



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
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Approved 7/25/12

Minutes of the May 30, 2012, Meeting of the
Commission on Governmental Ethics and Election Practices
Held at the Commission Office, 45 Memorial Circle,
Augusta, Maine

Present: Walter F. McKee, Esq., Chair; André G. Duchette, Esq.; Margaret E. Matheson, Esq.; Michael T. Healy, Esq.; Hon. Jane A. Amero
Staff: Executive Director Jonathan Wayne; Phyllis Gardiner, Counsel.

At 9:05 a.m., Chair Walter McKee convened the meeting.

The Commission considered the following items:

Agenda Item #1. Ratification of Minutes of the March 28, 2012 Meeting

Ms. Matheson moved to accept the minutes as drafted. Mr. Duchette seconded. The motion passed (4-0) with Ms. Amero abstaining.

Agenda Item #2. Finding of Violation for Failing to Register as a Candidate

Candidates are required to register with the Commission within 10 days of qualifying for the ballot. Candidates on the primary election ballot should have registered with the Commission no later than Monday, March 26. There were approximately 500 legislative and county candidates who registered with the Commission. The Commission staff contacted all unregistered candidates to ask them to register and all responded except for Debra Black who is running in District 99 for the House of Representatives. In spite of notices and attempted telephone contacts, Ms. Black still has not registered.

Mr. Wayne explained that Ms. Black has received at least two letters from the Commission as well as two voicemail messages and there has been no reply from her. Mr. Wayne said it may be that Ms. Black is what is called a paper filer or place holder candidate; however, all candidates are required to register and file reports with the Commission regardless of the temporary circumstances. Mr. Wayne explained that the

finding of violation by the Commission is a way to bring attention to the matter in hopes the candidate will respond because it is a legal matter.

Mr. Healy asked if Ms. Black had been given notice that she may be found in violation and Mr. Wayne said the staff had mailed out notices to Ms. Black.

In response to Mr. McKee's question, Mr. Wayne said the Commission's action would be to send a determination letter stating she was in violation but not issue a penalty.

Mr. Wayne explained further that if Ms. Black's intention is to withdraw after the primary, her basic responsibility is to register with the Commission and file two campaign finance reports. If she chooses not to perform these requirements, a civil penalty could be assessed by the Commission.

Mr. McKee moved to find Ms. Black in violation for failing to register as a candidate. Mr. Healy seconded the motion.

Motion passed unanimously (5-0).

Agenda Item #3. Final Adoption of Chapter 3 Rules (major substantive)

At its March 28, 2012 meeting, the Commission provisionally adopted changes to Chapter 3 of the Commission's rules. Because the Chapter 3 rules relate to the Maine Clean Election Act, they are major substantive. The Maine Legislature approved the final adoption of these rules in Resolve Chapter 158, which took effect on April 18, 2012.

Ms. Matheson moved to finally adopt the major substantive rules regarding Chapter 3 - the Maine Clean Election Act and related provisions. Mr. Duchette seconded the motion.

Motion passed unanimously (5-0).

Agenda Item #4. Further Consideration of Chapter 1 Rules (routine technical)

Mr. Wayne explained that comments have been received on this rulemaking with respect to the press exception which states that for regular publishers and broadcasters of news, commentaries and editorials the costs for preparing and disseminating news, commentary and editorials are exempt from what is considered an expenditure. However, staff feels an additional comment period is warranted. He said comments have been received since the March meeting and an issue arose in late March which brought up the issue of how the statute should apply to publishers and broadcasters that may be owned by a candidate or a member of the candidate's immediate family especially in the case of Maine Today Media's new ownership. He said this issue is important enough to invite further public comment in order to address the matter before the Commission has to deal with the issue in an enforcement context at a later time.

In response to Mr. McKee, Mr. Wayne said the timing will not allow for a public hearing on this issue, so the Commission would accept written comment within a scheduled 30 day period which would allow the Commission to consider the written comments at the July 25 meeting. He said he had contacted some of the managing editors of the media and requested they comment on the proposed rule. In response, he received a call from an attorney acting on behalf of Maine Today Media who indicated he would like to comment on the issue.

