Agenda Item #1

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

Approved:

Minutes of the November 24, 2014, Meeting of the
Commission on Governmental Ethics and Election Practices
45 Memorial Circle, Augusta, Maine

Present: Walter McKee, Esq., Chair; Michael T. Healy, Esq.; Margaret E. Matheson, Esq.; André G. Duchette, Esq. (by phone); Hon. Richard A. Nass

Staff: Jonathan Wayne, Executive Director; Phyllis Gardiner, Counsel

Commissioner McKee convened the meeting at 2:00 p.m.

The Commission considered the following items:

1. Ratification of Minutes of September 24, October 10 and November 3, 2014 Meetings

Ms. Matheson moved to accept the minutes. Mr. Nass seconded. Motion passed (5-0)

2. Request for Waiver of Late-Filing Penalties – Equality Maine PAC

Mr. Wayne explained that the Equality Maine PAC was required to file an independent expenditure report on October 23, 2014, but filed the report one day late. The PAC also filed its regularly scheduled 11-Day Pre-General Report one day late. The preliminary penalties for the two late reports total $350. The PAC requests a waiver because of the inexperience of its new treasurer.

Elise Johansen, Executive Director, and John McKenna, Office Manager, who did the filing, requested a further reduction of the penalty because they made an honest mistake and were not familiar with the IE reporting requirements. Mr. McKenna explained that the confirmation he received for the IE report he believed to be the 11-Day Pre-General report. He said he had been on the phone with Commission staff and was under the impression he had completed everything he needed to do.

Mr. Nass expressed concern over the Commission's history of reducing penalties and asked how consistency in assessing penalties is maintained. He said in order to remain consistent, he would not be in favor of reducing this penalty.

Mr. Wayne explained that staff is keeping better track of penalty data in order to maintain a consistent process for determining any reductions.

Mr. McKee stated he has relied on staff to maintain consistency over the years. He said the challenge is the Legislature sets the preliminary penalty amounts and allows for penalties to be adjusted. The Commission does have discretion in determining what those adjustments should be.

Mr. Healy said his concern was the cost to the State in staff time and Commission time that is associated with processing these penalties is more than the penalties cover.

Mr. Healy moved to adopt the staff recommendation to reduce the penalty to $350. Mr. Nass seconded.

Motion passed unanimously. (5-0)

3. Request for Waiver of Late-Filing Penalty – Maine Society of Anesthesiologists PAC (11:00)

Mr. Wayne said that on May 30, 2014, the Maine Society of Anesthesiologists PAC made contributions of $1,000 to two other PACs. Because these payments were made within the last 13 days before the primary election, the Anesthesiologists PAC was required to disclose the two payments in a 24-Hour Report. The PAC filed the 24-Hour Report 46 days late on July 22, 2014. The PAC requests a waiver of the $1,040 preliminary penalty because it is disproportionately high relative to the harm to the public.

Charles Soltan, Esq., on behalf of the PAC, said the treasurer was new this year. The two major political parties held fundraisers prior to the primary, which was not usual, and the PAC was not fully aware of the 24-hour reporting requirement prior to the primary. This caught many PACs off guard this year.

Ms. Matheson moved to adopt the staff recommendation to reduce the penalty to $250. Mr. Nass seconded.

Motion passed unanimously. (5-0)

4. Request to Investigate Signs in Gorham School Board Election (16:30)

Mr. Wayne explained that Suzanne Phillips was an outgoing member of the Gorham Town Council who was running for the School Board in the November 4, 2014 election. In the last two weeks before the election, signs including the statement "No Phillips" were posted around her town. Ms. Phillips requests that the Commission investigate whether the signs comply with the disclosure requirements for campaign signs.

Bryan Dench, Esq., on behalf of Matthew Robinson, explained that Mr. Robinson is very active in town government and local affairs in Gorham and has a very strong commitment to prevent drunk driving. He said Mr. Robinson believes that a conviction of OUI should be a disqualifying factor for candidates running for town government positions and felt the need to express his concerns. Mr. Robinson was not aware of the disclosure requirements for political signs. Mr. Dench explained that once Mr. Robinson learned of the requirements he immediately rectified the problem and contacted the Commission. He filed an independent expenditure report and paid the late-filing penalty for that report immediately.

Matthew Robinson explained that he had a family member killed by a drunk driver years ago and since then has been on an anti-drunk driving crusade. He has spent his own funds in support of programs aimed at preventing drunk driving. He said he has been re-elected to town council office five times and considers it an honor to serve. He explained that recently there were two Gorham town council members arrested for OUI. He said when he received a call from Commission staff, he took full responsibility for the error and paid the fine right away. He said he did not intend to hide his involvement and explained that he told several people at the town office as well as posted on his Facebook page.

Mr. Healy moved to assess a penalty of $25. Mr. Nass seconded.

Motion passed unanimously. (5-0)

5. Request for Waiver of Late-Filing Penalties – Kennebunk Democratic Committee (34:00)

Mr. Wayne said the Kennebunk Democratic Committee was required to file three campaign finance reports in 2014, because it raised and spent more than $1,500 this year. It was late filing two reports due July 15,

2014 and October 24, 2014. The maximum penalty amount for a late-filed report by a local party committee is $500; therefore, the total preliminary penalty in this case is $1,000. The committee treasurer requests a waiver because reminders were not addressed to her post office box. Mr. Wayne explained that a reminder post card was sent to the chair of the committee and the treasurer; however, her notice went to her physical address and not her post office box. He also said this committee is required to file more often due to more activity than smaller ones and this committee has been compliant in the past.

