



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

Additional Materials
Item #2
July 29, 2013

To: Commissioners
From: Jonathan Wayne, Executive Director
Date: July 23, 2013
Re: Additional Materials for Agenda Item #2

After receiving additional information from Timothy C. Woodcock, Esq., counsel for Rep. Michael Nadeau, the Commission staff is tentatively expecting that the following individuals will be witnesses at the July 29 hearing:

Norman Nadeau
Ronaldo Thibeault
Alicia Nadeau
Hon. Andre E. Cushing
Steven Daigle, owner of Paper Signs Ink
Detective Margie Berkovich, Office of the Maine Attorney General (potential)
Rep. Michael Nadeau (potential)

We received the attached letter from Mr. Woodcock dated July 22, 2013 (labeled "Woodcock Letter #1") conveying objections to what he considers to be the addition of new charges against his client. The Commission counsel or staff will respond at a later time.

The Commission staff received a second July 22 letter from Mr. Woodcock (labeled "Woodcock Letter #2") that includes objections to proposed exhibits. The Commission staff is hopeful that some or all of these objections may be resolved prior to the July 29, 2013 hearing.

Thank you for your consideration of these additional materials



Timothy C. Woodcock
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Bangor, Maine 04402-1210
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July 22, 2013

Walter McKee, Esq., Chair
Commission on Governmental Ethics
and Election Practices
135 State House Station
Augusta, ME 04333-0135

BY Federal Express
Tracking No.: 8013 7718 2570

RE: Investigation of House District 1 2012 Campaign

Dear Mr. McKee:

Enclosed please find our Objection of A. Michael Nadeau to the "Expansion" and "Clarification" of the Charges at Issue as Set Forth in the Notice of Hearing of June 21, 2013.

I appreciate your consideration of this objection and look forward to hearing from you.

Sincerely,

A handwritten signature in black ink that reads "Timothy C. Woodcock /PAH".

Timothy C. Woodcock

TCW/eab

cc: A. Michael Nadeau
Jonathan Wayne, Executive Director
Phyliss Gardiner, Assistant Attorney General
Kate Knox, Esq.
William Logan, Esq.

STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES

In re: Campaign Spending in Maine)	
House of Representatives)	OBJECTION OF A. MICHAEL
District 1)	NADEAU TO THE "EXPANSION"
)	AND "CLARIFICATION" OF THE
)	"LEGAL AND FACTUAL ISSUES" AS
)	SET FORTH IN THE NOTICE OF
)	HEARING OF JUNE 21, 2013

NOW COMES, A. Michael Nadeau, by and through his attorney, Timothy C. Woodcock, Esq., and files his objection to the "expansion" and "clarification" of the "Legal and Factual Issues" as set forth in the Notice of Hearing of June 21, 2013 as follows.

I. PROCEDURAL BACKGROUND

The instant investigation was initiated by a complaint filed by the Maine Democratic Party with the Commission on Governmental Ethics and Election Practices ("the Commission") on November 2, 2012. After a telephonic hearing held on November 5, 2012, the Commission made initial findings and concluded that further investigation and a further hearing was in order.

Accordingly, on November 19, 2012, the Commission issued a Notice of Hearing for the follow-up hearing, then scheduled for December 19, 2012. The November 19 Notice of Hearing ("First Notice of Hearing") set forth "Issues to be addressed at the Hearing," on page 2, followed by a list of "Relevant Statutes" on page 3.¹ Although not styled as "charges" against Michael Nadeau, as candidate, L. Philip Soucy, as Treasurer of the candidate or a political committee established to support the Michael Nadeau candidacy, it is clear from the Commission's hearing of November 5, 2012 that "Issues" were in fact charges against these individuals or entities, either together or separately. It is also clear that the Notice of Hearing

¹ The "issues" and "Relevant Statutes" listed in the First Notice of Hearing were repeated and, with respect to the issues, expanded in the Second Notice of Hearing. Therefore, neither the Issues nor the Relevant Statutes in the First Notice of Hearing is set forth herein. The reader is referred to the First Notice of Hearing for both.

was intended to provide notice to all concerned, including former candidate Nadeau, of the charges that he faced.

On December 12, 2012, the Commission issued a revised Notice of Hearing (“Second Notice of Hearing”). In setting forth the charges at issue, the Second Notice followed form with the First Notice, listing “Compliance Issues” on page 7 followed by Relevant Statutes, which were attached to the Second Notice with the “relevant statutory provisions” marked by an arrow

Second Notice of Hearing—December 12, 2012

1. Issues Listed—Second Notice of Hearing

The following were the issues listed in the Second Notice of Hearing.

