



Minutes of the November 30, 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 9:03 a.m.

1. Ratification of Minutes of the September 28, 2017 Meeting

Mr. Lee suggested two changes to the minutes regarding the time the meeting adjourned and a missing word on page 4. Instead of “the jurisdiction,” the phrase should be “the Commission’s jurisdiction.” Ms. Lowry moved that the minutes be adopted as amended. Mr. Nass seconded the motion. Motion passed (5-0).

2. Proposed Rulemaking

Mr. Wayne stated that the Commission initiated a rulemaking at its October 31, 2017 meeting. The staff proposed some administrative changes to the procedure for Maine Clean Election Act candidates to submit qualifying contributions and to demonstrate that the individuals who make qualifying contributions are registered voters in the candidate’s district. On November 9, 2017, the staff sent out an invitation to comment and specifically reached out to legislative leadership for comment. The staff did not receive any comments. The Maine Citizens for Clean Elections submitted written comments which were included in the meeting packet. Written comments may still be submitted until December 11, 2017.

Mr. Nass asked for a clarification about the role InforME plays in the online qualifying contribution (QC) process. Mr. Wayne explained that InforME is the private company that is under contract with the State of Maine to operate many of the State’s online services, including the online qualifying contribution service.

In response to a question from Mr. Nass, Mr. Wayne explained that the proposed change to the online QC system would allow candidates to enter in the information about their contributors and

the system would automatically verify the contributor's voter registration status and provide instantaneous results to the candidate. The Commission staff would still have to review the checks, money orders, and receipt and acknowledgement forms to ensure that they complied with the requirements. That review may take between two and four days. Mr. Wayne also explained how candidates can handle the qualifying contributions from contributors whose voter registration cannot be confirmed by the online QC service.

Ms. Matheson stated that she agreed with the comment by the Maine Citizens for Clean Elections (MCCE) regarding the use of business checks to make qualifying contributions. Mr. Lee and Mr. Nass said that there are many individuals in Maine who have sole proprietorships and use the same bank account for personal and business purposes. Mr. Wayne said the procedure was added to the rules for that reason. The contributor's name must either be included in the name of the account or the candidate must provide something in writing from the contributor stating that the account is used for personal purposes. Mr. Wayne stated that the staff has not had any problems with the current procedure and the proposed rulemaking does not include any changes to the procedure for handling business checks.

Mr. Lee said he thought MCCE was suggesting that the staff make sure that it really is a sole proprietorship or single-member LLC making the contribution, rather than, for example, a partnership or some other business entity. He said that was a reasonably bright line for handling business checks.

Ms. Matheson closed the public hearing on the proposed rulemaking. Written comments may be submitted until December 11th.

4. Compliance Reviews of Leadership PACs or other Political Committees

Mr. Wayne said this is a proposed procedure for reviewing campaign finance reports filed by leadership PACs and, perhaps, other PACs and ballot question committees. He said that he reached out to legislative leadership but has not received any comments from legislators.

Ms. Lowry said that this would be a worthwhile endeavor for the Commission to undertake and that it was within the Commission's mission.

Mr. Wayne suggested that the staff could present a more detailed plan for the review procedure at the Commission's December meeting.

Mr. Lee stated that the scope of the review should be narrowly focused on leadership PACs, at this point; that the review would not entail a full independent audit at the taxpayer's expense, but would consist of a review of the PAC's bank statements and campaign finance reports to verify whether all transactions were accurately reported; and that the PACs would be randomly selected, much the same way as Maine Clean Election Act candidates are selected for audit.

Mr. Nass said that the selection process should be designed in such a way that the leadership PACs of members of both parties are selected for the review. Mr. Wayne said that he would factor that into the procedure to be presented in December.

With respect to whether the review should be expanded to include other types of PACs and ballot question committees (BQCs), Mr. Lee said that he originally suggested conducting a more in-depth review for leadership PACs only. The problem the Commission recently addressed involved a leadership PAC, and he believed the focus of this new procedure should remain on leadership PACs. In addition, expanding the range of the PACs and BQCs subject to the review could result in a burden on staff resources; whereas, a review of a random selection of leadership PACs would be manageable for the staff.

In response to a question from Mr. Pattershall, Mr. Wayne said that this policy would not need to be adopted as a Commission rule.

4. 2016 Maine Clean Election Act Candidate Sidney Pew – Reimbursement for Travel

Mr. Wayne said that Mr. Pew was randomly selected for an audit, and the auditors noticed that Mr. Pew had used MCEA funds to reimburse himself for travel that occurred prior to his certification for the program.

Mr. Pew and Loraine Duclos, his campaign treasurer, appeared before the Commission. Mr. Pew stated that he did not intentionally violate the Maine Clean Election Act. He said that travel is neither a good nor a service, and is not defined as such in Election Law. He said the candidate guidebook is ambiguous as to how travel reimbursement should be handled. Ms. Duclos also referred to specific sections of the candidate guidebook and the MCEA expenditure guidelines to highlight that ambiguity and the lack of specificity regarding the prohibition against using MCEA funds for pre-certification travel.

Mr. Lee said that he was not inclined to make a finding of violation. He said it was easy to understand how they could interpret the guidebook regarding travel as they did. However, the statute states that a candidate cannot use taxpayer funds to repay himself or herself for actions

taken to qualify for MCEA funds. That is what seed money is for. Mr. Lee said the simplest way to resolve this is for Mr. Pew to repay the funds. That way the Commission would not make a finding of violation and it would be clear the MCEA funds were used in compliance with the statute.

