



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

Approved: August 30, 2017

Minutes of the July 14, 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., Hon. Richard A. Nass, Bradford A. Pattershall, Esq., and Meri N. Lowry, Esq. via telephone.

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

Commissioner Matheson convened the meeting at 9:59 a.m.

The Commission considered the following items:

1. Ratification of Summary of June 9, 2017 Meetings

Mr. Wayne said the summary was created to provide basic facts about the meeting because the Commission staff ordered a transcript of the meeting. Mr. Lee made a motion to adopt the June 9, 2017 summary as written. Mr. Nass seconded the motion. Motion passed (5-0).

2. York County Casino Investigation - Motion by Lisa Scott to Modify Subpoenas

Mr. Wayne said after the June 9th meeting when Bruce Merrill, attorney for Lisa Scott, refused to accept service on her behalf, the Commission staff mailed subpoenas to three different addresses for Lisa Scott. He said Mr. Merrill had filed a request to modify the subpoena to extend the deadline for filing objections to the subpoena and to produce the records because Ms. Scott was out of the country. Mr. Merrill also contended the subpoena had not been served because, of the three addresses to which the subpoena had been mailed, only one was correct and no delivery had been made to that address.

Mr. Wayne said Avery Day, Esq., representing Cheryl Timberlake in her personal capacity, accepted service for her subpoena. Mr. Day filed an objection to protect records that contained attorney-client information but is willing to produce all other records. Mr. Merrill filed an objection to the release of these records because Ms. Scott wants an opportunity to review the records, which may contain personal bank information unrelated to the casino initiative.

Mr. Wayne said the Commission staff recommends having Lisa Scott testify in person before the Commission in September and that the records be submitted without any redactions. Mr. Nass asked if Ms. Timberlake has the records subject to the subpoena. Mr. Wayne said she does.

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Mr. Nass asked if they are the same as the records held by Lisa Scott. Mr. Wayne said Ms. Scott would have additional records.

Avery Day, Esq., representing Cheryl Timberlake in her personal capacity, appeared before the Commission. Mr. Day said that he filed an objection to the subpoena insofar as any documents that may be subject to the attorney-client privilege. Mr. Day said Ms. Timberlake has no other objections to producing the records, but there is a concern that, while Ms. Timberlake has possession of the records, the BQC may be the actual owner of the records. He estimated there are 3,600 pages of records; two-thirds are within the scope of the subpoena and are primarily related to expenditures. Mr. Day said the remaining records are email communications with vendors, the accounting firm and others, and bank records. He said it is possible there could be some personal information contained in those records.

Bruce Merrill, Esq., representing Lisa Scott and HJF BQC, appeared before the Commission. Mr. Merrill said he filed the objection and request to modify the subpoena because his client is out of the country and she would like an opportunity to review the records and redact any personal banking information and other information not relevant to the investigation. He said Ms. Scott would return on July 21st and he would like a week to review the records with her. Mr. Merrill said there is a possibility he could turn over the records by July 31st.

Mr. Lee asked if attorney-client privilege could be applied at this level. Ms. Gardiner said the Commission has not dealt with this issue in the past. She said it is typical to require a privilege log that contains basic information about what is being withheld. Ms. Gardiner said bank records are confidential and can be annotated, but the Commission should object to any redaction of those records. Mr. Lee said that sounds like a reasonable procedure to follow.

Mr. Merrill said the HJF BQC records are straightforward but that the Lisa Scott, IDC, and MDC records contain information not relevant to this casino initiative and are, he believes, beyond the scope of the subpoena. Mr. Lee asked if he would be willing to submit a relevance log. Mr. Lee said this log would provide the Commission with verification of what records are being withheld and the reason for withholding the record. Mr. Merrill expressed concern about the amount of time it would take to compile such a log. Mr. Pattershall asked Mr. Merrill what is his concern about submitting irrelevant records. Mr. Merrill said he is concerned that information could be

leaked. Ms. Gardiner said these records would be considered confidential and the Commission has a proven track record of maintaining confidentiality.

Ms. Matheson asked if Mr. Merrill could provide information on IDC's origin. Mr. Merrill said he does not know. Ms. Matheson said both he and Ms. Fallon had agreed to provide that information at the June 9th meeting. Mr. Merrill said he would look into it.

In response to a question from Mr. Pattershall, Ms. Gardiner said the Commission has a statute that allows it to keep certain records confidential and there is no need for a protection order. She also said that it would be unlikely that a court would issue a protection order based on a relevance objection.

Mr. Lee asked if Mr. Merrill is agreeable to July 31st as a deadline to produce the records from HJF BQC. Ms. Gardiner said it should be no later than July 31st. Mr. Merrill said he would agree to a rolling production of records and said some records could be ready by July 24th.

Ms. Lowry asked for a characterization of the records considered to be subject to attorney-client privilege. Mr. Day said there are invoices from attorneys with a detailed breakdown of the time spent on issues and emails with attorneys seeking legal advice.