- (1) Whether the Michael Nadeau campaign² should be found in violation of the Maine Clean Election Act for receiving a contribution in the form of a coordinated expenditure by a group known as the Citizens for Effective Government.
- (2) Whether a penalty should be imposed on the candidate or the treasurer for receiving a contribution.
- (3) Whether Mr. Soucy made a material false statement in the affidavit filed with Independent Expenditure Report #205.
- (4) Whether Citizens for Effective Government made expenditures in excess of \$1,500 for the purpose of influencing the nomination or election of any candidate, thereby triggering an obligation to register and file a campaign finance report as a political action committee.
- (5) Whether the expenditure by James Majka for the newspaper ad should have been reported as an independent expenditure or whether it should be considered a contribution to Mr. Nadeau.

2. Statutes at Issue—Second Notice of Hearing

As attached to the Second Notice of Hearing, the statutes at issue were as follows:

² Maine election statutes do not identify a “campaign” as having a particular legal status. The statutes identify the “candidate” as well as a “political committee”—a term that appears in varying forms throughout the statutes—as having particular legal stature.

1. 21-MRSA §1004-A(5) (Material False Statement)
2. 21-A MRSA §1505(5) (Other Contributions and Expenditures)
3. 21-A MRSA §1052(4) (Expenditure—Definition)
4. 21-A MRSA §1052(5) (Political Action Committee—Definition)
5. 21-A MRSA §1053 (Registration—Section 1053 in its entirety)
6. 21-A MRSA §1059 (Report: Filing Requirements—Section 1059 in its entirety)
7. 21-A MRSA §1125(6) (Terms of Participation—Restrictions on Contributions)
8. 21-A MRSA §1127(1) (Civil Violations).

A. Hearing—January 17, 2013

When the Second Notice of Hearing was issued, the Commission planned to hold a hearing on December 19, 2012, one week later. When bad weather made driving perilous, the December 19 hearing was canceled and rescheduled to January 17, 2013.

No changes were made in the Second Notice of Hearing before the January 17, 2013 was held. At that hearing, Michael Nadeau and L. Philip Soucy appeared. Mr. Soucy invoked his Fifth Amendment and Article I, Section 6 rights not to incriminate himself. Mr. Nadeau testified at length in response to questions by members of the Commission as well as Assistant Attorney General Phyllis Gardiner, in her capacity as counsel to the Commission, as well as Commission Executive Director, Jonathan Wayne, and members of the Commission. Transcript, January 17, 2013 Hearing, at 116-160 (hereinafter “January Transcript”).

B. Post-Hearing Investigation

At the conclusion of the January 17 hearing, the Commission authorized Commission staff to continue the investigation. Pursuant to this authority, Commission staff sought and obtained four subpoenas for the accounts of Michael Nadeau’s business, Mike’s and Sons, and the account of his farm, Promised Land, as well as accounts held by James Majka individually and by James Majka and his wife.

In addition, according to the Commissions Staff's Memorandum of June 28, 2013 and its final pre-hearing memorandum of July 19, 2013, the Commission sought the assistance of the Attorney General to assist in the investigation; a request made pursuant to 21-A MRSA §1003(4). See, Staff Memorandum of June 28, 2013, at 11; Staff Memorandum of July 19, 2013 at 11.

This additional investigation included interviews by Marge Berkovich, the investigator delegated by the Attorney General to assist the Commission in response to the Commission's Section §1003(4) request, of Norman Nadeau (by telephone and in person in Connecticut), Renaldo Thibeault, Alicia Nadeau, and, James Majka. In addition, it appears that Commission staff shared with Investigator Berkovich the financial records that had been obtained pursuant to the Commission's subpoena.³

C. Third Notice of Hearing

On June 21, 2013, the Commission issued a third Notice of Hearing ("Third Notice of Hearing") which in some respects re-stated and in others "enlarged" and "clarified" the charges and statutes on which those charges were based.

1. Charges in Third Notice of Hearing

The Third Notice of Hearing listed the following charges under the heading, "Factual and Legal Issues to be Determined by the Commission."

- (1) Whether Michael Nadeau should be found in violation of the Maine Clean Election Act (21-A MRSA §1125(6)) for receiving a contribution in the form of a coordinated expenditure by a group known as Citizens for Effective Government.⁴

(A) Did Michael Nadeau request or suggest that James Majka, Dana Saucier, and/or Philip Soucy engage in preparing and distributing a paid mailing to households in House District #1 for the purpose of influencing the election of Michael Nadeau as representative of that district, or did Michael Nadeau

³ By this time, a criminal information had been served on Mr. Soucy. It is not known whether, with the initiation of that criminal proceeding, the Attorney General's Office served subpoenas for these records under its own authority.

⁴ At this point, advised that this charge was listed as "Issue #1" in the Second Notice of Hearing.

consult or cooperate with them on the mailing, thereby resulting in the expenditure for the mailing constituting a contribution to Mr. Nadeau under 21-A MRSA §10156(5)?

