



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

Minutes of the December 16, 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.; Andre Duchette, Esq.;
Michael T. Healy, Esq.; Hon. Richard A. Nass

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

Commissioner McKee convened the meeting at 9:05 a.m.

The Commission considered the following items:

1. Ratification of Minutes of November 18, 2015 Meeting

Mr. Nass moved to accept the minutes as written. Ms. Matheson seconded. Motion passed (5-0).

2. Complaint Against Joel Allumbaugh – Disclosure of Lobbyist Client

Mr. Wayne stated that Representative Ralph Tucker and Senator Geoffrey Gratwick had filed a complaint against Joel Allumbaugh for failure to disclose that he was a lobbyist and who he represented during public hearing on LD 1305. Mr. McKee asked why there was not a staff recommendation on this case. Mr. Wayne stated that this is the first complaint of this type against a registered lobbyist and staff has no experience to apply to this situation. Mr. McKee asked what options for sanctions were available. Mr. Wayne responded that the Commission could suspend Mr. Allumbaugh and/or assess a penalty of up to \$5,000.

Representative Tucker stated the reason he filed this complaint is because he believes it is important for Legislators to know who is in the audience and who is providing information both for and against proposed legislation. He said knowing a presenter's affiliation could change how their information is received by the Legislators. Representative Tucker stated that, in this case, he did not become aware of Mr. Allumbaugh's affiliation with the Foundation for Government Accountability (FGA), a public policy advocacy organization based in Florida, until several months later and, by that time, Mr. Allumbaugh had made several appearances before the Joint Standing Committee on Insurance and Financial Services. He said he found Mr. Allumbaugh's failure to disclose his status as a lobbyist surprising.

Mr. McKee stated that the public hearing was in May and asked whether any work sessions had been held. Representative Tucker stated there had been several work sessions. Mr. McKee asked whether Mr. Allumbaugh had equivocated about his status. Representative Tucker stated the sessions are not recorded and he could only rely on his memory of the events. Mr. McKee asked whether he had had some inkling about Mr. Allumbaugh's status when he finally asked him about it. Representative Tucker stated he was aware of Mr. Allumbaugh's Maine affiliations but not his

Florida affiliations. He said when Mr. Allumbaugh was asked about his employer, he had responded that he did some consulting. Mr. McKee asked whether Mr. Allumbaugh had participated in all the work sessions. Representative Tucker stated that Mr. Allumbaugh had been appointed to a sub-group of interested parties and that he was one of the key movers of the bill, which made his input very important. Mr. McKee asked whether anything similar to this has happened in the past. Representative Tucker responded that he had never noticed and went on to state that there is a difference between someone testifying in support of a bill and someone being paid to lobby a bill. He stated he later found out that Maine was the starting point of a national push on the issue covered by LD 1305. Mr. McKee questioned whether knowing Mr. Allumbaugh's affiliation with FGA would have made a difference in the outcome of the bill. Representative Tucker stated it would have made a dramatic difference and the bill may not have been carried forward if everyone had known about the national influence behind it.

Senator Gratwick appeared before the Commission to provide information on the complaint. He stated that he has served on IFS for three years. Senator Gratwick stated that personal perspective influences context. He stated that it is rare that Legislators do not know who is appearing before them and their associations. He stated that it is the rule to disclose lobbyist status and whether or not it is a good rule, it should be followed. Senator Gratwick went on to state that, from his experiences as a doctor, he knows that it is very important to disclose affiliations in order to avoid potential conflicts. He stated this is a simple case, Mr. Allumbaugh has admitted to his failure to disclose his status as a lobbyist and his employer and that, while he personally thought Mr. Allumbaugh is a likeable person, he still should be held accountable. Mr. McKee asked if Senator Gratwick had given any thought to what might be an appropriate penalty. Senator Gratwick responded that he agreed with Representative Tucker's recommendation that Mr. Allumbaugh be suspended.

