



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
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Minutes of the November 5, 2012, Special 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. Request for Investigation of Candidate Michael Nadeau and Citizens for Effective Government

The Maine Democratic Party contends that candidate Allen Michael (“Mike”) Nadeau of Fort Kent, who is running for the Maine House of Representatives (District 1) as a Maine Clean Election Act (MCEA) candidate, has accepted a contribution which is prohibited for MCEA candidates. The basis for the allegation is that Philip Soucy, who is Mr. Nadeau’s campaign treasurer, coordinated with an organization to make an expenditure for a mailing in support of Mr. Nadeau costing \$1,475.16. The organization is called Citizens for Effective Government. Mr. Wayne explained that Mr. Soucy signed and filed an independent expenditure report on behalf of the Citizens for Effective Government on November 2 disclosing the expenditure for the mailing. The independent expenditure report contained a notarized affidavit signed by Mr. Soucy stating that the expenditure was made without cooperation or consultation with the candidate, candidate’s committee or agent of the candidate. The Maine Democratic Party contends that since Mr. Soucy is both Mr. Nadeau’s campaign treasurer and the treasurer for the group making the expenditure, the expenditure for the mailing cannot be an independent expenditure under Maine’s campaign finance law and is, therefore, an in-kind contribution to Mr. Nadeau. MCEA candidates, such as Mr. Nadeau, are not permitted to accept contributions after being certified for the program.

Kate R. Knox., Esq., representing the Maine Democratic Party (MDP), said this complaint is relatively straight forward. As treasurer for a group called Citizens for Effective Government, Mr. Soucy filed an independent expenditure report for an expenditure made to support Mike Nadeau's campaign. Mr. Soucy is also serving as the treasurer for Mr. Nadeau's campaign. Ms. Knox said the MDP considers this a clear violation of the cooperation rule which says that a candidate, candidate's committee or candidate's agent may not cooperate or coordinate with a third party on making an expenditure. If there is coordination between the spender and the candidate, candidate's committee or the candidate's agent, the expenditure is considered an in-kind contribution which Clean Election candidates are not allowed to accept. She said it is clear from the paperwork that Mr. Soucy is the treasurer of the group that made the expenditure and the treasurer of the candidate's committee which puts him on both sides of the fence. It is clear that an expenditure cannot be independent of the candidate under this circumstance. Ms. Knox said there have been several attempts to contact Mr. Nadeau by the Commission staff but Mr. Soucy is the person to whom the Commission should be directing its questions since he made the expenditure. She said whether Mr. Nadeau knew about the expenditure is irrelevant to the finding of violation in this case. Due to the delicate timing with respect to election tomorrow, she stressed the importance for the Commission to find that a violation has occurred and perhaps hold off on assessing the penalty until after the election.

Mr. Healy asked Ms. Knox to explain who she thought should be found in violation.

Ms. Knox said there are potentially several violations. The MDP's request relates to the candidate's committee, she said, and finding Mr. Nadeau's campaign committee in violation because Mr. Soucy is an agent of his campaign.

Mr. Healy asked Ms. Knox whether the committee would be assessed the penalty and pay the fine, if the candidate's committee is found in violation,

Ms. Knox agreed with that assessment. She said there are outstanding questions about Citizens for Effective Government because they are not a registered PAC and whether the group did stay under the \$1,500 threshold for PAC registration. The lack of information about this PAC and the people involved is troublesome, she said.

Mr. McKee said it appears Mr. Soucy was alone in the expenditure because he signed the affidavit stating he did it independently and did not coordinate with the Nadeau campaign.

Mr. Healy said there is enough evidence to presume a violation; however, not being able to hear from Mr. Nadeau makes the decision more difficult.

Ms. Knox said Mr. Nadeau did speak with Assistant Director Paul Lavin so he was alerted to the issue. She said it is troubling that he has not responded at all despite knowing that an allegation has been made against his campaign treasurer and that a meeting would be taking place today. She said she understood the concern, however, she urged the Commission not to defer finding a violation simply because the candidate avoids making a response in hopes the Commission will not take action.