(B) Were James Majka, Dana Saucier and/or Philip Soucy part of the candidate's political committee or agents for the candidate or the candidate's political committee, thereby resulting in the expenditure for the mailing constituting a contribution to Mr. Nadeau under 21-A MRSA §1505(5)?

(C) What were the sources of the funds for the mailing, and did Mr. Nadeau have any role in providing or obtaining the funds?

(2) Whether James Majka made an expenditure of \$420 for an advertisement in the Fiddlehead Focus newspaper independently of Michael Nadeau, his committee, and their agents or whether Michael Nadeau should be found in violation of the Maine Clean Election Act (21-A MRSA §1125(6)) for receiving a contribution in the form of a coordinated expenditure on this advertisement.⁵

(A) Did the publication of the advertisement disseminate written material prepared by Michael Nadeau, thereby resulting in the expenditure for the advertisement constituting a contribution to Mr. Nadeau under 21-A MRSA §1015(5)?

(B) Did Michael Nadeau request or suggest that James Majka place the ad in the Fiddlehead Focus newspaper, or did Michael Nadeau consult or cooperate with Mr. Majka on the advertisement, thereby resulting in the expenditure for the advertisement constituting a contribution to Mr. Nadeau under 21-A MRSA §1505(5)?

(C) Was James Majka part of the candidate's political committee or an agent for the candidate or the candidate's political committee, thereby resulting in the expenditure for the advertisement constituting a contribution to Mr. Nadeau under 21-A MRSA §1015(5)?

(D) What was the source of the funds for the advertisement, and did Mr. Nadeau have any role in providing or obtaining the funds?

2. Relevant Statutes

The Third Notice of Hearing listed the following as "Relevant Statutes."

1. 21-A MRSA §1(30)
2. 21-A MRSA §1012(2)(A)

⁵ Here the Third Notice identified this issue as Issue #5 in the Second Notice of Hearing.

3. 21-A MRSA §1012(3)(A)
4. 21-A MRSA §1013-A
5. 21-A MRSA §1015(5)
6. 21-A MRSA §1019-B(5)
7. 21-A MRSA §1125(5-A)(F)
8. 21-A MRSA §1125(6)
9. 21-A MRSA §1127(1)
10. 94-270, Code of Maine Rules, ch. 1, §6(9)
11. 94-270, Code of Maine Rules, ch. 3, §6(1)
12. 94-270, Code of Maine Rules, ch. 3, §6(2)

3. “Expanded” Charges—Second Portion of Section 1505(5)

The July 21, 2013 Notice of Hearing states that the “issues” (charges) listed in the second category of charges “was listed as Issue #5 in the notice for the January 17, 2013 hearing, but is expanded here for clarification.” Third Notice of Hearing, at 3, n. 2. This characterization is misleading; in fact, the Third Notice of Hearing adds a charge that was not set forth in the Second Notice of Hearing.

The Third Notice of Hearing includes the new charge is set forth at Section A of the second category of charges. For the convenience of the Commission, this charge that is set forth in its entirety.

- (2) Whether James Majka made an expenditure of \$420 for an advertisement in the Fiddlehead Focus newspaper independently of Michael Nadeau, his committee, and their agents or whether Michael Nadeau should be found in violation of the Maine Clean Election Act (21-A MRSA §1125(6) for receiving a contribution in the form a a coordinated expenditure on this advertisement.⁶

⁶ Here the Third Notice identified this issue as Issue #5 in the Second Notice of Hearing.

(A) Did the publication of the advertisement disseminate written material prepared by Michael Nadeau, thereby resulting in the expenditure for the advertisement constituting a contribution to Mr. Nadeau under 21-A MRSA §1015(5)?

It is evident that this charge concerns the second part of 21-A MRSA §1505(5). That section provides as follows:

“The financing by any person of the dissemination, distribution or replication, in whole or in part, of any broadcast or any written or other campaign materials prepared by the candidate, the candidate’s political committee or committees or their authorized agents is considered to be a contribution to that candidate.”

To make it clear that this portion of Section 1505(5) is now at issue, the Commission staff memorandum of July 19, 2013 includes a copy of Section 1505(5) with arrows indicating that this portion, as well as the preceding portion of Section 1505(5), is now among the issues or charges against Michael Nadeau.

The inclusion of the second portion of Section 1505(5) contrasts with the Second Notice of Hearing which did not refer to materials prepared by Michael Nadeau and which included the statutes at issue, with the same arrow indicators, but with respect to Section 1505(5) displayed a single arrow pointing solely to the first portion of Section 1505(5).