Mr. Pew reiterated that the rules are very ambiguous. If he had understood that he had to differentiate between travel done before and after certification, he would have done so. In response to a question from Mr. Lee, he said that if repaying the amount for the travel reimbursement was what the Commission directed him to do, he would do that.

Mr. Lee stated his position that, while he understood why Mr. Pew interpreted the guidebook the way he did, the fact was that \$244.64 of taxpayer money was used in a way that is not allowed under the statute, and the full amount should be returned to the Maine Clean Election Fund.

Ms. Gardiner said that the statute does contemplate that travel is a form of service. The provision on seed money restrictions (21-A M.R.S. § 1125(2-A)(A)) reads, “All goods and services received prior to certification must be paid for with seed money contributions, except for goods and services that are excluded from the definition of contribution in section 1012, subsection 2, paragraph B.” That subsection in § 1012 makes two references to “travel expenses.” She said the statute does not prohibit the interpretation that travel expenses incurred prior to certification must be paid for with seed money, and that MCEA funds may not be used for that purpose.

Ms. Lowry said that the staff memo presented two options: a civil violation with a \$100 penalty or an order directing Mr. Pew to return \$244.64 to the Maine Clean Election Fund. She asked Mr. Pew which of those two options he preferred. Mr. Pew said that he preferred the \$100 penalty. He said the fact that he would be found in violation would not be an issue for him. He said that it was extremely important to him that the Commission improve its guidance materials for candidates regarding travel reimbursements.

Mr. Lee moved that the Commission find no violation provided that Mr. Pew reimburses the Maine Clean Election Fund \$244.64 within 30 days of today’s date; if the \$244.64 is not repaid within 30 days, that the Commission find a violation and assess a penalty of \$244.64.

Mr. Nass seconded.

The motion passed (5-0).

5. Request for Waiver of Late-Filing Penalties – 2016 Candidate April Turner

Mr. Wayne said that Ms. Turner had entered into an agreement in late July with Mach3Media, which provides mailhouse services to candidates for campaign mailers. Ms. Turner was required to report this transaction as a debt in the reports due in September and October. However, the transaction was not reported until after the election because she did not pay Mach3Media until November 21st. Ms. Turner included the transaction in the report that was due 7 weeks after the election. In the staff's view, the reports due in September and October are late because they did not substantially conform with the reporting requirements. The preliminary penalty is high – \$10,000 – and the staff recommends a reduction of the penalty to \$200, which is in line with penalties in similar cases.

Ms. Turner appeared before the Commission. She said was a first-time candidate and that she met with Commission staff soon after registering and thought she had a good understanding of the reporting requirements. She said that she had no intention of concealing this campaign expenditure by not reporting the debt to Mach3Media.

Ms. Matheson said the rule regarding what constitutes an expenditure is very clear, perhaps even clearer than the guidebook. She said that not reporting the debt was a clear violation. Ms. Turner said that she was not disputing the violation, but was requesting that the penalty be reduced.

Mr. Lee commented that the staff memo indicates that nearly a third of selected candidates missed reporting debts on their reports. He asked Mr. Wayne if there were any steps the staff could take to make candidates more aware that they must report debts when they are made, not only when they are paid. Mr. Wayne said that the staff will improve its printed and online written guidance. Mr. Lee said it may be particularly important to make sure that the Commission makes the extra efforts necessary to educate candidates about their reporting requirements in light of the increased penalty structure established by the citizen initiative in 2015.

In response to a question from Mr. Nass, Mr. Wayne said that the four legislative caucuses have taken the lead in training candidates and they know the Commission staff is available to participate in those trainings.

Mr. Nass moved that the Commission find a violation and reduce the penalty to \$200.

Mr. Lee seconded.

Mr. Lee offered a friendly amendment to include “and further find that it was an unintentional violation.”

Mr. Nass seconded the amended motion, which reads “that the Commission find a violation and reduce the penalty to \$200 and further find that it was an unintentional violation.”

Motion, as amended, passed (5-0).

6. Standards for Fixing Errors in Qualifying Contributions

Mr. Wayne presented for the Commission’s consideration a written policy on fixing defective qualifying contributions. He said the staff has had an unwritten standard on what actions a candidate could take to correct mistakes in qualifying contributions before and after the deadline for requesting MCEA certification. In a matter that came before the Commission in 2016 regarding a denial of MCEA certification, the attorney for the candidate criticized the staff for not having written standards that were publicly available to all candidates.

In response to a question from Ms. Matheson, Mr. Wayne said that he sent notice that the policy would be considered at this meeting to legislative leadership and their staffs, the Veterans and Legal Affairs Committee, the legislative caucus committees, and the political parties. However, he did not receive any comments.

Mr. Wayne said that the policy could be treated as an internal staff document or it could be posted it on the website. The staff intended for the policy to be an internal staff document. Ms. Gardiner suggested that posting the policy on the website may create some confusion and that it may be better to keep the candidates’ focus on getting the qualifying contributions correct the first time.

Mr. Lee said that it was not necessary for the Commission to take any action, but it seemed that the Commissioners were comfortable with the policy.

Executive Session

Ms. Matheson moved that, pursuant to Title 1 of the Maine Revised Statutes, section 405(4), the Commission go into executive session pursuant to Title 1, section 405(6)(E) and Chapter 1, section 5(2) of the Commission rules to consult with the Commission’s counsel concerning the legal rights and duties of the Commission. Mr. Nass seconded.

Motion passed (5-0).

Ms. Matheson called the Commission out of executive session.

Mr. Nass made a motion, seconded by Ms. Matheson, to adjourn. The motion passed (5-0). The meeting adjourned at 11:38 a.m.

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