



Minutes of the August 10, 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., Meri N. Lowry, Esq.,
Hon. Richard A. Nass, and Bradford A. Pattershall, Esq.

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

Commissioner Matheson convened the meeting at 9:10 a.m.

The Commission considered the following items:

1. York County Casino Investigation - Objections by Lisa Scott to Subpoena for Records

Mr. Wayne provided the following summary regarding the subpoenas: on June 9th, the Commissioners voted to investigate the funding of the York County casino initiative; on June 13th, the Commission staff mailed subpoenas to Lisa Scott and Cheryl Timberlake; and on July 14th, the Commissioners extended the deadline for Lisa Scott to file her objections to the subpoena to August 4th. He said Bruce Merrill, attorney for Lisa Scott, filed her objections on August 4th, asserting a claim of attorney-client privilege regarding some documents and requesting to redact all personal information and information about other business interests not related to the York County casino initiative.

Bruce Merrill, Esq., representing Lisa Scott, appeared before the Commission. Mr. Merrill said he believes the Commission is overreaching in its demand for records, especially records related to Ms. Scott's other business interests. Mr. Nass said it appears to him that the subpoena has a narrow focus and that the bank records are needed to verify the money spent on the casino initiative. Mr. Merrill said the Commission is not entitled to records that contain information not directly related to the York County casino initiative. Mr. Nass asked who Mr. Merrill thinks should be making that determination. Mr. Merrill said he believes that, as an officer of the court, he should be allowed to make that initial determination. Mr. Nass replied that he thinks the Commission staff should make the determination, and added that the records provided would be kept confidential and not released. Mr. Merrill said mistakes are made all the time and things can get released that should not be.

Mr. Lee asked Mr. Merrill to confirm that Lisa Scott created International Development Concepts, LLC (IDC), Miami Development Concepts, LLC (MDC), and Horseracing for Jobs Fairness BQC (HJF). Mr. Merrill agreed that is correct. Mr. Lee asked if Ms. Scott has control over the distribution of the money to these entities by Capital Seven or Regent Able, including whether that money would go to HJF directly or to MDC or IDC. Mr. Merrill said she does, in theory. Mr. Lee asked and Mr. Merrill confirmed that IDC and MDC are involved in other business ventures and that those entities were not specifically created for the Maine initiative. Mr. Lee said that because Ms. Scott directed the flow of money and chose to have it go through these other entities, he finds it hard to understand the argument that some of the transactions are irrelevant. He said that if the money had gone directly from Capital Seven, LLC to HJF, the Commission would not need to look at MDC or IDC records. Mr. Lee added that if Ms. Scott had created a single entity to give money to HJF, then the Commission would not need to see the records of any other entity that might have records relating to other ventures mixed in. However, because of the multiple entities involved in the flow of money, it is necessary to review the records from each entity. Mr. Merrill said if his client could demonstrate where the \$4.2 million came from, the Commission would not need to know about any additional transactions. Mr. Lee said that, without seeing the records, the Commission could not be sure that all transactions have been reported on the filings made to date or that no more than \$4.2 million was spent on the campaign. Ms. Matheson agreed and said the Commission could not be sure that all the funds related to the casino initiative were reported by HJF. Mr. Merrill said following the flow of money is not going to answer why the money flowed through other entities. Mr. Lee said the Commission could not be sure of that without seeing the records.

Mr. Merrill said he believes that he should be entitled to redact personal identifiers. Mr. Nass asked what Mr. Merrill meant by personal identifiers. Mr. Merrill said it would be information about medical procedures, etc. Mr. Lee asked why IDC or MDC records would contain that type of information. Mr. Merrill said they would not but Ms. Scott's personal records might. Ms. Gardiner suggested that actual medical information could be redacted and listed in a privilege log, but that Mr. Merrill's request to redact any "personal identifiers" was too vague and did not appear to provide a sufficient legal basis for redaction.

Mr. Nass asked if the Massachusetts case is over and if any information had been shared due to the relationship between that case and this matter. Mr. Wayne said the Massachusetts case is

closed and that he had only talked with his counterparts in Massachusetts about their settlement process. Ms. Gardiner said if Massachusetts has confidentiality protections, she doubts it would allow them to share information with another state. Mr. Nass asked whether another state would be in a different position than an individual with respect to a request for the records. Ms. Gardiner said there is no provision or exception in the statute that would allow the Commission to share the information with another state. She added that if another entity ever attempted to obtain confidential information that had been submitted to the Commission, the Commission staff would alert those who had provided the information so that they could object as well.

Mr. Lee said he does not see a request in this subpoena for Ms. Scott's bank records, only IDC's and MDC's bank records. Mr. Wayne said, in retrospect, that was an oversight. He said the staff had assumed Ms. Scott's bank records would be included in the documents produced by Cheryl Timberlake, but the records received from Ms. Timberlake are not as useful as the staff had hoped. Mr. Wayne had alerted Mr. Merrill before the meeting of the likely need to issue a new subpoena for those bank records. Mr. Lee said this seems to be a prospective objection from Mr. Merrill and wondered if the subpoena could be modified to address Ms. Scott's concerns about personal information. Mr. Wayne said the staff has not seen any personal information in the documents they have reviewed to date, but the staff is willing to work with Mr. Merrill to facilitate the release of the records. He said it would be helpful if Mr. Merrill would identify categories of information based on what is actually in the documents and not just hypothetically. Mr. Merrill said that he is willing to work with the Commission staff to accomplish this.

