



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
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Approved, as modified: January 30, 2017

Minutes of the January 9, 2017, Meeting of the
Commission on Governmental Ethics and Election Practices
45 Memorial Circle, Augusta, Maine

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

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

Commissioner Matheson convened the meeting at 9:01 a.m.

The Commission considered the following items:

1. Ratification of Minutes of December 8, 2016 Meeting

At the request of Ms. Matheson, Mr. Lee made a motion to table review of the December 8, 2016 minutes until the January 30, 2017 meeting. Mr. Nass seconded the motion. Motion passed (5-0)

2. Request for Waiver of Late-Filing Penalty – Hon. Geoffrey Gratwick

Mr. Wayne said Senator Gratwick was running for re-election to Senate District 9 as a Maine Clean Election candidate. Sen. Gratwick's deputy treasurer filed the 11-Day Pre-General Report five days early but the report was missing one expenditure for \$9,507.60. In the staff's view, the report was not substantially conforming and should be considered late. The preliminary penalty is \$5,000. The staff recommends reducing the penalty to \$200.

Senator Geoffrey Gratwick and George Burgoyne appeared before the Commission. Sen. Gratwick said this error was his because he paid for the expenditure via wire transfer but failed to enter the transaction into the campaign bank account. He said this was the first time he had paid by wire transfer; normally the campaign pays for expenditures with checks.

Ms. Matheson asked if Sen. Gratwick agreed with the staff recommendation. Sen. Gratwick said he was fine with the staff recommendation.

Mr. Lee asked if this was the campaigns first time paying via wire transfer. Mr. Burgoyne said it was the first time over two campaigns.

Mr. Lee made a motion to reduce the statutorily calculated penalty to \$200 as recommended by the Commission staff. Ms. Lowry seconded the motion.

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Mr. Nass asked what the total size of the campaign was. Mr. Burgoyne said he believed it was approximately \$45,000 but they had returned approximately \$5,000.

Mr. Nass asked why there was an immediate demand for payment. Mr. Burgoyne explained that he had paid one portion of the bill but had missed paying the second portion, which caused a potential problem with the timing of the mailing.

Mr. Nass said the waiver letter states that Senator Gratwick filed the report. Sen. Gratwick said that was a mistake; Mr. Burgoyne filed the report. Mr. Nass asked if the report was substantially conforming. Mr. Wayne said it was not substantially conforming and that the wording in the staff memo could have been clearer.

Mr. Burgoyne said that he has always found Commission staff to be very patient and helpful whenever he has called for help.

Motion passed (5-0).

3. Request for Waiver of Late-Filing Penalty – Hon. Lance Harvell

Mr. Wayne said Rep. Lance Harvell was a candidate for House District 113. Rep. Harvell made a \$2,195 expenditure on October 30, 2016 and was required to file a 24-Hour Report on October 31, 2016. Rep. Harvell became aware of this filing deadline when he entered his expenditures and received an alert that he needed to file this report. The report was filed 42 days late.

Rep. Lance Harvell appeared before the Commission. Rep. Harvell said he had contacted the vendor about this mailer in early October but had not given final approval or paid anything until the end of October. He said it did not occur to him that he would have to file an additional report because he has never filed a 24-hour Report in his past campaigns. Rep. Harvell said he had no intention of concealing the expenditure.

Mr. Lee asked what the total size of his campaign was. Rep. Harvell estimated he raised \$12,000-\$13,000. Mr. Lee asked how much the mailer cost. Rep. Harvell said he believed it was approximately \$2,000. Mr. Lee asked if he had filed 24-Hour Reports in the past. Rep. Harvell said he had not.

The Commissioners discussed the impact of the citizen initiative on the staff's penalty recommendations and in what instances the recommendations should be increased in light of the citizen initiative. Mr. Wayne said the staff recommendations have been higher for PACs, BQCs, and state party committees. However, the recommendations for candidate and local party committees have not increased as much because these campaigns have less experience filing reports. The staff wants the penalty to be sufficiently high to encourage accurate reporting and compliance but not so high as to discourage citizens from participating in the political process.

Mr. Nass made a motion to accept the staff recommendation. Ms. Lowry seconded the motion. Mr. Lee suggested the motion be amended as follows: to reduce the statutorily calculated penalty to \$200 as recommended by Commission staff. Mr. Nass agreed and Ms. Lowry seconded the amended motion. Motion passed (5-0).

