



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

Amended Minutes of the March 26, 2009, Meeting of the
Commission on Governmental Ethics and Election Practices
Held in the PUC Hearing Room, PUC Building,
242 State Street, Augusta, Maine

Present: Michael Friedman, Esq., Chair; Hon. Mavourneen Thompson; Walter F. McKee, Esq.; Hon. Francis C. Marsano; Staff: Executive Director Jonathan Wayne; Phyllis Gardiner, Counsel.

At 9:00 a.m., Chair Michael Friedman convened the meeting.

The Commission considered the following items:

Agenda Item #1. Ratification of Minutes of the January 29, 2009 Meeting

Mr. Marsano moved to accept the January 29 meeting minutes. Mr. McKee seconded. The 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 items were taken out of order:

**Agenda Item #3. Waiver of Penalties for Late Registration and Campaign Finance Reports/
Scarborough Village Partnership PAC**

Mr. Wayne explained that this enforcement proceeding was initiated by the Commission staff. He said the Scarborough Village Partnership PAC filed their registration late and also filed two campaign finance reports late with the Scarborough town clerk in connection with the November 4, 2008 municipal referendum which would have allowed slot machines at Scarborough Downs. The PAC requests waivers of the late filing penalties because it attempted to comply with the disclosure requirements but received incorrect information about the reporting requirements and deadlines from the town clerk. Mr. Wayne explained the staff feels the PAC should have registered one month earlier on August 26 and should have

OFFICE LOCATED AT: 242 STATE STREET, AUGUSTA, MAINE
WEBSITE: WWW.MAINE.GOV/ETHICS

PHONE: (207) 287-4179

FAX: (207) 287-6775

filed a campaign finance report at the time of registration. He said the staff recommends the assessment of a \$250 penalty for the late registration and a substantial or full waiver of the penalties for the two late campaign finance reports because the PAC did not get the correct information about its filing responsibilities and because it was a new PAC and was unfamiliar with the filing requirements.

Mr. Friedman confirmed that under the statutory formula amount, the penalty for not filing the initial report at the time of registration would be \$56,050.

Mr. Marsano disclosed that he served in the Legislature with Dan Warren (a Scarborough resident who supported the referendum and received a payment from SVP for consulting services) and continues to have a friendship with Mr. Warren. He said he did not feel this was any reason for him to recuse himself from this discussion.

Ms. Thompson asked where municipal PAC filing information could be obtained other than from a municipal clerk.

Mr. Wayne said normally PACs go to the municipal clerk; however, PACs may also go to the Commission's website to obtain information regarding filing deadlines or call the Commission staff.

Kathryn Rolston, Treasurer of the Scarborough Village Partnership PAC (SVP), said she was hired to coordinate the Scarborough referendum to allow a racino and development at the Scarborough Downs property. Ms. Rolston said this was her first experience running a campaign as a coordinator. She said she was notified by Scarborough Downs' attorney, Ed MacColl, that she had to register with the town as a political action committee on September 26 and she went that day to register with the town clerk. She said she asked the town clerk, Ms. Tody Justice, when her next report would be due and was told by Ms. Justice that her next report would be due October 24, 2008. She said, however, she became concerned about her filing requirements when she read an on-line newspaper article in which a representative from Save Our Scarborough (an organization opposed to the referendum) claimed that SVP should have filed an October 10 report. She said when she called Ms. Justice about this, Ms. Justice said she would call the Commission. Ms. Justice called Ms. Rolston back after speaking to the staff at the Commission and told Ms. Rolston that her next report was indeed due October 24. Ms. Rolston said Ms. Justice wrote a letter,

dated October 17, 2008, to her confirming that her report was due October 24. She said on November 26 she received a letter from the Commission stating that there had been a reporting deadline missed.

Mr. Friedman asked what Ms. Rolston's political background had been and how her background had qualified her to run this PAC.

Ms. Rolston stated that she had not served on a PAC board. She said in 2003 she filled out different PAC's reports with information that was provided to her. Ms. Rolston said her background was in the harness racing industry which is how she became involved in this issue. She worked at Scarborough Downs for sixteen years as a marketing director.

Mr. McKee asked why the registration had not taken place before Mr. MacColl's phone call and whether Ms. Rolston had planned to register at some point or if she did not know she had to register at all.

Ms. Rolston said she did not receive any direction to register and she was not aware of any reporting deadlines or expenditure limits. Ms. Rolston stated that she knew in the back of her mind that reports would have to be filed at some point but was not sure when that was supposed to take place because she did not have a schedule. Ms. Rolston stated that she did not have information about registration and reporting requirements.

Mr. McKee asked what precipitated the phone call from Mr. MacColl.

Ms. Rolston said that Ms. Justice called the Scarborough Downs attorney, Ed MacColl, and told him that SVP needed to register as a PAC right away. He called Ms. Rolston at that point.

Mr. McKee noted that there has been reference to a connection between Scarborough Downs and this PAC. He asked why, in her opinion, Mr. MacColl was calling her in particular.

Ms. Rolston said she was the only person available in the office working on the campaign at that time. Ms. Justice knows Mr. MacColl through many years of working with the town and Scarborough Downs on issues and Ms. Justice knew Mr. MacColl was connected to the campaign.

Ms. Thompson reiterated Mr. McKee's question as to why Ms. Justice would call Mr. MacColl. She said this is relevant to the issue because it would seem Ms. Justice should call Ms. Rolston directly.

Ms. Rolston said she did not know. She stated that she had been in the town office speaking with Ms. Justice in the weeks prior to September 26 and was not told by Ms. Justice that she needed to register the PAC.

Ms. Thompson asked who was the director of the PAC.

Ms. Rolston said Gene Beaudoin was the decision maker listed on the registration. He is a local developer, originally from Connecticut, who has been working on projects in Scarborough.