Mr. Pattershall said he believes the risk of having to release private information is something Ms. Scott should have been aware of when she undertook this project. He said he is not persuaded by the argument that she should be able to withhold or redact documents she thinks are irrelevant. Ms. Lowry agreed and added that any private documents are protected by the confidentiality statute. Mr. Merrill again expressed concern about a possible future release of information. Ms. Matheson said that would not happen unless there is a court order. Mr. Nass said the statute appears tight and the Commission has an exemplary record. Mr. Pattershall asked how the records are stored. Mr. Wayne said the records are stored electronically on a portion of the State network that only staff has access to, and the staff's working paper copies will be shredded after the investigation. He said there is also a process in place to share confidential records with

the Commissioners, in sealed envelopes marked confidential that would be shredded after review.

Ms. Lowry asked how the expansion of the subpoena to Ms. Scott would delay the timeline for completion of the investigation. Mr. Wayne said he does not believe it will because there are pending subpoenas to Bridge Capital, LLC, and to Capital Seven, LLC. He said the staff anticipates presenting any additional objections from those entities at the August 30th meeting and the documents are supposed to be produced by September 15th. Mr. Wayne said if Ms. Scott can produce the documents from her bank accounts by September 8th or 15th, the investigation will still be on track.

Ms. Lowry said she had read in the news that another PAC has been formed to support the casino initiative and asked if Mr. Merrill or Ms. Timberlake has any knowledge about it. Mr. Merrill said he has no information suggesting that Ms. Scott has anything to do with the new PAC or will be in any way involved. Avery Day, Esq., Cheryl Timberlake's attorney, said he does not know anything about the PAC other than what he had read in the paper, and Mr. Merrill said that is true for him as well. Mr. Nass asked if there have been any filings done by this PAC. Mr. Wayne said there have and that he intends to discuss this issue after the current matter was concluded.

Ms. Matheson asked about the timeline for production of Ms. Scott's records under the current subpoena. Mr. Merrill said they are due on September 1st. Mr. Nass suggested they use the same motion from their July 14th meeting relative to withholding privileged information only. Ms. Lowry asked if there is anything the Commission could do to facilitate the quick release of Ms. Scott's records. Mr. Merrill clarified that he needs to talk with his client before he can accept service of a subpoena on her behalf but that he does not anticipate any problems working with the staff.

Mr. Lee made a motion to modify the subpoena to Lisa Scott only to allow any information covered by an evidentiary privilege, such as attorney-client or spousal privilege to be withheld, but for any such documents withheld because of the claim of privilege, a privilege log will be provided with the documents that have been requested by September 1st.

Mr. Pattershall asked about the extra two weeks for Ms. Scott's personal bank documents. Ms. Matheson asked if they are going to modify the subpoena or issue a separate subpoena. Ms. Gardiner said that it would be better to address the bank records with a separate subpoena.

Mr. Lee said that, regarding the denial of the objections, his reasoning was that: 1) the information requested pertains to the activities of IDC, MDC, Lisa Scott, HRJF, Capital Seven and Regent Able, all of which have involvement in the York County casino initiative; 2) the confidentiality statute prevents the release of documents that are not relevant and which may contain private information; and 3) information contained in the financial records of IDC, MDC, HRJF is within the control of Ms. Scott, who had a variety of options to ensure the information would not be subject to a subpoena.

Mr. Nass seconded the motion. Motion passed (5-0).

Other Business

Mr. Wayne provided the Commissioners with information regarding the registration of a new PAC, Progress for Maine, in support of the York County casino initiative. He said the initial campaign finance report shows a \$200 contribution from Michelle Wilson, the Director of Operations at American General Corp. Mr. Wayne said there are expenditures related to Ms. Wilson's and Rumiko Yoneyama's travel to Maine and \$330,592.22 in unpaid obligations to campaign consultants. He said Ms. Wilson is listed as a decision-maker for the PAC. Mark Filler, who runs an accounting firm in Portland, is listed as the treasurer.

Mr. Nass asked what Dwayne Bickford's role is in the new PAC. Mr. Wayne said that Mr. Bickford is a political consultant with Goddard Gunster and his role is not currently defined. Mr. Lee asked what role this PAC would have in the casino initiative. Mr. Wayne said it had registered in support of the casino initiative and he assumed it would be handling the campaign for the initiative. He said the staff has done some informal research and it appears that American General Corp. has had some dealings with the Scotts in the past. Mr. Wayne said it is not clear whether there is any relationship between HJF and Progress for Maine. He said the staff would like to send a guidance letter to the PAC to avoid problems similar to HJF's problems and may include a couple of factual questions in the letter if the Commissioners supported that. Mr. Nass said he supports that idea.

Mr. Nass made a motion, seconded by Mr. Lee, to adjourn. The motion passed. The meeting adjourned at 10:09 a.m.

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