



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

Minutes of the November 30, 2011, Meeting of the
Commission on Governmental Ethics and Election Practices
Held at the Commission Office, 45 Memorial Circle,
Augusta, Maine

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

At 9:05 a.m., Chair Walter McKee convened the meeting.

The Commission considered the following items:

Agenda Item #1. Ratification of Minutes of October 28, 2011 Meeting

Ms. Amero moved to accept the minutes as drafted. Ms. Matheson seconded.

Motion passed unanimously (4-0).

Agenda Item #2. Complaint by Rep. Donald E. Pilon concerning Office of Rep. Linda M. Valentino

Mr. Wayne said Rep. Donald E. Pilon (House District 133, a part of Saco) filed a complaint regarding Rep. Linda M. Valentino's (House District 134, a part of Saco) establishment of an office in his House district. Both Representatives are seeking the Democratic nominee for Senate District 5 in the general election in 2012. Rep. Valentino turned to the Commission staff for advice about how to pay for the office. She told the staff that she would use the office for constituent work, for campaign purposes and for personal use by her daughter.

Rep. Donald E. Pilon explained that an office in downtown Saco opened by Rep. Linda M. Valentino is in his district which he feels is inappropriate. He said the timing, just before the next legislative session, is bothersome since Rep. Valentino has never used an office for constituent contacts before. Rep. Pilon said he has done some research and learned that there is no rule against such action. He called around to a few agencies, the National Conference of State Legislators and the Council of State Governments, and there

appears to be no history of any Legislator setting up office space within another district outside their own. Rep. Pilon suggests that the State of Maine address this issue.

In response to Mr. McKee, Rep. Pilon explained that he believes Rep. Valentino should not be allowed to open an office outside her district.

Mr. Duchette questioned what harm would result in Rep. Valentino opening an office outside her district.

Rep. Pilon explained that people walking into her office off the street would believe that Rep. Valentino was the Representative for that district, which she is not.

Mr. McKee said as long as Rep. Valentino made it clear to people who came into the office that she did not represent House District 133, he did not see a problem. He said this office will be used for multiple purposes and there was no reason she should not be able to operate an office that is very close to her own district line. In the absence of any evidence to the contrary, Mr. McKee thought that the Commission should take Rep. Valentino on her word regarding how the office would be used.

Rep. Pilon provided some maps of the districts showing where Rep. Valentino's office is located in downtown Saco.

Rep. Pilon, in response to Ms. Matheson, said he had concerns with how the office is being paid for, whether it was with seed money or private funding. He said it appears that the rent is high for the area and seed money would not cover more than two months, which would mean private funding would have to supplement the rent.

John Brautigam, Esq., representing Rep. Valentino, explained that Rep. Valentino has been very forthcoming from the beginning as to how she should handle this office rental matter. She sought guidance from the Commission and has followed the advice very carefully by keeping a journal to track all the activity and the amount of time each activity has taken. He said it is very common for Legislators to have offices for constituent services in order to be in contact with people in the community. Mr. Brautigam explained that Rep. Valentino sought this location because of the proximity to the downtown area and large

foot traffic which is not available in her own district. The office is a mixed use office so Rep. Valentino is keeping a journal of the activities that take place in the office and allocating the time into the different categories in order to report the financing correctly. He said, also, that Rep. Valentino is conducting family business in the office as well as political and brings her elderly Dad in to the office on a regular basis.

Mr. Brautigam said it was difficult to know what the actual issue raised in the complaint was. He said there is nothing wrong with a Legislator having a constituent office to facilitate communication with constituents. He said there is one Legislator in Maine that has a separate office listed; however other states' legislators have one or more constituent offices. He said there was so reason to be concerned that the office is not within Rep. Valentino's district. Many municipalities are divided into different districts and the main street and town center will usually be in one district. He explained that having the office inside her own district would not provide the constituent access that Main Street does. The real legal issue is whether her campaign is receiving an in-kind contribution. But there is a system in place to track the time the office was used for each of the different activities to make sure that the cost of the office was split appropriately between personal funds and campaign funds. As the use of the office for campaign purposes increases closer to the election, more campaign funds will be used to pay for the rent. There will be no in-kind contribution as a result. If there is no in-kind contribution, and if there is nothing to bar her from locating the office on Main Street or from having a mixed use office, he did not see that there was anything to investigate. There is no set of facts and no evidence that shows she is doing anything improper.

