



Minutes of the May 25, 2016, Meeting of the
Commission on Governmental Ethics and Election Practices
45 Memorial Circle, Augusta, Maine

Present: Margaret E. Matheson, Esq., Chair; Michael T. Healy, Esq.; William A. Lee III, Esq.;
Meri N. Lowry, Esq.

Absent: Hon. Richard A. Nass

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

Commissioner Matheson convened the meeting at 9:04 a.m.

The Commission considered the following items:

1. Ratification of Minutes of April 27, 2016 Meeting

Mr. Lee moved to accept the minutes as amended. Ms. Lowry seconded. Motion passed (3-0; Mr. Healy abstained).

2. Appeal by Theodor Short for Maine Clean Election Act Funding

Ms. Matheson formally opened the hearing on the appeal of Theodor Short for Maine Clean Election Act funding. The hearing was conducted in accordance with the following laws and rules: the Administrative Procedure Act, 5 M.R.S.A. §§ 9051-9063; the Maine Clean Election Act, 21-A M.R.S.A. § 1125(14); and Ethics Commission Rules, Chapter 2. The appeal was filed with the Maine Ethics Commission on May 18, 2016 in accordance with 21-A M.R.S.A. § 1125(14)(A). Notice of the hearing was provided to the appellant and his opponent in accordance with 21-A M.R.S.A. § 1125(14)(B). The appellant agreed to the hearing date notwithstanding that the hearing is being held more than five days after the appeal was properly filed. Pursuant to 21-A M.R.S.A. § 1125(14)(B), the appellant has the burden of proving the certification decision was in error as a matter of law or was based on factual error.

Philip Saucier, Esq. appeared before the Commission as counsel for the Senate Democratic Campaign Committee. He stated the Senate Democratic Campaign Committee is an interested party under 5 M.R.S.A. §9054 and, in particular, under 21-A M.R.S.A. §1125 (14), which gives the opponent or an interested party the ability to appeal a decision of the Commission. He clarified that

the Committee is not appealing the decision but the Committee wanted to be on record as a formal intervenor for the purpose of possible future appeal.

Joshua Tardy, Esq., representing Theodor Short, stated they did not have any objection to the Committee having party status in these proceedings or to their comments. Mr. Saucier stated he had spoken with Senator Hill, Theodor Short's opponent, and she had given him authority to represent her, as well as the Committee, in these proceedings.

Mr. Healy made a motion to grant the Senate Democratic Campaign Committee intervenor status as an interested party. Mr. Lee seconded the motion. Motion passed (4-0).

Mr. Wayne stated the Commissioners had already received key items in this matter in their meeting packet. He stated the following additional items, which have already been shared with Attorney Tardy, are now being entered into the record: the alphabetized list of contributors with staff's annotations, the Receipt and Acknowledgment Forms containing the names of contributors whose contributions were rejected, copies of money orders and personal checks from those contributors, information from the Central Voter Registration System for certain of those contributors, a memorandum from staff Candidate Registrar Emma Burke regarding the operation of the Commission's online qualifying contribution service, and excerpts from the 2016 Guidebook for Maine Clean Election Act candidates. Ms. Matheson asked if these are being entered as exhibits or simply into the written record. Ms. Gardiner stated Commission Rules view them as part of the written record; they could be entered as exhibits but it is not necessary. She stated they are part of the record because these are the documents Commission staff relied on to make its determination. Mr. Tardy stated they have no objection and if Commission staff had not entered them, he would have done so.

Joshua Tardy, Esq., appeared before the Commission as the legal representative to Theodor Short. The Commission heard sworn testimony from Paul Lavin, Assistant Director of the Commission Staff; Theodor Short, the candidate; and Edward Dugay, a campaign volunteer for Mr. Short.

The Commission considered the documentary evidence and oral testimony regarding nine qualifying contributions that the Commission staff determined to be invalid.

Mr. Healy made a motion to affirm the staff decision disqualifying the online qualifying contributions made by Z. Lemire, R. Moya and E. Moya and to find that the voter registration verification for these contributors was not done until May 9th and not received by the Commission staff until May 10th. Mr. Lee seconded the motion. Motion passed (4-0).

