



Minutes of the May 30, 2018, 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; Meri N. Lowry, Esq.; Bradford A. Pattershall, Esq.

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

Mr. Lee convened the meeting at 9:05 a.m. The Commission took Agenda Item #3 out of order in consideration of a request made by Diane Russell, who was scheduled to participate in a gubernatorial debate at 11:00 a.m.

3. Recommended Finding of Violation against Hon. Diane M. Russell

Mr. Wayne explained candidates are required to report in sufficient detail all expenditures made and contributions received. The Candidate Registrars review reports filed by candidates for compliance with reporting requirements. Sometimes a Candidate Registrar will request further clarification or corrections to be made to report and communicate that to the candidate. When Candidate Registrar Emma Burke performed a compliance review of Ms. Russell's January report, she found several expenditures were insufficiently described as being for "travel" or "food or beverages" and, in February, requested that Ms. Russell make changes to the report. Ms. Russell requested additional time to make the changes. However, no amendments were made during March or April. The morning of the meeting Commission staff discovered the amendments were made the night before the Commission meeting and are still pending in the e-filing system. While many of the reporting shortcomings are minor, there is a significant number of them. Regarding Mr. Yate, candidates must disclose the relationship of any family or household member to whom the candidate has paid with campaign funds.

Mr. Lee restated the semiannual report was filed on time and the pre-primary report was a day late, noting the issue at hand was the degree of completeness in the report, and questioned if it was filed on time. Mr. Lee said that reports could be categorized as follows:

- a) complete and filed on time,

- b) filed on time and, though missing some information, be substantially complete and compliant, which may result in a violation but no penalty; or
- c) filed on time but not substantially compliant, thereby resulting in a late-filing penalty.

Mr. Lee said the Commission staff felt that this report was substantially compliant but not complete which would result in a violation but no penalty. However, it is up to the Commission to decide if the report was substantially compliant.

Ms. Russell appeared before the Commission. She stated the person living with her is a campaign staffer from North Carolina who came to Maine to work on the campaign. She further stated they have a staffer/friendship relationship and she felt disclosing Mr. Yate's address on the report, which is the same as hers, would have been sufficient to meet the requirement.

Ms. Russell stated she had seen the amendments that were requested to be made, responded with an acknowledgment, and made a mental note to do it later, but as soon as she got back to campaigning she forgot it needed to be addressed. Regarding the Lyft expenditures, she stated Lyft is cab fare and the name of the company provided adequate information on the report. Ms. Russell admitted her compliance team could have been more specific regarding the food and drinks entries in her report. Ms. Russell said she is very experienced in dealing with a variety of computer systems, but she found the Commission's e-filing system to be unnecessarily cumbersome. Ms. Russell commented she did not think that some of the comments from the staff regarding the level of specificity for the expenditure description would have added that much more information for the public than what was originally in the report.

Mr. Lee asked Ms. Russell why, even being given a 10-day extension to amend the report, it took her a month and a half to do so. Ms. Russell responded she is very busy and on the road constantly because of her campaign and she cannot do the reports while on the road and finding the time to do the reports was a burden to her. Mr. Nass asked what her expectations were of the compliance team she hired; she stated she expected them to file complete campaign finance reports because she spent \$30,000 on compliance.

Mr. Lee commented that 38% of the expenditures in Ms. Russell's semiannual report were non-compliant. He said that is a significant rate of non-compliance. Mr. Lee said he does not find the semiannual report to be substantially compliant where over 100 expenditures required amendments. Mr. Lee also said 24% of the expenditures in the 42-Day Pre-Primary Report were

non-compliant and Mr. Yate, was paid over 33% of the total expenditures in that report, and lived in Ms. Russell's household, which was not disclosed.

Ms. Lowry asked Ms. Russell why she did not get her compliance team involved in making the amendments to the reports. Ms. Russell replied she did not have faith in her compliance team after the initial review of her report resulted in so many errors.

Ms. Russell said it was never her intention to hide anything or deceive anyone. Mr. Lee said the Commission did not believe she was deceitful, just that the reports were not substantially conforming.

Mr. Lee made a motion that neither the January 16th Semiannual Report nor the May 2nd 42-Day Pre-Primary Report was substantially conforming to the statutory requirements of Title 21-A, section 1017, subsection 5, in that 38% of the expenditures in the January 16th report were found to be non-compliant and required further information which was not provided, and 24% of the reported expenditures in the 42-Day Pre-Primary Report were found to be non-compliant and required additional information, and the candidate failed to meet the statutory requirement to disclose the relationship between the candidate and someone who resides in the candidate's household who also received money from the campaign and that person received one-third of the total expenditures in the 42-Day Pre-Primary Report. Mr. Nass seconded the motion.

Mr. Pattershall added all the vendors and amounts reported were correct. The focus of the Commission's action is on the specificity of the explanations provided for certain expenditures.

Mr. Nass did not see a large penalty in this case but he said the Commission's action needs to signify that attention needs to be paid to these reporting requirements. Mr. Lee agreed and said the Commission's action in this case will have an impact on what other candidates do going forward. He also agreed with Mr. Pattershall's statement that the vendors and amount were correctly reported.

The motion passed unanimously (4-0).

Mr. Lee moved there be a civil penalty of \$150 for the violation regarding the January 16th Semiannual Report and \$150 for the violation regarding the May 2nd 42-Day Pre-Primary Report. Ms. Lowry seconded the motion.

Mr. Pattershall said the statutory maximum penalty for the 42-Day Pre-Primary Report is higher than the maximum penalty for the January Semiannual Report which is indicative that the

information in the pre-primary report is more important for the public to know closer to the election. He said he would be in favor of a higher penalty for the pre-primary report.

