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

Minutes of the January 28, 2010, Meeting of the
Commission on Governmental Ethics and Election Practices
Held at the Commission Office, 45 Memorial Circle,
2nd Floor, Augusta, Maine

Present: Walter F. McKee, Esq., Chair; André Duchette, Esq.; Hon. Francis C. Marsano (by phone); Hon. Edward M. Youngblood; Margaret E. Matheson, Esq. Staff: Executive Director Jonathan Wayne; Phyllis Gardiner, Counsel.

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 November 19, 2009 Meeting

Mr. Youngblood moved to accept the minutes of the November 19, 2009 meeting as drafted. Mr. Duchette seconded the motion, which passed unanimously (5-0).

Agenda Item #2. Request for Waiver of Late Filing Penalty/Lobbyist John O'Dea

John O'Dea, lobbyist for the Associated General Contractors of Maine, explained that he had made a clerical error by marking the due date incorrectly on his calendar, which resulted in the late filing of his annual report by approximately eight hours. He said the late filing caused no harm to the public and that all the information contained in the report was already available to the public in his monthly activity reports filed on time over the course of the past year.

Mr. Marsano disclosed that he knows Mr. O'Dea from serving together in the Maine House of Representatives.

Mr. Marsano moved that the Commission waive the penalty entirely. Mr. McKee seconded the motion.

Mr. Youngblood expressed his concern that waiving the penalty may send a message to others that as long as a report is filed before the Commission's office opens on the next business day, a penalty will not be assessed. He said he would favor a $50 penalty because that recognizes that, as Mr. O'Dea argues, there was no harm done to the public but it would also send a clear message that the reports do have to be filed on time.

Mr. Marsano said the statute is confusing as to the deadline for filing the report and that he believed that Mr. O'Dea made an innocent mistake. He did not think that waiving the penalty would result in sending a message that filing deadlines were not important. He found merit with Mr. O'Dea's statement that there was no harm to the public as the report was filed prior to the beginning of business on the day following the statutory deadline.

Mr. McKee said that he found elements of both Mr. Youngblood's and Mr. Marsano's comments with which he could agree. He said that he believed the mistake as to the deadline was innocent. He said that he did not think that the Commission would be setting a bad precedent either way it decided.

Ms. Matheson disclosed that she has known Mr. O'Dea for several years as well. She stated that she thought that a penalty should be assessed and the staff moved in the right direction in recommending a lower penalty.

Mr. Duchette said that he did not think that the statute was confusing. The lobbying year ends on November 30 and the report is due thirty days after that, which makes the deadline December 30. He said that the Commission is almost required to assess a penalty and that he was inclined to agree with Mr. Youngblood.

The motion failed (2-3). (Mr. Marsano and Mr. McKee in favor; Mr. Duchette, Ms. Matheson and Mr. Youngblood opposed.)

Mr. Youngblood moved that the Commission assess a $50 penalty as recommended by the staff. Mr. Duchette seconded.

The motion passed unanimously (5-0).

Agenda Item #3. Request for Waiver of Late Filing Penalty/Scarborough Republican Town Committee

Mr. Wayne noted that no one from the Scarborough Town Committee had arrived to speak to the Commission; however, Mr. Artemus Pickard sent a letter to the Commission. He said Mr. Pickard was the committee's treasurer in 2008 and he filed a report in October 2008 as required. The committee was also required to file a year-end report in January 2009 and Mr. Pickard did not understand this requirement. Mr. Wayne pointed out to the Commission that the cover page of the October report filed by Mr. Pickard listed all the reports the committee was required to file for 2008. Mr. Pickard had come to rely on receiving reminders from the Commission staff and in this case, he did not receive a written reminder for the January 2009 report deadline. Mr. Wayne said it is ultimately the committee's responsibility to know what the filing requirements and deadline are and, according to statute, the state party committees are responsible to inform the local party committees of filing deadlines. He said while the Commission staff is sympathetic, the responsibility for filing lies with the party committee. He stated that the $500 penalty does seem high for a local party committee; therefore, the Commission staff recommends reducing this penalty to an amount between $125 and $250.

