



Minutes of the July 31, 2014, Meeting of the
Commission on Governmental Ethics and Election Practices
45 Memorial Circle, Augusta, Maine

Present: Walter F. McKee, Esq., Chair; Margaret E. Matheson, Esq.; André G. Duchette, Esq.

By phone: Hon. Jane Amero

Absent: Michael T. Healy, Esq.

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

Chair Walter McKee convened the meeting at 9:00 a.m.

The Commission considered the following items:

1. Ratification of Minutes of May 28 and June 25, 2014 Meetings

Ms. Matheson moved to accept the minutes as drafted. Mr. Duchette seconded.

Motion passed (3-0) (Ms. Amero abstained).

2. Request for Investigation of National Gay & Lesbian Task Force

Mr. Wayne explained that this request was made by the National Organization for Marriage on May 28, 2014 asking the Commission to investigate whether the National Gay & Lesbian Task Force (NGLTF) was required to register and file campaign finance reports as a ballot question committee. In 2009, the National Gay & Lesbian Task Force made cash contributions and provided staff assistance to the PAC that was opposing the effort to repeal the same-sex marriage law through a people's veto referendum. The staff requested some preliminary information from the National Gay & Lesbian Task Force.

John C. Eastman, Chair of the National Organization for Marriage, said he is asking the Commission to be consistent in its interpretation and application of the law with regard to the NGLTF. He referred to that organization's IRS Form 990 reporting and provided a chart which shows patterns of fundraising and spending that illustrates discrepancies between contributions and expenditures reported by NGLTF. He said NOM's and NGLTF's fundraising practices and the timing of contributions to PACs involved in the

people's veto were similar and said if the Commission requires the statute to apply to NOM it should also apply equally to both sides of the campaign. He stated that the major part of NGLTF's efforts were directed towards the Maine campaign, as were NOM's, and these facts should trigger further investigation by the Commission.

Michael Mahoney, Esq., representing the National Gay & Lesbian Task Force Foundation and the Action Fund, explained that the Foundation is the 501c(3) organization and the Action Fund is the 501c(4) advocacy organization. He said they support the staff's recommendation. He said in order to qualify as a ballot question committee, an organization must raise or spend more than \$5,000 to influence the election. The Action Fund raised less than \$2,600 during the relevant period of time. He said that Mr. Eastman referred to an invitation for a fundraising event in September 2009 but neglected to note that on the invitation it specifically stated that the event was to raise money for Maine's No on 1 campaign, not for the Action Fund. He said the Action Fund decided to have their fundraising efforts directly benefit the Maine PAC as opposed to their own organization which is the key difference between this matter and the NOM matter. He said further that there is no evidence that the Foundation's efforts were geared for the Maine campaign and there were no transfers of funds from the Foundation to the Action Fund during the campaign. He said all activities relating to Maine campaign came from the Action Fund. The Foundation was separate and apart from the Action Fund. He further stated the Action Fund was in full compliance with Maine laws and was not required to file as a ballot question committee.

Mr. McKee asked if the investigation done by Mr. Mahoney was hampered in any way by the large time span that had passed, almost five years since all these actions took place.

Mr. Mahoney stated that the ability to look back was not hampered; however, due to the turnover in staff since that time, some details may have been lost.

Ms. Matheson asked whether any key staff members or policy makers from NGLTF were directly involved in the Maine No On 1 campaign. Mr. Mahoney said not that he was aware of any. These organizations take pride in building relationships at the local level rather than having the national organization parachute in and take over.

In response to Mr. McKee, Mr. Wayne said he felt no further investigation was necessary in order for the Commission to make a decision.

In response to Mr. Duchette, Mr. Wayne explained that an organization that spends its own funds in coordination with a PAC is making an in-kind contribution to the PAC. That in-kind contribution must be reported by the PAC. The law expressly makes an exception for contributions, including in-kind contributions, from counting toward the BQC registration threshold of \$5,000. Therefore, the organization would not have to register with the Commission as a BQC on the basis of its in-kind contribution to the No On 1 PAC.

Mr. McKee said that he thought the fact that the two NGLTF organizations were separate entities as a 501(c)(3) organization and a 501(c)(4) organization is a critical factor that distinguishes the facts of this case from the NOM matter. He also expressed concern that the issue was brought up so many years after the 2009 election.

Mr. McKee moved to find there are insufficient grounds for believing a violation may have occurred and therefore no further investigation is necessary. Mr. Duchette seconded.

Motion passed unanimously (4-0).

3. Request for Investigation of Human Rights Campaign

(Rescheduled to be considered at the August 27, 2014 meeting.)

4. Investigation of Falmouth Town Democratic Committee (audio @ 0:27:18)

Mr. Wayne said in the 2014 Democratic primary election State Senate candidate Cathy Breen defeated Steve Woods for the Democratic nomination in Senate District 25. Mr. Woods filed a complaint with the Commission alleging unfair practices by the Maine Democratic Party and a party officer. The Commission directed the staff at the June 25 meeting to investigate whether the activities of the Falmouth Town Democratic Committee constituted a contribution to Ms. Breen. As a result of the Commission staff's investigation, the staff recommended finding that the Falmouth Town Democratic Committee did not make a contribution to Ms. Breen because no money was spent to promote the Breen campaign.