Mr. Lee made a motion to accept K. VanDorin's qualifying contribution. Mr. Healy seconded the motion. Motion passed (4-0).

Mr. Lee made a motion to affirm the staff's disqualification of the Folger and McDonald money orders. Ms. Matheson seconded the motion. Motion passed (4-0).

Mr. Lee made a motion to affirm the staff's disqualification of the Carnicelli and Kent contributions. The motion was withdrawn due to lack of a second.

Mr. Lee made a motion to affirm the staff's disqualification of the P. Carnicelli contribution. Ms. Matheson seconded the motion. Mr. Lee withdrew his motion.

Mr. Lee made a motion to affirm the staff's disqualification of the contribution of P. Carnicelli on the basis that T. Carnicelli signed the Receipt & Acknowledgement form for her in violation of the statute. Ms. Matheson seconded the motion. Motion passed (4-0).

Mr. Lee made a motion to affirm the staff's determination that L. Kent's qualifying contribution be denied on the grounds that J. Kent signed the Receipt & Acknowledgement form for him. Ms. Lowry seconded the motion. Motion passed (4-0).

Mr. Healy made a motion to affirm the staff's denial of J. Christian's qualifying contribution on basis there is no evidence she used corporate account for personal purposes. Motion failed due to lack of a second.

Mr. Lee made a motion to affirm the staff's disqualification of J. Christian's contribution on the basis that she is not a registered voter at the same address as her parents' and there is no evidence

she is a co-owner in her parents business. Ms. Matheson seconded the motion. Motion passed (4-0).

Mr. Healy noted for the record that he voted for the motion but did not agree with all aspects of the motion.

Ms. Matheson stated that the adjudicatory hearing on the matter of the Theodor Short's appeal of the staff's denial of Maine Clean Election Act certification was concluded. The Commission directed Mr. Wayne to draft the findings of fact and order to reflect the Commission's decision on the appeal, and to circulate the draft for review by the Commissioners prior to the next meeting.

3. Request to Investigate Invitations Mailed in Support of Hon. Benjamin Chipman

Mr. Wayne stated Steven J. Biel, a resident of Portland, filed a request for investigation regarding Representative Benjamin Chipman's use of the house party exception found in 21-A M.R.S.A. § 1012(2)(B)(2). Rep. Chipman is running as a Democrat for Senate District 27 and is a Maine Clean Election Act candidate. Mr. Wayne stated Mr. Biel is a supporter of Representative Diane Russell, who is also running as a Democrat for Senate District 27 as a traditionally financed candidate. Mr. Biel questioned the source of funding for house party invitations mailed in support of Rep. Chipman and whether the payment is in compliance with the restrictions imposed on Maine Clean Election Act candidates. Mr. Wayne stated that any request for an investigation filed within 28 days of an election must be considered by the Commission within two business days but both parties had agreed to appear on the day of this Commission meeting. He stated Mr. Biel is present today and Rep. Chipman is present with his legal counsel, David Lourie, Esq. Ms. Matheson asked for clarification on what options are available to the Commissioners today. Mr. Wayne stated the Commission could decide whether any further investigation is necessary and, if further investigation is necessary, refer it back to Commission staff, or they could find a violation or no violation based on the information obtained at the meeting. Mr. Wayne stated the Maine Citizens for Clean Election submitted comments on this matter suggesting the statute or rules pertaining to the house party exception should be scaled back.

Steven Biel appeared before the Commission to provide information regarding his request for an investigation. He stated he agreed the house party exception is open to interpretation but believes

Rep. Chipman's invitation goes beyond the intention of what is allowable under the exception. Mr. Biel stated the statute clearly states a purchase must be made by an individual, voluntarily providing services to a campaign. That is not the case with this invitation, which was paid for by 10-12 people. He further stated the invitation was mailed via bulk rate, which he said is only available to businesses or campaigns. Mr. Biel stated that based on his interpretation, the statute requires that the expenditures must be made by the volunteer host of the party and, in this case, a couple of the volunteers listed do not live in this district, which makes it unclear how they could serve as a host for a house party. He stated he was concerned that the outcome of this matter could trigger a major problem in the future with Maine Clean Election Act candidates pushing the limits of the house party exception.