Mr. McKee said that it would seem that there may be an indirect collateral benefit by having her office in a district where she is going to run but that is just something that happens. There is no monetary value to be associated with that.

Mr. Brautigam said Rep. Valentino is taking it a step further and keeping track of what the office is being used for specifically and the amount of time for each matter. He said Rep. Valentino is going the extra mile to provide a transparent record of what is being done by keeping a journal. He urged the Commission to stand behind the advice given by staff and make a finding in favor of Rep. Valentino.

Mr. McKee acknowledged Rep. Pilon's concern and asked counsel if there currently were any prohibition to this activity. Ms. Gardiner confirmed that there were no rules regarding where legislators are allowed to setup their offices. She said the financial issue has been addressed already by Rep. Valentino.

Ms. Amero agreed with Mr. McKee that there were no legal issues implicated by Rep. Valentino's locating her office where it is; however she said having run as a candidate several times she understood Rep. Pilon's concern. She agreed with Rep. Pilon when he pointed out that Rep. Valentino has been in office for seven years and it is only at the end of her time as a Representative that she opens a constituent office. She said this is highly unusual and it has the appearance of a campaign office, especially since Rep. Valentino is running against Rep. Pilon for the Senate seat. She explained that Representatives are very protective of their districts and for one to come into another's district and open an office is highly unusual but not illegal.

Mr. Duchette questioned whether the Commission should be concerned about the location of an office even if it is used for campaign purposes as long as the expenses for the office are accurately reported and no violations have occurred. He said until the reports are submitted in January there is no way to know whether there has been a violation. At this point Rep. Valentino has been subjected to more scrutiny than may be necessary. He said he understands the dispute but it is not one that should be settled by the Commission.

Ms. Matheson moved that the Commission find no violation by Rep. Valentino. Mr. McKee seconded.

Motion passed unanimously (4-0).

3. Audit of Rep. David Richard Burns/Recommended Referral to the Attorney General

In 2010, David Richard Burns (Alfred) ran as a Maine Clean Election Act (MCEA) candidate and was elected as the State Representative for House District 138. He was selected for an audit through the Commission auditor's random selection process. Rep. Burns was authorized to spend \$9,066 in MCEA funds for the 2010 election cycle. The audit determined that Rep. Burns spent at least \$2,500 of public funds for personal purposes and that expenditures totaling at least \$1,295 were falsely reported in his campaign finance reports. In responding to the auditor's request for documentation, Rep. Burns submitted cash register receipts that he later voluntarily admitted were fabricated. Mr. Wayne said the audit exposed

some conduct by Rep. Burns that was wrongful and potentially criminal and therefore should be referred to the Office of the Attorney General. Mr. Wayne suggested the Commission make finding of civil violations of campaign finance law but defer any civil penalty assessment and repayment of funds until after the Attorney General's investigation.

Mr. McKee questioned why staff recommended deferring repayment of MCEA funds. Mr. Wayne explained that \$2,285 in repayment does not include reimbursement for travel. Rep. Burns supplied falsified documents for other matters and therefore the staff cannot be certain the travel logs submitted by Rep. Burns are authentic. Rep. Burns claimed the campaign reimbursed him \$1,882 of campaign travel which is very high in comparison to other candidates in similar districts. He explained that since there was no clear amount Rep. Burns should be required to repay, deferring this until more thorough investigation has been done seemed appropriate.