Robert Howe, on behalf of the Maine Citizens for Clean Elections, said MCCE supports the staff recommendation because the actions of the Falmouth Town Democratic Committee in support of Cathy Breen did not involve an actual dollar cost. He discouraged any requirement that would require reporting of volunteerism and would not enhance the transparency in politics.

Ms. Matheson moved to find that the Falmouth Town Democratic Committee did not make a contribution to Ms. Breen. Mr. McKee seconded.

Motion passed unanimously (4-0).

5. Over-the-Limit Contribution Accepted by Campaign of Michael Michaud (audio @ 0:33:00)

Mr. Wayne said on June 9, 2014, the Michaud for Governor campaign accepted maximum contributions for the primary and general elections from three businesses with the same address in Topsham, Maine. After an inquiry by Commission staff, the campaign checked with the contributors and determined that the businesses had the same majority shareholder. Under Maine Election Law, the businesses are considered a single donor for purposes of the \$1,500 limit. Therefore, the combined contributions exceeded the \$1,500 limits for the primary and general elections. The campaign promptly returned the excessive portions of the contributions upon learning that the businesses were owned by the same individual.

In response to Mr. Duchette, Mr. Wayne explained that it is up to each campaign to keep track of all contributors that could possibly be duplicates.

Ms. Amero moved to find that that the contributions violated the limits for the primary and general elections and to assess no monetary penalty for the violation. Ms. Matheson seconded.

Motion passed unanimously (4-0).

6. Request for Waiver of Penalty – Alford Business, Community & Democracy PAC (audio @ 0:38:18)

Mr. Wayne explained that Senator Justin Alford is the principal officer of the Alford Business, Community & Democracy PAC (the PAC). After conducting an internal review of previously filed reports, he discovered a discrepancy between the PAC's actual cash balance and the amount reported in its

campaign finance reports. As soon as he learned this, he came forward to the Commission staff in order to find out what the PAC needed to do to rectify the errors. The PAC found that it had omitted some transactions in its 2013 reports and that some contributions had been included in the wrong report. Although the reports were filed on time and accurately disclosed many transactions, they did not substantially conform to the disclosure requirements. Therefore, the reports are considered late. The preliminary penalties for the late reports total \$31,764.42. The PAC is taking responsibility for the errors, but is requesting a waiver of the preliminary penalty on the grounds that it is vastly disproportionate to the mistakes and for the minimal harm to the public.

Kate Knox, Esq., representing the Alford Business, Community & Democracy PAC, said it supports the staff recommendation. She said as soon as the problem came to light, the PAC began working with the Commission staff to rectify the error. Also, the PAC has instituted new measures that will prevent this type of error from happening in the future.

Ms. Matheson moved to reduce the penalties to a total of \$1,500 for both late reports due to self-reporting and minimal harm to the public. Mr. Duchette seconded.

Ms. Amero expressed concern over the pattern of the Commission reducing very significant penalties recently. She raised the question whether the penalty amount formula is in line with what it should be or if the Commission is being too lenient in reducing the penalties.

Motion passed unanimously (4-0).

7. Request for Waiver of Penalty – Maine Forward PAC (audio @ 00:46:34)

Mr. Wayne explained the Maine Forward PAC received a \$50,000 contribution on June 3, 2014 which it was required to disclose the next day in a 24 Hour Report. The PAC's bank had not set up the automated alert system so that the PAC would receive notice of incoming wire transfers. As it did not receive the notice from the bank, the PAC was unaware of the contribution being deposited into its account in a timely manner. The PAC filed the report five days late on June 9. The funds were not used to influence the June 10 primary election. The preliminary penalty amount is \$2,500. The PAC requests a waiver of the

preliminary penalty because of the lack of notification of the wire transfer and the preliminary penalty is disproportionate to the harm to the public by the five-day late disclosure.

Kate Knox, Esq., representing the Maine Forward PAC, said the treasurer had taken steps to setup electronic alerts for incoming transfers but the bank acknowledged they had not set up the alert. She explained that as soon as the treasurer discovered the problem, the Commission staff was contacted and the report was filed. She said the treasurer thought he had taken extra steps to be aware of these transactions but because no money was being used, he did not think to check the account on a regular basis. She said the bank has fixed the problem regarding the alerts.

Ms. Matheson moved to reduce the penalty to \$250. Mr. Duchette seconded.

Motion passed unanimously (4-0).

Executive Session

Pursuant to Title 1 of the Maine Statutes, section 405(4), Mr. McKee moved to go into executive session pursuant to Title 1, section 405(6)(E) to consult with the Commission's counsel concerning contemplated litigation. Mr. Duchette seconded. Motion approved (4-0). The Commission went into executive session at 10:00 a.m.

At 10:08 a.m., Mr. McKee moved to come out of executive session. Mr. Duchette seconded. Motion approved (4-0).

Meeting adjourned at 10:08 a.m.

Respectfully submitted,

/s/ Jonathan Wayne

Jonathan Wayne, Executive Director