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

Minutes of the July 28, 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.; Hon. Edward M. Youngblood; Margaret E. Matheson, Esq., Michael T. Healy, Esq. Staff: Executive Director Jonathan Wayne; Phyllis Gardiner, Counsel.

At 9:00 a.m., Chair Walter McKee convened the meeting.
The Commission considered the following items:

Agenda Item #1. Ratification of Minutes of the June 23, 2011 Meeting
Ms. Matheson moved to accept the minutes as drafted and Mr. Duchette seconded the motion.
Motion passed unanimously (5-0).

Agenda Item #2. Public Comment on Changes to the Maine Clean Election Act Program
In June 2011, the U.S. Supreme Court, in Arizona Free Enterprise Club's Freedom Club PAC v. Bennett, ruled that Arizona could not pay matching funds to candidates in that state's public campaign financing program because the matching funds systems as it existed in Arizona was an unconstitutional burden of the free speech rights of others. There was already litigation pending in the U.S. District Court for the District of Maine that brought similar claims against Maine's matching funds system. As a result of the Arizona Free Enterprise decision, the District Court issued an order prohibiting the State of Maine from paying matching funds to Maine Clean Election Act candidates in the 2012 elections. In anticipation that the Supreme Court decision could require a modification of the MCEA, the Maine Legislature has directed the Ethics Commission to study the Maine Clean Election Act program and to recommend any necessary changes by mid-October. The Commission heard the following public comments on suggested changes to the program.

Alison Smith, President of Maine Citizens for Clean Elections (MCCE), said this new ruling was an opportunity to improve upon the current system. The Court did affirm the constitutionality of publicly funded campaigns but it also ruled that matching funds could not be based on the fundraising or spending of an opponent or by independent spenders. She said that the Maine Clean Election Act has served the people of Maine well over the past ten years. The MCCE has done polling over the years and during this year as well. A strong super-majority of Mainers support the Clean Election Act program. She said the success of the program is measured by the amount of participation by candidates and voters. It is a viable program and provides first-time candidates the means to run competitive campaigns. Candidates appreciate the current system because it is easy to understand and use and it allows them to spend time making contact with voters rather than raising funds through political donors. Voters like the program for those reasons, too, and they also appreciate that Clean Election legislators serve without being beholden to any special interests. The current system is inclusive and fair and it works. All these values can still be upheld even after the Supreme Court decision. The matching funds system was designed to ensure that candidates would have sufficient campaign funds to run an effective race even if they had a very well-funded opponent or if there were a high level of independent spending. A second objective was to level the playing field with more speech, since the Supreme Court would not allow spending limits. In this new legal landscape, Maine should focus on the first objective – providing sufficient funds for an effective campaign, rather than leveling the playing field. The matching funds system was not perfect. Matching funds were often cause for complaints that they were distributed too late to be used effectively. The new system can improve and strengthen the program by providing candidates with more certainty about how much funding will be available and when.

Ms. Smith offered comments on the three general options provided by the Commission staff for discussion.

1.) Allow candidates to re-qualify for additional funds. Candidates would not accept private contributions but could collect and submit additional qualifying contributions from voters in their districts. This would provide limited additional funds later in the campaign and would be optional for the candidates. She said this was feasible in her opinion. She said candidates should be able to raise the additional qualifying contributions early in the campaign but should not be prohibited from raising them later as long as the Commission has enough time to process them.

2.) Allow candidates to raise limited private contributions which would be matched with public funds. This would not be a full public funding system as the current system is now. After initially qualifying candidates would continue to raise and spend private contributions. She said adding private funds to the system and putting an emphasis on raising private contributions could lessen the impact of Clean Elections and damage the credibility of the program with the public. Moreover, the idea of using public funds to raise private funds runs counter to the spirit of the program.