Mr. McKee said there were phone calls made to this committee on more than one occasion to remind them of the filing requirement.

Mr. Wayne said he is not sure why this report has taken so long to be filed. The person who was the party committee registrar at the time no longer works for the Commission, making it difficult to verify the actual timing and frequency of correspondence to Mr. Pickard.

Mr. McKee said there were two issues involved in this matter. First, the report was filed very late, some time in April 2009. Secondly, after the statutory penalty was assessed, months went by without any response from Mr. Pickard. Mr. McKee asked whether the penalty would be assessed against the committee or Mr. Pickard.

Mr. Wayne confirmed that the penalty is assessed against the Scarborough Republican Committee, although some committee treasurers do pay the penalties themselves if they feel it was their error.

Mr. Duchette moved that the Commission accept the staff recommendation and reduce the penalty to $250. Ms. Matheson seconded the motion.

Mr. Duchette said given the facts, he would lean more toward the full penalty; however, he supports the staff's recommendation. He said due to the lateness of the filing and Mr. Pickard's inaction even after receiving the reminders, he believes that the Commission should assess a penalty at the high end of the range recommended by the staff.

Mr. McKee said he could understand that local party committees are late from time to time. However, he was troubled by the lack of any response from Mr. Pickard despite the repeated reminders from Commission staff. He said the Commission sends out reminders as an extra service provided to the committees. These reminders are not required by statute.

Mr. Youngblood said he supports the motion because the matter has dragged on too long.

The motion passed unanimously (5-0).

Agenda Item #4. Petition by National Organization for Marriage for Stay of Investigation

Mr. Wayne said in October 2009, NOM filed a federal lawsuit challenging the ballot question committee registration and reporting statute. He said as part of the lawsuit, NOM filed a request for a temporary restraining order to enjoin the Commission from enforcing the ballot question committee statute. He said U. S. District Judge Hornby denied the TRO so the Commission is free to continue investigating. He said in November, the Commission staff identified what the scope of the investigation would be and on December 8, the Commission issued its first request for information to NOM. He said the request included solicitations to contributors and information regarding its donors. He said on January 8, NOM responded with a number of objections to the request for information as well as a petition to stay the investigation. This petition is what is before the Commission today along with a list of objections from NOM regarding the Commission's investigative requests for information.

Mr. McKee asked Ms. Gardiner whether there was any substantive difference between this request for a stay of the Commission's investigation and the motion for a temporary restraining order brought in federal district court.

Ms. Gardiner stated that there is significant overlap between the two. She said the standard for granting a stay is essentially the same as for a temporary restraining order. She said the federal district court determined that NOM had not demonstrated a strong likelihood of success of the merits of its claim that the statute is unconstitutional and unenforceable against them. Because the Commission is seeking certain information for the investigation, NOM is now asserting that there would be a First Amendment harm associated with providing this information. Ms. Gardiner said the possibility of harm is completely remedied and alleviated since the Commission has the ability to keep investigative materials confidential. She said that the specific issue regarding the Commission's requests for information was not addressed in District Court; however, it may be raised again in the context of a challenge to the discovery request in the district court case.

Mr. McKee noted the degree of commonality of the issues involved in the Commission's investigation and the federal district court case and questioned whether the Commission should be second-guessing the judgment of Judge Hornby.

Ms. Gardiner said it is within the Commission's purview to address issues that are relevant to the investigation and necessary to make findings in order to administer the statute.

Mr. McKee asked whether those issues would be dealt with in the litigation as well.

Ms. Gardiner said it would be; however, as the agency charged with administering the statute, the Commission has a role that the Court respects. NOM is making a facial challenge to the statute that is not dependent on what the Commission actually does. However, NOM is also making an as applied challenge to the statute, and the Commission's role is to apply the statute to the NOM in the course of the investigation and determine whether NOM is required to register and file as a ballot question committee. The district court understood and accepted the fact that the Commission would be going forward with its investigation even while NOM went forward with its constitutional challenges to the statute.

