Agenda Item #1

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

Approved on:

Minutes of the April 30, 2014, Meeting of the
Commission on Governmental Ethics and Election Practices
45 Memorial Circle, Augusta, Maine

Present: Walter F. McKee, Esq., Chair; Margaret E. Matheson, Esq.; Michael T. Healy, Esq.; André G. Duchette, Esq.
By phone: Hon. Jane Amero
Staff: Jonathan Wayne, Executive Director; Phyllis Gardiner, Counsel

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

The Commission considered the following items:

1. Ratification of Minutes of the December 5 & 12, 2013 and April 1, 2014 Meetings

Mr. Duchette moved to accept the minutes of the December 5 & 12, 2013 and April 1, 2014 Meetings. Seconded by Ms. Matheson. Motion passed unanimously (5-0).

2. Over-the-Limit Contributions to LePage Campaign

Mr. Wayne explained that in the January 2014 compliance review of candidates' campaign finance reports, the Commission staff identified five contributions received by the re-election campaign of Governor Paul LePage that exceeded the contribution limit of $1,500 per election. He said the campaign remedied the over-the-limit contributions by returning the excessive portions of the contributions to the donors. Mr. Wayne noted that these were administrative errors and constituted a very small portion of the overall contributions received by the campaign.

Mr. McKee recalled that a similar issue came up in the 2010 campaign. Mr. Wayne explained that issue was slightly different because there were more over the limit contributions; however, most of them were from married couples. He said in that case, the administrative procedure for tallying contributions was not accurate in dividing up those specific types of donations.

Mr. Healy moved to accept the staff recommendation and find that the campaign violated 21-A M.R.S.A. § 1015(1) by accepting five contributions in excess of $1,500 and assess no civil penalty for the violation. Ms. Matheson seconded the motion.

Mr. William Logan, Esq., noted that with regard to online donations, those are more difficult to screen before getting deposited but once it was picked up in the screening process, they were returned.

Motion passed unanimously (5-0).

3. Late Registration and Initial Campaign Finance Report by Maine Guides Association

Mr. Wayne said in September 2013, the Maine Guides Association began raising money from its members in opposition to an anticipated citizen initiative restricting bear hunting practices. He said after raising more than $5,000, the association should have registered as a ballot question committee and filed its first campaign finance report by Monday, October 23, 2013, but the association was unaware of the filing requirements. He said as a result of a conversation with Paul Lavin, Assistant Director, and James Cote, the political advisor for the Maine Guides and Maine Trappers, the fundraising issue came to light. Mr. Lavin explained the requirements to Mr. Cote for registering and they did. Mr. Wayne said these organizations do not have a large staff and have very little experience with involvement in a citizen initiative. The association requests a waiver of a preliminary penalty of $5,520, based on its inexperience with political campaigns, a lack of harm to the public, and other factors.

Mr. Healy asked whether the citizen initiative had actually been filed and qualified with the Secretary of State when the fundraising had taken place. He said if the fundraising was in anticipation of an initiative and prior to the qualification, he did not feel filing would be necessary.

Mr. James Cote, campaign manager for the opposition to the initiative, and Mr. Don Kleiner, Executive Director of the Maine Guides Association, explained at the time this issue came up there was no campaign staff nor had the petition been taken out for signatures. Mr. Cote explained that later in the fall it was discovered the Maine Guides Association and the Maine Trappers Association had begun to raise money among their members so they registered as a BQC. Mr. Kleiner explained that most of the fundraising began in August or September in 2013 with the rumor that there may be an initiative. He said the

proponents for the petition are much larger and more skilled at this sort of campaigning so the members of the associations decided that there should be some early fundraising in case the rumor was realized. He explained he was part-time and there are two other part-time administrative aides. He said that the last time the organization was involved in a ballot question election was 10 years ago and the entire staff of the organization has changed since that time. Mr. Kleiner said that he did not realize the organization was required to file anything. When he learned there were requirements, they hired Mr. Cote as campaign manager. Mr. Kleiner said he is making every effort to comply.

Mr. Healy asked if the money was raised before the initiative petition was filed with the Secretary of State and before the petitions were circulated to collect signatures. Mr. Kleiner said that funds were raised before this.