Ms. Thompson asked Ms. Rolston who hired her.

Ms. Rolston said she was hired as an independent contractor by Penn National Gaming, a Pennsylvania company.

Ms. Thompson asked Ms. Rolston what her salary would be and the budget she had to work with.

Ms. Rolston said she was making \$4,500 a month and was paid by Penn National. She said there was no set budget. She said Penn National provided the money when needed to run the campaign. She said that she had coordinating meetings with Mr. Beaudoin and that they thought that the campaign would cost between \$50,000 and \$100,000. Ms. Rolston said the final budget was \$130,000.

Mr. McKee noted that the reason this issue was continued from the last meeting in January was because last minute information had been received from Dennis Bailey just prior to the meeting regarding e-mails between Mr. Bailey and Mr. MacColl which raised questions as to the connection between Scarborough Downs, Mr. MacColl and the PAC.

Ms. Rolston said she and Mr. MacColl have worked together for approximately twenty years through their association with Scarborough Downs. She said Mr. MacColl knew she was coordinating the campaign.

Mr. Friedman asked whether Ms. Rolston had ever sought legal advice regarding issues associated with the PAC prior to the call from Ms. Justice.

Ms. Rolston said she had not received any advice from any attorney regarding the PAC. She said she relied on Ms. Justice for advice and she also called the Commission staff with any questions. She stated that she did not seek advice from Penn National, Scarborough Downs or Mr. Beaudoin.

Ms. Thompson asked who attended the PAC planning meetings regarding budget and spending decisions.

Ms. Rolston said Mr. Beaudoin attended the meetings along with Steve Westra, who had planning board experience with the town of Yarmouth, and community members. She said it was a two part campaign: development at Scarborough Downs was one piece of the plan and the racino was the other part. She said the campaign planning was around how the community would look and how the racino would become part of that community.

Ms. Thompson confirmed that when Ms. Rolston made plans for media buys, she knew the money to pay for them would come from Penn National as did her salary. She asked if there was any legal entity at Penn National that Ms. Rolston would go to for advice.

Ms. Rolston said there were no legal advisors that she went to, nor was Mr. Beaudoin someone that she went to for advice.

Mr. Marsano asked Ms. Rolston if Penn National would ultimately pay any penalties that were assessed to her and whether Penn National would accept responsibility for the reporting error.

Ms. Rolston said she believed Penn National would accept responsibility and pay any penalty assessed to this PAC.

Ms. Thompson asked if Penn National was aware this process was taking place.

Ms. Rolston said Penn National was very much aware of this proceeding and she confirmed that no one from Penn National attended this meeting.

Ms. Thompson asked whether Penn National had advised Ms. Rolston with regard to her testimony at this meeting and also whether Penn National knew she may be faced with a substantial penalty.

Ms. Rolston said Penn National had not advised her and confirmed that Penn National knew she could be assessed a large penalty today. She stated that she met with a representative of Penn National last week and that Mr. MacColl had also spoken to someone at Penn National since learning about the possible violation and penalty.

Ms. Thompson asked if Penn National had given her any advice as to how to handle today's hearing.

Ms. Rolston said Penn National understands her actions were based upon the best of her ability and advice she received from officials. She stated that they knew she was not experienced in political dealings with PACs. She believes Penn National knows she did the best she could in representing them with the knowledge she had.

Ms. Gardiner asked when Ms. Rolston was hired by Penn National.

Ms. Rolston stated that she starting working in September, 2006 to promote slot machine revenues as a means to help the harness racing industry.

Ms. Gardiner confirmed that Ms. Rolston was already working for Penn National as an independent contractor on their behalf before the Scarborough referendum campaign had begun. She asked when Ms. Rolston had agreed with Penn National that she would be running the Scarborough campaigns for them.

Ms. Rolston said she started working specifically on the referendum for Penn National in early July, 2008.

Ms. Gardiner asked why the October 14th payment to Dan Warren for consultant services was not reported on the original October report.

Ms. Rolston said she thought that bill for services from Mr. Warren would come to her directly and she would pay it out of the PAC checkbook. When she went to do her last report, she noticed that the bill had not come in so she called Penn National to inquire if it had been paid. She said she also received a sheet from Penn National listing payments they had made and that payment was not listed on their sheet either. When she made her report for January, she inquired again and learned that Penn National had paid it directly and did not report this to her.

Ms. Gardiner asked if Ms. Rolston knew on October 24th that the services had been rendered.

She said she knew Mr. Warren had been hired, but did not know the arrangements of the contract.

Ms. Gardiner asked if Ms. Rolston had contacted Penn National before the October 24 report to find out whether they had paid any bills that she needed to include in the report.

Ms. Rolston said she only reported expenses out of the PAC checkbook she was keeping.

Ms. Gardiner confirmed that when Ms. Rolston filed the December report, she did check with Penn National to see what payments they had made on behalf of the PAC.

Ms. Rolston said Penn National had sent her a sheet indicating payments made which she included in her December report. She said the payment to Dan Warren was not on the sheet and when she made further inquiries she learned the invoice had been paid directly without her knowledge back in October.

Ms. Thompson asked who Dan Warren was and his connection to the campaign.

Ms. Rolston stated that Mr. Warren is a Scarborough attorney who was hired by Penn National as a consultant to garner town support for the referendum.

Mr. McKee asked what kind of communications Ms. Rolston had with Dan Warren prior to October 24.

Ms. Rolston could not recall when he became involved in the campaign but she stated that he was involved with media ads because she took his picture and comments for some of the ads which were in support of the referendum.

Ms. Thompson asked staff if any testimony heard so far would cause a change in the staff recommendation.