Mr. McKee expressed concern that the challenges that NOM would raise here at the Commission level during the course of the investigation would be similar to or the same as challenges raised in the district court. If this is the case, he asked whether it would be more appropriate and efficient to defer to the federal court.

Ms. Gardiner said it was in everyone's interest to coordinate the investigation and discovery processes to avoid duplication in the proceedings. She said the staff will be in close communication with NOM's counsel in order to accomplish this.

Mr. Barry Bostrom, Esq., representing the National Organization for Marriage (NOM) said his comments today are in support of NOM's petition for a stay of the investigation. He said that the U.S. Supreme Court has limited governmental regulation of political speech to express advocacy, i.e., communications that advocate for or against a candidate. In addition, it also limited the regulation of contributions to only those contributions that are expressly solicited or designated for political purposes. He said NOM has made certain disclosures regarding solicitations and contributions at the Commission's request and has provided the Commission with all communications that expressly solicit contributions and provided the Commission with information about all contributions received as a result of such communications. He said in the federal case, NOM has disclosed all public communications, whether they contained express advocacy or not. He said NOM has filed a federal lawsuit challenging the constitutionality of the BQC statute, the definition of expenditure and the definition of contribution under Maine law. He said the federal district court denied NOM's request for a TRO. As the standard for a TRO is very high, the denial was not surprising. Mr. Bostrom said although NOM disagrees with the court's analysis, NOM does agree with the Court's conclusion. He quoted the last sentence of the conclusion, "the case law makes clear that Maine cannot impose all the extensive impositions and PAC-style burdens used in regulating candidate elections." He said this is exactly what Maine's ballot question committee statute does, which is why NOM will prevail in its federal lawsuit. Mr. Bostrom said that the U. S. Supreme Court decision in *Citizens United v. Federal Election Commission*, handed down a week ago, provides even more support for NOM's claim that the BQC statute is unconstitutional. He said the Maine BQC statute limits corporations to total expenditures of only $5,000 before imposing PAC-style burdens. In addition, he said the term

"expenditure" was not narrowly defined. He said he is confident that the Maine statute will be struck down as unconstitutional, especially in light of the *Citizens United* decision.

Mr. Bostrom said the first request for information from the Commission has three problems associated with it. First, he said the requests are overbroad, not limited to activities in Maine, and not limited to express advocacy as required by the First Amendment and the U.S. Supreme Court's decisions. He said that he was referring specifically to requests numbered 1, 3, 4, and 7. He said the requests go beyond Maine and express advocacy, and are irrelevant and immaterial to this investigation and are protected by the First Amendment privilege. The second issue is that the use of the words "donation," "solicitation," and "donor," place into issue those claims made in NOM's federal case. He said if the BQC statute is unconstitutional, these vague and overbroad requests are also unconstitutional. He said to respond to these requests would require NOM to waive its constitutional rights. He said NOM cannot do anything in this investigation that would compromise its claims in the federal litigation. Third, the Commission claims that Maine's statutory confidentiality provision during an investigation solves the confidentiality issues raised by NOM. However, even if that provision was sufficient enough to protect the identities of NOM's donors, solicitors, members, officers and directors and their responses, just revealing their identities to the Commission chills their right of association and discourages future activity or participation in NOM. He said if donors are revealed in this investigation, the donors will say, "We might be revealed in other investigations as well. We don't want to be revealed to commissions. We don't want our identities revealed to the general public." He said if the Commission proceeds to third party discovery with document requests to donors or depositions of donors, the donors will certainly think twice about ever contributing to NOM again. People who solicit for contributions for NOM will think twice about getting involved. Officers and directors may think about whether to continue because they do not want to be involved in litigation. He said these issues are discussed in a 9th Circuit Court opinion, issued on December 11, 2009, *Perry v. Schwarzenegger*, which stated, "the declaration [the evidence in that case] creates a reasonable inference that disclosure would have the practical effects of discouraging political association and inhibiting internal campaign communications that are essential to effective association and expression. A protective order limiting dissemination of this information will ameliorate but cannot eliminate these threatened harms." He said in that case, the state had not shown a significant enough state interest to merit overcoming the First Amendment rights.

