



Minutes of the September 25, 2019 Meeting of the
Commission on Governmental Ethics and Election Practices
45 Memorial Circle, Augusta, Maine

Present: William A. Lee III, Esq., Chair; Hon. Richard A. Nass; Bradford Pattershall, Esq., and Meri N. Lowry

Staff: Jonathan Wayne, Executive Director; Phyllis Gardiner, Counsel

Mr. Lee convened the meeting at 9:02 a.m. He said the four Commissioners currently serving were present, but the fifth seat is vacant as it has been for the past 18 months.

1. Ratification of Minutes of July 30, 2019 Meetings

Ms. Lowry made a motion to adopt the July 30th minutes. Mr. Pattershall seconded the motion. The motion passed (4-0).

2. Update on Audits of 2018 Maine Clean Election Act Candidates

Jennifer Connors and Marcus Pratt of Runyon Kersteen Ouellette appeared before the Commission to provide an update on the progress of the post-election audits of 2018 Maine Clean Election Act (MCEA) candidates. Forty-eight legislative and three gubernatorial candidates have been selected for audit. Seven reports have been completed since the July 30th meeting including one gubernatorial candidate; two gubernatorial candidate audits are on-going.

At Mr. Lee's request, Ms. Connors explained the difference between an exception and a finding. She stated an exception is a minor error that was not a violation of the Maine Clean Election Act (the "MCEA") (*e.g.*, reporting an expenditure on the wrong report), whereas a finding would be something that would violate the MCEA or a Commission rule and is a more serious matter than an exception.

Mr. Nass inquired about Sen. Chipman's audit, specifically referring to the lack of documentation of seed money contributions. He asked why the auditors characterized this as an exception as opposed to a finding. Ms. Connors replied they could not prove that Sen. Chipman did violate the MCEA, therefore it was an exception. Mr. Lee asked if this would be worth

investigating further. Mr. Wayne said that he reviewed Sen. Chipman's seed money report and most of his seed money contributions were properly itemized with the complete contributor information. He did not think it would be necessary to investigate it further.

In response to questions from Mr. Nass, Mr. Wayne confirmed that Warren Richardson reimbursed the Maine Clean Election Fund for the unallowable travel reimbursement and Aaron Rowden has returned the unspent MCEA funds.

Ms. Lowry initiated a discussion about the frequency of the auditors' appearances at Commission meetings. She said it may be more efficient for the auditors to appear once when the audit process is complete. Additional appearances could be scheduled if there were issues that arose out of an audit that needed the Commission's attention. Mr. Lee said he would be more comfortable if the auditors appeared twice with additional appearances if needed. Mr. Nass said given the volume of audits, he would prefer more than one appearance by the auditors. Ms. Lowry said the Commission could decide how to proceed when the next round of audits begin after the next election.

3. Update on Transition and Inaugural Committees

Mr. Wayne gave a brief introduction to describe the law regarding gubernatorial transition committees and outline the reasons why the Mills inaugural committee was before the Commission.

Mr. Nass expressed his concern that the inaugural committee, which should have terminated its activity in February according to the law as enacted by citizen initiative, is becoming an on-going committee and that is something the citizen initiative sought to prevent.

Michael Carey, Esq., counsel for the Mills inaugural committee, appeared before the Commission. In response to a question from Mr. Lee, he said the committee currently has \$45,000 in unpaid pledges and confirmed that with the cash on hand and the pledges, if paid, the committee would be able to pay all outstanding obligations.

Mr. Nass and Mr. Lee said they were concerned that the longer this matter continues without resolution, the committee is paying for a fundraising consultant and legal fees with funds that could otherwise be used to pay down the debt to the Augusta Civic Center.

Mr. Lee said he was inclined to resolve this matter at this meeting. Mr. Pattershall said he questioned whether the committee would have the incentive to wrap up its operations if the Commission were to come to a final determination. He said his position on the amount of a penalty would depend on how long this matter remained unresolved. Ms. Lowry said she saw a benefit to having the Commission's and the staff's ongoing oversight until the committee has finished paying its obligations. She said that her position on a penalty amount could also be affected by the amount of time the committee took to pay off the debt.

Mr. Lee said there was not a significant harm to the public resulting from this matter and the committee has been very transparent about its activities. He said the Commissioners all agreed the statutory deadline for the committee to cease its operations was too early. However, the Commission did not expect the matter would remain unresolved as long as it has.

Mr. Pattershall suggested that rather than requiring the committee to report to the Commission at the next meeting in October, he preferred that the Commission direct the committee to return when the Civic Center debt and any other obligations were paid off. At that point, the Commission would have all the information needed to make a final determination.

Mr. Lee said he was concerned that having an open-ended date would take the pressure off the committee. Mr. Carey said the committee has the incentive to wrap this matter up. He did not think that regular appearances before the Commission would add to that incentive.

With respect to the Commission's consideration of this matter, Ms. Lowry said the Commission's role was not to question or comment on the committee's internal operations. Questioning the committee's internal operations or decision-making is also not going to be useful when it comes time for the Commission to come to a decision. The Commission has already made it very clear to the committee that the Commission is concerned about the length of time it is taking to resolve this matter.

Mr. Nass said it was not unusual for the Commission to take into consideration the steps that a candidate or committee has taken to ensure compliance with campaign finance laws when deciding whether to find a violation and impose a penalty.