Mr. Healy said he did not see how this could be a violation due to the timing.

Discussion took place on the triggering event to require an association to file reports.

Ms. Gardiner, reading from the statute, said someone (not defined as a PAC) who receives contributions or makes expenditures aggregating in excess of $5,000 for the purpose of initiating or influencing a campaign has to register with the Commission as a ballot question committee. She said the definition of "campaign" includes activities to initiate or influence a direct initiative. The definition of "initiate" includes activities during the phase of collecting signatures or any related activities to qualify the measure for the ballot. She said this is a little different scenario because these organizations are raising funds in opposition to a measure. She said the question is at what point chronologically they should have registered. Once registered, all campaign-related contributions and expenditures would have to be disclosed.

Mr. Healy stated that in his view the opponent campaign would not begin until the filing of the initiative.

Mr. McKee wondered whether there would be an obligation to file if someone decided to start fundraising in opposition of a potential initiative that never took place. He said it sounds like these groups waited until the prospect of an initiative began to take on a more solid shape before they began to fundraise.

Mr. Healy asked how long after the petitions were filed with the Secretary of State, the campaign finance report was filed.

Mr. Cote said the petition form was finalized late in September or first of October and certified on March 6. The registration was filed mid-December and initial campaign finance report by mid-January.

Mr. Healy asked for clarity sake, whether the first report was filed before the petitions were filed. Mr. Cote and Mr. Kleiner confirmed this.

Further discussion of timing of the petition filing with the Secretary of State and the filing requirement for the Commission.

Mr. Healy stated that the statute should be worded so the registration trigger for opposition of an initiative is the date the petitions are filed with the Secretary of State since the opposition may want to check signatures on the petitions. He also said he did not feel these groups had an obligation to file until the petition was valid and filed with the Secretary of State.

Mr. Healy reminded Mr. Cote that the staff recommendation states that there was a violation and asked if that was acceptable. Mr. Cote said they appreciate the recommendation of the staff and also realize the statute is slightly ambiguous. He said all the contributions were disclosed through the Maine Wildlife Conservation Council which is the registered ballot question committee running the campaign so they were really disclosed twice. He said he would appreciate a waiver of the violation as well, but would accept the staff recommendation of a waiver of the penalty only.

Mr. McKee moved to find the Maine Guides Association in violation of 21-A M.R.S.A. § 1056-B for not registering and filing an initial campaign report. Mr. Duchette seconded.

Mr. Duchette said the statute is not clear so the Commission must interpret the statute and decide at what point the filing requirement is triggered for the opponents of a campaign. He said the earliest the requirement could be made for the approval of the Secretary of State is November and he believes the Maine Guides Association should not be held in violation.

Ms. Gardiner said the statute clearly defines initiate as the collection of signatures.

Mr. McKee said the wording is vague which is why the penalty should be waived, however this falls within that time period.

Ms. Gardiner said it was not so much an issue of the statute being vague, but this situation is different because the opponents of the initiative are fundraising, not the initiative's proponents during a period of time prior to the initiative being certified for the ballot.

Mr. Healy said if all the Commissioners agree the statute is ambiguous, then consideration should be given to dismiss the violation. He suggested having a rulemaking to clarify the opponents of an initiative are required to register with the Commission and whether the timing for the opponents should be based on when the petition has been approved by the Secretary of State for circulation or when the Secretary of State has certified the initiative for the ballot after the submission of the petition signatures.

In response to a question from Mr. McKee, Ms. Gardiner explained that the obligation to register is triggered by raising contributions over $5,000 for the purpose of initiating or influencing a campaign. "Influence" means to promote, support, oppose or defeat. "Initiate" includes the collection of signatures and related activities to qualify a state or local referendum for the ballot. Ms. Gardiner said that the proponents of a referendum or initiative may begin collecting signatures when the Secretary of State has approved the petition form.

Mr. Healy asked when the campaign begins. Ms. Gardiner said the statute does not define when a campaign begins; however, it defines a campaign as any course of activities to influence the nomination or election of a candidate, or initiate or influence a ballot measure.

