



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

Minutes of the November 18, 2015, Meeting of the
Commission on Governmental Ethics and Election Practices
45 Memorial Circle, Augusta, Maine

Present: Walter McKee, Esq., Chair; Margaret E. Matheson, Esq.; Michael T. Healy, Esq.;
Hon. Richard A. Nass

Absent: Andre Duchette, Esq.

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

Commissioner McKee convened the meeting at 2:05 p.m.

The Commission considered the following items:

1. Ratification of Minutes of October 1, 2015 Meeting

Mr. Nass moved to accept the minutes as written. Ms. Matheson seconded. Motion passed (4-0).

2. Request for Waiver of Late-Filing Penalties – Maine Green Independent Party

Mr. Wayne explained that the Maine Green Independent Party (the “Party”) was required to file a quarterly campaign finance report on October 5, 2015 but filed the report on October 21 – 16 days late. The Party stated the late filing was due to a turnover in the treasurer position and the new treasurer did not have access to the financial records for the Party.

Mako Bates, treasurer for the Maine Green Independent Party, stated that he filed a waiver request because he was unaware that he could have requested a reduction. He stated he believed the penalty should only be \$200 or \$300 but did not disagree with the staff recommendation.

Mr. McKee thanked him for his presentation. Mr. Healy asked if penalty assessments and waiver requests were changed by the citizen initiative. Mr. Wayne stated that, under the new law, penalties will be 20% higher, but the Commission will still have the discretion to grant or deny waivers as it deems appropriate.

Mr. Nass made a motion to find a violation and assess a \$400 penalty. Mr. Healy seconded the motion. Motion passed (4-0).

3. Request for Waiver of Late-Filing Penalty – Legalize Maine PAC

Mr. Wayne stated that Legalize Maine PAC was required to file a campaign finance report by October 5, 2015 but filed the report on October 13, eight days late. He stated even though this is a first penalty, the penalty is large due to the amount of contributions received during this filing period. The PAC sought a waiver due to the treasurer's inexperience and the lack of a good process to track their financial transactions. It has since found someone to manage the PAC's finances.

Paul McCarrier, treasurer for Legalize Maine, stated that he took responsibility for the late filing. He said he would be paying the penalty himself because the PAC operates on a volunteer basis with the exception of paying a vendor for circulating petitions. Mr. McKee asked if he was a volunteer. He responded that he is. Mr. Healy asked if the PAC was paying for signature collectors. Mr. McCarrier stated that the PAC had a large number of volunteers collecting signatures; however, due to the population concentration in southern Maine, the PAC thought it made sense to pay a vendor for signature collection in that area. Mr. Healy asked what percentage of the expenditures was related to payment of the signature collectors. Mr. McCarrier stated that he would estimate 75% of the expenditures were related to paying signature collectors. Mr. Healy asked whether the PAC had any money remaining in its account. Mr. McCarrier stated that the PAC had over \$3,000 remaining, but he did not feel it was right for the PAC to pay for his mistake. Mr. Healy clarified that Mr. McCarrier did not have to pay the penalty out of his own funds but was choosing to do so. Mr. McCarrier confirmed that he would pay the penalty with his own funds. Mr. McKee expressed concern about the penalty amount given that Mr. McCarrier was going to be paying it with his personal funds instead of PAC funds. Mr. Healy stated that Mr. McCarrier did not have to pay the penalty himself, but he was choosing to do so.

Mr. Nass made a motion to find a violation and assess a penalty of \$1,000. Ms. Matheson seconded the motion. Motion failed (2-2), Mr. McKee and Mr. Healy opposed.

Mr. Healy made a motion to find a violation and assess a penalty of \$1,500. Mr. Nass seconded the motion. Motion failed (2-2); Mr. McKee and Ms. Matheson opposed.

Ms. Matheson made a motion to find a violation and assess a penalty of \$1,000. Mr. Nass seconded the motion. Motion passed (4-0).

4. Proposed Legislation – PAC and BQC Disclosure

Mr. Wayne stated that at the Commission's meeting on October 1st, the staff presented the Commission with draft legislation intended to address the issue of large donations being made to PACs and ballot question committees by other organizations without any disclosure of the actual source of the funds used to make the contributions. Based on concerns expressed by the Commission and interested parties at that meeting, the staff revised the bill to remove the more controversial language. The revised bill includes a more precise definition of contributions, improves the registration process for ballot question committees, and reduces the administrative burden on PACs. Mr. Nass stated he appreciated the revisions but still had some concerns about the impact on small organizations that are occasionally political. Mr. Wayne stated that provision has been removed and the current law would remain in effect. Ms. Matheson stated that she had a technical question regarding some terminology on page 3, subsection 5, paragraph A (4). She suggested striking "corporation" and "association" in addition to "organization." Mr. Healy asked whether under current law, organizations had to report the expenditures incurred in initiating a bill. Ms. Gardiner stated they did. In response to a question from Mr. Nass, Mr. Wayne stated the language currently before the Commission with the modification suggested by Ms. Matheson will be the final language of the bill.