Seen against this background, it is apparent that the explanation in the Third Notice of Hearing that second category charges have been “expanded” for purposes of “clarification” is, in actuality, a screen for the addition of a new charge against Michael Nadeau—a charge premised on the second portion of Section 1505(5).

4. Addition of Rule-Based Charges.

Although not cited in the summaries of the “Factual and Legal Issues,” the Third Notice of Hearing has enlarged the group of “relevant statutes” beyond those listed in the Second Notice of Hearing by including three Commission Rules—a) Rule ch. 1, §6(9), b) Rule ch. 1, §6(1), and, c) Rule ch. 1, §6(2).

Rule 6(1) concerns timing and Rule 6(2) concerns circumstances under which a “loan” becomes a contribution. By contrast, Rule 6(9) contains substantive and procedural standards

not set forth in the statutory provisions cited in the Second Notice of Hearing. For example, Section 6(9) defines “candidate” to include “a committee authorized by the candidate.”⁷ Rule 6(9) also includes presumptions not found in Title 21-A. See, Rule 6(9)(B).⁸

II. DUE PROCESS NOTICE REQUIREMENTS BAR THE NEW CHARGES IN THE THIRD HEARING NOTICE

A. The Addition of a New Charge Against Michael Nadeau Violates His Rights to Due Process of Law.

The addition of the second portion of Section 1505(5) as a charge against Michael Nadeau, if allowed by the Commission, would violate his Due Process rights to notice of the charges against him. This question is governed by *In re Ruffalo*, 390 U.S. 544 (1968). *Ruffalo* concerned an attorney charged with ethical violations. Part way through the proceedings, and based on the attorney’s own testimony, further charges were added against him. *Id.* at 546. Although the attorney was given additional time to answer the new charges, the Supreme Court found that to be entirely inadequate. As the Court observed,

“As noted, the charge (No. 13) for which petitioner stands disbarred was not in the original charges made against him. It was only after both he and [the investigator that the attorney had hired] had testified that this additional charge was added.” *Id.* at 549.

⁷ “Candidate” and “a committee authorized by the candidate” are used through Title 21-A and clearly mean different things. Although the Legislature has authorized the Commission to issue rules, that does not mean that the Legislature has authorized the Commission to make on statutory concept mean the same thing as another. In this respect, therefore, the definition of “candidate” in Rule 6(9) violates both the statutory delegation of rulemaking authority to the Commission but also the constitutional separation of powers. See, Maine Constitution, Article III, Section 2; *Bates v. Department of Behavioral and Developmental Services*, 863 A.2d 890, 2004 ME 154; see also, *Tenants Harbor General Store v. Department of Environmental Protection*, 10 A.3d 722, 2011 ME 6.

⁸ Title 21-A contains no presumptions. The presumptions set forth in Rule 6(9) appear to have been devised for the convenience of the Commission and to the disadvantage of the anyone whose conduct is challenged. As with Rule 6(9) redefinition of “candidate,” the Commission’s addition of a presumption not set forth in the statute exceeds the Commission’s delegated authority as well as the separation of powers. See, n. 7, *supra*. Moreover, it is clear that the presumption is intended to regulate and burden both political speech and political association, activities entitled to the highest protection and deference under the First Amendment. See, *Buckley v. Valeo*, 424 U.S. 1, 14-27 (1976). These First Amendment protections are especially applicable when, as here, the Clean Election Act, in catchall fashion, has criminalized any “willing” or “knowing” violation of the Act, itself, or the rules issued in support of the Act. 21-A MRSA §1127(2). *Cf.*, *Citizens United v. Federal Election Commission*, 558 U.S. 310, 355-356 (2010), *Buckley v. Valeo*, 424 U.S. at 77-81 (Criminalization of certain contributions).

The Court went on to note that the disciplinary proceedings against the attorney were, "...adversary proceedings of a quasi-criminal nature. [citation omitted]. The charge must be known before the proceedings commence. They become a trap when, after they are underway, the charges are amended on the basis of testimony of the accused. He can then be given no fresh opportunity to expunge the earlier statements and start afresh." *Id.* at 551.

The Law Court encountered the same issue in *Board of Bar Overseers v. Lefebvre*, 707 A.2d 69, 1998 ME 24. In *Lefebvre*, the Court found that the attorney had not received "fair notice" that the charges against him included a "good moral character" charge. *Id.* at 73, ¶¶4-6. The Court found that the absence of this charge deprived the attorney of his due process rights and barred any sanctions based on the "good moral character" charge. *Id.* at 73-74, ¶17.

B. Application of *Ruffalo* and *Lefebvre* to Third Notice of Hearing

Seen against the background of *Ruffalo* and *Lefebvre*, it is clear that the attempt to "expand" the Section 1505(5) against Michael Nadeau to include the second portion of Section 1505 is barred. A violation of this provision can be established by proving that "campaign materials" that have been "prepared by the candidate" have been "disseminated" by "any person."