Mr. Bostrom said NOM cannot and will not waive its constitutional rights. If the Commission proceeds with a subpoena, NOM will object to the subpoena. He said Maine courts will have to decide these issues raised by NOM based on the U. S. Constitution. He said, at the end of the day, regardless of what the state courts decide, the federal court decision will be preeminent because it involves a federal question and federal constitutional rights. He said there is no need to waste the time and resources of state courts on issues that will be decided by federal courts. He said for all these reasons NOM asks the Commission to stay its investigation.

Mr. McKee asked Mr. Bostrom what the difference was between what NOM is asking for here and what it is asking for in the federal litigation.

Mr. Bostrom stated there was no difference. NOM is asserting the same constitutional rights and privileges as they pertain to the facial and as applied challenges.

Mr. McKee said NOM is asking the Commission to put this matter off until the federal case is completed. However, if the investigation were stopped, how would the state advance the case on the as applied challenge in federal court?

Mr. Bostrom said the facts will be developed in the federal court according to federal rules of civil procedure and discovery, subject to the Constitution, and the relevant and admissible facts that come out in the course of the federal litigation will be available to the Commission. He said the purpose of the Commission is not to develop facts for the federal case. The federal case will develop its own facts pursuant to federal law and there is no reason for the Commission to duplicate those efforts.

Mr. McKee asked Mr. Bostrom if the federal court determines that everything the defense is asking from NOM is fair game, what would be the harm in the Commission asking for the same information in its investigation?

Mr.Bostrom said that there would be no harm but the requests would be subject to the same objections and assertions of privileges.

Mr. Duchette questioned whether the determination of the constitutionality of the BQC statute was something the Commission should undertake. He said the Commission is bound by the statute and the scope of the investigation allowed under the statute. He agreed that the redress NOM seeks would come from the state and federal court system and not the Commission. He questioned whether the Commission was even the proper venue to raise these constitutional issues.

Mr. Bostrom said if it is determined in federal court that NOM violated a statute, then all the facts from the federal case are available to the Commission and the Commission would proceed with enforcement.

Mr. McKee stated that because NOM filed the challenge in federal court, if the Commission grants the request to stay, it would have the effect of staying this investigation for as many years as it took for the case to go through the federal system.

Mr. Bostrom said that was correct.

He said NOM's petition for a stay of the investigation is similar to what it asked the federal court to do when NOM filed the application for a temporary restraining order. Mr. McKee said NOM had an opportunity to present a significant amount of information to the court when filing the TRO application.

Mr. Bostrom said the Ethics Commission is not under federal standards with regard to temporary restraining orders.

Mr. Joseph Greenier, a citizen from Stockton Springs, told the Commission of a Human Rights Commission investigation that he was involved in, which was shut down as the result of a law firm making a FOAA request.

Mr. McKee asked Counsel for procedural advice at this point.

Ms. Gardiner stated that, procedurally, it would be logical to address the request for a stay first. If the Commission granted the stay, there would be no need to address any other issues related to NOM at this meeting. If the Commission denied the request for a stay, the Commission could then address NOM's

objections to the particular requests for information and give guidance to the staff as to how to proceed. If the Commission did not grant the stay, she did not think that it would make sense for the Commission to try to enforce a subpoena in state court while simultaneously arguing the same discovery issue in the federal court. She said it would be best to wait to see how the federal court ruled before taking the next step. She said the Commission would have opportunities to give direction as to how the investigation should proceed and to what extent it should be coordinated with the federal litigation. NOM's constitutional claims and arguments raised in the objections go more to NOM's ultimate legal arguments that they will be making to the Commission and the federal court. She did not see any way that NOM would be waiving any of those legal arguments by answering factual questions, if the Commission were to proceed with an investigation.

Mr. Duchette asked, if the request were denied, whether NOM would have any concern regarding the Commission's ability to keep the records confidential. He said he did not believe that there was a basis for a concern that any information provided to the Commission would become public before a decision was made.