Mr. McKee asked whether the Commission would be investigating the travel issue further and Mr. Wayne said the Commission staff could but does not want to get in the way of the Attorney General's investigation of the entire matter.

Mr. McKee expressed concern the Commission would make the findings and then repayment could be deferred for a year while the investigation was ongoing.

Mr. Wayne suggested requiring Rep. Burns repay \$2,285.48 and defer any decision on the travel until a later time.

Mr. Wayne stressed that this type of conduct in the MCEA program is extremely rare. He said candidates who participate in the Maine Clean Election Act program are under a very high degree of scrutiny and overall are very aware of and compliant with the requirements of the program. He said 75% of the audits completed by the Commission have had no finding of violations and the few that do are minor issues. He said this degree of misuse of the program is jarring and upsetting but rare.

Mr. Vincent Dinan explained that there were eight findings in the audit - comingling of campaign funds with personal funds, false documentation, use of MCEA funds for personal expenses, false reporting of

campaign expenses, unreported disbursements from the campaign bank account, questioned and unsupported expenditures, use of MCEA funds for qualifying period expenses, and misreporting of total campaign expenses.

Mr. Dinan summarized the most salient points:

- **Finding No. 1 - Comingling of MCEA funds with personal funds.** Between May 11, 2010 and November 24, 2010, Rep. Burns transferred \$6,711.15 in MCEA funds from his *campaign* bank account at Bank of America into his *personal* checking account at the same bank. Rep. Burns also transferred \$1,659.65 from his personal checking account back to the campaign bank account. In March, 2011 in order to close the campaign account, Rep. Burns transferred an additional \$503.64 into the campaign account from his personal account. His campaign account was in overdraft by that amount.
- **Finding No. 2 - Submitting Falsified Receipts in Response to the Audit.** On March 27, 2011, Rep. Burns e-mailed to the auditor a number of documents containing images of invoices or receipts from vendors paid by the campaign. One of the documents contained the three images of what purported to be receipts. On March 30, 2011, the candidate telephoned the auditor and informed him that these “receipts” had been fabricated by someone (unidentified) in his campaign and were false.
- **Finding No. 3 - Spending at least \$2,500 in MCEA Funds for Personal Use.** Over the period of June 14 - 23, 2010, Rep. Burns made three transfers of MCEA funds totaling \$2,600 from his campaign account to his personal bank account. Analysis of the candidate’s personal bank account for the month ending June 25, 2010 shows that if Rep. Burns had not deposited \$2,600 in MCEA funds into his personal bank account, it would have had a negative balance of \$2,523. There appears to be no doubt that the entire \$2,600 transferred by Rep. Burns was spent for personal purposes (except arguably the \$77.01 balance on June 25). Also, the 42-day post-primary campaign finance reporting by Rep. Burns indicates no campaign expenditures during the month of June 2010.
- **Finding No. 4 – Falsely Reporting Campaign Expenditures.** During the course of the audit, Rep. Burns admitted that his campaign had reported making three expenditures totaling \$1,295.33, which, in fact, never occurred.

- **Finding No. 5 – Unreported Disbursements from the Campaign Bank Account.** The audit analysis of the campaign bank account identified ten disbursements totaling \$544.55 from the account that were *not* reported by the candidate on his campaign finance reports. Two of these disbursements were for monthly campaign account bank fees which would have been legitimate expenses if they had been reported.
- **Finding No. 6 – Reported Expenditures in Question (including Travel Reimbursements).** The audit has identified expenditures totaling \$2,285.48 which have been brought into question due to lack of supporting documentation or other concerns. Four of those expenditures have been discussed previously in Findings Nos. 2 and 4. Mr. Dinan concluded that three other expenditures are unallowable also. The campaign used \$110.15 in MCEA funds to reimburse the candidate for printing of business cards, pins, and a name plate which the candidate received in March 2010, *before* he was certified as an MCEA candidate. Since there were no Seed Money contributions during the qualifying period, there was no money available to make this purchase. Also payments to two individuals for services that they rendered to the campaign are in question because one of the individuals, Tim Guinard, contacted the Commission saying he never rendered a service or was paid for it.