Mr. McKee summarized that the Commission will open the written public comment period again for 30 days and review the comments at the July meeting.

Mr. Duchette asked whether extending the comment period will affect the Commission's ability to respond to any matters relating to this issue that may arise in the fall during the busy election season.

Ms. Gardiner explained that once the Commission adopts the final rule, it will take effect five days later.

Mr. Healy asked whether, if the Commission went ahead today and adopted the rule as originally presented on March 28, there would be no press exception and any media owned by a candidate or candidate's spouse would have to file reports for expenditures.

Ms. Gardiner said the Administrative Procedures Act requires a public comment period of 30 days before a rule that is substantially different may be adopted. She said the issue of publications owned by a candidate is substantially different and was not addressed in prior drafts and therefore requires a comment period. She said if the Commission decided not to address that issue, then the second draft presented on March 28 could be adopted at this time.

Mr. Healy wondered whether it was necessary to extend the comment period again in light of the fact that no one raised any concerns about this issue in the other two comment periods. He said that it may be better to deal with this matter now by adopting the rule as written rather than leave the issue open during the upcoming election. He said if the rule originally proposed was adopted today, then Maine Media would not have an exception but would have to simply comply with the statute without a press exception.

Mr. Wayne said that would be true. However, the Commission could interpret the current statute in such a way that it would not preclude Maine Today Media from using the press exception. For example, the Commission could say that since Ms. Pingree is a candidate for federal office and the Commission's jurisdiction extends only to state and county candidates, the press exception would still apply to Maine Today Media.

Mr. Healy said he would like to hear views by the media; however, if they know this issue is before the Commission and they have not expressed any views or concerns before now, then perhaps they have no concerns. He questioned why the Commission should change its course of action to adopt a rule if there appears to be no concerns raised by the media.

Mr. Wayne said he believes Maine Today Media will make comments since they expressed an interest in seeing the issue clarified.

Mr. McKee pointed out that Ms. Pingree's campaign is a federal election which the Commission has no jurisdiction over.

Ms. Gardiner explained the issue is cloudy because the word "candidate" as defined in Election Law includes federal candidates even though the Commission's jurisdiction over campaign finance regulation

applies to state and county only. In response to Mr. Healy, Ms. Gardiner said, assuming the Commission took no action regarding this rule, it is only the statute on the press exception that would be in effect. There is no rule interpreting the press exception. It is the same statute that the Commission applied in the Cutler Files case.

Mr. Duchette said the Commission was simply trying to include the internet exception originally and now this issue regarding the press exception has arisen.

Mr. McKee said addressing the issue now is better than revisiting it in six months and rehashing everything.

Mr. McKee moved to invite additional public comment on the press exception rule to address the issue of publications owned by a candidate or an immediate family member of a candidate and that the comments be in writing only and that the comment period shall be 30 days. Mr. Duchette seconded.

Motion passed unanimously (5-0).

Ms. Matheson raised the issue of the definition for broadcasting stations and whether that included cable providers.

Ms. Gardiner said she did not believe it technically covered the cable carriers. Cable carriers are subject to a different licensing process than broadcasters. The FEC mentions cable carriers separately in its rule and so does not appear to consider them included in the term “broadcasting station.”

Mr. Wayne agreed with Ms. Gardiner that cable carriers would not be included. The staff would like to make a statutory change so that cable carriers are specifically included.

EXECUTIVE SESSION

At 9:30 a.m. Mr. McKee moved to go into executive session pursuant to Title 1 of the Maine Statutes, section 405(4), the Commission went into executive session pursuant to Title 1, section 405(6)(E) to

consult with the Commission's counsel concerning pending or contemplated litigation. Seconded by Ms. Amero.

Motion passed unanimously.

At 9:50 a.m. Mr. McKee moved to come out of executive session. Ms. Amero seconded.

Motion passed unanimously.

Mr. Duchette moved to adjourn and Ms. Matheson seconded the motion, which passed unanimously. The meeting adjourned at 9:52 a.m.

Respectfully submitted,

/s/ Jonathan Wayne

Jonathan Wayne, Executive Director