William P. Logan, Esq., representing Philip Soucy, explained that Mr. Soucy agreed to be the treasurer for Mr. Nadeau's campaign with the understanding that Mr. Soucy would not actively be involved as the campaign treasurer. As the Commission may know, treasurers may have varying levels of participation in candidates' campaigns. In this case, Mr. Nadeau ran his own campaign and filed his own reports. Mr. Soucy did not perform any duties as a treasurer, did not have an active role in the campaign, and has never been a campaign treasurer before. Mr. Soucy did not intend for the mailer to be in coordination with the campaign and did not communicate with Mr. Nadeau about the mailer. He said the Citizens for Effective Government is an informal group of individuals who wanted to support the election of Mr. Nadeau and did not have to register as a PAC. He said that the Commission's rules create a rebuttable presumption of coordination under certain circumstances; however, there is no evidence that this expenditure was coordinated with the candidate. Mr. Logan said with regard to Mr. Soucy being an agent of the campaign, there is no definition of agent in the statute and rules. In federal elections, the FEC's regulations say the individual must have actual authorization, either express or implied, from the principal. Mr. Logan said that was not the case here because Mr. Nadeau has not delegated any authority to Mr. Soucy to produce any communications on his behalf. Mr. Nadeau has run his own campaign and wrote all the checks from his campaign account.

Mr. Healy asked whether Mr. Soucy wrote any checks from the campaign account and Mr. Logan said he did not. Mr. Logan was not certain whether Mr. Soucy had signature authority on the account.

Mr. Logan summed up by saying there is sufficient evidence to rebut the presumption of coordination. The group financing the expenditure was an informal group of individuals who did not have any contact with the candidate regarding the expenditure. Mr. Soucy did not have an active role in the Nadeau campaign and was treasurer in name only as Mr. Nadeau ran his campaign and fulfilled all the duties of the treasurer by himself. While it may have been better practice for Mr. Soucy not to have been involved at all in the expenditure, there was no actual coordination between the candidate and the Citizens for Effective Government in making the expenditure.

Mr. Philip Soucy, joining the meeting via teleconference, said that he was treasurer for the campaign in name only. He said when Mr. Nadeau asked him to be treasurer, he told Mr. Soucy he would do all the work himself. Mr. Soucy also said he did not sign any checks on behalf of the campaign. It could be possible that Mr. Nadeau put his name on the campaign account but he never used the signature authority and never wrote any checks.

Mr. Healy asked if the candidate assigned him any other duties or authority to act on Mr. Nadeau's behalf. Mr. Soucy said the candidate did not but he did call the candidate whenever he receives any notices from the Commission to be sure the reports were being filed.

Mr. Healy asked Mr. Soucy who came up with the idea to send out the mailing. Mr. Soucy said it was his idea as well as two other people on the committee. Mr. Soucy said they did not discuss the mailer in any way with Mr. Nadeau.

Mr. Duchette asked who the two other people on the committee were. Mr. Soucy said they were Dana Saucier and Jim Majka. Mr. Duchette asked if they had any relationship with Mike Nadeau and Mr. Soucy said they did not.

Mr. McKee asked Mr. Soucy whether he understood that he did have some responsibilities when he agreed to be the treasurer for the campaign. Mr. Soucy said he did know and was very sorry that he put himself down as treasurer for the group. He explained when he agreed to be treasurer of the Citizens for Effective Government, it did not occur to him that there may be a conflict. He said that he should have known but

he was unaware at the time. In response to a question from Mr. McKee, he said he was not aware that he could not be the treasurer for both the candidate and for the Citizens for Effective Government. He was also not aware that he would have to file a report when he made the expenditure.

Mr. McKee asked Mr. Soucy whether he would agree that since he was the treasurer of the candidate's campaign and of the Citizens for Effective Government, he was in essence coordinating the expenditure with the campaign.