Mr. Wayne said it was very relevant that Penn National had significant involvement in this campaign. He said that there have been many statewide and local casino referenda and that large interest groups, like Penn National, have become involved in these campaigns. He said that he believed that it was important for the Commission to send a message to interest groups involved in future referenda that they have to become familiar with and comply with the state's campaign finance reporting laws. He said that the Commission has wide latitude in terms of what it can consider in making a determination. He said that in a recent case the Commission decided that the public's need for transparency in campaign finance reporting outweighed the consideration to be given to a filer's inexperience.

Mr. McKee stated that initially the issue appeared to be a misunderstanding between the filer and the municipality, which is understandable. He said, however, that this new testimony appears to indicate that there are other relevant issues than just a misunderstanding.

Mr. Wayne confirmed that this information does change his view. He said that SVP does have the resources to find out what is required under the law. He also stated that Ms. Justice told Ms. Rolston that her report was not due until October 24, and that Ms. Rolston did not need to file the October 10 report, so Ms. Rolston relied on information given to her by the municipality. Mr. Wayne said this circumstance was an overriding factor for the staff's recommendation.

Ed MacColl, Esq., said he has been the principal attorney for Scarborough Downs since 1989. He said that he considered Ms. Rolston to be his client for this meeting. Ms. Rolston forwarded the Ethics Commission's November letter regarding incorrect PAC reports to him and he agreed to talk with her, on a no-fee basis, about the process and what she needed to focus on in her request for a waiver. He cautioned

the Commission when determining any penalty imposed on Ms. Rolston and/or the PAC, stating that there is a statutory limit intended by the Legislature in drafting these statutes. He also questioned the constitutionality of any commission having unlimited authority to impose fines of any amount they wished. He said, for the record, Ms. Rolston contends that those statutory limits apply in this matter.

Mr. Friedman asked what those limitations were that Mr. MacColl was referring to.

Mr. MacColl stated he was referring to the \$5,000 and \$10,000 limits.

Regarding Ms. Justice's communications directly with him, Mr. MacColl said Ms. Justice had been communicating regularly with Mr. Beaudoin who was hired to run this campaign. He said Mr. Beaudoin was the front person dealing with Ms. Justice. He said he did not know if Ms. Justice had communicated with Mr. Beaudoin about registering the PAC. He said he has known Ms. Justice since 1989 and has dealt with Ms. Justice on several different issues with regard to the Scarborough Downs racetrack. He said perhaps due to the familiarity between them, Ms. Justice called him to let him know that Mr. Beaudoin had not registered the PAC. He said upon learning this, he called Ms. Rolston's office to let her know about the issue and she went to the town office that day and registered the PAC. He said the only communication between Ms. Rolston and him regarding the registration was that she told him that she would be listing Penn National as the primary fundraiser and Mr. Beaudoin as the decision maker on the form.

Mr. MacColl stated that Ms. Rolston was not getting advice from him and did not believe Ms. Rolston was getting advice from anyone regarding her PAC reports. He said she went through the appropriate channels, asking the town and the Commission for advice. He said Ms. Rolston depended upon Ms. Justice for the correct advice.

Mr. MacColl said that there was never any attempt on the part of Ms. Rolston to disguise Penn Nationals' involvement in the referendum. He said the registration has Penn National as the funding source and this has been interpreted that Penn National is the decision maker, which is incorrect. He said Mr. Beaudoin was the administrator of the campaign. Penn National was disclosed at the beginning as the funding source. He said the initial filing was late, that has not been disputed. However, he said, the lateness was due to information Ms. Rolston received.

Mr. MacColl said in addition to receiving erroneous advice from the town clerk, the laws are complex and complicated. He said the wording is difficult to understand and to distinguish whether it pertains to candidate or referendum campaigns.

Mr. MacColl said that there was no attempt to mislead the public as claimed by Mr. Bailey. He said these accusations are false and Mr. Bailey knows this. He said Penn National's involvement was disclosed at the outset of the campaign. He said Penn National was required to fund this effort under a contract it has with Scarborough Downs. He said that Mr. Bailey's claims that the campaign was funded by out-of-state interests are not true and were only made to smear the pro-referendum side.

Mr. McKee asked for clarification regarding the Commission staff giving erroneous information.

Mr. Wayne described the communications between Ms. Justice and Jeremy Brown, the Commission's PAC Registrar, in which Mr. Brown explained the filing requirements to Ms. Justice and informed Ms. Justice that it was her decision whether to require the initial report. Mr. Wayne stated that most municipal clerks prefer to handle these campaign report deadlines in their own way. He said Ms. Justice decided that she would keep her original advice to the PAC of the October 24 report deadline based on Mr. Brown's e-mail.

Ms. Thompson asked whether Mr. MacColl agreed with Ms. Rolston's assumption that Penn National would pay for any penalty assessed by the Commission.

Mr. MacColl could not say definitely that this was the case. He stated that he felt Penn National ought to pay this penalty. He said Mr. Beaudoin was the principal person in charge of the PAC.

Ms. Gardiner asked Mr. MacColl whether he was aware of the requirement to file an initial report since he was aware of the obligation to register as a PAC.

Mr. MacColl said he has never done a PAC report. He said he understands reporting is required for municipal referenda some time within the August – September time period. He said he expected a

registration had been done by SVP, but was not certain of date deadlines. He said he called Ms. Rolston as soon as he learned that the registration had not been filed.

Dennis Bailey, Executive Director of CasinosNO! and President of Savvy Inc. in Portland, said this inquiry was not initiated by CasinosNO!. He said when he became aware of the issue, he sent an e-mail to the Commission with pertinent information that he believed would be needed for the Commission's determination. He stated that he felt the major participant involved in this matter is Penn National, not Kathryn Rolston or Ed MacColl. He explained that Penn National is the third largest publicly traded casino corporation in the world. He said last fall Penn National was involved in another campaign in Ohio where they spent \$30 million in defeat of another casino. He said he does not dispute the lack of knowledge on the part of SVP. His issue is that Penn National's involvement was not disclosed to the public until September. He said this has been Penn National's strategy in the past. He said their campaign signs talked about voting for a tax cut or swimming pool or school and the gambling aspect was hidden in their campaign communications.