David Lourie, Esq. appeared before the Commission as legal representative to Rep. Chipman. Mr. Lourie stated the facts in this matter are undisputed. He said that Mr. Biel claimed that the invitation copied the style of Rep. Chipman's campaign mailers; however, the campaign mailers were mailed after the house party invitation was sent out. He stated the issues raised here involve Rep. Chipman's First Amendment rights and he believed the statute should be read broadly, not narrowly as Mr. Biel insists. In addition, Mr. Lourie stated that Rep. Chipman sought and followed Commission staff advice in this matter.

Rep. Chipman appeared before the Commission to provide information on this matter. He stated this is his fifth time running for office; he has a lot of experience with election law and has always made it his practice to seek advice from the proper authorities if he has any question about something his campaign would like to do. Rep. Chipman stated he was approached by several people about holding house parties for him. He talked with Senator Cathy Breen who has done this in the past and she provided him with a copy of an invitation that volunteers on her campaign had used. He stated he also spoke with Commission staff to make sure it would be okay to do this. The house parties are being held at opposite ends of the district, are scheduled within days of each other and the same volunteers are involved, so it was decided to send one invitation for both house parties. Rep. Chipman stated he sought guidance from Commission staff to find out if there were any limits to the number of invitations that could be mailed, the amount that could be raised cumulatively or if there was any problem with the content of the invitation. He stated a volunteer created the house party invitation and because he liked the look of the invitation, he asked this

volunteer if he would be willing to create a campaign mailer with the same design, which was mailed after the house party invitations. Rep. Chipman stated some of the people listed on the invitation are elected officials but others are not and he was not aware of any requirement that a volunteer had to live in the district to volunteer for a campaign. He stated it only made sense to use a mailhouse service for the invitations because it could print and mail them, saving the volunteers money. He said that a mailhouse will use its bulk mail permit for anyone, including individuals, as long as the order was large enough. Rep. Chipman concluded that he felt this allegation was politically motivated, especially being made so close to the primary by a supporter of his opponent.

Mr. Healy asked how many volunteers paid for the invitations. Rep. Chipman stated he believed there were no more than 15 volunteers who gave varying amounts up to the \$250 maximum. Mr. Healy asked who solicited the funds. Rep. Chipman stated there were a number of conversations about this and because the Senate district is so much larger than the House district, it was agreed that mailing the invitation would be better than going door-to-door. Mr. Healy asked who instructed the volunteers to send the money directly to MailingsUnlimited. Rep. Chipman stated he sought advice from Commission staff about this and was advised his campaign should not receive the donations but the volunteers should pay MailingsUnlimited directly. Mr. Healy asked who told the volunteers to send the money directly to MailingsUnlimited. Rep. Chipman stated he did.

Mr. Healy asked if each of the four individuals at whose houses the parties would take place also contributed \$250. Rep. Chipman stated they only contributed toward the cost of food and beverages, not the mailing. Mr. Healy asked if the host committee donated any money. Rep. Chipman stated some of them did. Mr. Healy asked for a list of the individuals who donated the \$1,828 and what services they were providing. Rep. Chipman stated he could provide a list. Mr. Healy asked if he had the list with him. Rep. Chipman stated he did not but he could get it and assured him that no one gave more than \$250. Mr. Healy stated that Rep. Chipman needs to provide more details about what services the volunteers rendered and that they did not simply write a check. Rep. Chipman stated they are all involved in the organization of these events.

Mr. Healy asked who made the arrangements for the mailing. Rep. Chipman stated he did. Mr. Healy asked who created the list of people to mail the invitations to. Rep. Chipman stated the volunteers coordinated the mailing list. Mr. Healy asked who approved the mailing list. Rep.

Chipman stated he was not sure but knew John Eder and several other volunteers coordinated the mailing list. Mr. Healy asked if Rep. Chipman had any involvement in approving the mailing list. Rep. Chipman stated he was aware of the list but did not approve or disapprove it. Mr. Healy stated the invitation is very professional looking and different from what a host would typically send for a house party. Rep. Chipman stated he thought it depended on the host, what skills they had or if they knew someone who could design an invitation similar to this.