Ms. Matheson said the objection to the Lisa Scott subpoena is mainly a request for an extension of time to review the records. Ms. Matheson asked if Mr. Merrill would accept service of the Lisa Scott subpoena if the Commission agrees to a time extension. Mr. Merrill said he would accept service for the first subpoena, but could not accept a subpoena for Lisa Scott to testify without consulting with her. Mr. Merrill said he currently has no ability to contact Ms. Scott. Ms. Matheson asked if he has authority to produce records within the proposed timeframe. Mr. Merrill said the compromise proposed by Mr. Wayne is acceptable.

Ms. Matheson made a motion to enter into executive session pursuant to Title 1, section 405(6)(E) and Chapter 1, section 5(2) of the Commission rules to consult with Commission's counsel concerning the legal rights and duties of the Commission. Motion passed (5-0).

Mr. Pattershall made a motion to come out of executive session. Motion passed (5-0).

Mr. Lee made a motion to modify the subpoena to Cheryl Timberlake to state that the documents requested will be provided to the Commission no later than July 31, 2017. For any documents

where privilege is claimed a privilege log will be provided by July 31, 2017. Mr. Nass seconded the motion.

Mr. Pattershall said they are relying on the confidentiality statute to protect anything Mr. Merrill may believe is irrelevant to this investigation. Mr. Lee said the motion is not to agree with the redaction or withholding of documents based on relevance. He said any objections could be addressed at their August meeting. Ms. Matheson asked if there would be a privilege log for any withheld or redacted documents. Mr. Lee said it is part of the motion.

Motion passed (5-0).

Mr. Wayne asked if the only documents the Commissioners anticipated being withheld or redacted are those subject to evidentiary privilege. Mr. Lee agreed.

Mr. Lee made a motion to modify the document subpoena to Lisa Scott to state that any objections to the documents requested shall be provided to the Commission no later than August 4, 2017, and documents will be provided to the Commission no later than September 1, 2017. This modification of the documents subpoena is conditioned on Bruce Merrill's acceptance of service of the document subpoena on behalf of Lisa Scott today. Mr. Pattershall seconded the motion.

Ms. Matheson asked Mr. Merrill if he is willing to accept service today if the motion passes. Mr. Merrill said he would accept service of the documents subpoena.

Motion passed (5-0).

Ms. Matheson asked Mr. Merrill if he has a different address for Lisa Scott other than the three used by the Commission to mail the subpoenas. Mr. Merrill said he does not. Ms. Matheson said the 4411 NW 74th Avenue address appears 21 times throughout the reports. Mr. Merrill said that is a mail forwarding address, not her business address. He said the 68 SE 6th Street is her residential address. Ms. Matheson asked if he has a unit number for that address. Mr. Merrill said he does not but would look into it. Mr. Nass said there is requirement to have a valid address on file. Mr. Merrill said that address may have been valid at one time. He said he believes that once he accepts service, he will be able to accept service on future subpoenas after talking with his client. Mr. Nass said if his client does not consent, then the lack of valid address will still be a problem. Mr. Merrill said he would look into providing a unit number.

Ms. Matheson said she believes there have been additional objections to other subpoenas. Mr. Wayne said the Commission served subpoenas on both Bridge Capital, LLC and Capital Seven, LLC and has received objections from representatives for both entities. He said Bridge Capital's primary objection is the deadline for production of records because it took longer than anticipated for the subpoena to be delivered to the Northern Marianas. Mr. Wayne said the exact nature of Capital Seven's objection is not clear. He said unless the Commissioners object, he recommends they delegate authority to negotiate the terms of the subpoenas to the Chair, Commission staff, and counsel. Mr. Lee said he is comfortable with delegating that responsibility. Mr. Nass agreed.

Mr. Nass made a motion to delegate authority to modify the subpoenas for Bridge Capital, LLC and Capital Seven, LLC to the Chair, staff of the Commission, and the Assistant Attorney General assigned to the Commission. Mr. Lee seconded the motion. Motion passed (5-0).

Mr. Merrill asked if a date has been set for the early August meeting. After a brief discussion, it was agreed to schedule the meeting for Thursday, August 10th at 9:00.

3. Final Adoption of Amendments to Commission Rules

Ms. Matheson said it appears the Legislature has approved the provisionally adopted Chapter 3 Rules, except for the two items they had anticipated might be problematic: the responsibility of the candidate to train individuals who collect qualifying contributions on their behalf and the acknowledgement of a duty of oversight when declaring intention to qualify for MCEA funding.

Mr. Nass said he thought the Senate Republican caucus had three objections to these rules. Mr. Wayne said they had but the objections were resolved by compromises during the legislative review process.

Mr. Nass made a motion to finally adopt the Chapter 3 rules as authorized by legislative resolve. Mr. Lee seconded the motion. Motion passed (5-0).

Mr. Nass made a motion, seconded by Mr. Lee, to adjourn. The motion passed. The meeting adjourned at 12:47 p.m.

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