



Minutes of the September 24, 2014, Meeting of the
Commission on Governmental Ethics and Election Practices
45 Memorial Circle, Augusta, Maine

Present: Margaret E. Matheson, Esq.; André G. Duchette, Esq.; Hon. Jane Amero;

Absent: Walter McKee, Esq.; Michael T. Healy, Esq.

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

Margaret Matheson convened the meeting at 9:00 a.m.

The Commission considered the following items:

1. Ratification of Minutes of August 27, 2014 Meeting

Ms. Amero moved to accept the minutes with a minor change. Mr. Duchette seconded.

Motion passed (3-0).

2. Request for Waiver of Late-Filing Penalty – Hon. Amy F. Volk

Mr. Wayne said that Rep. Amy F. Volk is a candidate for the State Senate, District 30. Her campaign treasurer filed the 11-Day Pre-Primary report on May 30, 2014. The report, as initially filed, was incomplete because it did not contain contributions totaling \$3,270 that were received by the campaign during the report period. The report was considered late because it did not substantially conform to the disclosure requirements of the Election Law. The preliminary penalty for the late report was \$3,413.89. Representative Volk requested a waiver of the preliminary penalty, explaining that the treasurer was unaware that others in the campaign received contributions that were not given to him. After the report was amended, the contributions were known to voters nearly five months before the general election.

Mr. Duchette noted that the penalty was higher than the contribution. Ms. Matheson moved to adopt the staff recommendation and reduce the penalty to \$100. The motion was seconded by Ms. Amero, and passed unanimously.

3. Request for Waiver of Late-Filing Penalty – Gary Capehart

Mr. Wayne said Gary Capehart is a candidate for the Maine House of Representatives, District 125. On July 3, 2014, he entered information into the 42-Day Post-Primary Report (due July 22). The report was not filed until July 28, 2014. The preliminary for the late filing was \$18. Mr. Capehart requested a waiver because he thought he had filed the report on July 3, 2014 before leaving for vacation, and did not receive the e-mail notice of the late report until his return on July 27th.

Ms. Amero moved to adopt the staff recommendation to find that the report was late and to waive the penalty. The motion was seconded by Mr. Duchette, and passed unanimously.

4. Request for Waiver of Late-Filing Penalty – Paige Katharine Brown (0:06)

Mr. Wayne said Paige Brown is a candidate for the Maine House of Representatives, District 97. Ms. Brown's 42-Day Post-Primary Report was filed seven days late on July 29, 2014. The preliminary penalty was \$283.44. Ms. Brown requested a waiver of the preliminary penalty because she was traveling at the time the report was due and had limited internet access.

Mr. Duchette moved to adopt the staff recommendation and reduce the penalty to \$100. The motion was seconded by Ms. Amero, and passed unanimously.

5. Request for Waiver of Late-Filing Penalty – Citizens for Justice, Inc. PAC (0:10:30)

Mr. Wayne said on June 5, 2014, the Citizens for Justice PAC made \$5,500 in contributions to other PACs. The Citizens for Justice PAC was required to disclose the payments in 24-hour reports. The PAC filed the report 46 days late on July 22, 2014. The preliminary penalties for the late reports total \$2,530. The PAC requested a waiver of the preliminary penalties because they are disproportionately high relative to the harm to the public and the PAC's financial activities.

William P. Logan, Esq., representing Citizens for Justice, stated that the PAC agrees with the staff recommendation.

Ms. Amero moved to adopt the staff recommendation and reduce the penalty to \$250.

In response to Mr. Duchette's question, Mr. Logan said this PAC was associated with the Maine Trial Lawyers Association and was not an active organization in legislative races.

The motion was seconded by Ms. Matheson and passed (2-1), with Mr. Duchette voting against the motion.

6. Request for Waiver of Late-Filing Penalty – Build Maine PAC (0:14:20)

Mr. Wayne said on June 3, 2014, the Build Maine PAC made a \$1,000 contribution to another PAC, which it was required to disclose the next day in a 24-hour report. The PAC filed the report 48 days late on July 22, 2014. The preliminary penalty amount was \$480. The Build Maine PAC requested a waiver of the preliminary penalty because the PAC was not aware of the 24-hour reporting requirement or that it applied to contributions made to other PACs. Mr. Wayne said although a representative from the PAC could not attend the meeting, the PAC supports the staff recommendation.

Ms. Amero moved to adopt the staff recommendation and reduce the penalty to \$250. Seconded by Mr. Duchette. Motion passed unanimously.

7. Request for Waiver of Late-Filing Penalty – Committee to Rebuild Maine's Middle Class PAC (0:18:43)

Mr. Wayne said that on May 27, 2014, the Committee to Rebuild Maine's Middle Class filed an 11-Day Pre-Primary Report showing no financial activity. In July 2014, the PAC's treasurer learned that the PAC had received significant contributions of in-kind staff time during the period covered by the report. Although the initial report was filed on time, it did not substantially conform to the disclosure requirements and was considered late. The preliminary penalty for the late report was \$5,435.68. The PAC requested a waiver of the preliminary penalty on the grounds that it is disproportionate to the mistakes made.

Rob Walker, representing the PAC, stated that the PAC has no problem with the staff recommendation.

Ms. Matheson moved to adopt the staff recommendation and reduce the penalty to \$500. The motion was seconded by Mr. Duchette and passed unanimously.