Mr. Dinan explained that he has concerns about the basis for reimbursement of mileage expenses to the candidate which totaled \$2,082.40, significantly higher than other candidates with similar moderately sized districts. Rep. Burns' travel reimbursements significantly exceed the amounts claimed by any other House candidate. Through his attorney, Rep. Burns states that the handwritten log he submitted was created contemporaneously with the travel and his odometer was used to calculate mileage, however of the 57 entries in the handwritten log, only two include a travel destination. Mr. Dinan explained that since there are so many instances of false reporting and use of campaign funds there is reasonable possibility that the travel log is also false.

Mr. McKee asked Mr. Dinan for his opinion with regard to accepting the travel log information and Mr. Dinan explained Rep. Burns had a campaign worker write a letter to substantiate the travel claims. He said having this individual submit an affidavit swearing to the accuracy of the travel since he accompanied Rep. Burns on several occasions would be helpful.

- **Finding No. 7 – Using MCEA Funds to Pay for a Qualifying Period Expense.** Rep. Burns’ Seed Money report claimed no contributions and no expenditures during the qualifying period; however a payment of \$110.15 to R&W Engraving was made by credit or debit card on March 17, 2010, during the qualifying period. As far as could be determined, the candidate probably reimbursed himself with a transfer from the campaign account to his personal checking account.
- **Finding No. 8 – Misreported Total Campaign Receipts and Expenditures.** The analytical results are summarized below:

Reconciliation - Finance Reports to Banking Activities:	
Bank Deposits and Transfers In	\$14,628.65
Less: Return of Unauthorized MCEA Funds	(\$3,877.75)
Subtotal	\$10,750.90
Less: Campaign Expenditures Reported by DRB	(\$8,862.50)
Subtotal	\$1,888.40
Add: negative bank balance @12/7/2010	\$503.64
Amount Over-Spent by the Burns Campaign	\$2,392.04

In conclusion, Mr. Dinan explained the audit has determined that the Burns campaign accepted funds in excess of MCEA distributions, and made expenditures significantly in excess of the amounts reported in their campaign finance reports to the Commission.

In response to Mr. McKee’s question as to how long Mr. Dinan has been doing audits for the Commission, he said he created the audit process in 2006. Mr. McKee further questioned whether Mr. Dinan has ever seen in his work as an auditor this level of fraud and false statements as this case shows.

Mr. Dinan said he could not think of any worse case than this.

Mr. William Logan, Esq., counsel for Rep. Burns, stated he would suggest that if the matter is to be referred to the Office of the Attorney General, that the Commission defer any penalties until after that investigation and possible criminal penalties. He said if some issues were going to be dealt with as criminal then the Commission could take those penalties into consideration in their final determination of penalty amounts.

Mr. McKee asked how determinations were made in the past with this type of case and Mr. Wayne explained that there needs to be a distinction between penalties and repayments to the Clean Election Fund. In this case, the minimum repayment to the MCEA fund is \$2,285.48. Mr. Wayne said the staff would support waiting to assess penalties until after the criminal matter is disposed of.

Ms. Matheson asked what the maximum penalty amounts were for the eight findings.

Mr. Wayne said the maximum penalty amount for violations of the Maine Clean Election Act is \$10,000.

Mr. Wayne said, in response to Mr. Duchette's question with regard to whether the Commission had to make any findings, that since there were violations of the civil statute in the election law it would be appropriate for those findings to be made.

Mr. McKee said the Attorney General will conduct an investigation into potential criminal violations and the Commission should make the findings now.

Mr. Duchette asked Mr. Logan if he wanted to make any comments before the Commission made its determination.