Mr. Soucy said he could be accused of that but he was not thinking that way when he made the expenditure.

Mr. McKee said that his understanding of Mr. Soucy's position is that he did not know he could not be the treasurer for the candidate and be a part of a separate group that was spending money to support the candidate. Mr. Soucy agreed that was his position.

Mr. Healy asked whether Mr. Soucy had any knowledge that the other individuals involved discussed the expenditure with Mr. Nadeau. Mr. Soucy said he did not.

Mr. Soucy explained, in response to Mr. McKee, that he had not been involved in politics since Gov. McKernan appointed him to the Board of Environmental Protection. He said he was retired and had never run for office. He said he was involved in the Fort Kent Republican Committee since the primary and has helped two other candidates for the past 6 months. He said he also put up signs for Republican candidates who had asked for help in the past.

Mr. Wayne asked Mr. Soucy to describe how the money was raised for the expenditure. Mr. Soucy explained he was approached by three people who wanted to do something to help Mr. Nadeau's campaign and those people agreed to provide the money to pay for the mailing. Mr. Soucy said the three people were Renaldo Thibeault, a resident of Fort Kent, and Norman Nadeau and Kenneth Nadeau, who live in Connecticut but have summer homes in Fort Kent. They provided all the money for the expenditure.

Mr. Wayne asked how the cost for the mailing was determined. Mr. Soucy explained that he was told they would need \$1,500 for the printer to do the mailing. Once the money was raised, the purchase was made.

Mr. Wayne asked how Mr. Soucy received the money and what he did with it. Mr. Soucy explained that each individual paid him in cash and he put the cash in his safety deposit box and paid the printer with his credit card. Mr. Wayne asked if there was any paper record of that and Mr. Soucy said only his own record with his safety deposit box in his home.

Mr. Wayne asked if any of the contributors were related to the candidate and Mr. Soucy said he did not know.

Ms. Matheson asked whose name was on the credit card and Mr. Soucy said it was his name.

In response to Mr. McKee's question, Mr. Soucy said each contributor paid \$500 and will be refunded a portion of the balance (\$24.84) remaining after the expenditure was made. Mr. McKee asked how the \$1,500 amount was chosen. Mr. Soucy said he was told that he had to keep the expenditure under \$1,500 in order for the group not to be considered a PAC. Mr. McKee asked if he had received any funds from any other parties other than the three mentioned. Mr. Soucy said there were no other contributors. Mr. Soucy said he believed that Dana Saucier was the contact with the printer to set up the mailing. Mr. Saucier also determined the cost and designed the mailing with Jim Majka.

Mr. McKee asked if Mike Nadeau had any involvement with the design of the mailing and Mr. Soucy said he did not.

Mr. Duchette asked if Dana Saucier had a working relationship with the candidate and worked on his campaign. Mr. Soucy said that he was aware that Mr. Saucier tried to help but Mr. Nadeau was very independent and would not accept any help but he may have gotten some advice from Mr. Saucier.

Mr. McKee asked Mr. Soucy about the affidavit he signed stating there was no coordination with the candidate in making the expenditure and whether he understood what he was signing. Mr. Soucy said he did not know how to answer that question. As campaign treasurer for Mr. Nadeau, he said he was

accustomed to having Mike Nadeau do all the paperwork. He assumed that this form would be similar. He said he read it in a hurry and most likely missed the part about coordination. He said it did not occur to him that he should have checked it further.

Mr. McKee read the section from the affidavit which states that the expenditure was not made “in cooperation, consultation, or in concert with, or at the request or suggestion of, any candidate, authorized committee or agent of a candidate” and asked whether Mr. Soucy thought he was an agent at the time he signed the affidavit and had it notarized. Mr. Soucy replied that he and Dana Saucier went to the town office to get the affidavit notarized but he apparently did not know what he was signing at the time.