Mr. Healy asked if a campaign could start before the signatures were filed with the Secretary of State. Ms. Gardiner said that the opponents of an initiative could conduct activities to oppose the collection of signatures and to try to convince voters that the initiative should not go on the ballot.

Mr. Duchette asked what date was used in calculating the preliminary penalty amount. Mr. Wayne said staff used October 23, 2013 which made the report 61 days late.

Mr. Healy suggested if the Commission staff had used the November date Secretary of State petition filing, then the penalty amount would be reduced because they would have been approximately 30 days late.

Ms. Matheson suggested going with the November date and reducing the penalty amount in the motion.

Mr. McKee adjusted his motion to have the penalty amount lessened by the date of filing in November with the Secretary of State.

Mr. McKee restated his motion to adopt the staff recommendation to find Maine Guides Association in violation of 21-A M.R.S.A. § 1056-B for not registering and filing an initial campaign report on time. Mr. Duchette seconded.

Motion passed 3-2 with Mr. Healy and Ms. Amero opposed.

Mr. McKee moved to waive all penalties. Mr. Duchette seconded.

Motion passed unanimously (5-0).

Mr. Wayne noted that staff had learned the filing of the petition with regard to the Maine Guides matter was September 25, 2013. Mr. McKee asked Commissioners if this changed the results of the findings for the Maine Guides and it did not.

4. Late Registration and Initial Campaign Finance Report by Maine Trappers Association

Mr. Wayne said this matter was similar to the Maine Guides Association. In August 2013, the Maine Trappers Association began raising money from its members in opposition to an anticipated citizen initiative restricting bear hunting practices. After raising more than $5,000, the association should have registered as a ballot question committee and filed its first campaign finance report by September 29, 2013,

but was unaware of the filing requirements. The association requests a waiver of a preliminary penalty of $4,622.52, based on inexperience with political campaigns, a lack of harm to the public, and other factors.

Mr. McKee moved to adopt the staff recommendation and find Maine Trappers Association in violation of 21-A M.R.S.A. § 1056-B for not registering and filing an initial campaign report on time. Mr. Duchette seconded.

Motion passed 3-2 with Mr. Healy and Ms. Amero opposed.

Mr. McKee moved to waive all penalties. Mr. Duchette seconded.

Motion passed unanimously (5-0).

5. Proposed Consent Agreement/Lewiston Casino PACs

Mr. Wayne explained the history of the Lewiston Casino PACs that promoted a casino in Lewiston in 2011. He said the lack of cooperation by the PACs delayed the investigation but through the subpoena process the staff discovered that the money did not come from the organization reported on the filing, GT Source Corp., but from Scott Nash and Ryan Hill who had formed M Five, Inc., the company in charge of the casino project. Mr. Wayne said all the parties were finally able to come to an agreement without having to prolong with further hearings and investigation. This consent agreement is what is before the Commission today for consideration.

Mr. McKee acknowledged the months-long process that the staff and counsel for the parties had been working to come to an agreement. He said further that it really is not important who is responsible for paying the $15,000 penalty as long as it happens.

Mr. Wayne summarized the agreement:

- The commission concludes that the reports were not timely filed because they did not conform to the disclosure requirements in the law.
- The PACs and individuals named in the agreement are not admitting to any personal fault or wrong doing but are agreeing to pay a penalty to move the proceedings along.

Mr. Healy noted that M Five Inc., is not a party to the consent agreement and Mr. Wayne said he presumed that was something worked out among the parties in order to come to agreement.

Mr. Healy moved that the consent agreement be approved. Ms. Matheson seconded.

Motion passed unanimously (5-0).

Other Business

Mr. Wayne shared a letter which was forwarded by the Governor's Office from the Center for Competitive Politics urging the Governor to respond to a U. S. Supreme Court decision with regard to federal election funding limitations. He explained that he would bring it before the Commission at a future meeting if necessary but wanted the Commissioners to be aware of the issue.

Ms. Gardiner explained that it was an attempt to get the state of Maine to officially declare it would not enforce this statute.

Meeting adjourned at 9:50 a.m.

Respectfully submitted,

/s/ Jonathan Wayne

Jonathan Wayne, Executive Director