3.) Give candidates an initial distribution with no additional funds. She said this option has the benefit of simplicity but may not have the broad appeal of the current system because it could cause a candidate to be a "sitting duck" when outspent by an opponent or by independent spenders with no opportunity to access additional funds to compete. Unless the initial distributions were significantly higher than they are now, this option would increase the influence of third party spending on independent expenditures in candidate elections. That is a result that most candidates and voters would find objectionable. She also said that raising the initial distribution across the board could result in too much money being spent in some races. She noted that Connecticut did use this approach and doubled the initial distribution to candidates in the last election and even though Connecticut's program had a successful run last year, it was costly.

Ms. Smith said when rethinking the Clean Election program after the Supreme Court's decision, the priority should be to preserve the fundamental value and benefits of the program as much as possible. She said the new system not only has to comply with the Supreme Court but also has to be right for Maine. The new system should be inclusive and fair so that all qualified Mainers can participate. Similarly situated candidates should be treated the same. The system should be viable for most races. The funding should be adequate to run a competitive campaign and win, even against an incumbent. There should be continuity with the current system and the new system should remain simple to understand and to participate in. She said it must be true to the original intent of the Act to minimize the importance of private contributions, strengthen the ties between candidates and voters, increase transparency, and provide opportunity for a diverse array of Mainers to run for office and serve without ties to special interests. The cost of the new system should remain reasonable for the state and provide real value. And the system should provide for the good stewardship of public funds and accountability. Ms. Smith said while the MCCE disagrees with

the Supreme Court's decision, the new review of the program will give Maine an opportunity to strengthen an already excellent program.

Mr. Healy asked Ms. Smith what she felt an adequate amount would be for a Senate and House campaign to receive.

Ms. Smith suggested that question would be best answered by people who run campaigns; however, she has heard from some people who are active in political campaigns that the current amount is low and the area of $5,000 may be more realistic.

Ms. Smith said she is a strong supporter of keeping the gubernatorial campaigns within the program, in answer to Mr. Healy's question.

Mr. Duchette noted that the amount of matching funds distributed in an election cycle may indicate that the initial payments do need to be higher in order to run an effective and competitive campaign.

Ms. Smith said that currently matching funds are driven by spending by an opponent, so as the opponent spends more, the matching funds will increase as well. The amount of matching funds distributed in a previous election was a factor in the Commission's calculation of the initial payment for the next election. However, the amount of matching funds distributed does not necessarily mean that the initial distribution is too low. That is why the Legislature gave the Commission more leeway in determining which factors to consider in calculating initial distribution amounts. She said the "one size fits all" approach would not be an effective way to use public funding because it would result in the distribution of more funds overall than would be necessary. She explained that a better approach would be to determine a baseline amount for an effective campaign in a contested race, base the initial distribution on that amount, and have another mechanism by which candidates could obtain additional funds later in the campaign, if necessary.

Daniel I. Billings, Esq., Legal Counsel for the Governor, said that the Governor has been advised of the issues regarding changes to the Maine Clean Election Act in light of the Supreme Court case. He said the Governor does not have any fixed position on this issue but is interested in the process as it goes through the Commission and the Legislature. The Governor remains opposed to keeping the gubernatorial part of

the MCEA. Mr. Billings advised the Commission that in reviewing possible changes to the MCEA, the legislative and gubernatorial programs should be considered separately because they are very different types of campaigns. He said the fact that very few legislative candidates receive matching funds indicates that the current initial amounts are appropriate and sufficient. However, the elimination of matching funds in the gubernatorial program has a much larger impact on the viability of an MCEA gubernatorial candidate.

Mr. Billings stated, also, that a viable option would be to do nothing since the only part of the program affected by the Supreme Court decision is matching funds. The rest of the program remains constitutional. It is a false premise that the Supreme Court decision has created a crisis and he cautioned against a rush to make changes. He explained that the original Act enacted by the voters in 1996 is substantially different than the current one. He said nearly every year since its inception the Act has been changed substantially to address problem issues that have arisen. He suggested simply moving forward with the law as is, without matching funds, for the next election and see how it plays out and then make changes from that point, if necessary.