It is apparent from this new charge that it rests on Michael Nadeau's testimony that he wrote the words that James Majka later converted into an advertisement that appeared in the October 31, 2012 edition of the Fiddlehead Focus. He was shown Exhibit 22, the paper on which the handwritten text of the words that later appeared in the advertisement had been inscribed and confirmed that that was his handwriting. *Transcript, Hearing January 17, 2013* at 146. He also testified to the circumstances under which he wrote up such notes. *Id.* at 147-148.

In short, the new Section 1505 charge against Michael Nadeau cannot be added at this late date without violating his Due Process rights and running afoul of both *Ruffalo* and *Lefebvre*.

The same conclusion obtains for Rule 6(9). It is apparent that this rule has been added only after Michael Nadeau testified. It imposes substantive, law-changing definitions as well

as presumptions on him which he was entitled to know before he appeared before the Commission and testified under oath.

In considering this Objection, it is respectfully urged that the Commission consider that, with the exception of the initial hearing, when the Commission attempted to accommodate the Maine Democratic Party's Complaint against an imminent Election Day deadline, the Commission has at all times been in full control of the timing and progress of this investigation. At all times before it held the hearing on January 17, 2013, the Commission had the authority to delay that hearing until its investigation was complete; at all times, it had the authority to request assistance from the Attorney General pursuant to 21-A MRSA §1003(4)⁹; and, at all times, it had the authority to issue subpoenas for financial records, as it eventually did in two phases after the January 17, 2013 hearing.

Had the Commission taken these steps, it could have provided Michael Nadeau with notice that it now has issued to him—the Third Hearing Notice. As the Commission chose to proceed with the January 17, 2013 hearing based on the Second Notice of Hearing, however, it cannot now depart from that notice and add to that notice and expose Michael Nadeau to risks and sanctions not included in the Second Notice.

III. CONCLUSION

An individual who is at risk for the imposition of civil sanctions by the Government is entitled to adequate notice of the charges against him. Where the Government has issued such a notice and the individual at risk has testified in reliance thereon, the Government may not then add to or expand the charges and proceed against him on those expanded charges.

WHEREFORE, Respondent Michael Nadeau objects to the new charges in the Third Notice of Hearing and respectfully asks this Commission to dismiss them.

⁹ According to the initial Staff Memorandum of June 28, 2013 and the final Staff Memorandum of July 19, 2012, eventually, the Commission did, in fact, request the assistance of the Attorney General pursuant to 21-A MRSA §1003(4), although it is not entirely clear when the Commission made that request.

Dated at Bangor, Maine this 22nd day of July, 2013.

A. MICHAEL NADEAU

Timothy Woodcock / PAH

Timothy C. Woodcock, Esq.
EATON PEABODY
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Attorneys for Defendants



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
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To: William P. Logan, Esq., attorney for Philip Soucy
Representative-Elect A. Michael Nadeau
James H. Majka
Dana Saucier
Katherine R. Knox, Esq., attorney for the Maine Democratic Party
Hon. John L. Martin

From: Jonathan Wayne, Executive Director

Cc: Walter F. McKee, Commission Chair
Assistant Attorney General Phyllis Gardiner, Commission Counsel

Date: November 15, 2012

NOTICE OF HEARING

Hearing Scheduled for December 19, 2012

The Maine Commission on Governmental Ethics and Election Practices has scheduled a hearing to investigate matters raised in a complaint by the Maine Democratic Party concerning spending by L. Philip Soucy and others under the name of Citizens for Effective Government to promote Michael Nadeau, candidate for Maine House of Representatives, District #1. The hearing will be held on Wednesday, December 19, 2012 at 9:00 a.m. at the Commission's office at 45 Memorial Circle, 2nd Floor, in Augusta, Maine. The hearing is being held pursuant to 21-A M.R.S. § 1003.

At a meeting on November 5, 2012, after hearing from Mr. Soucy, his counsel, counsel for the Maine Democratic Party, and Commission staff, the Commission made initial findings that:

- (1) a coordinated expenditure (i.e., one made "in cooperation, consultation or concert with, or at the request or suggestion of, a candidate, a candidate's

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WEBSITE: WWW.MAINE.GOV/ETHICS

PHONE: (207) 287-4179

FAX: (207) 287-6775

political committee or their agents”) occurred under Title 21-A, section 1015(5) as a result of the involvement of treasurer L. Philip Soucy in the Mike Nadeau campaign and Citizens for Effective Government, and

- (2) the coordinated expenditure, constituted a campaign contribution to the Mike Nadeau campaign which is not allowed under the Maine Clean Election Act.