Mr. Bailey said he was asked by Save Our Scarborough (SOS), an anti-racino group, to help them with their campaign to stop the SVP referendum. Mr. Bailey said he did some research and went to the town and state to find out more about SVP because they had put disseminated mailings and brochures to the public.

Ms. Thompson asked what date that was.

Mr. Bailey said it was late August, early September. He said CasinosNO! had discussions about filing a complaint and had started to draft one. He said a call was made to the Commission to find out what the laws were for groups who were involved in municipal referenda. He said that SVP filed a registration just as CasinosNO! was about to file their complaint.

Mr. Bailey said he had a conversation with Mr. MacColl after CasinosNO! had run an ad against the referendum. He stated that Mr. MacColl claimed that it was not an out-of-state interest but that he had written the referendum himself and it was Scarborough Downs' campaign. Mr. Bailey said this campaign was entirely funded by Penn National and a \$250 fine is not going to affect them at all.

Mr. Bailey said the entire campaign was built on the facade that it was a downtown redevelopment project. He said since the PAC did not register until late, the public did not have the information that Penn National was the sole contributor. He said that this is how Penn National operates, their strategy is to keep information from the public.

Mr. Bailey also referred to an ad in a local paper that SVP purchased which featured the comments of Dan Warren, an attorney in Scarborough, who is a well liked and highly respected citizen in Scarborough, in support of the referendum. Mr. Bailey said Mr. Warren has always been against casinos and that he came out in support of this project late in the campaign. He said he thought that this was a major setback to the opponents of the referendum. He said that SVP's amended report filed after the election showed Mr. Warren was paid \$30,000. He said that this payment to Dan Warren was pertinent information that the public needed to know before the election. He said this is how Penn National does business and the public needs to know this.

Mr. Marsano agreed with Mr. Bailey's evaluation of the situation and expressed his concern over the law as written. He said Maine law is flawed and this situation proves it. He said Mr. Bailey is correct in bringing this forward. He also suggested that the statute be changed to prevent this type of facade from occurring again.

Mr. Bailey said if the law had been followed, and the PAC had registered when it was supposed to, then the public would have been aware of Penn National's influence from the beginning.

Sue Foley-Ferguson, a member of Save Our Scarborough (SOS), said SOS opposed the referendum but came into the campaign late because Penn National's involvement was not disclosed until late in the campaign. She said she did some research on SVP and discovered that the Articles of Organization were filed in July 28, 2008, and its registered agent was Ed MacColl. She said she thought, based on what she heard at the meeting, that he was the attorney for Scarborough Downs but it turned out that he had an association with SVP beginning in July.

Ms. Ferguson also said that when her group formed the PAC, she knew she had to register. She said she looked for information on the internet and she said she had some difficulty figuring out the registration requirements. She also went to the clerk's office and was told by Ms. Justice what the requirements are. She asked Ms. Justice in September while registering whether SVP had registered and was told they had not. Ms. Ferguson said Ms. Justice told her she had contacted Ms. Rolston a few times about registering SVP. Ms. Ferguson said that she figured out from the information she obtained on the internet that she needed to file a report when she registered.

Ms. Ferguson questioned when, in fact, SVP actually initiated campaign-related activity. She said that it held focus groups in June and she believed that they used that information to formulate a campaign strategy. She said the PAC should have registered perhaps as early as July because they were spending money and committing funds as early as June and certainly in July. She said that people involved with SVP discounted Penn National's involvement when it was mentioned at community meetings. She said she was frustrated because she could not prove that Penn National was involved at the time because that information was not disclosed until late in the campaign.

Ms. Ferguson said a PAC is a group of people, it is not just the treasurer. She said she was not questioning Ms. Rolston's ethics but she questioned whether the PAC as a group did intentionally file late so that the information would not be disclosed. She said the focus has been too much on the treasurer, Kathryn Rolston, and should be more on the PAC as a group, Penn National and Gene Beaudoin.

She said the State of Maine needs to send a message to Penn National that when they play in Maine they have to play by Maine's rules.

Daniel Billings, Esq., speaking on his own behalf and not for any of the parties involved in this matter, said Penn National should be testifying before the Commission. He said a payment was made by Penn National to Dan Warren and they never told Ms. Rolston, the PAC's treasurer. He said the difference between an in-kind contribution to a PAC and what is actually an expenditure by a person separate from the PAC has always been confusing to him. He said an in-kind expenditure would be offering to pay for something and the PAC accepting it. However, if a separate entity writes a check to have an impact on the referendum and it triggers the reporting requirements, then that entity is responsible for registering and reporting it. Penn

National should have reported this \$30,000 expenditure to Dan Warren on its own. He said trying to convert it into an in-kind contribution later is not acceptable. He said the delay in the initial registration filing is more significant than the late or non-filing of the October 10 report, in his opinion.

Mr. Billings said the Commission could take action against Penn National for their expenditures and lack of disclosure.

Mr. Marsano said that procedure cannot be done under this proceeding today.

Mr. Billings said it could not be done under this matter but could be taken up as a separate matter by the Commission staff at a later date with a request to representatives from Penn National to provide additional information. He said if the PAC did not know about the expenditure then it is not up to the PAC to report it.

Mr. Marsano asked Ms. Rolston about the amended report which was filed on January 15. He said there was a payment to Dan Warren. He asked how she learned that this had taken place.

Ms. Rolston said she discovered this when she was going through her notes and checkbook to prepare the last report in December and did not see any invoice or payment to Dan Warren in her records. She made an effort to find out where the bill was and whether it had been paid.