Mr. Logan asked for clarification if the \$2,285.48 repayment included the mileage issue and Mr. Wayne said it did not. Mr. Logan also said that because the matter is going to the Office of the Attorney General he had no comment at this point but would when the matter comes back before the Commission for final penalty assessment.

Mr. Duchette said the most disputed findings in his view were #6 with regard to payments to Tim Guinard (\$475) and Kyle M. Raine (\$350) and mileage reimbursement and also receipts and expenditures in finding #8. He said there were some other findings disputed by Mr. Logan which could be dealt with separately.

Mr. McKee said without question the Commission should make findings of violation. He said he was struck by the righteous indignation in March when submissions were made by the candidate and his friend and then to submit false documentation after that is mindboggling. He had never seen improper conduct

this severe in his tenure on the Commission. Mr. McKee said the Commission needs to send a very clear message and make the findings as outlined by staff. He could consider giving Rep. Burns the benefit of the doubt with regard to the mileage; however, if there was anyone who did not deserve it, it was Rep. Burns. Nonetheless, the Commission has to be fair and treat all candidates who come before the Commission equally.

Ms. Matheson agreed and said the Commission should follow up on the mileage issue in the same manner as the last candidate who did not have a complete travel log by requesting an affidavit. She said referral to the Office of the Attorney General is warranted in this case.

Mr. McKee moved that the Commission find Rep. Burns violated:

- 21-A M.R.S.A. § 1125(7-A) by commingling Maine Clean Election Act (MCEA) funds with his personal funds, as discussed in Finding No. 1 of the audit report;
- 21-A M.R.S.A. § 1004-A(5) by making materially false statements in documents submitted to the Commission, as discussed in Finding No. 2 of the audit report;
- 21-A M.R.S.A. § 1125(6) by using MCEA funds for purposes that were not related to his campaign, as discussed in Finding No. 3 of the audit report;
- 21-A M.R.S.A. § 1004-A(4) by filing campaign finance reports that substantially misreported expenditures, as discussed in Finding No. 4 of the audit report;
- 21-A M.R.S.A. § 1125(12) by failing to accurately report expenditures of MCEA funds, as discussed in Findings No. 5 and 8 of the audit report;
- 21-A M.R.S.A. § 1125(12-A)(C) by failing to keep campaign records as required by law, as discussed in Finding No. 6 of the audit report, with the exception of the travel reimbursements which the Commission will consider at a later date;
- 21-A M.R.S.A. § 1125(2-A)(A) by using MCEA funds to pay for goods received prior to certification as an MCEA candidate, as discussed in Finding No. 7 of the audit report; and

further to defer any findings that address the travel reimbursement issue until the next Commission meeting when additional information has been presented to the Commission. Ms. Matheson seconded.

Motion passed unanimously (4-0).

Mr. McKee moved that the Commission require Rep. Burns to reimburse the Maine Clean Election Fund \$2,285.48 for unallowable expenditures, which does not include payments to the candidate for travel. Ms. Amero seconded.

Motion passed unanimously (4-0).

Mr. McKee moved that the Commission refer this matter to the Office of the Attorney General for consideration of criminal investigation and prosecution. Mr. Duchette seconded.

Motion passed unanimously (4-0).

Ms. Matheson moved that the Commission defer assessment of any civil penalties for these violations until the completion of the investigation by the Office of the Attorney General. Mr. McKee seconded.

Motion passed unanimously (4-0).

4. Audit of Sen. Michael D. Thibodeau

In 2010, State Representative Michael D. Thibodeau ran for State Senate as a Maine Clean Election Act candidate. During a random audit of his campaign, his treasurer submitted a log of his campaign travel. The log was requested because the campaign reimbursed the candidate a total of \$816.47 for his vehicle travel. The log did not include the destination or purpose of the campaign trips, as required by the Commission's rule. The audit disclosed no other violations. At the October 28, 2011 meeting, the Commission requested that the candidate provide additional information concerning how the travel was recorded and Senator Thibodeau has submitted an affidavit.