The Commission then directed its staff to continue an investigation into the factual issues concerning: 1) the expenditure by Citizens for Effective Government, 2) whether Citizens for Effective Government should have registered as a political action committee, and 3) the sworn statement by L. Philip Soucy that there was no coordination between the Nadeau campaign and Citizens for Effective Government regarding the expenditure for the communication.

The December 19, 2012 hearing will be conducted in accordance with Chapter 2 of the Commission’s rules (see copy enclosed) and the Maine Administrative Procedure Act, 5 M.R.S. §§ 8001 et seq.

Issues to be addressed at the Hearing

The topics or issues to be addressed at the hearing will likely include:

- (1) whether the Michael Nadeau campaign should be found in violation of the Maine Clean Election Act for receiving a contribution in the form of a coordinated expenditure by the group known as Citizens for Effective Government
- (2) whether a penalty should be imposed on the candidate or the treasurer for receiving a contribution
- (3) whether Mr. Soucy made a material false statement in the affidavit filed with Independent Expenditure Report #205
- (4) whether Citizens for Effective Government made expenditures in excess of \$1,500 for the purpose of influencing the nomination or election of any candidate, thereby triggering an obligation to register and to file a campaign finance report as a political action committee.

Opportunity for Legal Argument

In addition to presenting evidence, there may be an opportunity for you to present legal argument at the December 19th meeting concerning whether any person committed a violation of law. The Commission may reach a final determination at the December 19th meeting, following the hearing, but it is also possible that the Commission will close the hearing and decide the matters at issue at a subsequent meeting. You will receive notice and have an opportunity to attend any such meeting.

Relevant Statutes

The following statutory provisions are relevant to the proceeding:

- 21-A M.R.S. § 1004-A(5)
- 21-A M.R.S. § 1015(5)
- 21-A M.R.S. §§ 1052(5)(4) & (5)
- 21-A M.R.S. § 1053
- 21-A M.R.S. § 1059
- 21-A M.R.S. § 1125(6)
- 21-A M.R.S. § 1127(1)

Applications to Intervene as a Party

Any person who wishes to intervene as a party to this proceeding should submit a letter to the Commission addressed to Walter F. McKee, Chair, at the above address no later than November 30, 2012.

Questions

If you have any questions concerning this notice, please call me at (207) 287-4179 or e-mail me at Jonathan.Wayne@maine.gov.



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To: William P. Logan, Esq., attorney for Philip Soucy
Timothy C. Woodcock, Esq., attorney for Rep. Michael Nadeau
James H. Majka
Dana Saucier
Katherine R. Knox, Esq., attorney for the Maine Democratic Party
Hon. John L. Martin

From: Jonathan Wayne, Executive Director

Cc: Walter F. McKee, Commission Chair
Assistant Attorney General Phyllis Gardiner, Commission Counsel

Date: December 20, 2012

NOTICE OF HEARING FOR JANUARY 17, 2013

Hearing Scheduled for January 17, 2013

The Maine Commission on Governmental Ethics and Election Practices has scheduled a hearing to investigate matters raised in a complaint by the Maine Democratic Party concerning spending by L. Philip Soucy and others under the name of Citizens for Effective Government to promote Michael Nadeau, candidate for Maine House of Representatives, District #1. The hearing will be held on Wednesday, January 17, 2013 at 10:00 a.m. at the Commission's office at 45 Memorial Circle, 2nd Floor, in Augusta, Maine. The hearing is being held pursuant to 21-A M.R.S. § 1003.

At a meeting on November 5, 2012, after hearing from Mr. Soucy, his counsel, counsel for the Maine Democratic Party, and Commission staff, the Commission made initial findings that:

- (1) a coordinated expenditure (i.e., one made "in cooperation, consultation or concert with, or at the request or suggestion of, a candidate, a candidate's

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political committee or their agents”) occurred under Title 21-A, section 1015(5) as a result of the involvement of treasurer L. Philip Soucy in the Mike Nadeau campaign and Citizens for Effective Government, and

- (2) the coordinated expenditure, constituted a campaign contribution to the Mike Nadeau campaign which is not allowed under the Maine Clean Election Act.

The Commission then directed its staff to continue an investigation into the factual issues concerning: 1) the expenditure by Citizens for Effective Government, 2) whether Citizens for Effective Government should have registered as a political action committee, and 3) the sworn statement by L. Philip Soucy that there was no coordination between the Nadeau campaign and Citizens for Effective Government regarding the expenditure for the communication.

The January 17, 2013 hearing will be conducted in accordance with Chapter 2 of the Commission’s rules (available at www.maine.gov/ethics) and the Maine Administrative Procedure Act, 5 M.R.S. §§ 8001 et seq.