Mr. Marsano asked Ms. Rolston if the money paid to Dan Warren came through the PAC or from Penn National directly.

Ms. Rolston confirmed the money did not come from the PAC. She assumed it came directly from Penn National.

Mr. Friedman stated, for clarification, what was before the Commission for determination. He said the issues were whether SVP filed a late PAC registration and whether two reporting deadlines were missed. He said what is not before the Commission is whether the filings are inaccurate or whether other entities

should have filed reports. He asked staff for the penalty parameters with regard to the late filing of the registration.

Mr. Wayne said that a PAC that fails to register may be assessed a \$250 forfeiture. He said for the late filing of the initial report required at registration time, under §1053, the statute does not state what the maximum penalty is for that particular report. He said using the formula in the penalty statute, the preliminary amount is \$56,050. He said the Commission may choose to waive a part or all of that amount. He said the report that was due on October 10, based on the formula in the statute, the amount is \$5,667.76; however this statute has a penalty cap at \$5,000. He said this penalty may be waived as well.

Ms. Gardiner said whether a report conforms to the disclosure requirements is also a factor that goes into the determination of the timeliness of the report. She referred to § 1062(A)(2). She said it would have to be a substantial error to be considered non-conforming and the Commission would have to make a factual determination regarding whether the inaccuracy was substantial. She referred to the \$30,000 payment to Mr. Warren, which apparently was made before the end of the reporting period for the October 24 report but was not reported until January 15. She said the Commission could look at the \$30,000 expenditure, which should have been reported on October 24, and decide whether the omission of that expenditure would make the October 24 report substantially non-conforming.

Mr. Marsano asked whether there should be a distinction made between the PAC and the entity that made the expenditure and whether consideration should be given to the fact that the PAC did not know the expenditure had been made.

Ms. Gardiner said the PAC is an organization, not an individual, and Penn National is part of the PAC along with Gene Beaudoin. She said the organization has responsibility for knowing what expenditures are made.

Mr. Wayne said many PACs do not understand what in-kind contributions are and what has to be reported. He said that if the Commission wants to hold this PAC to the highest standard, it was his understanding that Ms. Rolston knew about the services provided by Mr. Warren and she knew he would be paid. He said,

despite the fact that Mr. Warren had not been paid, the PAC could have reported an in-kind contribution in October because the PAC received these services and could have ascertained the value to be reported .

Ms. Thompson asked for more detail regarding the amended report.

Mr. Wayne noted that the amended report shows smaller payments to Gene Beaudoin and Kathryn Rolston. Mr. Wayne said the amended report reflected better information regarding their salaries.

Ms. Rolston said she was unclear as to what constituted an in-kind contribution when she first began filling out the reports. After speaking with Commission staff, she got a clearer understanding of in-kind contributions and decided that some of Mr. Beaudoin's time for which he was compensated was not related to the referendum. She adjusted his salary to show this.

Mr. McKee asked why Ms. Rolston's salary was originally reported as \$35,000 but was reduced to \$17,000 in the amended report.

Ms. Rolston said she did not have an explanation; it was just the wrong figure.

Ms. Thompson asked staff, again, if the testimony today changed the staff's recommendation.

Mr. Wayne said he has learned new information from the testimony today such as Penn National's full extent of involvement with this PAC. He also said Penn National has the resources to comply with the reporting requirements in Maine. He said he would like to withdraw his recommendation and leave it to the Commission to use its best judgment for a determination. He said it is very important, even in a municipal election, that participants make every effort to understand what the law requires them to disclose with regard to financial activity associated with a referendum.

Mr. McKee stated that he was pleased the Commission decided last time to put this issue off until the information from all sides was provided to the Commission. Had the Commission made a determination on only the initial information received, the outcome would be very different. He said this is more than a simple error made due to the lack of correct information from officials. He said that more issues have been

revealed since the curtain has been peeled back. He said this issue gets right to the core of what the Ethics Commission's role is – transparency. He said the public has the right to know the truth. He stated that he appreciated the testimony by Ms. Ferguson from the Save Our Scarborough PAC, since it gave a different perspective on the matter from someone who knew that SVP should register but could not prove it. He said it raises more questions about why the SVP did not register earlier.

Mr. McKee said that, aside from the matter in front of the Commission, perhaps the Commission should direct the staff to question Penn National directly regarding the significant delay in disclosing the payment to Mr. Warren. He said regardless of the fact that SVP may have made an honest mistake and relied on misinformation, the lack of disclosure is very significant.

Mr. Marsano expressed concern that if there is a substantial penalty assessed against SVP, it will be under the cover of SVP even though Penn National is the party that may have been responsible for the lack of disclosure. However, he said that he is only making that assumption because Penn National is not present at the hearing and he does not have the benefit of hearing Penn National's side of the story.

Ms. Thompson questioned whether the Commission could take further steps to examine and investigate Penn National's involvement in this matter.

Ms. Gardiner said the Commission can decide how far to go with its fact-finding. She said Penn National is not simply a contributor but is listed as the primary fundraiser on the PAC's registration. She said if the Commission had further questions for either Penn National or Mr. Beaudoin as participants in this PAC, it would be in the Commission's purview to take further action. She said that if the Commission's purpose in questioning Penn National was to determine the PAC's responsibility for registering and reporting or the lateness of the report or the amount of the penalty, for example, then such questioning would logically be a part of this proceeding. If the Commission wanted to question Penn National on other issues, a separate investigation and procedure could take place.

Ms. Thompson expressed concern that two participants in the PAC – Penn National and Mr. Beaudoin – were not present and suggested that perhaps the Commission should continue this proceeding in order to

engage in more fact-finding and to take testimony from Penn National and Mr. Beaudoin. She said that this would create greater transparency regarding this PAC's activities.