Mr. Nass said this is the first cycle after the law change and they have time to work on a new penalty structure. Ms. Lowry agreed and said she did not believe they had to double all penalties but should be considering the circumstances of the individual cases. Ms. Matheson said that she believed the Commission has always been tougher on the PACs, BQCs and parties because of the level of their experience.

4. Request for Waiver of Late-Filing Penalty – Hon. Joel Stetkis

Mr. Wayne said Rep Stetkis was running for re-election to House District 105 as a traditionally-financed candidate. Rep. Stetkis made a \$2,305 purchase for a mailer on Friday, October 28, he entered the transaction into the e-filing system but did not complete the process to file the report. Rep. Stetkis received a late notice from the system and filed the report one day late. Mr. Wayne said staff recognizes that the current system is not user-friendly and is working on a replacement system that should provide a better end user experience. However, he said that the new system will not change the two-step process for filing reports. Mr. Nass said the second step is important because it allows the filer to review the report and make changes prior to filing the report. Mr. Wayne said that was correct.

Rep. Joel Stetkis appeared before the Commission. Rep. Stetkis said he was not present to argue about the amount of the penalty because he believes it is important to follow the law and rules. He said he has very limited experience with the e-filing system; normally his treasurer enters the

information into the e-filing system and files the reports. In this case, his treasurer was not available so he entered the information and filed the report. When he received the late-filing notice the next day, he immediately filed the report. Rep. Stetkis pointed to a recent similar case that staff had not found a violation or imposed any penalty.

Mr. Lee asked about the circumstances of the case Rep. Stetkis referred to. Mr. Wayne said that matter could be distinguished from Rep. Stetkis' case in that the candidate had relied on an email from the staff regarding the filing procedure, but the information was not sufficiently clear regarding the necessary steps to complete the filing process. Ms. Lowry said she believed the Commission was consistent in their handling of these cases. She said it was rare that they found a violation and not imposed a penalty.

Mr. Nass made a motion to accept the staff recommendation of \$46.10. Mr. Lee seconded the motion. Ms. Gardiner clarified they are voting not to waive any portion of the statutorily calculated penalty of \$46.10. Motion passed (5-0).

5. Request for Waiver of Late-Filing Penalties – Theodor Short

Mr. Wayne said this waiver request was filed by the treasurer for the Theodor Short campaign. The treasurer experienced problems with his internet connection on the filing deadline which resulted in the report being filed one day late.

Mr. Lee said the treasurer could have filed the report before the deadline and by waiting until the last minute, he or she assumes the risk that something could go wrong. Mr. Lee said he does not see any mitigating factors in this case nor does he believe the penalty is disproportionate.

Ms. Matheson asked if the treasurer had standing to file a waiver request. Ms. Gardiner said the candidate and treasurer are jointly responsible for filing reports. Mr. Wayne said notice of violation is required to be sent to the candidate and the candidate's political committee.

Ms. Matheson said she was not persuaded by the arguments in the waiver request.

Mr. Lee made a motion to impose the statutorily calculated penalty of \$98.10 as recommended by Commission staff. Mr. Pattershall seconded the motion. Motion passed (5-0).

6. Request for Waiver of Late-Filing Penalty – Maine Democratic State Committee

Mr. Wayne said the Maine Democratic State Committee (“Party”) made two independent expenditures within a day of each other, entered both transactions into the e-filing system, but only filed one independent expenditure report believing that both transactions would be captured in a single report. He said the system is designed to be a two-step process: enter the transactions and file the report. Ms. Matheson asked if the filer can preview the final report prior to filing. Mr. Wayne said they can. Mr. Lee asked if the filer can enter multiple transactions at one time. Mr. Wayne said each transaction must be entered individually and the filer has to go to the reports page to view and file the report. Mr. Lee asked if it was common practice for a filer to enter transactions and not file the report. Mr. Wayne said it was. Ms. Matheson asked for clarification on how the support/oppose transactions are entered. Mr. Lavin said the filer enters one transaction based on the total amount paid to the vendor and then that amount is broken down by the separate allocations to support or oppose a candidate.