Ms. Matheson moved to adopt the staff recommendation to reduce the penalties to a total of $150. Mr. Nass seconded.

Motion passed unanimously. (5-0)

6. Request for Waiver of Late-Filing Penalty – Roger Hicks (44:00)

Mr. Wayne said that in the November 4, 2014 general election, Roger Hicks was one of three candidates for Commissioner of York County, District 3. His treasurer filed the 11-Day Pre-General Report on October 23, 2014. The initially filed report did not include the single expenditure for the report period, $369.25 paid on September 17, 2014. The report is considered late because it was not substantially complete, and the preliminary penalty for the late report is $44.28. The campaign treasurer requests a waiver because she relied on bank statements, and as a first-time treasurer she was inexperienced.

Mr. Healy expressed concern that the candidate would have to pay the fine when it was the treasurer's failure to include the expenditure. In response to Mr. Healy's question, Ms. Gardiner said the statute states that the Commission may hold the candidate and the treasurer jointly and severally liable for any penalties assessed for violations of the reporting or record-keeping requirements. The statute does not provide for assessing a penalty individually against a treasurer.

Ms. Matheson moved to adopt the staff recommendation and assess a penalty of $44.28 jointly and severally against the candidate and the treasurer. Mr. Healy seconded.

Motion passed unanimously. (5-0)

7. Proposed Statute Changes (52:00)

The Commission considered some proposed changes to the Election Law and Lobbyist Disclosure Law drafted by its staff for possible submission to the 127th Legislature.

In response to a question from Ms. Matheson, Mr. Wayne clarified that state party committees would not be required to submit the names and addresses of officers and treasurers to municipal clerks. She suggested that the state committees get accurate information from the local committees accurate and up-to-date and the state committee would report that information to the Commission.

Mr. Nass expressed concern over the accuracy of addresses for committee officers because it seems to be causing havoc in getting the reminders to the officers. He said many put down their physical address but not their post office box number. Mr. Wayne suggested using the term mailing address in the statute.

Mr. Healy asked for clarity on section 1003(2) regarding the time limitation on bringing complaints to the Commission. The Commissioners proposed new language for that section that would require the Commission to dismiss complaints based on alleged violations that were more than four years old.

Mr. McKee asked for more information regarding using surplus funds for a recount. Mr. Wayne explained that usually there are not large costs associated with a recount unless there is an attorney involved with the process. Mr. Nass said most often the parties pay for expenses such as attorneys' fees.

In response to Mr. Healy, Mr. Wayne said there were no changes being made regarding the duties of the campaign treasurer and deputy treasurer.

Mr. Nass expressed support for the proposed new § 1054-B regarding payments from political action committees to Legislators who serve as a principal officer, treasurer or primary decision-maker or fundraiser for the PAC. Mr. Healy expressed his view that no member of the Legislature should be involved with a PAC and allowed to raise money for the PAC during a legislative session and would support strengthening the proposal to include that.

Mr. Nass asked whether the Commission should propose a statutory change to clarify whether campaign finance law applies to a state agency's involvement with a referendum.

Ms. Gardiner said there were two aspects to this issue – whether the state agency should be required to register and file reports with the Commission or whether the activities of the state agency should be reported as an in-kind contribution to the PAC or BQC with which the agency is cooperating. It is also necessary to determine whether the state agency is engaged in governmental speech or whether its activities are for the purpose of promoting or opposing a referendum.

Mr. McKee said he supported having any activity of employees of a company or organization, including a state agency, involved with a referendum be reported by the PAC.

Mr. Healy expressed concern over a state employee having to pro-rate their salary for reporting purposes because they are public employees.

8. Contribution Limits for Unenrolled Candidates (Additional Statute Change) (1:45:00)

In August 2014, the U.S. District Court granted a motion for preliminary injunction in favor of four plaintiffs who had sued the Commission to challenge the constitutionality of the $1,500 per election contribution limit for candidates for Governor. The plaintiffs each had given $1,500 to Eliot Cutler's campaign prior to the June 10, 2014 primary election, and sought to give an additional $1,500 for the election cycle. (*Woodhouse, et al. v. Maine Commission on Governmental Ethics and Election Practices, et al.*, Docket No. 1:14-cv-266-DBH) The Commission staff presented ideas for changing the contribution limits statute as it applies to unenrolled candidates.

Mr. McKee reviewed the issue with this year's gubernatorial primary elections in which the major party candidates were uncontested yet the candidates were still able to collect the maximum for the primary of $1,500 in addition to the maximum $1,500 for the general election, giving them an advantage over the unenrolled candidate who could only collect $1,500 for the entire election cycle.

Mr. McKee suggested that when there is only one party candidate in the primary, the candidate would be allowed to collect the maximum amount for that election and the other party candidate who did not have an opponent would not be able to collect those primary contributions.

Ms. Gardiner said the timing may be an issue since candidates do start collecting contributions long before the March 15 party deadline so they will not know if they have an opponent.

Mr. Healy said he would not be in favor of allowing independents to raise funds for both elections when they are not in two elections.

Discussion followed on the parameters and wording of the proposal.

Mr. McKee suggested putting this issue out for public comment.

Other Business

The Commission discussed a request for investigation from candidate Karen Gerrish concerning anonymous mailings in her legislative race. The request was received four days before the Commission meeting. The mailings appear to lack the required "paid for" disclosure statement.

Mr. Healy moved to authorize an investigation. Ms. Matheson seconded.

Motion passed (4-0, Mr. Nass abstained).

Meeting adjourned at 4:01 p.m.

Respectfully submitted,
/s/ *Jonathan Wayne*
Jonathan Wayne, Executive Director