Mr. Friedman stated that doing this would not add anything to this procedure. He said the Commission will assess a penalty against SVP. He said the Commission cannot assess individual penalties against the decision makers or the primary contributors of a PAC. He said there is sufficient information currently to render a decision and assess a penalty which will send a message to all PACs in Maine regarding registration and filing reports. He cautioned the Commission not go beyond what it needs to do.

Ms. Thompson said Penn National should have been at this hearing today for transparency's sake. She expressed a desire to have them brought before the Commission.

Mr. Friedman did not agree. He said the issues are the PAC's failure to register earlier and failure to file two finance reports on time. He said there is no further information to get from Penn National or Mr. Beaudoin.

Mr. Marsano suggested wording a decision today so that it would include Penn National Gaming, a/k/a SVP, LLC.

Mr. Friedman said the legal entity is Scarborough Village Partnership (SVP) and Penn National is not part of that title.

Mr. Marsano said the fact is that Penn National is hidden and that makes a difference in how the penalty should be approached.

Mr. Friedman said this matter could be determined with the facts outlined today. He said the penalty assessment will be determined by the facts. He said a determination that does not provide a waiver will send a message and a penalty in addition to that will be sufficient.

Ms. Thompson asked if the \$30,000 expenditure to Dan Warren was a separate issue from the late registration and late filing.

Ms. Gardiner said it was not a different issue but may be significant in determining whether the PAC met its reporting obligations.

Mr. Friedman said there is no question regarding the late registration deserving a full penalty of \$250. He said, of the two late filings, perhaps the second late filing of the October 10 report deserved a partial waiver of \$2,500 due to mitigating circumstances involving the misinterpretation of the filing requirements by the town clerk. He said he was more troubled by the fact that an initial report was not filed at the time of registration and the inaccurate reporting due to the omission of the payment to Mr. Warren. He said in keeping with past practice, he would support a penalty of \$10,000 for the late filing of the report. He said the total would be \$12,750 for all penalties noted.

Ms. Thompson moved to assess SVP the maximum penalty of \$250 for late registration; Mr. McKee seconded.

Motion passed unanimously (4-0).

Ms. Thompson moved to assess SVP a penalty of \$56,050, the maximum penalty allowable under the statute, for the late filing of the August 26 report. Mr. McKee seconded for purpose of discussion.

Ms. Thompson said the Commission knows that SVP is an entity that is influenced, directed and financed by Penn National. She said it is not necessary for the Commission to solve the problem of which entity participating in a PAC should pay a penalty. She said that the manner in which SVP, a/k/a Penn National, reported campaign finance information contravenes the most basic principle of transparency that the public should have access to this information as soon as possible.

Mr. Marsano said he would vote against this motion. He said that he did not agree with the manner in which the penalty was calculated in terms of using the number of days late to arrive at a penalty amount.

Mr. McKee said that the Commission should take into account the mitigating factors but he did not think that \$10,000 was sufficient.

Ms. Gardiner said the Commission has determined that the registration did not take place in a timely fashion. To help compute the penalty amount, the Commission should make a finding regarding the date on which the registration should have been filed.

Mr. Friedman summarized that the clearest estimation of when the PAC should have registered is August 26 and that should be the Commission's finding.

Mr. Friedman restated the motion to impose the maximum fine of \$56,050 with regard to the late filing of the report that was due on August 26.

The motion failed (1-3) with Ms. Thompson in favor and Mr. Friedman, Mr. McKee and Mr. Marsano opposing.

Mr. McKee moved to find that August 26 is the date on which SVP should have registered and filed its first report and to assess a penalty of \$20,000. Mr. Friedman seconded.

Mr. McKee said the penalty needs to be more than \$10,000 under the circumstances. He said the Commission has imposed higher penalties in the past with less significant findings.

The motion failed (2-2) with Ms. Thompson and Mr. McKee in favor and Mr. Friedman and Mr. Marsano opposed.

Mr. Friedman moved to impose a penalty of \$10,000 with respect to the filing which should have been made on August 26, 2008. Mr. McKee seconded.

Ms. Thompson asked the Commission members what kind of message would be sent to the public with this determination.

Mr. Friedman said this is a substantial penalty and is consistent with other penalties assessed on matters which have come before the Commission. He said he felt this assessment was appropriate under the circumstances.

Mr. Marsano said that he did not think that the Commission was going to be able to provide the degree of transparency that he would like to see in the matter but agreed that it should be concluded today. He said that he concurred with the penalty amount stated in the motion.

The motion passed unanimously (4-0).

Ms. Thompson moved to assess SVP the maximum penalty allowed of \$5,000 for the late filing of the October 10 report. Mr. McKee seconded.

Mr. Friedman said he would not support this penalty due to the confusion with regard to information supplied by the town clerk.

Mr. McKee stated he agreed with this maximum amount because of the importance of timely-filed information just prior to the election.

Ms. Thompson said this is a very sophisticated PAC and said she was disappointed that the Commission could not assess a higher penalty.

The motion failed (2-2) with Ms. Thompson and Mr. McKee in favor and Mr. Marsano and Mr. Friedman opposed.

Mr. Friedman moved to impose a penalty of \$2,000 for the late filing of the October 10 report. Mr. Marsano seconded.

The motion passed unanimously (4-0).

Agenda Item #2. Legislation to Amend the Maine Clean Election Act Program

State Senator Peter Mills reviewed his 2009 legislation to amend the Maine Clean Election Act. He said over the years since MCEA was enacted, he has been troubled by the degree of bureaucratic inefficiency that the statute creates for the Commission and the candidates with regard to seed money rules and qualifying contribution procedures. He suggested combining the two procedures and allowing the candidate to collect qualifying contributions and deposit the funds in their campaign account as they would do now with seed money contributions. He said that candidates would still have to meet the eligibility requirements of collecting a certain number of qualifying contributions but would also be required to raise a certain amount of qualifying contributions. Candidates would use the qualifying contributions to fund their campaigns prior to certification. Candidates would still file the receipt and acknowledgement forms with the Commission but would no longer have to submit qualifying contribution checks to the Commission. He also suggested allowing qualifying contributions to be made in any amount from \$5 to \$100 per contributor.

