



Minutes of the December 12, 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 1:30 p.m., Chair Walter McKee convened the meeting.

The Commission considered the following items:

**Agenda Item #1. Misreporting of 2011 Campaign Contributions/Lewiston Casino PACs**

Mr. Wayne described two proposals to expand the investigation concerning the Lewiston casino political action committees (PACs). He explained that at the conclusion of the December 5 hearing, Commissioner Healy suggested notifying M Five, Inc. that the Commission may consider whether M Five qualified as a PAC. Mr. Wayne suggested that the Commission may also wish to consider whether Scott Nash, Ryan Hill, and Dwayne Graham (the principals of M Five) should be viewed as primary fundraisers, decision-makers, or officers for the People of Lewiston Auburn Committee, the second PAC formed in support of the initiative. In that case, they might be held jointly responsible for any civil penalties assessed against the PAC.

Mr. Healy asked about the impact if M Five has been dissolved. Ms. Gardiner said M Five had been dissolved administratively. There would be an issue of whether the corporate form shielded the principals from liability, if the Commission assessed a penalty.

Mr. Healy explained that he brought up the issue because the evidence was clear after the hearing that People of Lewiston Auburn Committee (PLAC) played no role in the campaign. He said that, technically, PLAC received no contributions and made no expenditures. Mr. Nash had entered into a contract with the consultant, Dome Messaging, for campaign services, and M Five paid the consultant. He said that the principals of M Five – Mr. Nash, Mr. Hill, and Mr. Graham – appear to be the ones responsible for raising

the funds, and decided how the money would be spent. They did not file any reports, and Mr. Robinson filed the reports based on information he received.

Commissioner Healy explained that he did not want the Commission to continue the hearing and deliberate without giving notice to M Five that it could be a PAC. He said that finding only Mr. Robinson in violation did not seem right. The matter should be expanded to include all of the parties who were involved.

Mr. McKee said that additional information would be very helpful in making an accurate determination. Ms. Gardiner said that Scott Nash would be the next witness to be heard and that M Five may request that Mr. Hill provide additional testimony, which would be a decision for the Commission.

Ms. Matheson asked whether the treasurer of PLAC should be on notice as well. Ms. Gardiner said Mark Walker, Esq., has stated he is representing both PACs as well as Stavros Mendros individually, which is why the Commission staff has not communicated with PLAC's treasurer. Mr. Wayne said he would communicate with Mark Walker to be clear that the treasurer and principal officers are on notice.

Mr. McKee moved to expand the enforcement proceeding to determine whether M Five, Inc., qualifies as a political action committee or ballot question committee and whether Scott Nash, Ryan Hill, and Dwayne Graham should be considered primary fundraisers, decision makers or officers of PLAC and could potentially be held jointly responsible for any civil penalties assessed. Mr. Healy seconded the motion.

The motion passed unanimously (5-0).

**Agenda Item #2. Consideration of Proposed 2014 Expenditure Guidelines for MCEA Candidates**

Mr. Wayne explained that by statute the Commission is directed to adopt guidelines for permissible expenditures of public campaign funds by Maine Clean Election Act candidates. He said that the staff proposed changes to the guidelines to cover issues that have arisen during the staff's compliance reviews of candidates' spending. He had distributed the proposed changes for public comments, but had received none.

Mr. Healy moved to approve the proposed changes to the 2014 Expenditure Guidelines. The motion was seconded by Commissioner Matheson.

The motion was approved unanimously (5-0).

**Agenda Item #3. Consideration of Proposed Legislation for 2014 Session**

The Commission staff proposed possible legislation for the 2014 session relating to who is considered an agent of a candidate or a member of the candidate's political committee for purposes of determining whether a candidate has received a contribution through a coordinated expenditure. Commissioner Healy said that he had no problem with what the staff is proposing, but recommended clarifying that a person who is a candidate's treasurer cannot make independent expenditures. Mr. Wayne explained that in the proposed Section 1015(5-A) certain people would, as a matter of law, be deemed to be part of the candidate's political committee and that expenditures that they made, or cooperated with, could not be considered independent of the candidate. Commissioner Duchette said that the Commission has had a problem with people who are listed in these positions and whose defense is that they were not decision-makers or had no involvement in the committee.

Commissioner Healy asked the Commission's Counsel whether the proposed bill makes it clear, as a matter of law, that a candidate's treasurer could not make independent expenditures. Ms. Gardiner replied that with regard to treasurers it was clear, but that she had some questions concerning people covered in proposed Section 1015(5-A)(D) who are not in the named officer positions. Commissioner Healy suggested an addition to the summary for the legislation stating that if a person falls into one of the categories, that person could not make independent expenditures.

The Commissioners debated improvements to proposed Subsection 1015(5-A)(D) to focus on individuals who are the key insiders in a candidate's campaign. They also considered whether to delete the subsection from the bill, and rely instead on the proposed definition of agent. The consensus was to keep Subsection 1015(5-A)(D) in the bill.

Commissioner Matheson suggested that the definition of political committee should include people conducting activities to promote the nomination or election of the candidate, whether or not the candidate

authorized a political committee or its officers pursuant to the registration statute (21-A M.R.S.A. § 1013-A(1)(B)).

The Chair asked whether any Commissioners had comments on the legislation concerning the confidentiality of investigative working papers. No comments were offered, and the Chair said that he supported the legislation.

The Chair moved to authorize the submission of both bills to the Maine Legislature, with the additions suggested by Commissioners Matheson and Healy. Mr. Healy seconded the motion.

The motion passed unanimously (5-0).

Mr. Wayne introduced two new Candidate Registrars on the staff of the Commission.

The meeting adjourned at 2:50 p.m.

Respectfully submitted,

*/s/ Jonathan Wayne*

Jonathan Wayne, Executive Director