Mr. Wayne asked Mr. Soucy whether he could provide contact information for the other three individuals who contributed the funds for the expenditure and Mr. Soucy said he could do that.

Mr. Wayne asked if the cash was still in the safety deposit box and Mr. Soucy said it was not except for a balance of \$25 - \$30. Mr. Wayne asked why he did not pay the vendor with the cash. Mr. Soucy said he uses his credit card for all his purchases. Mr. Wayne asked if there was any receipt for the contributions. Mr. Soucy said he could contact the contributors to see if they would give him some form of documentation.

Mr. Wayne said that in the conversation they had on Saturday, Mr. Soucy told him that the contributions came from several people giving under \$100 and that Mr. Saucier and Mr. Majka may have put some of their own money in. Mr. Wayne said he asked Mr. Soucy on Saturday whether there were any other sources of money and Mr. Soucy told him that there were not. He said Mr. Soucy made no mention of the three people he named today. Mr. Wayne asked Mr. Soucy why he did not mention Mr. Thibeault and Norman and Kenneth Nadeau when Mr. Wayne spoke with him on Saturday.

Mr. Soucy said that he talked with Mr. Wayne before he spoke with his attorney and that he was apprehensive about being interrogated without an attorney.

Mr. McKee said that when Mr. Soucy was asked where the money came from, Mr. Soucy said the money came from individuals giving less than \$100. Mr. McKee asked Mr. Soucy if that was a truthful statement

at the time. Mr. Soucy said it was not truthful at the time. He said that it was his understanding that individuals giving smaller amounts do not need to be identified while those giving larger amounts do. If he said he had received smaller amounts, he was in error.

Mr. McKee said that did not have anything to do with whether he needed to talk with an attorney. Mr. McKee said that Mr. Wayne asked where the money came from and Mr. Soucy indicated that it came from people giving small amounts under \$100. Mr. McKee asked Mr. Soucy whether it was fair to say that Mr. Soucy was now saying that there were no individuals giving small amounts under \$100. Mr. Soucy said that was correct. He said there were no small contributions under \$100. In response to Mr. McKee's comment that what Mr. Soucy was now saying contradicted what he told Mr. Wayne on Saturday, Mr. Soucy said that what he told Mr. Wayne must have been in error.

Kate Knox said Mr. Soucy's testimony has raised more concerns and created inconsistencies. With regard to two of the contributors donating cash, she wondered how they could give cash if they are living out of state. She said Mr. Soucy has not denied his involvement on both sides of the fence. At this point, she said the question for the Commission may be who should be penalized and how much. The Commission may need more information to make that determination, which will require further investigation. In any event, this is a serious violation of the statute and she stressed the importance for the Commission to take immediate action before the election.

Mr. Healy asked Ms. Knox whether she believed Mr. Soucy was an agent for Mr. Nadeau and she said yes. He asked, based on the record so far, what Mr. Soucy's authority was. Ms. Knox said when someone signs up to be a treasurer there are certain duties that are required of the treasurer, including filing reports. She said whether Mr. Soucy had check signing authority or how much authority he had in the campaign is not particularly relevant. He was the treasurer of the campaign and the only other person listed in Mr. Nadeau's candidate registration. An analysis of how much of the treasurer's responsibilities he actually undertook or what parts of the campaign's operations he performed is not relevant. By nature of being the treasurer, he is an agent of the campaign.

Mr. Healy asked Ms. Knox if she believed Mr. Soucy was personally responsible for everything the campaign does or does not do. She said it was a complicated question. However, in this instance he is

responsible because the assumption is the candidate and the treasurer know about the campaign's expenses and operations. Regarding the matter at hand, Mr. Soucy is definitely responsible, because he is presumed to have the same knowledge as the candidate she said.

Ms. Knox said that Mr. Soucy claimed on the phone that he was only treasurer in name only and had no knowledge of expenditures. However, that argument does not hold in this case, she said, because a treasurer should not be allowed to claim he is not responsible.