Senator Mills said this would avoid the process of bringing boxes of checks to the Commission during the certification process. He said these checks remain outstanding for months due to the bureaucratic process. He said allowing the candidate to keep the money he/she raises and report the funds in the same manner as currently takes place with a form that would record the contributions, would consolidate and simplify the process for the candidate and the Ethics Commission.

Senator Mills said he will be presenting this bill in the near future and wanted to receive any comments from the Commission before doing so.

Mr. Marsano disclosed that he did make a contribution to Senator Mills' gubernatorial campaign in 2006. He said he completely supported this idea.

Mr. Friedman said, historically, the Commission does not lobby particular bills but he would expect Mr. Wayne to be present at the hearing when this bill is presented.

Agenda Item #4. Request to Investigate Campaign Finance Reporting by CasinosNO! PAC

Mr. Wayne explained that Kathryn Rolston of the Scarborough Village Partnership PAC raised some expenditure reporting issues regarding CasinosNO! and she requested that the Commission consider whether the CasinosNO! PAC complied with requirements to specifically report expenditures made to oppose the Scarborough referendum. Mr. Wayne said CasinosNO! has recently filed an amended report.

Mr. Friedman asked if there were any penalties listed under §1060 for this kind of violation.

Mr. Wayne said any miniscule failure to report could be considered a violation; however, to assess a penalty, the determination would have to be made that the report did not substantially conform to the requirements, which would make it a late filing. Mr. Wayne said the expenditures were reported but it was difficult to know what the expenditures were intended for.

Mr. Wayne said the current PAC reporting form needs updating; however, the Commission has entered into a contract with a vendor to do some major e-filing system enhancements to address this issue.

Ms. Kathryn Rolston said her concern was with transparency. She said there is an allegiance between Save Our Scarborough and the CasinosNO! which was not disclosed and still has not been disclosed to the public. She said that CasinosNO! placed a TV ad on a Time-Warner cable station opposing the referendum and put "paid for by CasinosNO!" on the TV ad. Later in the month, there was a direct mailing to Scarborough residents and there were print ads in newspapers and both items were the exact replica of the TV ad purchased by CasinosNO!. However, these communications had a disclosure statement saying that they were paid for by SOS. She said the PAC reports for SOS do not have these expenditures listed and indicate that SOS raised no more than \$900. She said CasinosNO! report was unclear as to who paid for ads. She said the voters were denied this information before the election because none of these expenditures were disclosed. She expressed concern that it appeared that Save Our Scarborough made these expenditures for advertising when in fact these ads were paid for by CasinosNO!. She said that CasinosNO! was backed by large corporate interests, such as L.L. Bean. She also claims that CasinosNO! did not submit a revised registration form stating that it supported the Save Our Scarborough PAC.

Ed MacColl, Esq., attorney for Scarborough Downs, said public officials in Maine need to be aware of the risk involved in discriminating against people “from away,” as Maine citizens sometimes do. He said Penn National is considered an entity “from away” and he recognized that the Commission has determined that Penn National’s role was hidden with regard to this referendum. He said Penn National’s role was not hidden in his opinion. Penn National was simply completing a contractual requirement to spend money and it was not running the referendum campaign. He said the payments for the SOS ads were misrepresented. He said the ads were paid for by CasinosNO! which is financed by L.L. Bean and the Bean and Gorman families. But these entities have not been listed on CasinosNO! registration forms as primary fundraisers. He said CasinosNO! did not register as taking a position on this referendum as is required by law.

Dennis Bailey, representing CasinosNO!, said his PAC registration states that it is opposed to casino gambling in Maine. He said he was contacted by Save Our Scarborough to get involved in the Scarborough referendum. He said he put out press releases stating that his PAC would support Save Our Scarborough’s effort to defeat this referendum. He stated that he was not familiar with municipal requirements for reporting, so the Ethics Commission was contacted. He said his PAC reported expenditures to the town as was required and any one could have had access to those reports. He said the original intent was Save Our Scarborough would raise money and CasinosNO! would contribute to their effort. He said unfortunately more money was spent and less was raised than they had hoped. He said as far as the disclosure issue, the “paid for” disclosures on the proponent side did not mention Penn National, when in fact that was who paid for those ads. He said CasinosNO! was very forthcoming about being involved in this referendum and reported as required.

Mr. Friedman asked about the ad that said it was purchased by SOS when in fact it was paid for by CasinosNO!

Mr. Bailey said he takes full responsibility for this. He said the intent was to include those ads as in-kind contributions to the SOS PAC. He said the SOS PAC was inexperienced and wrote a note on the report that it had benefited from ads produced by CasinosNO! He said the public was very aware that CasinosNO! was involved and in support with SOS.

Joseph Greenier, a concerned citizen, expressed concern that CasinosNO! is passing the blame back to the complainant.

Mr. Wayne said there are two issues involved in this matter. The first issue is the accuracy of the PAC's financial reports and the issue of whether the PAC should have amended its registration to disclose it was opposing the referendum and supporting Save Our Scarborough. He said the report should have an itemization of each expenditure indicating the ballot questions and committee supported or opposed; therefore, the Commission could find that the PAC did not report making expenditures in opposition to the referendum. However, there is no basis for a financial penalty. He expressed concern that the Commission's data entry form did not give as much guidance as it could have. He pointed out that PACs may call the staff with any questions on reporting requirements. He said improvements will be ready to be implemented soon.