Mr. Nass stated there are usually sign-up sheets at all legislative work sessions and hearings. Representative Tucker stated that had supplied a copy of the sign-up sheets. Mr. Nass noted that another lobbyist was listed on the sign-up sheets and that they had not disclosed their client. Representative Tucker responded that he did not believe the other lobbyist had had as much impact on the bill. Mr. Nass stated that lobbyists could have multiple clients that oppose or support any bill. Representative Tucker agreed this was true. Senator Gratwick stated that most lobbyists disclose their clients.

Mr. McKee asked whether the failure to disclose was simply an oversight. Representative Tucker stated that Mr. Allumbaugh had also submitted a written statement which also did not disclose his client.

Mr. Healy asked whether Mr. Allumbaugh had ever appeared before the IFS Committee. Senator Gratwick responded he had. Mr. Healy asked whether Mr. Allumbaugh was a full-time or part-time lobbyist and how much time had he spent before the IFS Committee on this bill. Senator Gratwick stated that he had seen Mr. Allumbaugh communicating with small groups of Legislators and other

interested parties at multiple sessions. He estimated that Mr. Allumbaugh spent approximately 20 minutes testifying before the committee.

Mr. Allumbaugh appeared before the Commission to respond to the complaint filed against him. He stated that he is not a professional lobbyist; he is an insurance professional. Mr. Allumbaugh stated that he found this experience to be personally discouraging and he had done some research into this issue and had not found any information about this provision. He stated that he does not deny that he failed to disclose his client, but stated he had mentioned his affiliation with FGA during conversations with the sponsors of the bill. He stated he believed this requirement ought to have more prominence as a clearly, known rule. He stated that LD 1305 is the only bill he is associated with; he does not regularly attend legislative hearings or work sessions.

Mr. McKee asked how much he was paid to lobby for this bill. Mr. Allumbaugh stated he received minimal compensation. Mr. Nass stated Mr. Allumbaugh reported receiving \$2,700. Mr. Healy questioned how much time he spent actually communicating with Legislators. Mr. Allumbaugh stated there is a three-minute clock used at the hearing and he had a handful of conversations with the bill sponsors, which he reported to FGA. Mr. Healy asked whether he had spent more or less than eight hours in a month lobbying. Mr. Allumbaugh responded he thought it unlikely that he had spent more than eight hours. Mr. Healy asked how he billed his time. Mr. Allumbaugh stated he began working for FGA in late 2014 and has a monthly retainer with them. Mr. Healy asked if he did non-lobbyist work for FGA. Mr. Allumbaugh stated he provides consultation on issues on which he has expertise.

Mr. McKee asked why he did not list his affiliation with FGA on the sign-in sheets. Mr. Allumbaugh stated it was an oversight; he had no intent to hide this affiliation. Mr. Healy asked if this was his first time registering as a lobbyist. Mr. Allumbaugh responded this is his first significant registration. Mr. Nass stated he believed Mr. Allumbaugh had been politically active for a long time and most Legislators probably knew of him. Mr. Allumbaugh agreed with this statement. Mr. McKee stated that Mr. Allumbaugh's connection with FGA could have been important to some Legislators and questioned when he disclosed the connection. Mr. Allumbaugh responded that he had spoken with the Senate Chair on numerous occasions but could not identify specific times of disclosure.

Mr. Healy stated he had reviewed the statute and it did not appear to him that Mr. Allumbaugh was in violation. Ms. Gardiner stated this is the first time this statute has been specifically addressed but stated that Mr. Allumbaugh is a registered lobbyist. Mr. McKee stated that it was known that Mr. Allumbaugh was an insurance professional but he could see how his affiliation with FGA could have an impact. Mr. Nass stated Mr. Allumbaugh is known to be a conservative and that is likely a factor in this case. Mr. Duchette agreed the situation appeared partisan but stated the Commission's role is not political; it is the Commission's responsibility to enforce statutes and rules. Mr. Duchette stated he believed there is a violation but it is a minor infraction with no harm to the public.