Mr. Lee stated it would be difficult for him to find that this invitation met the house party exception without a list of volunteers, the amount they paid and what services they rendered. Rep. Chipman stated he thought he had covered this information in his response. Mr. Lee stated that Mr. Wayne requested more detailed information in his letter to Rep. Chipman. Rep. Chipman stated this was not a contribution to the campaign and there is no requirement in the house party exception to provide this level of detail. Mr. Lee agreed but stated that a complaint had been filed and now that information is necessary to make a determination on this matter. Mr. Lourie stated Rep. Chipman has addressed these issues but if the Commissioners need more information, they could provide it. He said that the events had not occurred so it may not be clear what services each volunteer will provide.

Ms. Matheson stated that in order to make any determination today, she would, at a minimum, need to see something from MailingsUnlimited documenting what each volunteer paid. Rep. Chipman suggested having a Commission staff member contact MailingsUnlimited to get this information. Mr. Healy asked if Rep. Chipman had a list with the required information at home. Rep. Chipman stated he did but it would be faster for Commission staff to call MailingsUnlimited to get the information in order to resolve the matter today. This has been damaging to his campaign and he would prefer this not continue past today.

To resolve this issue today, Mr. Healy stated he needed to know who made the donation, how much they donated and what voluntary personal services they rendered besides paying for the invitation. Rep. Chipman stated no one is alleging the volunteers are not rendering personal services. Mr. Healy stated that is a factual determination to be made. Mr. Lourie asked if Commission staff could review a submission to be made by Rep. Chipman showing the donations, the amounts and

describing the voluntary services to be made by each individual and report back to the Commissioners.

Ms. Matheson stated the invitation was not a political mailing. She said that she disagreed with Mr. Biel's reading of the statute that the purchase of the mailing must be by made one individual and that the statute required the host to make the expenditure.

Mr. Lourie asked if the Commissioners would be willing to take a break while Rep. Chipman obtained the requested information. Ms. Lowry stated Mr. Wayne's letter to Rep. Chipman was very clear about what information was required today. She quoted the services Rep. Chipman listed in his response and asked if the Commissioners would be able to make a determination today if Rep. Chipman provided the additional information requested.

Mr. Lee stated he could not make a commitment to make a determination today without seeing the additional information and whether it answers the outstanding questions. Mr. Healy stated that he was not sure that soliciting contributions and sending cash to a mailhouse to print and mail invitations is permitted under this exception. The only way it could be permitted is if the individuals making these contributions were also providing personal services related to the house party.

Ms. Lowry stated she believed the volunteer activity could extend beyond providing the house, food, beverages and invitations; it can include organizing the party and following up with the invitees. She stated she is satisfied with the description Rep. Chipman provided but he needed to designate which volunteers were performing the services. Ms. Matheson stated he also did not include whether they would be doing more than writing a check. Ms. Lowry stated if the volunteers are only writing a check that may not satisfy the exception provisions. She stated she had asked if they would accept Rep. Chipman's description of services to be rendered or if they were going to request Commission staff contact each volunteer to verify the services they would be rendering.

Rep Chipman suggested he contact MailingsUnlimited to get the names and amounts and he would list what services each individual would be doing at the house parties. Mr. Lee stated he would like to see copies of the individual checks. Rep. Chipman stated he did not know if MailingsUnlimited

kept copies of the checks or what bookkeeping practices they have. He again asked if he provided them with a list of names, amounts contributed and the services to be provided, if the Commissioners would close this matter today. Mr. Wayne stated that the Commission regularly audits candidates and deals with various vendors, who have different bookkeeping records. He stated the proposed list is good but if MailingsUnlimited could provide their bookkeeping records of this transaction it would strengthen his submission. Mr. Lee stated that if they receive the information before they adjourn today, they would consider it and might be able to make a determination based on the submission. Mr. Healy suggested they assure parties present that they would adjourn for one hour and return to consider any information they could provide.

The Commission adjourned for one hour while Rep. Chipman obtained the information.

