



Minutes of the April 5, 2013, 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; Margaret E. Matheson, Esq.; Michael T. Healy, Esq.  
By phone: André G. Duchette, 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 January 17, 2013 Meeting**

Ms. Matheson moved to accept the minutes as drafted. Mr. Healy seconded.

Motion passed unanimously (4-0).

*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:*

*(Ms. Amero joined the meeting.)*

**Agenda Item #4. Request for Waiver of Late-Filing Penalty/League of Young Voters Maine PAC**

Mr. Wayne explained that the League of Young Voters Maine PAC spent money on a voter guide endorsing candidates and was required to file two reports with the Commission on October 26, 2012 – an independent expenditure report and a regular campaign finance report. Mr. Wayne said there were six emails between the Commission's PAC Registrar and the person responsible for filing the reports in which the PAC Registrar explained what was due from the PAC. Due to a miscommunication by the Commission staff, the PAC filed its regular PAC report that day, but not an independent expenditure report. He said the late filing of the independent expenditure report triggered an automatic penalty process. Due to the confusion between staff and the PAC, the staff believes the PAC had the best intentions and this was a

simple misunderstanding. He said further that nothing would be gained by assessing a penalty in this particular case and the staff recommends a full waiver of the penalty.

Mr. Michael Mahoney, Esq., said he appreciated that staff recommendation and rested on his submission to the Commission.

Mr. Wayne said as Mr. Mahoney pointed out in his submission, there was a very small amount of money spent per candidate and that expenditure was listed in the regular PAC report so the public did have knowledge of the spending.

Ms. Matheson moved to accept the staff recommendation and assess no penalty. Ms. Amero seconded.

Mr. Healy asked whether wrongful advice from staff was a defense from a penalty.

Mr. McKee said in his experience there have been cases where it is a legal defense with regard to a state governmental matter and said he understood there was confusion in this case.

Ms. Gardiner said the statute expressly authorizes mitigation of a penalty based upon an error by Commission staff.

Motion passed unanimously. (5-0)

*The Commission resumed the scheduled order of agenda items at this point.*

**Agenda Item #2. Objections by Rep. Michael Nadeau and James Majka to Subpoenas** *(withdrawn)*

Mr. Wayne gave a brief update of this matter and said the staff has done further investigation regarding money that was spent in this campaign and felt it was appropriate to issue subpoenas for records that could help identify the source of cash being used for the political communication that was at the core of the investigation. He said after considering the matter further both parties decided to withdraw their objections and the banks involved will be sending the financial information along soon. He said the investigation has been going on long enough and the staff hopes to wind up the investigation soon and decide whether additional testimony will be necessary in order to make a determination. He said the goal was to have all

the evidence in before discussion of any legal violations took place. Discussion regarding the schedule for bringing this matter to a close took place.

Mr. Healy said he believed that the legal standard for what constitutes an agent will be an important legal issue to discuss at the next hearing so that it can be decided whether Mr. Soucy was an agent of the campaign.

**Agenda Item #3. Complaint against Defense of Liberty PAC**

Mr. Wayne explained that in December, Patrick Eisenhart requested an investigation of the Defense of Liberty political action committee (DOLPAC), alleging that the PAC was formed for business purposes to benefit its founders and has not properly reported its financial activity. He said the staff looked into this matter and could not find any evidence of candidates being involved with spending by the PAC to support the candidates. This request has not presented sufficient grounds for believing that a violation of any reporting laws occurred. However, the matter with regard to Mr. Eisenhart's belief that the PAC is misleading donors would be outside of the Commission's jurisdiction.