Katherine Knox, Esq., counsel for the Party, appeared before the Commission. Ms. Knox stated there is no question that the report was filed late. The treasurer is very experienced, but she did not realize that the system would not capture all the transactions in one report. Ms. Knox suggested that the system be upgraded to provide an alert about unfiled transactions. Ms. Matheson said a review of the report would have provided that information. Ms. Knox agreed but said that it gets very busy at the end of a campaign and this was simply missed.

Mr. Lee said he thought Ms. Knox’s suggestion about having the system alert filers about unfiled transactions was a good idea and asked if it was possible to make this happen. Mr. Wayne agreed and said it could be added to the new system. The Commissioners discussed options to modify the e-filing system so that it would be more evident to users when there were unfiled transactions and reports.

Mr. Pattershall made a motion to reduce the preliminary penalty to \$250. Ms. Lowry said she did not agree with that recommendation. Motion failed due to lack of a second.

Mr. Nass made a motion to accept the staff recommendation of a \$500 penalty. Ms. Lowry seconded the motion. Mr. Lee suggested amending the motion to reduce the statutorily calculated

penalty to \$500 as recommended by Commission staff. Ms. Lowry seconded the amended motion. Motion passed (4-1; Mr. Pattershall opposed).

7. Request for Waiver of Late-Filing Penalty – York County Republican Committee

Mr. Nass recused himself from consideration of this matter due to his involvement with the York County Republican Committee (“Committee”).

Mr. Wayne said this matter had been postponed at the December 8, 2016 meeting because the Committee chairperson could not attend that meeting. The Committee’s treasurer filed the waiver request stating that she had attempted to file the report three days early but had somehow failed to file the report. Mr. Wayne said the staff is not recommending a reduction because the penalty is consistent with past penalties. In addition, the treasurer is experienced and was aware of the filing deadline.

Jim Booth, chairperson for the Committee, appeared before the Commission. Mr. Booth said the treasurer was not good with computers, was very upset by this mistake and has since resigned as treasurer. He said he believed she had logged into the system twice on October 25 and thought she had filed the report. Mr. Wayne confirmed she had logged into the system twice on October 25. Mr. Booth said everyone on the Committee is a volunteer and their by-laws require the treasurer to pay this penalty out of her personal funds, which is why he was hoping for a waiver or a reduction of the penalty.

Mr. Lee asked what the Committee’s budget was for 2016. Mr. Booth said the total budget was approximately \$10,000 but that included a lot of in-kind contributions. He said without the in-kind contributions, the total would be closer to \$5,000 or \$6,000. Mr. Lee asked how long the treasurer had been with the Committee. Mr. Booth said he believed she started in 2012 but the Committee had not been very active until he joined in 2014.

Mr. Lee said he would support a reduction of the penalty to \$100. Ms. Lowry said she believed the penalty was proportional and that they would not be considering a reduction if they had not been told the treasurer would be paying the penalty out of her personal funds. Mr. Lee said the fact that the treasurer would be paying the penalty from her personal funds did not factor into his decision. He said he looked at the size of the organization and the multiple log-ins by the treasurer.

Ms. Matheson asked if reminder mailings had been sent to this Committee. Mr. Wayne said they had.

Mr. Pattershall asked how it came to light that the report had not been filed. Mr. Booth said another Committee member had noticed that the report was not filed and had contacted the treasurer.

Ms. Matheson said they hear this excuse a lot and, to be consistent, she could support no waiver of the penalty. Mr. Pattershall said he could support a reduction.

Mr. Lee made a motion that the statutorily calculated penalty of \$164.40 be reduced to \$150. Mr. Pattershall seconded the motion. Motion passed (4-0; Mr. Nass had recused himself from participation in this matter.)

8. Request for Waiver of Late-Filing Penalty – Androscoggin County Republican Committee

Mr. Wayne said this matter had been postponed at the December 8, 2016 meeting because the Androscoggin County Republican Committee (“Committee”) treasurer could not attend that meeting. He said the treasurer had taken over in January 2016 after the Committee discovered that the prior treasurer had misappropriated funds. The Committee was required to file the 11-Day Pre-General Report on October 28 but due to the illness of the treasurer, it was filed one day late.

