

Minutes of the December 22, 2014, Meeting of the
Commission on Governmental Ethics and Election Practices
45 Memorial Circle, Augusta, Maine

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

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

Commissioner McKee convened the meeting at 9:00 a.m.

The Commission considered the following items:

1. Ratification of Minutes of November 24, 2014 Meeting

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

2. Comments from the Public on Potential Changes to Contribution Limits (:01)

The Commission invited public comments on potential changes to the Election Law relating to limits on contributions to candidates. Only one comment from Rep. Ben Chipman was received. This item will be on the January agenda as well.

3. Request for Waiver of Violation and/or Late-Filing Penalties – Mainers for Fair Bear Hunting BQC

Mr. Wayne explained that on October 30, 2014, the Mainers for Fair Bear Hunting BQC received a \$50,000 contribution from the Humane Society of the United States. A 24-Hour Report was due for this contribution on October 31, 2014. The BQC entered the data for the report on October 31, but the report was not filed that day. The BQC filed the report the next morning (November 1) after receiving an electronic notice that a report was overdue. The preliminary penalty for the late report is \$1,500. The BQC has requested a waiver, contending that it followed all of the steps to properly file the 24-Hour Report electronically, but the Commission's e-filing system failed to recognize the report as filed.

James Cohen, Esq., representing the BQC, disclosed that he and Mr. Healy worked at the Verrill Dana law firm prior to Mr. Healy's retirement a year ago. The two people responsible for filing the reports followed the steps for filing the report on the day it was due; however, the second step of hitting the file button after entering the information was not done. Once the email was received regarding the late filing, the report was filed immediately. He said he would like the Commission to consider this as a constructive filing and waive the violation or reduce the penalty.

Ms. Matheson moved to adopt the staff recommendation to find that the BQC filed a late report and reduce the penalty to \$500. Mr. Healy seconded. Motion passed (5-0).

4. Expenditures for Promotional Items – Paige Brown (0:16)

Mr. Wayne said that Paige Brown participated in the Maine Clean Election Act (MCEA) program as a first-time candidate for the Maine House of Representatives. The Commission's 2014 MCEA Expenditure Guidelines allow candidates to spend public campaign funds on inexpensive items to promote themselves or to gain visibility at public events, such as buttons, hats, and baseball caps. The guidelines state that spending MCEA funds on more expensive items such as sweatshirts or coolers is not permitted. Given the 2014 guidelines, the Commission staff questions the acceptability of Ms. Brown's expenditures for sweatshirts and aluminum water bottles to promote her campaign.

Mr. Duchette asked whether the issue was the item itself or the dollar value. Mr. Wayne said in this case it was the dollar value.

Paige Brown explained that this was her first time running for office and this was an honest oversight with regard to the sweatshirts. She said the water bottles supported her campaign platform to raise awareness for environmental issues. For that reason, she did not want to purchase certain plastic products for her campaign, such as plastic signs or water bottles. She said she felt the items she purchased were reusable items and consistent with her platform and beliefs. She explained that once she realized she was not going to win her race, she returned the remainder of her MCEA funds to the Commission.

Mr. Nass expressed concern over the Commission micro-managing campaigns and deciding what is and is not allowable.

Mr. Duchette wondered why baseball hats and water bottles are acceptable but sweat shirts are not. Mr. Healy noted that since sweat shirts are specifically noted in the guidelines, the Commission must uphold that a violation occurred and enforce the law.

Mr. Healy moved to find the candidate in violation of the guidelines for how MCEA funds are to be spent. Mr. Duchette seconded. Motion passed (5-0).

Mr. Healy moved to assess a penalty of \$100. Mr. McKee seconded. Motion passed (3-2, Mr. Nass and Mr. Duchette opposed.)

5. Request for Waiver of Late-Filing Penalty – Sagadahoc County Democratic Committee (0:37)

Mr. Wayne said that on October 24, 2014, the Sagadahoc County Democratic Committee made contributions of \$3,000 and \$2,500 to the Michaud for Governor campaign and the Maine State Democratic Party. It was required to disclose these payments in a 24-Hour Report on October 25. The committee became aware of the 24-hour reporting requirement on November 2, as it was preparing its regularly scheduled report due in January 2015. The committee filed the 24-Hour Report on November 3 (nine days late). The preliminary penalty is \$495.

Ms. Matheson moved to adopt the staff recommendation and find the Committee filed a late report and reduce the penalty to \$200. Mr. Nass seconded. Motion passed (5-0).

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:

6. Request for Waiver – Committee for a Healthier, More Prosperous Maine BQC (1:35)

Mr. Wayne said that beginning on July 29, 2014, the Committee for a Healthier Maine BQC began engaging contractors to provide polling and analysis, website production, and video work in order to support Question 4 on the November 4, 2014 ballot. The organization was required to register and file its initial campaign finance report by August 5, 2014. It registered and filed its first report 21 days late on

August 26, 2014. The BQC did not recognize that entering into an agreement or promising to pay for services constituted an “expenditure” which can trigger BQC status. The preliminary penalty is \$5,435.68.

LuAnn Ballesteros, treasurer for the BQC, said everyone involved with this BQC was new to the process. She said the Jackson Labs had never been involved in a referendum before. She said she learned that the definition of expenditure included entering into a contractual agreement just as they were beginning to file the first report. She said they accepted the staff recommendation.