Issues to be addressed at the Hearing

The topics or issues to be addressed at the hearing will likely include:

- (1) whether the Michael Nadeau campaign should be found in violation of the Maine Clean Election Act for receiving a contribution in the form of a coordinated expenditure by the group known as Citizens for Effective Government
- (2) whether a penalty should be imposed on the candidate or the treasurer for receiving a contribution
- (3) whether Mr. Soucy made a material false statement in the affidavit filed with Independent Expenditure Report #205
- (4) whether Citizens for Effective Government made expenditures in excess of \$1,500 for the purpose of influencing the nomination or election of any candidate, thereby triggering an obligation to register and to file a campaign finance report as a political action committee
- (5) whether James Majka made an expenditure of \$420 for an advertisement in the Fiddlehead Focus newspaper independently of Michael Nadeau, his committee, and their agents.

Opportunity for Legal Argument

In addition to presenting evidence, there may be an opportunity for you to present legal argument at the January 17th meeting concerning whether any person committed a violation of law. The Commission may reach a final determination at the January 17th meeting, following the hearing, but it is also possible that the Commission will close the hearing and decide the matters at issue at a subsequent meeting. You will receive notice and have an opportunity to attend any such meeting.

Relevant Statutes

The following statutory provisions are relevant to the proceeding:

21-A M.R.S. § 1004-A(5)

21-A M.R.S. § 1015(5)

21-A M.R.S. §§ 1052(5)(4) & (5)

21-A M.R.S. § 1053

21-A M.R.S. § 1059

21-A M.R.S. § 1125(6)

21-A M.R.S. § 1127(1)

Applications to Intervene as a Party

Any person who wishes to intervene as a party to this proceeding should submit a letter to the Commission addressed to Walter F. McKee, Chair, at the above address no later than January 8, 2013.

Questions

If you have any questions concerning this notice, please call me at (207) 287-4179 or e-mail me at Jonathan.Wayne@maine.gov.



Timothy C. Woodcock
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July 22, 2013

Jonathan Wayne, Executive Director
Commission on Governmental Ethics
and Election Practices
135 State House Station
Augusta, ME 04333-0135

Via: Email and US First Class Mail

RE: Investigation of House District 1 2012 Campaign

Dear Jonathan:

I am writing to submit Michael Nadeau's position to: (1) certain exhibits; (2) identification of additional witnesses; (3) additional exhibits; (4) Nadeau's position on redaction.

(1) Objection to Exhibits:

Exhibit 40. Michael Nadeau does not object to Exhibit 40, but does object to the description of Exhibit 40. All of the Invoices were issued to "We the People for District 1, Michael Nadeau" and the official description should track the description of the customer as it appears in the invoices.

Exhibit 42. Michael Nadeau objects to the admission of summaries of interviews of any witnesses including those of Norman Nadeau. The summaries are inadmissible hearsay and lack authentication.

(Norman Nadeau has agreed to testify from Connecticut. Presumably, his testimony will obviate the need the admission of Exhibit 42.)

Exhibit 45. Conditional objection: Michael Nadeau objects to all of the checks listed in Exhibit 45 on the grounds that the subpoenas issued by the Chair of the Commission for the NorState Federal Credit Union Account for Mike's & Sons was limited to the period of October 1, 2012 to November 15, 2012. All of the checks listed as Exhibit 45 were for periods pre-dating October 1, 2012. Therefore, Michael Nadeau objects to the admission of Exhibit 45 until the Commission provides information identifying the legal authority pursuant to which the commission obtained possession of the documents included in Exhibit 45.

Exhibit 50. See objection to Exhibit 42.

Exhibit 51. See objection to Exhibit 42.

Exhibit 52. See objection to Exhibit 42.

(2) Additional Witnesses:

Steven Daigle, PaperSigns Ink.	Topic will be work done for candidate Mike Nadeau by PaperSigns Ink.
Michael Nadeau	May offer testimony on campaign and/or professional and personal finances depending upon the completeness of the testimonial and evidentiary record.

(3) Additional Exhibits:

Michael Nadeau	The summary of a loan to Mike's & Sons from Promised Land and repayment in part by installment of the Promised Land loan.
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Michael Nadeau does not object to this proposed exhibit to be shown in its entirety to the Commissioners, the Commission Staff and Commission Counsel. Michael Nadeau requests that, for public purposes, the document remain confidential until such time as the Commission shall determine otherwise.

(4) Confirmation on redaction and confidentiality

Michael Nadeau agrees with the redactions of the financial records for Mike's & Sons and Promised Land as proposed by Commission Staff on July 19, 2013. In addition, Nadeau also agrees with the confidentiality status of those records as proposed by Commission Staff on July 19, 2013 with the understanding that the Commission retains the authority, on proper notice, to approve the publication of some or all of the redacted portions upon proper justification.

