



Minutes of the December 19, 2018 Meeting of the
Commission on Governmental Ethics and Election Practices
45 Memorial Circle, Augusta, Maine

Present: William A. Lee III, Esq., Chair; Hon. Richard A. Nass; Meri N. Lowry; Bradford A. Pattershall, Esq.

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

Mr. Lee convened the meeting at 9:09 a.m.

1. Ratification of Minutes of November 28, 2018 Meeting

Mr. Nass moved to accept the minutes of the November 28 meeting as amended. Ms. Lowry seconded. The motion passed (4-0).

2. Request for Waiver of Late-Filing Penalty – Jan Collins (Irving Faunce, Treasurer)

Mr. Wayne said Jan Collins, who was a Maine Clean Election Act candidate for State Senate, made two expenditures of \$1,000 or more on October 29th and was required to file a 24-Hour Report on October 30th. When her campaign treasurer, Irving Faunce, entered transactions into the e-filing system in preparation for filing the 42-Day Post-General Report, he was alerted that a 24-Hour Report was late. He filed the report on November 21st, 22 days late. The preliminary penalty is \$2,565.38. The staff believed the preliminary penalty is disproportionately high and recommended a reduction to \$218. The campaign also filed another 24-Hour Report one day late and the preliminary penalty is \$82, for which the campaign is not requesting a waiver. The staff recommended a combined penalty of \$300 for two late-filed 24-Hour Reports.

Mr. Lee noted the standard penalty for this type of late-filed report is in the \$300-\$400 range. He said a reduction to \$218 seemed inconsistent with other penalties assessed for late-filed 24-Hour Reports. Mr. Wayne agreed that for the sake of consistency, a \$300 penalty would make more sense.

Irving Faunce, treasurer for Jan Collins, appeared before the Commission. He acknowledged there was a lapse in his reporting. It was an oversight on his part and he took full responsibility.

Mr. Lee stated it was important for the Commission to act consistently when imposing penalties. Making an exception to a standard penalty in one case could lead to questions of fairness in future cases. He said a \$300 penalty was at the low end of the range and would be consistent with the Commission's practice. Mr. Faunce said, while he would prefer the \$218 penalty given his economic circumstances, he fully understood the need for the Commission to be consistent.

Mr. Nass said the Commission always looks at its past practice in imposing penalties and what it decides to do in this case will be a part of the historical record going forward.

Mr. Lee said, in light of the extenuating circumstances involved and Mr. Faunce's diligence, he proposed a motion to reduce the statutorily calculated penalty from \$2,565.38 to \$300. Mr. Nass seconded. The motion passed (4-0).

In keeping with the Commission's past practice, Mr. Lee proposed taking agenda item #6 out of order to allow Ms. Soma-Hernandez's matter to be heard before moving on to the other agenda items. The other Commissioners agreed.

6. Potential Maine Clean Election Act Violation – Cynthia Soma-Hernandez

Mr. Wayne said once a candidate opts into the Maine Clean Election Act (MCEA) program, the candidate must only use MCEA funds to pay for all campaign-related goods and services.

Cynthia Soma-Hernandez was a MCEA candidate for the House of Representatives. On October 11th, she purchased campaign brochures for \$1,655.05 and used the debit card for her campaign account to make the payment. Shortly after, she received a call from the bank informing her the account did not have sufficient funds to process the payment. Ms. Soma-Hernandez deposited \$391.75 of her personal funds to cover the shortfall. She had anticipated she would be eligible for one supplemental payment of \$1,250 and would be able to reimburse herself. However, as she was mistaken about the deadline for submitting her request for supplemental funds, she missed the deadline and did not receive a supplemental payment. The result was Ms. Soma-Hernandez used personal funds to pay for campaign-related goods and services. Mr. Wayne said in the past the Commission has imposed a \$50 penalty in similar cases but that penalty amount may not be sufficiently high enough to underscore how important it is for MCEA candidates to maintain accurate bookkeeping.

In response to a question from Mr. Pattershall, Mr. Wayne said the statutory authority to impose a civil fine for a violation of the Maine Clean Election Act is found in 21-A M.R.S.A. § 1127.

Ms. Gardiner said § 1127 is a catch-all provision that would apply to violations of the Maine Clean Election Act that did not specify a penalty amount.