Mr. Lourie provided the Commissioners with a list of volunteers, amounts contributed and individual services to be rendered. Ms. Matheson stated she feels more comfortable that the questions asked by the Executive Director had been answered.

In response to a question from Mr. Lee, Mr. Wayne stated that Commission staff has interpreted the house party exception to be one that encourages volunteerism. When providing advice on this matter, staff has always viewed the volunteering of personal services for a campaign included providing food, beverages and invitations, as long as it did not exceed \$250 per individual. Mr. Wayne stated he did not feel further investigation was necessary but would leave a final determination to the Commissioners.

Mr. Healy stated the statute clearly states services are to be provided by an individual and questioned if that should be applied to multiple individuals. Mr. Wayne stated that staff has typically not seen a problem with volunteers banding together to provide services. He stated he thought Rep. Chipman was pushing the limit with the scale of this mailing but believes this is covered by the exception.

Ms. Matheson stated she sympathized with the concerns expressed by Maine Citizens for Clean Elections but agreed with Mr. Wayne that this matter does fall within the house party exception.

Ms. Matheson stated that, given the level of interest in this matter, it might be a good idea to make a referral to the legislature for possible revision of this statute. She stated she did not believe this matter rose to the level of an investigation under this statute but expressed concern that this could become a bigger problem in the future.

Mr. Lee asked if Commission staff had received the requested information prior to this meeting, it would have accepted the information or done follow-up calls to the individual volunteers. Mr. Wayne stated Commission staff would have accepted the information because he did not believe calling each individual would provide more definitive information than what Rep. Chipman had provided. Mr. Lee stated that if they accept the information at face value, there does not appear to be any reason for further investigation. He asked if Commission staff would be able to develop some modifications for this statute for the Commissioners review.

Ms. Lowry expressed concern that this matter was pushing the limits of the exception but believed it was ultimately acceptable.

Mr. Healy stated he has found that most complaints brought before the Commission are politically motivated so Mr. Biel's political affiliations are irrelevant to this matter. He stated that, while he is sympathetic to the fact that Rep. Chipman sought advice from Commission staff and others, he does believe this goes beyond the scope of the exception. Mr. Healy stated he did not believe the statute contemplates soliciting nine donations and raising \$1,800 for a house party and, if it does, what prevents a candidate from going even further and raising money to hold a house party at a large venue like the Civic Center. He stated he would not suggest further investigation is necessary but he believes this is definitely beyond the exception. Mr. Healy stated his interpretation of the facts is that this was a solicitation of \$1,800 to mail 5,260 invitations. He stated he viewed the invitation as a mass campaign-related communication to be distributed before the primary and donations were made to facilitate it. He cannot vote to find that this fits within the exception. Mr. Healy stated the whole purpose of the Maine Clean Election law was to eliminate private donations so this is clearly a violation of the law. He stated this is an unfortunate situation and he would not support imposing a penalty. Mr. Healy stated he sees no reason for further investigation but he would not vote to find no violation.

Mr. Lee stated he could not vote to find a violation based on the information provided and the language of the statute.

Ms. Matheson made a motion that there be no further investigation in the matter.

Mr. Healy stated he would vote for no further investigation but he does believe there is a violation. He stated he does not want to make an example of Rep. Chipman, but he does want people to understand that this use of the house party exception is not acceptable.

Ms. Matheson asked what circumstances allowed for emergency rulemaking. Ms. Gardiner stated the Commissioners needed to decide if a Rule change would correct the problem or if the statute should be revised. Mr. Wayne suggested the Commission could issue administrative guidance on this issue. Ms. Matheson asked what would happen if people did not follow the guidance. Ms. Gardiner stated that administrative guidance is not as legally enforceable as a Rule. Ms. Lowry stated she thought the suggestion of issuing an administrative guidance for future reference was a good idea.

Mr. Lee stated he would support a motion to terminate the investigation, request Commission staff research the legislative history of this statute and report back to the Commissioners so they would have a basis for future interpretations. Mr. Healy stated that could result in finding a violation in this case. Ms. Lowry stated she did not believe it should be retroactive.

Mr. Lee seconded Ms. Matheson's motion for no further investigation. Motion passed (4-0).