Mr. Bostrom stated that he was not NOM's litigation counsel and his response would not be a litigation position. If there were a protective order entered allowing the release of certain information, such an order would be negotiated between the Attorney General and NOM's litigation counsel. He said the concern is the statutory provision that applies to information obtained through an investigation by the Commission does not go far enough to protect NOM's contributors. If there were a negotiated protective order in the federal litigation, NOM would seek a similar protective order to apply in the investigation.

Mr. Marsano stated that he has reviewed all of the materials for this matter extensively and this was one of the most difficult issues he has confronted. He said that he found Mr. Wayne's memo well written and persuasive. However, after listening to Mr. Bostrom's arguments, he believes that the proper course of action is to grant the stay and wait for the federal litigation to proceed to a conclusion. He said this matter will go to the state court and then on to federal court. He said in the final analysis it comes down to the question of whether the Commission should commit the state to spend a significant amount of money in order to reach the final goal. He said the Commission should wait to see what decisions are made by the federal courts in order to best accomplish the Commission's goal in the best interest of the people of Maine.

Mr. Duchette asked whether the same discovery dispute existed in the federal litigation.

Ms. Gardiner confirmed that it did and that it would be addressed by the federal magistrate next Thursday. In response to the request for documents and to the types of questions that would be asked in a deposition, NOM has made objections, based on First Amendment privilege, particularly with respect to disclosure of donor identities and certain types of strategy information. She said that the Attorney General's office has indicated to NOM's counsel that they would enter into a protective order to assure that donor identities are not disclosed during the pendency of the litigation. There may also be a discussion about whether there are other types of information that would be legitimately subject to that protective the order. She said the federal magistrate will address that issue promptly. She said that, in the interest of efficiency and judicial economy, they would favor allowing this discovery dispute to proceed in the federal court rather than embarking on a parallel proceeding in state court.

Mr. Duchette asked whether tabling the matter would be an option for the Commission, in order to see what guidance may come from the federal court on that issue.

Mr. McKee said that, in light of the timing of the discovery hearing with the federal magistrate and the return dates on the subpoena, the decision could be made today.

Mr. McKee said the decision handed down regarding NOM's application for a TRO is a very detailed decision written by a very well respected judge who had a significant record before him. The application for the TRO asked essentially the same thing being asked by NOM in its request for a stay of the investigation. He said while it may be unfortunate that some of the same issues could be litigated in state and federal court, that is part of the process. Mr. McKee said that the other part of the end of Judge Hornby's conclusion that Mr. Bostrom did not quote reads as follows: "Maine has a strong and even compelling interest in helping the electorate assess the particular issue on its merits by providing voters with information about where the money supporting a measure has come from and therefore whose interest it serves." He thought that, in this matter where the issues are almost completely identical, if the Commission were to substitute its judgment for Judge Hornby's by granting a stay, it would be setting aside Judge Hornby's conclusion regarding the purpose and effect of Maine's campaign finance disclosure laws. He said that the Commission should defer to Judge Hornby and continue with the investigation. He

said though he does not want to have to litigate these issues twice and spend more of the State's money, that is the battle that has been brought to the Commission and we are simply responding to it.

Mr. Youngblood asked whether the effect of granting this stay would be that other organizations that would otherwise be subject to § 1056-B could say that the Commission should not pursue an investigation of the organization while the matter of NOM's investigation is still pending.

Mr. McKee said if the same issues were raised, granting a stay in this case would have that effect.

Ms. Matheson said she understands the concerns expressed regarding the duplication of effort at the state and federal levels. Despite that, the Commission has to play out its part in this matter. She said the quotation from Judge Hornby's opinion read by Mr. McKee is the very crux of the matter before the Commission. The Commission's role is to ensure that the voters have this important information about who is financing campaigns. That is exactly what this investigation is trying to do. She said she would support a vote to proceed with the investigation. The possibility that we may set up a parallel track in the state court is almost irrelevant to the decision.

Mr. McKee moved that the Commission deny the request for stay. Ms. Matheson seconded the motion.

