



Minutes of the March 28, 2018, Meeting of the  
Commission on Governmental Ethics and Election Practices  
45 Memorial Circle, Augusta, Maine

Present: Hon. Richard A. Nass; Meri N. Lowry, Esq.; Bradford A. Pattershall, Esq.; and William A. Lee III, Esq. (by telephone)

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

Mr. Nass convened the meeting at 9:00 a.m.

Mr. Nass moved to elect Mr. Lee as Chair for at least a two-year term. The motion was seconded by Ms. Lowry. Motion passed (4-0).

Mr. Lee moved to have Mr. Nass serve as Chair for this Commission meeting; Ms. Lowry seconded. Motion passed (4-0).

### **1. Request of Waiver of Late-Filing Penalty – Candidate James Boyle**

Jonathan Wayne introduced David Farmer who is representing James Boyle in this matter. Mr. Wayne explained that Mr. Boyle is a former State Senator and was a gubernatorial candidate for the Democratic nomination in 2018 but has recently withdrawn from the race. He was required to file a January Semiannual Report by 11:59 p.m. on January 16, 2018. He was receiving assistance from a political consulting firm, NGP. The campaign was relying on NGP to provide it with a data file to upload to the Commission's e-filing system for the January report.

Unfortunately, the data file the campaign received from NGP included an extra column and the data upload was not successful. The deputy treasurer of the Boyle campaign was made aware of the issue in the afternoon and was advised to work with NGP to solve the problem. The issue did not get solved by the filing deadline. The campaign uploaded the data file after the deadline and received an email confirming the submission. However, the campaign did not actually file the report by clicking the "File Report" button. The report was two days late resulting in a preliminary penalty of \$1,000. The staff recommended that the penalty be reduced to \$500. The campaign requested a full waiver of the penalty.

David Farmer appeared before the Commission and identified himself as the senior advisor for Boyle for Governor Campaign and representing Mr. Boyle. Mr. Farmer stated he works for

Bernstein Shur's public affairs group, but is not an attorney. Mr. Farmer agreed with Mr. Wayne's description of the facts of this matter, and commended Ms. Erin Gordon on her accessibility to the campaign and on her accurate write-up of the circumstances leading up to the late report. There is no dispute with the facts of the case. The waiver was requested because the campaign made a bona fide effort to file the report on time. The campaign had released the information about its financial activity to the press by noon on the day of the deadline. There was no intent to conceal or delay. Mr. Boyle dropped out of the gubernatorial race in February. He ran twice before in 2012 as a traditionally financed candidate and again in 2014 as a Maine Clean Election Act candidate. This is the first offense he has had. The candidate and staff take transparency very seriously and take responsibility for the mistake. Mr. Farmer asked for consideration of waiver of penalty or reduction.

Mr. Lee asked Mr. Wayne why the version of the report emailed to the Commission staff on the deadline did not meet the filing requirements of 21-A M.R.S.A § 1020-A(2).

Mr. Wayne stated that the only way the public can view a report is if the information has been entered into the Commission's e-filing system. A report in the form of a pdf file cannot be uploaded into the e-filing system. In addition, under 21-A M.R.S.A. § 1017(10), candidates with financial activity or more than \$1,500 are required to file their reports using the e-filing system.

Mr. Lee stated that it appears that Mr. Farmer and the campaign understood this to be the protocol.

In response to a question from Mr. Nass, Mr. Farmer explained that NGP is a national consulting firm that manages the integration of the campaign finance parts of campaign with the voter file. Essentially, it is a database that many Democratic candidates use for campaign finance reporting and voter contact.

Mr. Lee asked why the Boyle campaign did not manually enter the data on January 16, 2018 as recommended by the Commission staff. Mr. Farmer said the campaign determined it was quicker and more responsive to continue working on the electronic filing than enter the data manually.

Mr. Lee asked why the campaign waited until the day of the deadline to file the report. Mr. Farmer responded that the timing of a campaign finance report filing is a political consideration about releasing information to other candidates.

Mr. Lee asked Mr. Wayne if there were other cases like this situation in relation to penalties.

Mr. Wayne said he cannot recall any cases where there was a problem with the data upload feature of the e-filing system resulting in a late report. In general, the \$500 penalty is based on gubernatorial candidates in 2014 who made well-intentioned mistakes such as missing a 24-hour report and minor errors which received a \$500 fine.

Mr. Farmer commented that there was a material difference between a 24-hour report and January report for June election and the impact on the public's awareness of a campaign's financial activity and the impact it may have on other campaigns. He does not believe there was a significant impact on the public or other opponents as result of this late report.

Mr. Pattershall said it did not seem that there was any intent to file late by the Boyle campaign, but he believed it was important to maintain a penalty for late filing regardless of the circumstances. Mr. Pattershall said he understood that this was a technological glitch, he was supportive of the staff's recommended penalty.

Ms. Lowry and Mr. Lee said they were also comfortable with the staff's recommendation.

Mr. Pattershall moved to adopt staff recommendation of a \$500 penalty; Mr. Lee seconded. The motion passed (4-0).

## **2. Rulemaking**

Mr. Wayne said the staff was proposing these rule changes to address issues regarding the applicability of contribution limits in this year's primary election if there is no clear winner after the first round of ranked-choice voting and some time passes before the winner is finally determined.

In response to a question from Mr. Nass, Ms. Gardiner explained the procedures for emergency rulemaking for major substantive rules (Chapter 3 of the Commission's rules) and routine technical rules (Chapter 1 of the Commission's rules). She said by voting to initiate a rulemaking today, there would be sufficient time to receive comments and to adopt the rules prior to the June primary.

Mr. Nass said he is inclined to be supportive of the rulemaking process and move forward.

Ms. Lowry moved that the Commission post the proposed rules for public comment. Mr. Pattershall seconded. Motion passed (4-0).

Mr. Nass made a motion, seconded by Mr. Pattershall, to adjourn. The motion passed (4-0).

The meeting adjourned at 10:12 a.m.

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