Mr. McKee said the explanation by the candidate was legitimate and the affidavit basically cleared up the issues.

Ms. Gardiner explained that the matter was held over in order to see whether the affidavit would establish the veracity of the travel log in order to determine if the expenditure was properly made. The penalty was

assessed for defects in the travel log. The issue of whether the reimbursement was properly made was the issue that was held over.

Mr. Duchette stated also that because the candidate did not attend the meeting in October when the issue was discussed, the Commission could not ask the candidate directly to explain how and when the log was prepared.

Mr. Wayne said usually he leaves it up to the candidate to decide whether or not to come to the meeting. Sen. Thibodeau was not aware that there might be questions about the accuracy of the travel log but Mr. Wayne said that he believes that Sen. Thibodeau would have attended if he had known that the Commission needed more information.

Ms. Matheson moved that the Commission take this matter off the table. Mr. McKee seconded.

Motion passed unanimously (4-0).

Ms. Matheson moved that the Commission accept the staff recommendation from the October 28 meeting and find that Senator Thibodeau violated Chapter 3, Section 7(1)(C) and assess a penalty of \$100. Mr. McKee seconded.

Motion passed unanimously (4-0).

Ms. Amero added that discussion had taken place at the October meeting with regard to requiring more information from candidates on travel log mileage, especially to include the destination and purpose of the travel. She said due to the increase in the number of these issues brought before the Commission it seems that a rule change is in order.

Mr. McKee said when large sums of money are being used for travel, more detail is warranted. He said being vague in the travel log will cause more trouble for candidates down the road if they are not diligent about keeping better records.

Mr. Duchette stated that there is a sample log in the Guidebook for candidates to use.

Ms. Amero said that sample should be required for all candidates, not optional.

Mr. Dinan said from an audit standpoint what would enable the process is odometer readings.

Mr. McKee said the actual odometer readout was certainly another piece of information but perhaps not critical. It may be sufficient for the candidate to write down the number of miles.

Mr. Duchette said the destination and purpose are critical in verifying the use.

Mr. Greenier said the chart supplied by the Commission in the Candidate Guidebook should be a requirement for candidates.

Mr. McKee said making a rule to require a specific form is not appropriate when the rules spell out what should be included if candidates wish to be reimbursed for travel expenditures.

5. Audit of Former Rep. Sean Flaherty

Former State Representative Sean Flaherty was running for re-election in 2010 as a Maine Clean Election Act (MCEA) candidate who was randomly selected for an audit. The only finding in the audit was that the candidate commingled \$216.29 of personal funds with his MCEA funds. The audit did not indicate any misuse of MCEA funds or impermissible in-kind contribution to the campaign.

Mr. Dinan explained that the campaign bank account pre-dated the 2010 election period. The balance in the account at the beginning of Rep. Flaherty's 2010 campaign was \$216.29, an amount that had been in the account for at least a year before the campaign started and was not reported. Mr. Flaherty informed Mr. Dinan that in May, 2010, he realized that leaving the funds in the account was unallowable, and that the Commission would consider it commingling of funds so he wrote a check to himself for \$100 to at least partially resolve the problem. However, the remaining balance of \$116.29 was left in the account through the general election period. By failing to disburse these funds, the candidate commingled personal and

MCEA funds. Mr. Dinan said that Rep. Flaherty wrote a note to the Commission accepting full responsibility for the commingling and does not dispute the recommended penalty.

Mr. Duchette moved that the Commission accept the staff recommendation and find that former Rep. Flaherty violated 21-A M.R.S.A. § 1125(7-A) by commingling funds and assess a penalty of \$100. Ms. Amero seconded.

Motion passed unanimously (4-0).

Mr. McKee moved to adjourn and Mr. Duchette seconded the motion, which passed unanimously.

Meeting adjourned at 11:00 a.m.

Respectfully submitted,

Jonathan Wayne, Executive Director