Mr. Billings said he would support changes in the reporting requirements. He said there are substantial and burdensome requirements that were adopted to implement the policies behind matching funds which are no longer necessary. He said that the reporting requirements regarding certain electioneering communications, 24-hour reports, and accelerated reports should be re-examined to see whether they are necessary after the elimination of matching funds. He also said another part of election law that should be reconsidered is contribution limits. He said when the Act was adopted there was a substantial reduction of the limits from $1,000 per person and $5,000 per political committee or party to $250 per individual or entity. More recently, that amount was raised to $350.

Mr. Billings said candidates' decisions to participate in the program were based on pragmatism not necessarily on the popularity of the program. He said that he would advise candidates to run as a MCEA candidate, mostly because of the matching funds component of the program. He said without matching funds, there will be less incentive or pressure for candidates to participate in the program.

Mr. Healy asked if there were any statistics on the success rate and spending amounts for traditionally financed versus publicly financed candidates and what his thoughts were on the amount of the initial distribution.

Mr. Billings said there were limited cases of self-funded candidates being successful. He said the current amounts for the initial distribution were adequate. He said in most races involving large independent expenditures by parties or political committees, they are made on both sides.

Ann Luther, a board member of Maine Citizens for Clean Elections, said the do-nothing option would actually mean that candidates would get a lower distribution because the Legislature passed a resolve again this year which reduced the initial distribution amounts for the next election cycle. She said that she was concerned that under-funding campaigns would tend to favor the incumbents over challengers. There is already some evidence that challengers have not been competitive enough in facing incumbents as it is. Ms. Luther closed by saying that this was a citizen initiated law which was and remains very popular with the public. It passed with broad majority of the voters. To respect the will of the people who enacted this law, Ms. Luther said stewardship of the program requires that we keep the program healthy and working effectively.

In response to a question from Mr. Healy, Ms. Luther said she has no reliable data with regard to what the amount should be for the initial distribution. She said she has heard anecdotally that it could be as much as $6,000 for the House and over $19,000 for the Senate.

Public comment ended.

Agenda Item #3. Matching Funds in the August 2011 Special Election

A special election has been scheduled for August 16, 2011 to elect a new State Representative for District 121 in Cape Elizabeth. The staff informed the Commission that because of the U.S. Supreme Court decision in Arizona Free Enterprise Club v. Bennett, the U.S. District Court entered an order declaring the matching funds provision of the Maine Clean Election Act unconstitutional. As a result, the Commission will not make any payments of matching funds in this special election.

Agenda Item #4. Ellen Lemire – Update on Candidate's Sale of Stamps

Mr. Wayne explained that this issue was a non-compliant situation that the staff is trying to resolve on its own. No action was required by the Commissioners at the meeting. Ellen Lemire was a candidate for the Maine House of Representatives in the 2010 election. Her campaign purchased rolls of postage stamps worth $1,320 that the campaign did not use. The Commission staff has provided her with an extended period of time to sell the stamps and to return the proceeds to the Commission. The candidate has sold (and returned the proceeds for) most of the postage, except for eight rolls worth $352. He said if the situation is not resolved by early August, the Commission staff intends to schedule this matter for the Commissioners' meeting on August 18 as an enforcement matter with a possible civil penalty.

Mr. McKee said he did not like the idea of penalizing someone for an innocent mistake. He said he would favor allowing the candidate more time and not make this an enforcement matter at this time.

Mr. Duchette suggested giving her a deadline to return the funds.

Agenda Item #5. Rudolph T. St. Peter/Recommended Findings of Violation

Mr. Dinan reviewed the five audit findings in Mr. St. Peter's audit which began in December of 2010 and has just been completed due to difficulty getting the documentation from the candidate.

- Finding No. 1: Use of MCEA funds to pay qualifying period expenditures. The candidate used public funds of $74.80 for travel expenses that occurred prior to becoming certified.
- Finding No. 2: Undocumented campaign expenditures. In two cases, payments were reported but no vendor invoice was provided to explain the expenditures, one of which was a gas card purchase.
- Finding No. 3: Reported expenditures with no record of disbursement. Three expenditures were reported but no record of them is apparent in the campaign bank account. These were mileage reimbursements.
- Finding No. 4: Unreported campaign receipts and disbursements. One refund was made to the campaign by Citadel Broadcasting but was not reported to the Commission. Mr. Dinan said he had to contact Citadel and then was provided documentation which included a copy

of a refund check that was unreported by the candidate. Also after reviewing the bank account, a disbursement of $31 occurred but was not documented in any fashion.