Ms. Matheson made a motion to approve the revised proposed legislation. Mr. Nass seconded the motion. Motion passed (4-0).

5. Rule-Making

Mr. Wayne stated that in light of the passage of the citizen initiative on November 3rd, staff proposed initiating a rulemaking process to incorporate the changes resulting from the initiative. He stated a public hearing could be held at the regular December 16th meeting, a comment deadline set for January, and a meeting scheduled in either January or February to consider any comments and to adopt the rules. Ms. Matheson asked whether anything was pending at the Legislature that would potentially amend or delay the implementation of the citizen initiative.

Mr. Wayne stated he was not aware of anything at this time. Mr. McKee stated that he did not see a problem going forward with the process and see what comments are submitted.

Mr. Healy stated he would like to make sure that PACs, party committees, etc. receive notice about the increase in penalties and decrease in waivers as a result of the passage of the citizen initiative. Mr. Wayne stated staff could publicize the increase in penalties. In response to a comment by Mr. Healy, he said the Commission could review how it considers waiver requests; however, whether to grant a waiver or not, is still a discretionary matter for the Commission. Mr. Healy stated that he has some sympathy for candidate treasurers. However, PACs and party committees raise a lot of money and they should not be doing business if they do not have a competent treasurer to manage their finances. Mr. McKee stated that he thought it was fair to warn PACs and party committees about the penalty increases, but he is less inclined to put out a notice about a change in the review of waivers.

Mr. Nass expressed concern about the funding process set out in the citizen initiative and whether enough funds would actually be available for participating candidates. Mr. Wayne stated that staff is currently reviewing funding levels and believes that, based on the current budget, the Maine Clean Election Fund should have enough funds for this election cycle. He stated that staff has not ruled out the possibility of having to make an additional funding request to the Legislature. Mr. Wayne stated that if the Commission should run out of funds, MCEA candidates can solicit additional contributions, at the same level as traditionally financed candidates. Mr. Nass asked if the Commission has ever run out of money. Mr. Wayne stated it had not. Mr. Nass asked if the Commission's operating budget came out of Clean Election funds. Mr. Wayne stated it did.

Mr. Nass made a motion to approve initiation of the rule-making process. Ms. Matheson seconded the motion. Motion passed (4-0).

6. Reduction of Late-Filing Penalty for Michael Phillips

Mr. Wayne stated that Michael Phillips was a candidate for Sheriff of Knox County in the 2014 general election. He filed his 42-Day Post-General Report on December 16, 2014 stating that he had no financial activity for the period of 10/22/2014 – 12/09/2014. In fact, he had made two

expenditures for campaign signs and office supplies totaling \$642. Even though the Commission staff had contacted Mr. Phillips multiple times to remind him about amending his report, he did not correct the report until September 17, 2015. The report is considered late because it did not substantially conform to the disclosure requirements. The Commission staff encouraged Mr. Phillips to file a waiver request and to attend at this meeting. Mr. Phillips told the staff that he had mailed a waiver request but it was never received. Mr. McKee asked whether the Commission had the authority to grant a waiver without a request from the candidate. Ms. Gardiner stated that the Commission did have that authority.

Mr. Nass made a motion to find a violation and assess a \$500 penalty. Ms. Matheson seconded the motion. Motion passed (4-0).

Other Business

Mr. Wayne stated the staff drafted advice for traditionally financed candidates who may be interested in participating in the MCEA program in 2016. Mr. Wayne also presented the Commissioners with the printer mock-ups of the new 2016 Candidate Quick Guides. He stated staff had worked very hard on creating a simple, easy informational guide for candidates and he thought they had an excellent job.

Mr. Wayne introduced Allen Hallett as the new Candidate Registrar.

Ms. Matheson made a motion, seconded by Mr. Nass, to adjourn. The motion passed. The meeting adjourned at 3:00 p.m.

Respectfully submitted,

/s/ Jonathan Wayne

Jonathan Wayne, Executive Director