Mr. Healy made a motion for a determination that this instance does result in making the \$1,800 a contribution because it exceeded the \$250 overall limit of the statute and that the mailer was a political advertisement as well as an invitation. Motion failed due to lack of a second.

Mr. Lee stated that, based on the language of the statute, which is open to interpretation, and the fact that the candidate sought advice from Commission staff, he would have a hard time finding a violation. Mr. Healy stated the advice portion is only a consideration if they are determining a penalty for a violation. He stated he would have no problem finding a violation but assessing no penalty based on prior communication and good faith reliance on the staff's advice. The

Commission could go on the record saying this is a violation and this is how it interprets the statute but assess no penalty. Mr. Lee stated he would prefer to hear back from Commission staff on the legislative or referendum history on the statute. Mr. Healy suggested the matter could be tabled until Commission staff reports back on what they learned.

Ms. Matheson made a motion to find no violation based on the known facts and the ambiguous nature of the statute. Motion failed due to lack of a second.

Mr. Lee made a motion to table the matter until the next meeting and have Commission staff provide information on possible statutory interpretation. Motion failed due to lack of a second.

Mr. Lourie stated the statute requires the Commission to meet on an emergency basis because of the impact on an election campaign and it would not do justice to the person accused of violating statute if no decision is made until after the election. Ms. Lowry asked what would be the result of finding a violation. Mr. Wayne stated there would be a determination of a violation of the law and it would be a “black eye” for the candidate.

Mr. Healy asked if they could issue an advisory opinion to be disseminated to all candidates. Ms. Gardiner stated they could look into this and they could also consider making a Rule, which would allow for public comment. She stated that Mr. Lourie had made a valid point about making a decision on this matter as promptly as possible. Mr. Healy asked how Rep. Chipman would view the Commission voting to take no further action and close the matter. Mr. Lourie stated the Commissioners should not be making a decision on the merits at this meeting but only whether to conduct further investigation.

Mr. Healy asked how long it took to do a rulemaking. Ms. Gardiner stated the shortest timeframe is approximately 60 days unless it was an emergency rulemaking. Ms. Matheson stated she would be interested in an emergency rulemaking. Mr. Healy stated it was a possible solution but was not sure they could agree on this matter. Mr. Healy stated he thought the most appropriate course of action at this time would be to adjourn without taking any further action. Mr. Lee agreed and stated it would remove the possibility of future inconsistency.

Mr. Healy made a motion to adjourn this matter. Mr. Lee seconded the motion.

Ms. Matheson questioned if he was making a motion to close this agenda item. Mr. Healy stated he was.

Ms. Lowry asked what would be the impact of this decision. Mr. Healy stated it would be whatever the public wants to make of it. Motion passed (4-0).

4. Staff Update on Candidate Registrations and Maine Clean Election Act Administration

Mr. Wayne stated this item was an overview of what has been happening so far this year for the Commissioners. He stated election years are a very busy time for Commission staff from processing registrations to certifying candidates for Maine Clean Election funding. Mr. Wayne stated that staff has registered 504 candidates and received 235 MCEA certification requests, 232 of which have been processed. Mr. Lee questioned how many candidates failed to qualify for MCEA funding. Mr. Wayne state most of the MCEA candidates were certified.

5. Findings of Violation Against Unregistered Candidates

Ms. Matheson stated she believed staff should send another couple of reminders to the unregistered candidates and leave the matter there. Mr. Wayne clarified that two of the three unregistered candidates are now registered. He stated when this item was initially placed on the agenda there had been 25 candidates who had not filed their registrations with the Commission. Mr. Wayne stated one of the formerly unregistered candidates was present and would like the opportunity to address the Commissioners. Mr. Brann thanked the Commissioners for their time and apologized for the delay in filing his registration.

Mr. Healy made a motion to find a violation against the remaining unregistered candidate but take no further action. Ms. Matheson seconded the motion. Motion passed (4-0).

Mr. Healy made a motion, seconded by Mr. Lee, to adjourn. The motion passed. The meeting adjourned at 3:34 p.m.

Respectfully submitted,
/s/ Jonathan Wayne

Jonathan Wayne, Executive Director