- Finding No. 5: Incomplete Mileage Log. Candidates are required to record travel origin, destination and purpose for campaigning travel in order to receive reimbursement. Mr. St. Peter only recorded "campaigning" with no destination or purpose.

Mr. Healy asked whether the candidate or treasurer wrote the reimbursement checks and Mr. Dinan said both had signature authority on the account, but that he would have to review the records again to verifying who wrote the checks.

Mr. Healy questioned whether the treasurer should be the person penalized for the errors since checks were written and travel reimbursement made without the proper documentation.

Mr. Dinan said generally treasurers do not have any financial background and are not familiar with the correct bookkeeping methods. Mr. Dinan said regardless of who signs the check, documentation needs to be retained for each disbursement.

Mr. Healy asked whether it would be burdensome to require candidates to have a qualified treasurer and Mr. Dinan said that it would be burdensome since candidates have difficulty finding treasurers now.

Mr. Wayne said the total penalties recommended by the staff are $350 and a refund to the Clean Election fund of $74.80 for a total of $424.80. He said candidates have varying skill levels and this candidate has a below average skill level for running a campaign.

Mr. McKee said there are many factors to consider in the penalty phase such as negligence or recklessness which it appears the staff has done.

Mr. Wayne said he believes this amount to be fair for the circumstances.

Mr. Healy said he understood this issue was a paperwork problem and not that Mr. St. Peter was reimbursing himself improperly.

Mr. Wayne said this was a very large district so the mileage will be higher than some other districts.

Mr. Dinan stated that the mileage reimbursement totaled $1,965 which made up 41% of the campaign's total expenditures.

Mr. Duchette asked whether Mr. St. Peter has contested any of the findings or had any comments.

Mr. Wayne said he spoke on the phone with Mr. St. Peter and he was not disputing the findings but blamed other people in his campaign for the lack of documentation and errors in bookkeeping.

Mr. Duchette stated that the Commission is presented with the facts in order to make their decision but when there are no comments received from the candidate, it is difficult to make an assessment.

Mr. Dinan said Mr. St. Peter was offered the same opportunity as all candidates who go through the audit process and he chose not to be present today.

Mr. Wayne said he received a phone call from Mr. St. Peter after he received the July final audit and was told that he would not be coming to the meeting. He said candidates have two opportunities to comment during the audit process and Mr. St. Peter chose not to.

Mr. Healy stated that if someone chooses not to be present during their proceeding, he viewed it as a default. He said he would support giving a candidate written notice that if the candidate does not respond to the audit report, the Commission may assume that the candidate does not dispute any of the audit findings.

Mr. McKee moved the Commission find Mr. St. Peter in violation and accept the staff recommendation as follows:

- Finding No. 1 – Use of MCEA funds to pay for qualifying period expenditures: Candidate is directed to repay $74.80 to the Clean Election fund

- Finding No. 2 – Undocumented campaign expenditures: Assess a penalty of $125
- Finding No. 3 – Reported expenditures with no record of disbursement: Assess a penalty of $125
- Finding No. 4 – Unreported campaign receipts and disbursements: Assess a penalty of $125
- Finding No. 5 – Incomplete Mileage Log: Assess a penalty of $100.

Mr. Youngblood seconded.

Motion passed unanimously (5-0).

Agenda Item #6. Audits of Maine Clean Election Act Campaigns

In addition to Rudolph T. St. Peter, the Commission's auditor has completed eleven audits of 2010 Maine Clean Election Act candidates. No exceptions (violations) were found.

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

Meeting adjourned at 10:25 a.m.

Respectfully submitted,

Jonathan Wayne, Executive Director