The motion passed by a vote of 4 - 1, with Mr. Marsano opposed.

Mr. McKee asked whether the Commission should address in more detail how the investigation should be conducted.

Mr. Duchette said it would make sense to wait to see what direction may come from the federal court's decision on the discovery dispute and what the protective order may be before proceeding with the investigation.

Mr. McKee said the Commission should continue with the investigation. If there is a protective order or other major development in the federal case, there would be sufficient time for the staff and counsel to report back to the Commission at the next meeting. Because of the substantial similarity between the

investigation and the federal case, if the federal magistrate determines to limit some of the discovery requests in the federal litigation, he is confident that the Commission would be mindful of that in its requests for information in the investigation. He said he defers to the Commission to conduct the day-to-day and tactical aspects of the investigation and he is certain that the staff will seek guidance on strategic issues as needed.

Mr. Duchette asked whether the Commission would be addressing each of the objections with respect to the individual requests.

Mr. McKee said this would not be practical. He said the staff would be working on these issues and will report back to the Commission at the next Commission meeting in February with an appraisal of the investigation.

Agenda Item #5. Update on Sufficiency of Maine Clean Election Fund

Mr. Wayne said the staff's memorandum reflects its current view on how to apportion payment reductions to MCEA candidates in 2010, if a reduction were necessary. After the public hearing in November on the proposed rule, there appeared to be a consensus that if the Commission had to reduce payments to legislative candidates, it should reduce the initial payment for the general election and maintain the current level of potential matching funds available, and if the Commission had to reduce payments to candidates for governor, it should reduce the amount of matching funds that would be available instead of reducing the initial payment. He said the major variables that will determine whether there is shortfall in the Fund are the number of gubernatorial candidates certified for public funding and the number of MCEA candidates that win their party's nomination in the June primary election.

Mr. Duchette asked whether there were any candidates for governor who were close to fulfilling the requirements for certification.

Mr. Wayne said there are two basic requirements for qualifying for governor. He said one is that candidates have to collect $40,000 in seed money from individuals registered to vote in Maine, up to $100 per contributor. He said that based on the reports filed by Senator Elizabeth Mitchell, it appears that she may have met the $40,000 requirement, although she has not yet submitted the supporting documentation

for those contributions. The deadline to do so is April 1. He said Senator Peter Mills and John Richardson are very close to meeting the $40,000 seed money contribution requirement. Lynne Williams, the Green-Independent Party candidate, is somewhat farther behind the others. Patrick McGowan only registered as a candidate early in January and the staff has not yet received any reports from that campaign yet. He said the second requirement is to collect 3,250 qualifying contributions and the staff does not know yet where the candidates stand in that regard.

Agenda Item #6. Rule-Making/Shortfall in Maine Clean Election Fund

Mr. McKee stated that at the September 8, 2009 meeting, the Commission agreed to accept comments on proposed amendments to the Commission's rule regarding the procedures for authorizing MCEA candidates to accept campaign contributions if there is insufficient money in the Fund to fully pay MCEA candidates, and on November 19, the Commission held a public hearing to receive public comment on the proposed amendments. He said the Commission will decide whether to amend the rule.

Mr. Wayne said the Commission staff recommends adopting a rule that is slightly different from the original proposed rule. He said the draft amendment to the proposed rule specifies how the Commission would apportion the reduction of payments to candidates as explained in the previous agenda item. The proposed amendment also contains a provision that allows candidates to deposit contributions that they are already authorized to spend into their campaign account and requires candidates to deposit contributions that they have not been authorized to spend into a segregated account. As the candidates are authorized to spend the funds in the segregated account, they may spend them directly or transfer them into the regular campaign account.