Mr. Lee withdrew his motion.

Mr. Lee moved there be a civil penalty of \$100 for the violation regarding the January 16th Semiannual Report and \$200 for the violation regarding the May 2nd 42-Day Pre-Primary Report. Mr. Nass seconded the motion.

The motion passed unanimously (4-0).

1. Ratification of Minutes from April 25, 2018 Meeting

Mr. Nass moved to adopt the April 25, 2018 minutes as amended; Mr. Lee seconded. The motion passed unanimously (4-0).

2. Negative Allocation in Maine Clean Election Fund for Fiscal Year 2019

Mr. Wayne stated there are two budget issues affecting the Maine Clean Election Act program in this election year. The immediate issue is the Commission does not have sufficient spending authority through the end of the current fiscal year, which ends on June 30th, to pay eligible MCEA candidates the full amount of the supplemental funds they are eligible for. The Commission has sufficient cash on hand, but not the authority to spend the amount required to meet the demand for supplemental payments. All candidates will receive the initial basic payment for the general election, but the amount they can receive for supplemental payments will be very limited. The staff has submitted another financial order to increase the spending authority, and has asked if the Governor would be willing to meet with Mr. Wayne and Mr. Nass to discuss this issue. The Candidates can collect the extra qualifying contributions, but we wouldn't be able to disperse the supplemental funds in June unless the legislature solves the problem which would give the Commission authorization to spend the money after June 30th.

The second issue involves the ability of the Commission to expend funds in the 2019 fiscal year beginning on July 1st. The Commission currently does not have the authority from the Legislature to spend MCEA funds on or after July 1st for any purpose other than personnel costs. This will also affect the ability of the Commission to make supplemental payments to candidates. Mr. Wayne stated there could be a special session after the primary election that results in a legislative fix. He said legislative leadership is aware of the problem and what needs to be done

to fix it. Mr. Wayne said he will provide updates to the Commission regarding the status of the Maine Clean Election Fund.

4. Rulemaking – Ranked Choice Voting / Contribution Limits / Recounts / Litigation

Mr. Wayne explained the Commission staff received questions in March from three gubernatorial campaigns regarding fundraising activities in the middle of June, if it takes longer than usual to determine the outcome of the primary election due to ranked choice voting. The concept in the originally proposed rule was that candidates could continue to collect primary election contributions until the date the Secretary of State submits the tabulation of election results to the Governor. There were no comments on that aspect of the rulemaking.

Mr. Wayne also stated the rules presented in March for public comment included a change to reflect a policy of the legislature established in statute that allows candidates involved in a recount to receive donations for purposes of a recount if those donations are within the contribution limits, except that donated money or services received from the party committees, PACs, attorneys, or law firms would not be subject to the contribution limit. In response to a comment from the Mason for Maine campaign, the staff is suggesting a change to the proposed rule that would allow MCEA candidates to solicit and accept donations, subject to the same limits as donations in a recount, to pay for litigation costs if the results of a ranked choice vote election were to be contested. The staff recommends adopting these changes.

A motion was made by Mr. Nass to adopt the rules with the changes proposed; Mr. Pattershall seconded the motion. The motion was unanimously approved (4-0).

5. Discussion of Proposed Policy – Employees of Political Parties

Ms. Gardiner explained the staff's original suggestion was to make a statutory change to 21-A M.R.S.A. §1014(6) so that the exceptions in that section did not apply to communications paid for by party committee employees. Instead, Ms. Gardiner suggested a rebuttable presumption be established in the Commission's rules. Since the premise for the exceptions to the disclaimer and attributions requirements in §1014 is the person is acting independently (and that the communication cost less than a certain dollar amount), it would be presumed that an employee of a committee is not acting independently of the committee if the employee engages in the activities mentioned in §1014(6). This would not prevent the employee from engaging in these activities, but he or she would have to rebut the presumption to get the benefit of the exception to

the disclaimer and attribution requirement. Ms. Gardiner said the approach she suggested was not that different from the staff's original suggestion, but would use an existing rule to cover communications paid for by employees of a committee and would not require a statutory amendment.

Mr. Nass expressed his reluctance to make a change due to the ambiguity involved in determining who is an employee of a committee, but he was open to hearing what the public has to say.

Ms. Lowry had an initial concern when Jason Savage came before the Commission in February, that an employee of a committee could evade the disclaimer requirement due to a lack of authorization from the committee. In Mr. Savage's case, there was a lack of authorization because he never asked for the party's authorization and appeared to act in secrecy. However, because the proposed rule also requires the employee prove the activity is not related to the employee's work responsibilities, she thinks a situation like Mr. Savage's would be captured by the proposed rule.

Mr. Lee and Mr. Pattershall expressed their interest in hearing what the public would say about this policy.

Mr. Wayne said the staff would include this policy change along with other proposed rule changes after the general election in November.

6. Findings of Violation against Unregistered Candidates

This item was withdrawn from the agenda. Mr. Wayne said all the named candidates had registered prior to the meeting.

Executive Session

Mr. Lee moved pursuant to Title 1 of the Maine Revised Statutes, section 405(4), the Commission go into executive session pursuant to Title 1, section 405(6)(E) and Chapter 1, section 5(2) of the Commission rules to consult with the Commission's counsel concerning pending or contemplated litigation. Mr. Nass seconded. The motion passed (4-0).

Mr. Lee moved to come out of executive session; Mr. Nass seconded. The motion passed (4-0).

Other Business:

The Commission briefly discussed recent activities regarding the vacant Commission seat.

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

The meeting adjourned at 12:12 p.m.

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