Mr. Healy asked whether the disclosure aspect is applicable if the eight-hour rule has priority. Ms. Gardiner responded that there is a technical argument that the eight-hour rule has priority. Mr. Wayne stated there is no tally of the hours Mr. Allumbaugh spent on this bill. Mr. Healy stated that disclosure is important but the eight-hour rule is the benchmark for representation as a lobbyist. He stated the Commission should ignore the political motivations and rule on the facts of the case. Ms. Gardiner stated more information would be necessary to make an actual determination of whether the eight-hour rule applied.

Ms. Matheson moved to table the matter while Mr. Allumbaugh retrieved his lobbyist information. Mr. Healy seconded the motion. Motion passed (5-0).

Mr. Allumbaugh reappeared before the Commission to provide an update on the number of hours he spent as a lobbyist during the timeframe of the complaint. Mr. Allumbaugh stated the hours are based on what he reported to FGA and he could not provide any clarification on how many hours were spent on consultation and how many were actual lobbying hours. Mr. Healy stated it was Mr. Allumbaugh's burden to prove he had not exceeded the eight-hour rule and, based on his submission he has not done so; therefore, the Commission must find him in violation. Mr. McKee agreed but stated the penalty should be minimal. Mr. Nass expressed concern that this finding of violation could result in more politically motivated complaints. Mr. Healy agreed that could happen but stated it was the Commission's duty to enforce the statutes. Mr. McKee stated there was a spectrum of possible penalties. Mr. Duchette pointed out that the statute was written as "may impose" a penalty. Mr. Healy stated Mr. Allumbaugh had admitted the violation and there should be a penalty for that violation but a minimal penalty.

Mr. Healy made a motion to find a violation and assess a \$50 penalty. Mr. Duchette seconded the motion. Motion passed (5-0).

3. Public Hearing for Rule-Making

Mr. Wayne stated this Commission meeting also serves as the public hearing for the Commission's proposed rule changes. He stated that after internal staff discussions about the procedures necessary to implement the citizen initiative, the staff believes it would be prudent to add some minor rules changes in this rule-making. These changes could be incorporated into the proposed rule changes. Ms. Gardiner stated that the rule-making process did not need to be reinitiated but the additional changes should be sent out for comment.

Mr. Nass asked if email solicitations for qualifying contributions were permissible. Mr. Wayne stated that they were and it has not been a problem, but a rule amendment could be done if necessary. Ms. Matheson asked whether "organization" was the appropriate term to use in Chapter 1, section 7 (12).

John Brautigam of Maine Citizens for Clean Elections (MCCE) appeared before the Commission to present comments on the proposed rule changes. He stated the citizen initiative passed in November should create a more robust, accountable and transparent public funding program for legislative and gubernatorial candidates. Mr. Brautigam stated the rules should be clear, accessible and lessen the burden on staff and campaigns. He stated there were three areas MCCE would like to focus on: the top three funder provision, fraudulent qualifying contributions, and paid staff time and campaigns. Mr. Brautigam stated the top three funder disclosure provision was crucial to ensuring transparency in the contribution process. He stated that it should be easy for party committees and PACs to comply with this provision. Mr. Brautigam stated the rules should encompass a variety of potential scenarios designed to thwart the top three funder disclosure such as, entities created to hide actual donors, PACs created as a sub-group, and legal subsidiaries of other entities. In all these cases, the top three funder provision should apply. He stated the proposed changes to Chapter 3 are very good; it is very important to hold campaigns to a high standard but be flexible with enforcement. Mr. Brautigam stated there may be some confusion regarding paid staff time for campaigns and in-kind contributions. He stated MCCE believed volunteer political activity is important and should be encouraged. It should be made clear that paid staff cannot assist in the collection of qualifying contributions; except paid party staff under the 40-hour provision in the statute. Campaigns should be discouraged from paying employees to collect qualifying contributions but if they do, they should pay employees out of cash they have on hand and not pledge unearned money as payment. Mr. Brautigam stated MCCE supported the electronic tracking of contributors.