Leslie Gibson, treasurer for the Committee, appeared before the Commission. Mr. Gibson said the Committee had had a complete turnover of its leadership due to embezzlement by the prior treasurer and willful negligence of the former Chair. He said the first late report violation this year was a result of the actions of the former treasurer. Mr. Gibson said he had caught a viral bug on the Wednesday before the filing deadline. He saw his doctor on Thursday and the anti-nausea medicine he was given just knocked him out. Mr. Gibson said no one else on the Committee has log-in credentials but they were working on changing that. He said he had been waiting for several receipts from other Committee members before he filed the report.

Ms. Matheson asked when he received the invoices. Mr. Gibson said he received the receipts on the day of the filing deadline. He said he had sent an email the prior week to Committee members reminding them to turn in their receipts. He said he had also asked the Committee’s secretary to send a blast email to all Committee members. Ms. Matheson pointed out that he did not have to wait until the filing deadline to file the report.

Ms. Matheson asked what the circumstances were in the second violation. Mr. Wayne said it was a late 24-Hour Report. Mr. Gibson said that was triggered by their annual Lincoln Day dinner and no one was aware of the filing requirements. Ms. Lowry said she believed they had contracted for the location but did not actually pay for it until it happened, which was during the 24-hour reporting period. Mr. Gibson agreed.

Mr. Lee asked what the dates were of the expenditures that he was waiting to enter into the report. Mr. Gibson said he could not recall the specific dates only that the expenditures fell within the reporting period. In response to a question from Mr. Lee, Mr. Gibson said he took the medication after he returned from his doctor appointment and slept through the afternoon and night.

Mr. Nass said the statutory provision for a valid emergency does not give them much guidance. Ms. Gardiner said it does give the Commissioners with the ability to make a judgement about the validity of the emergency. Mr. Lee said he would not call this an emergency because the report could have been filed anytime. He said this is the Committee's third violation and, while the current leadership has no fault in the first violation, he could not support a reduction as low as the staff recommendation. Ms. Lowry asked what figure he had in mind. Mr. Lee said he could support a reduction to \$200. Mr. Gibson said he understood the Commissioners' concern that this was the third violation for the Committee. He said he believed the circumstances of the prior two violation should be taken into consideration. Ms. Matheson said the base penalty calculation is set by law. She said she has sympathy for the situation the Committee inherited but this is the third violation and simply dismissing the violation would not be in the spirit in the change of law. Ms. Matheson said she could support the suggested reduction to \$200. Mr. Nass said he could support a \$100 penalty because he believed, in some circumstances, the individuals who get involved in local party committees require encouragement.

Mr. Lee made a motion to reduce the statutorily calculated penalty of \$295.69 to \$200. Ms. Matheson seconded the motion. Motion passed (4-1; Mr. Nass opposed).

9. Request for Waiver of Late-Filing Penalty – Mainers for Informed Voters BQC

Mr. Wayne said this a late-filing of an initial report by Mainers for Informed Voters ("BQC). The BQC was formed by Ballot Initiative Strategies Center is a Washington-based advocacy organization that gets involved in various ballot question initiatives across the nation. The

organization trains and works with advocates in different states to promote these ballot questions. In June, the organization began engaging in monthly strategy telephone calls. The expenditures to staff in Maine exceeded the \$5,000 limit on September 30. The organization did not register with the Commission until 19 days later.

Ms. Matheson asked how the Commission staff became aware of the failure to register. Mr. Wayne said the organization self-reported the failure.

Mr. Lee asked if this case was also a late registration violation. Mr. Wayne said it was and the penalty of \$2,500 for a late-filed registration was mentioned in the penalty letter to the BQC but a determination was made not to pursue that violation. Mr. Lee asked if that was because if you have late registration you automatically have a late-filed initial report. Mr. Wayne said that was correct.

Katherine Knox, Esq., counsel to the BQC, appeared before the Commission. Ms. Matheson asked how the organization discovered it should have registered. Ms. Knox said the organization has a compliance counsel who pointed out the necessity to register in Maine due to its level of activity. She said the organization had no actual resources dedicated in Maine and could have made an in-kind contribution of its staff time to the Mainers for Fair Wages PAC. She said by the time it realized it had exceeded the \$5,000 limit, there was no choice but to register as a BQC.