Cynthia Soma-Hernandez appeared before the Commission. She said the printer double charged her for the order but she did not realize that at the time she paid the bill. As soon as she heard from the bank that she did not have sufficient funds in the campaign account, she deposited enough personal funds to cover the bill. She thought she had enough campaign funds left to cover the bill but clearly was wrong about that.

Mr. Lee said \$50 was not high enough of a penalty for a MCEA violation and a penalty of \$100 would recognize the significance of the violation and that Ms. Soma-Hernandez did not intentionally violate the MCEA. The other Commissioners agreed.

Mr. Lee moved that under the circumstances, the Commission assess a civil penalty of \$100. Mr. Nass seconded. The motion passed (4-0).

3. Proposed Changes to Commission Statutes

Ms. Lowry said the proposed statutory amendments were based on some of the difficult matters that came before the Commission and the decisions it made in those cases. She expressed her appreciation for the staff's careful organization in capturing these decisions and making proposed changes that reflected them.

The Commissioners took up each of the staff's proposed changes and agreed the proposed changes should be included in the Commission's bill, except that the following modifications should be made:

Ms. Lowry suggested a change to the proposed language in the provisions dealing with the maximum penalties for late-filed reports. She thought using the term "that amount" could lead to an unintended result because the antecedent for "that amount" would be \$50,000, not "the dollar amount of the financial activity" reported late as intended. Mr. Lee suggested rewording the proposed change to read "except that if the dollar amount of the financial activity that was not timely filed or did not substantially conform to the reporting requirements of this subchapter exceeds \$50,000, the maximum penalty is 100% of the dollar amount of that financial activity." The Commissioners agreed that change should be made in the bill. This modification affected sections 1020-A(5-A) and 1062-A(4) of Title 21-A.

After a brief discussion, Mr. Wayne said he would keep the phrase “signed by the contributor” in the definition of qualifying contribution. Mr. Pattershall suggested including the word “cash” in the definition, so that it would read “in the form of cash, a check or a money order payable to the fund and signed by the contributor.” This modification affected section 1122(7) of Title 21-A.

The Commission authorized Mr. Wayne to submit the proposed statutory changes, as modified, to the Office of the Revisor of Statutes.

4. Proposed Rule-Making

Mr. Wayne explained that the purpose of the proposed rule change regarding debts remaining unpaid after an election was to provide the Commission with a clearer process and greater discretion regarding such debts. He said unpaid debts could become de facto in-kind contributions to a candidate and could exceed the contribution limits. However, he said this was not a frequent problem and the rule as currently written is sufficient to address these matters.

The Commissioners agreed the proposed change in Chapter 1, Section 6(6) should be removed.

Ms. Lowry expressed a concern that the proposed rule change regarding campaign communications by employees of political parties, PACs, or ballot question committees would still encourage secrecy. She recommended the rule change incorporate language requiring the employee to provide sufficient evidence that the communication was not related in any way to the employee’s work responsibilities in order to rebut the presumption.

Mr. Nass said it would still be difficult to determine who an employee is given how party committees are organized.

In response to a question from Mr. Lee, Mr. Wayne said he did not think a situation like the one involving Jason Savage would come up very often. Mr. Lee said if a similar situation were to come up in the future, the Commission would still have the power to investigate if there was sufficient evidence that a violation may have occurred.

Mr. Pattershall said it was an unnecessary burden shift and he was not inclined to support the proposed change.

The Commissioners decided not to include the provision in the proposed rule.

The Commissioners approved the changes to the provision regarding how unpaid debts are reported in campaign finance reports.

Mr. Wayne said the staff is working with the Commission's IT vendor to develop an e-filing system for Legislators and executive branch officials to file their annual statements of sources of income online. The proposed rule change is to provide a little more information to the public about the categories of gifts received.

The Commissioners decided to initiate a rulemaking and authorized Mr. Wayne to put the proposed rule as modified out for public comment.

5. Insertion to Candidate Guidebook – Disclosure Statements in Candidate Literature

In response to a comment from Ms. Lowry, Mr. Wayne said the intent was to have the disclosure statement on each communication if the communications were combined or distributed together, not that the disclosure statement be included on each page.

Mr. Lee said the fact that there is written guidance may be a helpful factor in deciding a case should one come before the Commission.

Mr. Lee, Mr. Nass, and Mr. Pattershall agreed that the insertion should be made; Ms. Lowry did not agree.

Mr. Nass moved to adjourn. Mr. Pattershall seconded. The motion passed (4-0).

The meeting adjourned at 12:31 p.m.

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