



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

Approved
10/28/11

Minutes of the September 19, 2011, 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.; Hon. Edward M. Youngblood. Staff:
Executive Director Jonathan Wayne

At 9:00 a.m., Chair Walter McKee convened the meeting.

The Commission considered the following items:

Agenda Item #1. Ratification of Minutes of the August 18, 2011 Meeting

Mr. McKee suggested tabling ratification of the minutes until October since he was not present at the August meeting and only two members present at this meeting were at the August meeting.

Agenda Item #2. Commission's Report on Maine Clean Election Act Program

The Commission is required by Resolve Chapter 103 to study the Maine Clean Election Act program in light of a recent decision by the U.S. Supreme Court eliminating matching funds from the program. Mr. Wayne explained that the staff developed the report after the public had two opportunities for public comments and after Commission staff had informal discussions with various stakeholders. The draft report contains two specific proposals for the Veterans and Legal Affairs (VLA) Committee to review. He said that at the August meeting the Commission did not fully endorse one proposal and decided to submit both alternatives.

Mr. McKee stated that since he was not at the August meeting he did not get a sense of which proposal the majority of commissioners supported.

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Mr. Youngblood said he favored Proposal #2 although either proposal would be acceptable. He said Proposal #1 does not provide alternatives for the case where some candidates need more funding than others. He said he supports giving the Committee options instead of stating one alternative because this way the decision makers will have guidance and background information to make their decision. He said that the Commission has the expertise to give the Committee some direction about options and that this report gives that direction.

Mr. Duchette said he believes the Commission is not responsible for writing the laws, only enforcing them. He said he valued the comments by Rep. Carey and others at the public hearing because those comments were taken into consideration when drafting the proposals. He said the report gives the Committee important information to consider. He also said that he did not think it was up to the Commission to favor one proposal over the other.

Mr. McKee asked the commissioners if there were any further changes that they would like to see at this point before the report is forwarded to the VLA Committee. Mr. McKee acknowledged Ms. Matheson's careful review of the report and her suggestions to make some textual improvements.

Mr. Duchette asked whether not having an endorsement of one option would harm the decision process or create a risk to the Clean Election program.

Mr. Wayne said he did not believe it would affect the process adversely.

Mr. Youngblood went over some minor grammatical issues that needed changing.

Mr. McKee moved that both proposals be forward to the VLA Committee for further review and decision. Mr. Duchette seconded.

Motion passed unanimously (3-0).

Agenda Item #3. Statutory Proposals

Mr. McKee asked if there were any members of the public who wished to comment on the proposed statutory amendments. No public comment was offered.

Mr. Wayne explained that three out of the four proposed changes arose from the 2010 campaign audits. Mr. Wayne said this election had more television and radio advertisements than in previous years which required the staff to focus more on these types of expenditures. He said the staff and the auditor reviewed payment made to media buyers and said that more accountability and recordkeeping was necessary. Mr. Wayne said also that the State needs to be very certain that any refund money comes back to the Clean Election Fund when refunds are due from the media buyer.

In an effort to gain more accountability of State funds, Mr. Wayne said the staff has drafted some proposals for reporting:

- All candidates, publicly or traditionally financed, will be required to disclose whether they received a refund from a media buyer.
- MCEA candidates would be required by law to return the refunds to the Fund.
- Media buyers who receive a refund from the station would be required by law to return the funds to the candidate.

Mr. Youngblood asked how the media buyers would be notified of this requirement as well as who would be subjected to the penalty, how the penalty would be charged, and to whom it is charged.

Mr. Wayne recognized the proposed change regarding the obligations of political consultants and media buyers would be the first time that these vendors would be regulated to some extent under the Maine Clean Election Act. He said the Commission staff would publicize the change on the Commission's website as well as in the Guidebook. He believed political consultants would also be made aware through word of mouth. The staff would also be open to contacting media buyers and political consultants by letter to inform them about this change. However, he said, ultimately the candidates would have to inform media buyers and consultants about the change.

Mr. Youngblood said there were many different contractors for this type of service and not just media buyers and he thought the proposed change addressed that. However, he said that there had to be a reference or notification of the potential penalty.

Mr. Wayne explained that the statutory basis for the Commission assessing a penalty for violations of the Act is quite broad and would be applicable in this kind of situation. The staff would do its utmost to notify as many media businesses and consultants as it can about this change.

Mr. McKee agreed that this was a significant change and it would be fair to get a notice out to the affected parties. He said it should not be only the candidate's responsibility to make sure that the funds are properly accounted for.

Mr. Duchette agreed and said the responsibility should be shared by the advertising entity and the candidate. The ultimate goal is to improve the accounting of funds and this would accomplish that goal.

Mr. Wayne said another issue under the proposal dealt with getting copies of candidates' bank account statements. He said during audits, it can take weeks and months to get this information from the candidates. He said this proposal will require MCEA candidates to sign a release that allows the Commission to get these bank statements directly from the bank only when evidence of a violation has occurred or when repeated requests by staff are ignored.

Mr. Youngblood said that although he has confidence in how the Commission is managed today and confidence in the current auditor, he cautioned that there needed to be specific guidelines so abuse does not occur when personnel changes occur. He said a specific timeline and criteria need to be established and followed by staff. He also said that someone at the Maine Bankers Association should be contacted to review the release form.

Mr. McKee said public funding is State money and the State has a right to know where the money is going while not abusing the authority to obtain the information when necessary. He suggested language that included something that would specify when the release could be used to obtain records, for example, "Release (form) to be used only if 30 days or more have passed since request for records were made."

Agenda Item #4. Audits of Maine Clean Election Act Campaigns

Since the Commission's last meeting, the auditor has completed seven audits of 2010 Maine Clean Election Act candidates. No exceptions (violations) were found.

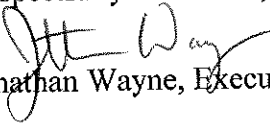
No action required.

Mr. McKee recognized Mr. Youngblood's years of service to the Commission and thanked him for his participation and expertise.

Mr. Youngblood moved to adjourn and Mr. Duchette seconded the motion, which passed unanimously.

Meeting adjourned at 9:45 a.m.

Respectfully submitted,


Jonathan Wayne, Executive Director