Mr. Nass expressed concern about small, generally non-political groups, who make political contributions and the impact of having to disclose the top three donors. Mr. Brautigam responded that only the organization should be listed, not the actual top three donors, unless the organization is the sole source of funding for a PAC. Mr. Healy stated that many non-profit organizations receive donations from multiple sources, including out of state organizations, and asked whether they would need to disclose their top three donors. Mr. Brautigam stated they did not. Ms. Matheson stated it was good to know the connections in contributions but may need to define “control” more clearly in the rules. Mr. Brautigam stated MCCE would be happy to assist in drafting language for the rule changes and/or assist in the rule-making process.

4. Request for Waiver of Late-Filing Penalty – Working Families PAC

Mr. Wayne stated Working Families PAC was a leadership PAC formed by Representative Diane Russell. The PAC was required to file a quarterly campaign finance report in October 2014, which it did on October 6, 2014, but failed to report 12 expenditures. Representative Russell, as the Principal Officer, logged in and attempted to add 15 expenditures on October 24, 2014, but she did not complete the re-filing process and the expenditures remained unreported until October 20, 2015, when the PAC successfully re-filed the report. Mr. Wayne stated Commission staff made multiple attempts to correct this matter with Representative Russell, who failed to respond.

Philip Saucier, Esq., appeared on behalf of Working Families PAC and Representative Russell. He stated Representative Russell accepts full responsibility for the late-filing of the report and extends her apologies for her failure to maintain communication with the Commission. Mr. Saucier stated the report was filed on time and when the missing expenditures were found, attempts were made to correct the report but due to a failure in the filing system, the report was not actually corrected for more than a year. Mr. McKee stated that multiple attempts were made to contact Representative Russell to resolve this issue and she failed to respond. Mr. Saucier responded that Representative Russell was confused by the multiple notifications but acknowledges her failure to respond. He stated the PAC has a new treasurer and there should not be any future filing problems. Mr. Healy asked if the PAC had money remaining in its account. Mr. Saucier stated it did but believed the proposed penalty is disproportionate. Mr. McKee stated there is a comparable case provided and the proposed penalty seemed fair. Mr. Saucier responded that the two cases did not involve the same amount of money and the Working Families PAC is not directly connected to a campaign. Mr. Healy questioned expenditures listed as “on-line organizing” and why those payments went to Representative Russell. Mr. Saucier did not know what the on-line organizing expenditures were. Mr. Healy questioned whether the PAC had the money to pay the fine. Mr. Wayne stated the PAC has, in the past, engaged in fundraising activities to generate funds to pay penalties. Mr. Nass commented that Representative Russell used to be on the oversight committee for the Commission. Mr. Nass questioned whether it was actually Representative Russell who logged into the system to correct the report. Mr. Saucier stated Representative Russell was the person who logged into the system. Mr. Nass asked if there was a definition for a leadership PAC. Mr. Wayne stated that a leadership PAC is a conventional term, not an actual defined definition and there is no restriction on who could have leadership PACs. Mr. Saucier stated it was not accurate to state this is the PAC’s third violation; the prior two violations were paid voluntarily and there was minimal public harm. Mr. Nass pointed out the penalty is based on the number of days in violation, not on how many violations have been incurred. Mr. McKee expressed concern about Representative Russell’s failure to accept Commission staff assistance and stated he was concerned she would perceive a reduced penalty as a diminishment of the violation.

Mr. Nass made a motion to find a violation and assess a \$500 penalty. Motion passed (5-0).

Ms. Matheson made a motion, seconded by Mr. Nass, to adjourn. The motion passed. The meeting adjourned at 11:00 a.m.

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