8. Request for Waiver of Late-Filing Penalty – Somerset County Democratic Committee (0:21:36)

Mr. Wayne explained that between August 23, 2013 and November 13, 2013, the Somerset County Democratic Committee raised a total of \$2,533. The committee should have filed a Semiannual Report by January 15, 2014, but it did not do so until July 15, 2014. The preliminary penalty equals the statutory maximum of \$500. The Somerset County Democratic Committee requested a waiver of the penalty, arguing that it did not have notice of the need to file and that the penalty is disproportionate to the experience of the treasurer.

In response to a question by Ms. Matheson, Mr. Wayne said there was a requirement in statute (21-A M.R.S.A. § 1013-A(3)) for party committees to submit and update their officer information with the Commission.

Mr. Duchette said, to be clear, that the Commission is not required to send out reminders of the filing deadlines. The reports are deemed late whether a reminder is sent or not.

Colby Seams, treasurer of the Somerset County Democratic Committee, said Democrats in Somerset County were lucky to have a committee. He receives mail only through a post office box in Anson. He said there was no intent to defraud anyone and the reporting error will not happen again. In response to Mr. Duchette's question, he said the reduced penalty of \$100 recommended by staff was better than the preliminary penalty of \$500. He explained that Somerset County is very poor and any penalty feels like punishment for hard-fought fundraising success. He said it will be difficult to take the recommended penalty back to the present committee, if that were the amount assessed.

Ms. Matheson said she would be in favor of waiving the penalty, however a message needs to be sent to the local party committees that their officer lists need to be updated with the Commission. Mr. Duchette agreed, given the timing and how long it went before any report had been filed.

Ms. Matheson moved to reduce the penalty to \$50. Seconded by Mr. Duchette.
Motion passed unanimously.

In consideration of the Commission's practice to address agenda items out of order to accommodate the attendance of public participants regarding particular items, the following agenda item was taken out of order:

10. Proposed Findings of Violation - Candidates not Disclosing Sources of Personal Income (0:35)

Mr. Wayne explained that candidates for legislative office are required to file a statement of the sources of their personal income that they received in the year before the election year. Three candidates for the Maine House of Representatives (Dillon Bates, Kenneth Hoyt, and Mark Lockman) have not filed the statement, after receiving multiple requests by the Commission staff. He said the law does not prescribe any civil penalty for the failure to file the statement.

Mr. Duchette moved to find these three candidates in violation of 1 M.R.S.A. § 1016-D by not disclosing the sources of their 2013 income. Seconded by Ms. Amero. Motion passed unanimously.

Executive Session

Ms. Matheson moved to meet in executive session pursuant to Title 1, section 405(6)(E) to consult with the Commission's Counsel concerning pending litigation. Ms. Amero seconded. Motion approved (3-0). The Commission went into executive session at 9:43 a.m.

At 10:00 a.m., Ms. Matheson moved to come out of executive session. Ms. Amero seconded. Motion approved (3-0).

Other Business – Woodhouse v. Maine Commission on Governmental Ethics & Election Practices

Ms. Matheson stated that the Commission decided to proceed with a proposed settlement of the plaintiffs' claim for attorneys' fees under 42 U.S.C. § 1983.

The Commission resumed the scheduled order of agenda items at this point.

9. Request for Waiver of Late-Filing Penalty – ActBlue Maine PAC (0:40)

Mr. Wayne said ActBlue is a nonprofit organization that operates a website for members of the public to make contributions to Democratic candidates and other committees. ActBlue has registered with the

Commission as ActBlue Maine PAC in order to comply with Maine campaign finance law. It reports its payments to candidates and committees as expenditures. On June 1 and 8, 2014, ActBlue Maine PAC made payments to Maine state candidates and a Maine PAC totaling roughly \$17,400 but did not file 24-Hour Reports of the expenditures. The preliminary penalties for the two late reports are \$1,680.38 and \$16,165.11, respectively. ActBlue requested a waiver, because of the disproportionate size of the preliminary penalties, explaining that the violation was caused by a software problem.

Steven Gold, Esq., General Counsel for ActBlue, said this was a computer problem and believed the harm to the public was extremely minor. The contributions made through ActBlue are intended for candidates and PACs but their role is simply as an intermediary for those funds. These are not contributions to ActBlue directly and Maine law allows for these contributions to be viewed as donations from an individual under the contribution limit requirements.

Kate LaForge, Compliance Manager for ActBlue, said she was responsible for submitting the report. She explained that she was pulling data every day during the 13-day period, and no expenditure was apparent that required the filing of a 24-Hour Report. She said ActBlue learned later that scheduled maintenance of the database interfered with the system's display of data. If the data had shown up correctly, she would have filed a 24-Hour Report.

Mr. Gold explained that this was a first-time maintenance process and going forward these processes will not impact reporting.

In response to a question by Mr. Duchette, Ms. LaForge said the late filing was picked up when the PAC filed the next quarterly report.

Mr. Gold said it would be very rare that ActBlue would receive any donation large enough to trigger a 24-Hour Report. The expenditures made to candidates are aggregates of small contributions received by ActBlue. He said he supports the recommended penalty amount and does not see any issue like this one arising in the future.

Ms. Amero moved to adopt the staff recommendation and reduce the penalties to a total of \$500. Seconded by Mr. Duchette. Motion passed unanimously.

Meeting adjourned at 10:10 a.m.

Respectfully submitted,

/s/ Jonathan Wayne

Jonathan Wayne, Executive Director