Mr. McKee said when someone signs up to be a treasurer for a campaign they need to assume responsibility no matter how active they are. Ms. Knox agreed.

Mr. Healy said it is possible for someone to sign up as a treasurer and not perform the treasurer's duties and not be involved in the campaign at all. He said becoming a treasurer is a very important role and unless someone is willing to be an active treasurer, they should refrain from signing on as the treasurer. But that does not mean that an inactive treasurer who does nothing regarding campaign operations has all the knowledge he should have.

Ms. Knox explained that she does not believe that to be a fair analysis. She said someone cannot sign up to be a treasurer and then later claim no knowledge. If a treasurer makes the choice to be inactive, they do that at their own risk because they are ultimately responsible just by being on the form.

Mr. Duchette said that was the issue with Mr. Soucy. He claims he is not active in the campaign and so he believed he could be active in another group in supporting the candidate.

Ms. Knox said the statute and rules hold the treasurer in a position of responsibility and the treasurer can be found in violation if the campaign gets into trouble, based on their individual actions.

Mr. Logan said Ms. Knox argues that under the statute and rules, the treasurer must be considered an agent of the candidate. However, the commission's rule on coordination states that there is a rebuttable presumption of coordination if the treasurer is involved in expenditure by a third party. He said agents are limited by the scope of power designated by the principal.

Mr. Healy asked Mr. Logan whether the law required the treasurer to file reports. Mr. Logan said the candidate was allowed to file his own reports and many do. Mr. Logan said that treasurers' roles vary greatly and some candidates perform all duties assigned to the treasurer.

Ms. Amero said that sometimes a person who has good name recognition in the community and lends their name to the campaign because the treasurer's name is printed on all campaign communications.

Mr. Duchette said the issue really is not so much whether there was a violation but who is at fault.

With respect to the responsibilities of a candidate's treasurer, Ms. Gardiner said section 1016 of Title 21-A describes many of the statutory duties of a treasurer. In addition, she said section 1017 states that the treasurer shall file reports with the Commission. One possible line of inquiry for the Commission, if it decides to pursue it, is whether the Nadeau campaign was in compliance with these statutory provisions. She said the Commission could also address whether Mr. Soucy, as treasurer for the candidate, has violated any of these provisions. Furthermore, even though this may not be consistent with historical interpretation, Clean Election candidates are not allowed by statute to be their own treasurer for their campaigns. She said whether Mr. Nadeau should have functioned as his own treasurer and filed his own reports could be investigated further as well. She said another issue is whether the Citizens for Effective Government is a PAC and should have been registered. She said a determination of violation could be made today and the penalty phase deferred until after more fact finding has taken place.

Mr. McKee said if the Commission found a violation today it would be Mr. Soucy or the committee or both found in violation.

Ms. Gardiner said if the Commission found that Mr. Soucy was on both sides of the line in terms of coordination on the expenditure, there is the issue of whether he made a false statement by signing and submitting the affidavit. That violation would be specific to Mr. Soucy. In addition, if there is a finding of coordination, there is the issue of whether the candidate's committee accepted an impermissible in-kind contribution. Ms. Gardiner said that Ms. Knox was accurate as a matter of law that a treasurer can create some liability for the campaign by his actions.

Mr. McKee said that the two most likely defendants are Mr. Soucy and the candidate's committee. He said there are other aspects of this matter that may require further investigation at a later time as well.

Mr. Wayne said he thought the question is whether the candidate's committee or the candidate has received a contribution by the actions of the campaign treasurer in violation of the Maine Clean Election Act. Mr. Wayne said Mr. Soucy could be considered part of the political committee of the candidate as well as an agent. He said the candidate or candidate's committee could also be found in violation.

The Commissioners briefly discussed various ways in which the law of agency may apply in this instance.