Mr. Wayne said another significant policy question addressed in the proposed amendment was what options should be available to the candidates after the election to dispose of unspent private contributions that they were not authorized to spend. He said initially the staff proposed giving the candidates the full range of options that are available to traditionally financed candidates to dispose of unspent contributions. He said this included using the funds in a future election, transferring funds to a political party, or making donations to charitable or educational organizations. He said the Maine Citizens for Clean Elections as well as some candidates urged the Commission to take a more narrow approach. He said the staff currently suggests that candidates only be allowed to return the funds to the contributors, make a donation to the

Maine Clean Election Fund, make an unrestricted gift to the state, pay for transitional or inaugural expenses or other expenses related to the office to which they were elected, or make a gift to a charity or educational organization. He said the staff does not support allowing candidates to spend these contributions in a future election. The staff was persuaded by the comments from MCCE that part of the original design of the MCEA program is that campaign finance activity would end shortly after the election. He said the staff believes that is more in keeping with the original design of the Act. The process of raising money and having a surplus does not fit in the design of the MCEA. He said with this proposed amendment, the candidates would have a period of six months to dispose of the surplus in the manner described in the amendment.

Mr. Duchette asked whether there would be issues in the future if a candidate with a surplus wanted to run again as a Clean Election Act candidate. He asked how the unspent funds would be handled in that case.

Mr. Wayne said there is a provision in the Commission's rules that describes the procedure for how a traditionally funded candidate who decides to run as a MCEA candidate should handle surplus private campaign funds in order to participate in the MCEA program. The procedure would be similar for MCEA candidates with surplus private campaign funds.

Mr. McKee said that MCEA candidates still receive a significant benefit through the MCEA program, even if there were a shortfall and they had to raise a limited amount of private funds to make up for it. Traditionally financed candidates who raise all their own funding should have more latitude in disposing of their surplus funds. He thought there should be more restrictions on how MCEA candidates use these unspent funds and urged caution as the Commission treads into this area. Even though it was through their own efforts that they raised the funds, MCEA candidates still receive a significant benefit from the program.

Mr. Wayne agreed that candidates are getting a major benefit with the MCEA program and candidates will receive most, if not all, the funding they are entitled to receive. He said the Commission may set any restrictions it deems necessary. If the Commission thought that any of the options suggested in the proposed rule are inconsistent with the program, they could be removed from the amendment.

Mr. McKee suggested removing the options to make contributions to charitable and educational organizations and to pay for transition or inaugural expenses.

Mr. Youngblood said was troubled by the openness of the language in the proposed amendment describing the option to use surplus funds for "any expense incurred in the proper performance of the office to which the candidate is elected."

Mr. Wayne suggested that by removing some of these options, a six-month period for disposing of the funds may not be necessary and could be shortened.

Mr. McKee said that he approved of the changes that have been made in the amendment to the proposed rule with the exception of some elements of paragraph G.

Ms. Matheson noted that, as a practical matter, it seemed that the option of returning funds to contributors may be difficult to manage for the candidates. Identifying the contributors and determining the appropriate amount to return to each contributor could be problematic. She wondered whether that option should be removed as well.

Mr. Wayne said traditionally financed candidates do this routinely; however, they cannot give back to a contributor more than he or she contributed to the candidate. Although difficult, candidates seem to manage it.

Mr. Duchette said he believes that candidates should have the option of returning some surplus funds to contributors.

Mr. McKee moved that the Commission adopt the changes in the proposed rule, but strike out "paying for transition or inaugural expenses or any expense incurred in the proper performance of the office to which the candidate is elected, or by making a gift to a charitable or educational organization" in paragraph G.

Ms. Matheson proposed a friendly amendment to reduce the period in which the funds must be disposed of.

Mr. McKee amended his motion to include a reduction of the six-month period in which to dispose of funds to 60 days.

Mr. Youngblood seconded.

The motion as amended passed unanimously (5-0).

Agenda Item #7. Selection of Meeting Dates for 2010

The Commission decided to hold the monthly meetings through 2010 on the last Thursday of each month. Meeting dates were set as follows:

February 25, March 25, April 29, May 27, June 24, July 29, August 26, September 30, October 28, November (to be determined), December 30.

Mr. Youngblood moved to adjourn. Mr. Duchette seconded. The motion passed. The meeting adjourned at 10:55 p.m.

Respectfully submitted,

Jonathan Wayne, Executive Director