Mr. Patrick Eisenhart explained that he filed his complaint because he does not believe DOLPAC is a legitimate PAC because there are no identifiable officers or principals of the PAC and the statute states these officers must be listed on the registration form. He said the PAC website lists people involved with the PAC but he does not believe they really are. He said he feels this is simply a scam resulting in financial gain for Mr. Brakey and possibly a handful of other folks involved with the Ron Paul campaign. He said only approximately ten Maine candidates received less than 15% of DOLPAC funds. He said in summary he believes DOLPAC is not a legitimate PAC and does not meet the legal interpretation of what constitutes a political action committee and they have deceived many donors. After discussions with Mr. Wayne, he believes there needs to be a process to verify whether a political action committee is legitimate by submitting a certified audit of their campaigns.

Mr. McKee explained that the Commission has a limited ability to investigate these issues. He said allegations of misrepresentation or fraud would be better raised with the Office of the Attorney General. The Commission was not given the power to investigate these matters by the Legislature.

Mr. Eisenhart said at a minimum the Commission should be able to determine whether an organization is a legitimate political action committee. He said he would hope there was some mechanism of oversight with regard to PACs. He said anyone could come into the state of Maine and claim they were a PAC when in actuality they are some type of con artist collecting money.

Mr. Healy said that is exactly true and it happens, unfortunately, but the Commission cannot investigate every occurrence of an organization taking money from someone under the impression they were giving a donation to a legitimate political cause.

Mr. Healy, in response to Mr. Eisenhart's question, said his understanding is there is no requirement that a PAC have a board of directors and someone could be a one-person PAC.

Mr. Wayne explained that the Commission does have a legislative proposal that provides a little more structure for political action committees, so that people who have responsibility within the PAC are required to be listed but there is no language about audits.

Mr. Eisenhart, for clarification purposes, created a scenario where he could form a PAC on his own called the Crippled Children and request donations to his PAC and asked if there was any oversight for that type of scenario.

Mr. Healy said under a different law, not under the Commission's laws, the money collected for another purpose other than the Crippled Children and spent on an unrelated purpose could be unlawful.

Mr. Duchette asked whether the Commission discovered DOLPAC was misreporting their income or expenditures in any way.

Mr. Wayne said there was no indication of any misreporting.

Mr. Eisenhart said he hoped his bringing this matter to the Commission will help in some way to get the law changed.

Mr. Eric Brakey, chair and treasurer for DOLPAC, said this is a two member LLC registered as a PAC comprised of himself and David Boyer. He said originally the start up costs were significant and explained that the person Mr. Eisenhart believed to be a principal agent in the PAC was actually a consultant to get the organization up and running and was paid to do that. He said the PAC was not created for self interested purposes. He has not taken a salary for some time and has contributed more than the salary he received. He said they were constantly in contact with the Commission staff to be sure they were in compliance with the law. Mr. Brakey said he believes Mr. Eisenhart's complaint is personally motivated and said Mr. Eisenhart has made personal attacks against him. He said in his opinion he has done due diligence in reporting for this PAC and has been in full compliance of the law.

Ms. Matheson moved to accept the staff recommendation and take no further action with respect to an investigation because the complaint has not shown sufficient grounds for believing that a violation may have occurred. Mr. Healy seconded.

Motion passed unanimously (5-0).

**Agenda Item #5. Request for Waiver of Late-Filing Penalty/Candidate Stuart Pennels**  
*postponed until next meeting*

**Agenda Item #6. Audits of Maine Clean Election Act Candidates**

The Commission acknowledged the audits of 31 candidates since the last meeting, with all but one having no exceptions in their reporting.

**Agenda Item #7. Adoption of Amendments to Commission Rules**

The rulemaking was initiated on December 19, 2012 which considered amendments to the Commission rules and no comments were received by the deadline of January 30, 2013.

Ms. Matheson moved to finally adopt the rule amendments. Mr. Duchette seconded.

Motion passed unanimously (5-0).

Mr. McKee moved to adjourn and Ms. Matheson seconded the motion, which passed unanimously.

The meeting adjourned at 9:45 a.m.

Respectfully submitted,

*/s/ Jonathan Wayne*

Jonathan Wayne, Executive Director