Mr. Duchette moved to reduce the penalty to \$500. Mr. Nass seconded. Motion passed (5-0).

7. Request for Waiver of Late-Filing Penalties – Maine Economic Growth Coalition (0:39)

Mr. Wayne said the Maine Economic Growth Coalition PAC (the PAC) made four expenditures supporting Question 2 between October 28, 2014 and November 4, 2014 which required 24-Hour Reports, but did not report these transactions until after the election. The PAC indicates it had no experience using a media buyer and was not aware the media buyer had made these expenditures on behalf of the PAC until after the election. The preliminary penalties total \$1,819.84.

Todd Saucier, treasurer for the PAC, explained that the PAC has been around for a while and from time to time becomes involved in elections when there are bond questions on the ballot that affect the University of Maine System. At the time of this election, there was a transition with the bookkeeping staff. Also, they were unaware that they could report anticipated expenditures and had hired an electronic media buyer who did not provide expenditure information to the PAC. These expenditures were not discovered until the bank statement was reviewed. He said going forward they will include anticipated expenditures in their filings.

Mr. McKee said these late expenditures are problematic when not reported in a timely fashion since the public is deprived of knowledge about who is influencing the election.

Mr. Nass moved to reduce the penalty to \$500. Ms. Matheson seconded. Motion passed (5-0).

8. Request for Waiver of Late-Filing Penalties – Bonnie Lewis (0:58)

Mr. Wayne said the House campaign of Bonnie Lewis filed two reports late in October 2014. The campaign's 11-Day Pre-General Report was filed one minute late at midnight on October 25, due to interruptions in the treasurer's internet service. A 24-Hour Report was also filed one day late.

Lisa Day, treasurer for Bonnie Lewis, said she accepted the staff recommendation to reduce the penalty to \$47.77.

Mr. Duchette moved to adopt the staff recommendation and reduce the penalty to \$47.77. Mr. Nass seconded. Motion passed (5-0).

9. Request for Waiver of Late-Filing Penalties – Richard Paul (1:01)

Mr. Wayne said Richard Paul was a Maine Clean Election Act candidate for the Maine House of Representatives in the November 4, 2014 general election. His treasurer was one day late filing a 24-Hour Report for an expenditure of \$1,109.35 that Mr. Paul made on October 30. The treasurer entered the expenditure in the system on October 31, 2014, but the report was not filed that day. After the treasurer received an automated notice that the report was overdue and called the Commission office, the Commission staff filed the report one day late on November 1. The preliminary penalty is \$11.09.

Ms. Matheson moved to adopt the staff recommendation and assess a penalty of \$11.09. Motion seconded by Mr. Nass. Motion passed (5-0).

10. Request for Waiver of Late-Filing Penalties – Donnie Smith (1:02)

Mr. Wayne said that Sheriff Donald "Donnie" Smith was a candidate for Sheriff in Washington County. His treasurer was ten days late filing a 24-Hour Report. The obligation was incurred on October 24, 2014, triggering a report due October 25, 2014. Sheriff Smith paid the debt on October 29. The 24-Hour Report was filed on November 4, 2014 (the day of the election). The preliminary penalty is \$563.87

Ms. Matheson moved adopt the staff recommendation and assess a penalty of \$200. Mr. Duchette seconded. Motion passed (5-0).

11. Disclosure of Governmental Advocacy in Ballot Question Elections (1:09)

The Commission considered whether to propose legislation to change financial reporting requirements when departments of Maine state government or municipalities pay staff or otherwise spend money to influence public opinion on ballot questions.

Mr. McKee said for clarification that this would only require an organization receiving a benefit from a state agency to report, it would not require the state agency to report. Mr. Wayne confirmed that.

Mr. Healy asked for clarification as to what the phrase “governmental agency” was intended to cover and whether it would cover municipalities and school districts. Mr. Wayne said it would include state and municipal agencies and subdivisions.

Mr. Duchette stated that the purpose of the proposed legislation would be only to report what was spent and not to regulate whether money should be spent or how much should be spent.

Ms. Matheson said that in the past election, it was very obvious that staff members of the Department of Inland Fisheries and Wildlife were involved in the campaign. She said that issues related to this matter are still in front of the court and she expressed a need for caution while the matter was still before the court.

Mr. Healy expressed concern that state government employees who are doing their job would have to record their time on activities related to a referendum when these employees are basically just doing their job as a state employee.

Mr. McKee said the Commission should encourage transparency and disclosure.

Mr. Healy suggested adding the word “state” to governmental agency for clarity’s sake.

Mr. McKee moved to submit a revised version of option #1 clarifying its applicability to state governmental agencies in the Commission’s bill for consideration by the Legislature. Mr. Duchette seconded. Motion passed (4-1 with Ms. Matheson opposed).

12. Proposed Changes to Commission Rules (1:30)

The Commission will accept public comment on changes to the Commission's Rules proposed by Commission staff at its next meeting on January 23.

By motion of Mr. Duchette, seconded by Mr. Nass, the meeting adjourned at 10:50 a.m.

Respectfully submitted,

/s/ Jonathan Wayne

Jonathan Wayne, Executive Director