Mr. Nass said the statute is unclear regarding who is liable for any penalty imposed by the Commission. Ms. Gardiner agreed that the statute is unclear; it does not provide a definition of

“person.” In response to a question from Mr. Nass, Ms. Gardiner said the statute governing gubernatorial transition committees is different from campaign finance law which clearly identifies the persons who are liable for penalties.

Mr. Lee moved to continue this matter until the committee reports that it has paid the underlying debt or until the Commission decides to bring this matter back for further hearing. Mr. Pattershall seconded.

Mr. Nass said that he would vote against motion because he believes the Commission should resolve this matter and impose the maximum penalty.

Mr. Pattershall said the underlying violation is that the committee has continued fundraising after the January 31st deadline, but he sees that there are mitigating circumstances given the short timeframes established in the statute. He may eventually decide that a high penalty is appropriate, but he is not inclined to decide upon a penalty at this meeting.

The motion passed (3-1, Mr. Nass opposed).

4. Consideration of Proposed Legislation

Mr. Wayne said the staff was proposing three bills to be submitted to the Legislature for the second legislative session starting in January. He said the first bill made some minor wording changes to clarify which provisions of campaign finance law applied to PACs or ballot question committees or both. The second bill expands the requirements for organizations which do not employ a lobbyist to report expenditures on grassroots lobbying and makes some changes to the grassroots lobbying reporting requirement for lobbyists whose clients engage in grassroots lobbying. The third bill addresses the situation where a lobbyist pays for meals or makes other payments on behalf of public officials, but the expenditures are not made in connection with a client for lobbying purposes. The current language in the lobbyist reporting statute indicates that it should be reported, possibly for each of the lobbyist’s clients. That would give the wrong impression to the public regarding the amounts spent by the clients to influence public officials. Under the proposed bill, the lobbyist would report their own expenditures on behalf of public officials in a separate report, not in any client’s report. This issue was brought up by several lobbyists who are unclear about how to report these expenses. The bill would also simplify the

registration process for state agency employees who lobby on behalf of their agency. It also makes some minor changes to clarify the monthly reporting requirements for lobbyists.

Mr. Lee opened the discussion for the first bill. Ms. Lowry suggested including the phrase “of political action committees” in the titles of subsections 1054-A and 1057. The new titles would read: “Duties and liabilities of the treasurer, principal officer and primary decision maker of political action committees” and “Records of political action committees,” respectively.

Mr. Nass asked whether the statute should make a specific reference to “leadership PACs” since that is a commonly-used term, but it is not included in the statute. Ms. Gardiner stated it is not a legally defined term. Ms. Lowry suggested that the staff would have the opportunity to define and use the term “leadership PAC” in communications to PACs. Mr. Nass said that he wanted to bring that specific idea up in discussing the letter that would be sent to leadership PACs (Agenda Item # 5). He said it is important that the people getting the letter know that it has to do with leadership PACs. Mr. Wayne noted that, even though “leadership PAC” is not defined, the concept is contained in two provisions of the statutes that refer to a PAC led by a Legislator. The staff also categorizes a PAC led by a Legislator as a leadership PAC in the campaign finance e-filing system, so that those PACs are identifiable by the public.

Regarding the bill on grassroots lobbying, Mr. Nass asked how the reporting requirement would affect membership organizations which send out newsletters. Sometimes those newsletters have a wider distribution than just to the organization’s members. Mr. Wayne said the intention was to draft the proposed bill in such a way that it was not unduly burdensome on membership organizations which were communicating with their members. The reporting requirement would apply to expenditures to independent contractors and other outside vendors, not to salaries paid to staff of the organization. The bill actually makes an exception for membership communications that does not currently exist in the statute. Mr. Wayne said as this bill goes through the legislative process, others will likely comment on this provision which may result in some changes.

The Commissioners did not suggest any substantive changes to the third bill regarding clarification of lobbyist reporting requirements, legislative designee registration, and separate reporting requirements for lobbyist expenditures on behalf of covered officials that are not

related to a specific client or clients. The Commissioners suggested several minor grammatical corrections.

Mr. Nass moved that the Commission recommend the adoption of proposed legislative changes with amendments recommended by members of the Commission Ms. Lowry seconded.

The motion passed (4-0).

5. Compliance Reviews of 2020 PAC Led by Legislators

Mr. Lee said this matter was on the agenda to provide the Commission with an update on the plans to conduct compliance reviews of financial activity in 2020 by political action committees which are directed or controlled by a Legislator. Ms. Lowry and Mr. Pattershall recommended some wording changes to the letter. Mr. Nass recommended that the letter be sent to the principal officer of the PAC as well as the treasurer. Ms. Lowry agreed. Mr. Wayne said the staff would make that change.

Mr. Lee asked why the staff stated in the letter that the staff would not be publishing separate reports for each PAC. Mr. Wayne said he could take that bullet point out and preserve the opportunity to provide individual reports on the PACs to the Commission. Mr. Lee said he would like to see an individual report if the staff discovered substantial discrepancies which may lead to further Commission action.

Mr. Nass said he would like the letter to clearly state that this review applies to leadership PACs. He also said the term “usual procedures” in the sixth bullet point is unclear. The letter should be clearer about what will happen if the staff finds potential violations. Mr. Wayne said he would make those clarifications.

The Commission did not have to take any action regarding this agenda item.

Mr. Lee moved to adjourn. Ms. Lowry seconded. The motion passed (4-0).

The meeting adjourned at 10:58 a.m.

Respectfully submitted,
/s/ Jonathan Wayne
Jonathan Wayne, Executive Director