Mr. Duchette asked what contact staff had with Mr. Nadeau. Mr. Wayne said that when he spoke to Mr. Nadeau he said he did not know about the mailing. Mr. Nadeau also spoke with Mr. Lavin on Friday night and told him that he did not know about the mailing or who the Citizens for Effective Government was.

Mr. Duchette asked whether Dana Saucier had been contacted and Mr. Wayne said he had not returned a phone call.

Mr. Wayne said there could be perception of unfairness if the candidate is being charged with accepting a contribution due to actions by his treasurer. However, he said that it was good policy that certain core people who are involved in a candidate's campaign should know that they cannot spend money to support the candidate in coordination with outside groups. He said in his view the candidate's committee accepted a contribution due to the treasurer's action even though the candidate did not know about it.

Mr. McKee said further investigation needs to be done to cover all the aspects of this matter. He said he would support a finding of violation against the committee but further investigation needs to take place in order to find whether Mr. Soucy was in violation by signing the affidavit stating there was no coordination with the candidate.

Mr. Healy asked if the Commission was under obligation to make a finding of violation today. Mr. McKee said because it was so close to the election, the Commission should make a determination about the expenditure today.

Mr. Duchette asked whether there was any doubt that a coordinated expenditure was made. He said it seemed obvious to him that there was coordination because the treasurer of the candidate's campaign and treasurer of the group spending money to support the candidate were the same individual.

Mr. Healy said he could agree that Mr. Soucy in his role of treasurer for the campaign and the committee violated the law. He said he was not comfortable, at this time, saying that Mr. Nadeau or his committee was in violation.

Mr. Duchette asked Mr. Healy whether he viewed Mr. Soucy as part of the candidate's committee or its agent. Mr. Healy said he agreed that Mr. Soucy was the treasurer of both which he should not have been. However, he questioned whether Mr. Nadeau did anything in violation of the statute since it appears Mr. Soucy acted on his own and there is no evidence of Mr. Nadeau's involvement. He would support a motion that further investigation take place.

Mr. McKee stated that although he would like Mr. Nadeau to be more responsive, he would give him the benefit of the doubt at this point and have staff do further investigation.

Mr. Duchette said he was unsure how Mr. Nadeau could shield himself from the actions of his committee but ultimately that may depend on what further investigation reveals. He said the candidate is responsible for the campaign and cautioned the Commission against holding other individuals responsible for actions and not the campaigns. He said in the past, the Commission has not done this and wondered how to find only Mr. Soucy in violation given his position on the candidate's committee. Mr. Duchette had questions about Dana Saucier's involvement with Mr. Nadeau. He wondered whether Mr. Soucy was put in this position of treasurer by the people around him. He said there needs to be more fact finding.

Mr. Healy suggested requiring the other parties be required to testify at a hearing in order to obtain more facts.

Mr. McKee said further factual findings would be necessary to determine who was in violation and said he was in favor of the hearing process Mr. Healy suggested.

Mr. Duchette moved that the Commission find that there was a coordinated expenditure under 21-A M.R.S.A. § 1015(5) as a result of the actions by and involvement of L. Phillip Soucy in both the Mike Nadeau campaign and the Citizens for Effective Government and to find that, as a result of the coordinated expenditure, there was a campaign contribution to the Mike Nadeau campaign which is not allowed under the Maine Clean Election Act. Mr. McKee seconded.

Motion passed (5-0).

Mr. McKee moved to have the staff commence an investigation regarding 1) the factual issues concerning the coordinated expenditure, 2) whether the Citizens for Effective Government should have registered as a political action committee, and 3) the issues raised by the sworn statement by L. Phillip Soucy that there was no coordination between the Mike Nadeau campaign and the Citizens for Effective Government regarding the expenditure for the communication. Mr. Duchette seconded.

Motion passed (5-0).

Mr. Duchette moved to adjourn and Ms. Matheson seconded the motion, which passed unanimously. The meeting adjourned at 10:15 a.m.

Respectfully submitted,

/s/ Jonathan Wayne

Jonathan Wayne, Executive Director