Very truly yours,



Timothy C. Woodcock

TCW/eab

cc: Paul Lavin, Deputy Director
Phyllis Gardiner, Assistant Attorney General
Kate Knox (without attachment)
William Logan (without attachment)



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

Additional Materials
Item #2
July 29, 2013

To: Commissioners
From: Jonathan Wayne, Executive Director
Date: July 23, 2013
Re: Agenda Item #2 - Letter from William P. Logan

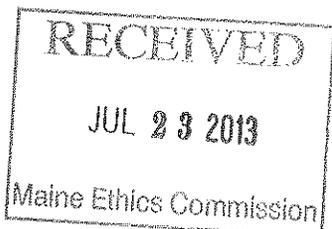
The Commission received the attached letter today from William P. Logan, attorney for Philip Soucy. He requests that the Commission make factual determinations on 12 questions that are set out in his letter.

The Commission staff and counsel believe it is *not* necessary for the Commission to address all of the factual questions listed by Mr. Logan. Likewise, the Commission staff and Counsel believe it is not necessary for the Commission to make a determination on each of the questions listed under the heading "Factual and Legal Issues to be Determined by the Commission" on pages 2-3 of the Notice of Hearing for July 29, 2013. Many of these are *alternative* grounds that could support different potential findings of violation. The Commission's obligation, in our view, is to determine whether any violations of law took place, based on the evidence that is presented to you, and to make findings of fact and conclusions of law sufficient to apprise the parties of the basis for those determinations.

With respect to the staff's recommendation that the Commission defer making any findings on the issue of whether Mr. Philip Soucy made a material false statement in his affidavit in the independent expenditure report to the Commission until the outcome of the criminal prosecution against him. We note that this is not contrary to past Commission practice. The Commission took a similar approach in at least one recent matter, the findings of violation arising out of the audit of State Rep. David R. Burns.

If you have any questions concerning this, we can address them at the hearing. Thank you for your consideration of these additional materials.

cc: William P. Logan, Esq.
Timothy C. Woodcock, Esq.
Kate R. Knox, Esq.



William P. Logan
wlogan@itmlaw.com

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July 23, 2013

Jonathan Wayne, Executive Director
Maine Ethics Commission
135 State House Station
Augusta, ME 04333-0135

Re: *July 29, 2013 Commission meeting*

Dear Jonathan:

This letter confirms our conversation last week about my anticipated participation in the hearing on the Soucy/Nadeau matter scheduled to occur at the Commission's July 29, 2013 meeting.

Per your request, I request that the Commission make specific findings as to the expenditure made by Citizens for Effective Government. Given that the Commission is expected to have received all relevant evidence by the conclusion of the hearing, the Commission will be in a position to make findings as to whether the expenditure was an "independent expenditure." To that end, I expect the Commission to address at least the following issues:

1. Was the expenditure made in cooperation, consultation or concert with, or at the request or suggestion of the Candidate?
2. Was the expenditure made in cooperation, consultation or concert with, or at the request or suggestion of an Authorized Committee?
 - A. If so, when did the Candidate authorize a political committee pursuant to 21-A M.R.S.A. §1013-B?
 - B. If so, what documents evidence the creation of such a committee?
 - C. If so, who are the members of said committee?
 - D. If so, why do the Commission's records reflect that there is no political committee authorized by the Candidate?

3. Was the expenditure made in cooperation, consultation or concert with, or at the request or suggestion of an Agent of the Candidate?
 - A. If so, who was the Agent?
 - B. If so, was the Agent acting within his/her authority at the time?
 - C. If so, what factors are the Commission considering in determining whether an "agency" relationship exists and further, when did the Commission adopt and/or enumerate those factors.
 - D. If so, what statutory or regulatory basis supports the factors or test utilized by the Commission in reaching its determination whether an individual is an "Agent?"
 - E. If so, has the Commission informed the public or participants in MCEA as to the circumstances giving rise to agency and how the Commission communicated or otherwise made that information available or known.

I reserve the right to question any witnesses testifying at the hearing, regardless of the party calling such witness as well as the right to question any Commission staff providing testimonial evidence. I further reserve the right to provide oral and/or written argument to the Commission concerning its ultimate decision of this matter.

This matter has been pending since November 2012. My client wishes for this matter to be resolved and I can see no reason for additional delay of this matter. There is no reason for this Commission to delay making findings until after a criminal prosecution has concluded – such an approach abdicates the Commission's responsibility, is contrary to past Commission practice, and the staff memo lacks any articulated reason to justify further delay. Therefore, I request that the Commission address the issues set forth above and bring this matter to a conclusion.

Sincerely,



William P. Logan, Esq.

cc: Timothy Woodcock, Esq.
Katherine Knox, Esq.
Philip Soucy