Ms. Matheson said experience of the treasurer is a factor they can consider and asked about the treasurer's experience. Ms. Knox said she would say the treasurer has some experienced, but she would not characterize her as highly experienced. She said the organization's activities are largely educational and are similar to the activities of a 501(c)(3) or (c)(4) organization, except that they do share their resources with active campaigns.

Ms. Matheson said the harm to the public would be minimal given the amount of money and activity. Mr. Nass said he was comfortable with the staff recommendation to reduce the penalty to \$500.

Mr. Nass made a motion to reduce the statutorily calculated penalty of \$2,559.52 to \$500 as recommended by Commission staff. Mr. Lee seconded the motion. Motion passed (5-0).

10. Adoption of Rule Changes

Ms. Matheson said only two written comments had been received on the proposed rule. Mr. Nass asked if this was a major substantive rule. Ms. Gardiner said it was and the Veterans and Legal Affairs (VLA) Committee would hold a hearing on the proposed rule. Ms. Gardiner said the VLA Committee could reject the proposed rule in total or it could report out a bill that authorizes the adoption of the rule as proposed or with changes made by the Committee. In addition, Ms. Gardiner said the House and the Senate could propose floor amendments to further make changes to the proposed rule.

Ms. Matheson said there are provisions in the proposed rule that are necessary to make the Commission's rules consistent with the statutes. However, she said that reasonable minds could disagree with the Commission's policy decisions. Mr. Nass said the comments of the Senate Republican caucus raised important issues regarding paying individuals for collecting qualifying contributions and the candidate's responsibility for policing individuals who collect qualifying contributions. In response to a comment by Mr. Nass, Ms. Gardiner clarified that, under current law, a candidate can be disqualified for submitting a fraudulent contribution. The proposed rule requires the candidate to provide training, not to police individuals collecting qualifying contributions. The proposed rule makes it clearer who has the burden of proof and what the candidate must do to meet the burden of proof. The proposed rule allows the Commission to find the candidate eligible if the candidate can show by a preponderance of evidence that the candidate exercised due diligence, and had no knowledge of and did not participate in the fraudulent contributions. Ms. Matheson said that the proposed rule does add the requirement to provide training, but it also provides the candidate additional grounds upon which to base an appeal of the Commission's denial of certification.

Mr. Nass asked whether Mr. Wayne would have an opportunity to provide the Senate Republican caucus with an explanation of the benefits of the proposed rule. Mr. Wayne said he would reach out to the Senate Republican caucus and would explain to the Senate Chair of the Veterans and Legal Affairs Committee that the Commission would rather see these provisions stripped out of the proposed rule, if the Committee disagrees with them, than to have the entire rule thrown out. Ms. Matheson said the Commission has decided on these two policy directions but acknowledged that others may have a different approach to achieve the policy goals of the proposed rule.

Mr. Lee said that there may be some misunderstanding about the status of the current law regarding the submission of fraudulent qualifying contributions and the denial of certification. The proposed rule would allow a candidate, who would be denied certification under current law if he or she submitted fraudulent qualifying contributions, to remain eligible as long as the candidate could prove he or she provided the training and was not involved with the fraudulent contributions. Without this provision, under current law, the candidate could be disqualified for submitting a single fraudulent qualifying contribution. The proposed rule only asks that the candidate make some minimal effort to provide training to individuals collecting qualifying contributions for the candidate on the legal requirements for qualifying contributions.

Mr. Nass said that it was important to show that the Commission gave serious consideration to the comments of the Senate Republican caucus. Ms. Gardiner said the basis statement that must be submitted to the Secretary of State is another way to communicate that the Commission gave serious consideration to the comments of the Senate Republican caucus and to explain the rationale for the proposed rule regarding the training requirement.

Mr. Lee moved to provisionally adopt the rule as proposed. Ms. Lowry seconded.

Ms. Matheson expressed a concern about the possibility that the rule could be voted down if there were strong objections in the VLA Committee or the House or Senate to portions of the proposed rule. She said the proposed rule contained some important changes that would bring the Commission's rule into alignment with the Maine Clean Election Act as amended by the 2015 citizen initiative. However, she said she would support sending the rule as proposed to the Legislature with the hope that any concerns could be addressed and settled by the VLA Committee.

The motion passed (5-0).

Ms. Lowry made a motion, seconded by Mr. Nass, to adjourn. The motion passed. The meeting adjourned at 12:22 p.m.

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