Mr. Wayne said as far as the registration update is concerned, the PACs view registrations as something filed when they are established, so some PACs do not update their registrations with regard to who they support or oppose. He said the statute (§ 1053) is clear. The PAC registration is supposed to include a statement of support or opposition with respect to candidate, political committee or referendum if known at the time of registration. He said most PACs do not comply with this requirement. He said the Commission could hold this PAC up as an example and find it in violation for not reporting its support for SOS on its registration form. He said it could be considered a substantial omission and assess a penalty of \$250; however, most PACs currently are not updating their registration forms.

Mr. Marsano asked about filing requirements at the municipal level.

Mr. Wayne said CasinosNO! was filing financial reports with the town clerk, but not an amended registration form. He stated that the public most likely does not look at the registration, they look at the campaign finance reports for up-to-date information.

Mr. Bailey said he was not notified by officials that the PAC needed to update the registration when he called for information.

Mr. Marsano asked if information about the PAC and its campaign activity is available to the public at the town office.

Mr. Wayne confirmed that the financial reports give the updated information as far as financial activity. He said the reports were filed with the town clerk so the public knew it was spending money on this referendum.

Mr. Wayne stated that overall CasinosNO! reporting was not perfect, but it was done on time and substantially conformed with the requirements.

Ms. Thompson moved to find CasinosNO! in violation because it failed to follow the procedure for amending their registration and to assess a \$250 penalty. Mr. Friedman seconded.

The motion failed (2-2) with Ms. Thompson and Mr. Friedman in favor; Mr. Marsano and Mr. McKee opposed.

Mr. McKee moved to find CasinosNO! in violation but to assess no penalty. He said in view of the staff's assessment of how the PAC registrations are dealt with and past practice with regard to amending these registrations, he would support taking this opportunity to educate rather than punish. Ms. Thompson seconded.

The motion passed (3-1) with Ms. Thompson, Mr. McKee and Mr. Friedman in favor; Mr. Marsano opposed.

Agenda Item #5. Adoption of Proposed Changes to Commission Rules

Mr. Wayne explained at the December 29, 2008 meeting, the Commission agreed to accept public comment on changes to Chapters 1 and 3 of the Commission's rules that were drafted by staff. On January 29, 2009, the Commission received public comment on the proposed changes. The staff recommends adoption of the rule changes. The changes to Chapter 3 are major substantive, and would be considered by the Legislature.

Mr. Friedman moved to adopt the changes to Chapter 1 in final form and Chapter 3, provisionally. Mr. Marsano seconded.

The motion passed unanimously (4-0).

Agenda Item #6. Re-Adoption of Proposed Change to Commission Rules

Mr. Wayne said at the Commission's December 29, 2008 meeting, the Commission voted to provisionally adopt a rule change that would permit gubernatorial candidates seeking Maine Clean Election Act funding to raise up to \$150,000 in seed money. He said, however, the staff has been informed by the Attorney General's office that this rule change was not included in the regulatory agenda that was submitted to the Secretary of State in August, 2008. Because of this, the Attorney General's office suggested that the Commission staff amend the regulatory agenda and that the Commission re-adopt this rule change. The Attorney General's office will then complete its review of the rule change and forward it to the Legislature for its consideration.

Mr. McKee moved to provisionally adopt the rule change. Ms. Thompson seconded.

The motion passed unanimously (4-0).

Agenda Item #7. Recommendations by Commission Staff on Two Policy Issues

Mr. Wayne explained that at the November 24 meeting, the Commission directed the staff to get information and feedback on policy issues. He said the staff convened a group of interested persons on January 13, 2009 to discuss two policy issues. The first issue involves candidates appearing in issue advocacy ads sponsored by third-parties and the second issue involves the effect of the Commission's 2006 express advocacy decisions on communications sent in the 2008 elections. Mr. Wayne gave examples of third party advertising and said the group suggested that candidates should be made aware, through the Candidate Guidebook, that these types of ads could be considered a contribution to their campaign.

Mr. Marsano suggested that, because of the Clinton case now pending before the U. S. Supreme Court which involves issues about express advocacy (Citizens United v. Federal Election Commission), perhaps

just a cautionary note to candidates would be more appropriate until the outcome of the pending litigation is known. At that point, the Commission can reconsider this issue and make adjustments, if necessary.

Agenda Item #8. Update on Criminal Prosecutions of 2006 Candidate Debra Reagan and 2008 Candidate Bruce Ladd

Ms. Gardiner stated that the Reagan case is concluded and the Ladd issue is waiting sentencing at this point. Ms. Reagan has pled guilty to a misdemeanor charge in connection with her 2006 misuse of Maine Clean Election Act funds, has agreed to serve a 30-day jail sentence, and has repaid all misused Maine Clean Election Act funds. Bruce Ladd had submitted receipt and acknowledgement forms that contained forged signatures, has pled guilty and has agreed to a sentence that includes jail time. The sentencing is scheduled for April 2009.

Agenda Item #9. Audits of 2008 Maine Clean Election Act Candidates

Mr. Wayne explained that the staff has completed an additional 31 audits of 2008 Maine Clean Election Act candidates and no exceptions were found in any of the audits. He also explained that since the staff auditor had left, the staff felt that it was best to go forward with the routine audits. He said 58 audits were randomly selected and 36 have been completed with no exceptions. He said there are 22 that have not been looked at yet or have been set aside for more thorough review by the new auditor.

Ms. Thompson asked if the candidates' audit findings were becoming more compliant or less compliant.

Mr. Wayne said the Commission has only been auditing for two years. He said in 2006, four candidates were found not to have returned their MCEA funds or misspent funds. He said in 2008, there were no findings with these issues, which would indicate more compliance in 2008.

There being no further business, Mr. Marsano moved to adjourn. Mr. McKee seconded.

The motion passed unanimously (4-0).

Respectfully submitted,

Jonathan Wayne, Executive Director