Agenda Item #1

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

Minutes of the June 24, 2010, Meeting of the
Commission on Governmental Ethics and Election Practices
Held at the Commission Office, 45 Memorial Circle,
2nd Floor, Augusta, Maine

Present: Walter F. McKee, Esq., Chair; André G. Duchette, Esq.; Hon. Edward M. Youngblood; Margaret E. Matheson, 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 May 27, 2010 Meeting

Mr. Youngblood moved to accept the minutes of the May 27, 2010 meeting as drafted. Ms. Matheson seconded the motion.

The motion passed unanimously (4-0).

Agenda Item #2. Request for Waiver of Late-Filing Penalty/Bill Beardsley

Mr. Wayne explained that candidates in the gubernatorial primary elections were required to file a campaign finance report by 11:59 p.m. on April 27, 2010. Bill Beardsley's campaign filed the report approximately two hours late on the morning of April 28 due to difficulties that the campaign treasurer had in attempting to use the data upload feature of the e-filing system. The campaign's treasurer had to manually input all the information. However, he was not able to completely enter the information before the deadline at 11:59. The campaign requests a waiver of the preliminary penalty. Mr. Wayne said due to mitigating circumstances and the fact that this was the first time the campaign had used the upload feature of the e-filing system and was unfamiliar with the process, the staff is recommending the report be considered late but the penalty waived.

Michael Pajak, campaign manager for Bill Beardsley, explained that the treasurer thought that the data upload would work. He said the entries could not be completed by midnight, even though every effort was made to do so.

Mr. McKee said he completely understood how this could happen because uploading the data for the first time could be challenging. He said that it was significant to him that this was a first time filer and that there was no harm caused to the public due to the lateness of the filing by one hour and fifty-three minutes.

Mr. Youngblood asked if there were any attempts by staff to make the uploading process any easier for candidates.

Mr. Wayne said the process does work and several candidates have used it successfully for their reporting. He said the staff continues to look into ways to make it more flexible and easier for the candidates to use.

Mr. Duchette moved to accept the staff recommendation to waive the penalty. Ms. Matheson seconded.

Motion passed unanimously (4-0).

Agenda Item #3. Request by Julius Erdo to Investigate the Piscataquis County Democratic Committee and Sharon Libby Jones

Mr. Wayne explained that Julius Erdo requests that the Commission investigate misreporting by the Piscataquis County Democratic Committee (PCDC) from 2006-2009 and also to investigate expenditures of Maine Clean Election Act funds by 2006 candidate Sharon Libby Jones. Mr. Wayne stated that the Commission staff would be willing to investigate the Libby Jones issue further if the Commission deems necessary; however, based upon the preliminary investigation, the staff recommends no further investigation is necessary.

Mr. Wayne said regarding the County Committee issue, the staff went through all the Committee's bank statements and reports from 2006 through 2009 with the representatives of the Committee and determined that there were several contributions and expenditures that were not reported. With the Commission staff's assistance, the Committee has amended these reports for this time period. It is that staff's view that even

though the reports were filed by the appropriate deadlines, four reports were substantially non-conforming due to the omitted transactions and could be considered late-filed.

Mr. McKee stated that dealing with issues that occurred many years ago is difficult to sort out accurately. He asked why these issues were being brought up now instead of being addressed when they occurred.

Mr. Wayne said Mr. Erdo had never filed a request for investigation until now. He stated that due to the lapse in time, it raises concern whether further investigation is merited or worthy of the time it would require. He said it would have been more appropriate to investigate if the complaint had been filed years ago.

Mr. Julius Erdo explained that he did not raise the issue sooner because he was working out of state on a construction job in New Jersey. He listed the three issues he had concerns with. He said his contribution of $250 did not include his name on the October 6, 2004 report. He said after he was elected Chair of the Committee he made a contribution of $500 which was listed with the wrong date and that had been corrected. He also said there was a $500 loan he made on May 8 which did not get reported at all and another on May 31. He explained that he contacted the Commission on February 7, 2007, and informed the Party Committee Registrar, Jeremy Brown, that the $500 donation was not reported. He said Mr. Brown told him that most likely it had been included in an October 31, 2006 entry for a $928 contribution which Mr. Erdo felt the Committee made illegally because it was a contribution to itself.

Mr. Erdo said every report sent in by the treasurer and assistant treasurer along with help by Sharon Libby Jones had mistakes that were not picked up and he was blamed for them.

Mr. McKee stated that Mr. Erdo sued the Committee and received a judgment and he was able to get back some of the money. He said that the Court found that there was not enough evidence to support that Mr. Erdo's claim that he had made a second loan to the Committee. He said Mr. Erdo has had a determination by Justice Anderson regarding his claim against this Committee. He asked if Mr. Erdo believed that some of these monies should have been reported by the Committee.

Mr. Erdo said the only proof he has for the loan payment he made was his own journal entry and daily calendar.

Mr. McKee said he understands that Mr. Erdo was out of state for awhile, however a determination is very difficult when trying to recreate a events that happened years ago.

Michael Saxl, Esq., working *pro bono* to help the Committee and Sharon Libby Jones, explained that these are volunteers who participate in the democratic process and do their best to comply with reporting requirements. He said Mr. Erdo's complaints from four and six years ago when he was Chair of the Committee are not factually accurate. He said there are no records of loans. He said in an effort to be completely transparent the Committee reviewed their statements and checkbook with Commission staff for hours going through each report to be sure nothing was done inappropriately. He said mistakes were made and they have been corrected, but the reports were filed in good faith. He said the Committee has filed amendments which has satisfied the law; however, if the Commission finds the mistakes were substantial enough to make the reports not timely, he requested the fine be waived in total since the Committee has already paid out over $1700 in settling the dispute with Mr. Erdo. He said the Committee's intent was to be as transparent as possible and they did so as soon as they could.

Mr. McKee said aside from the timing of the complaint which Mr. Erdo brought forward, there were mistakes that were discovered and the errors were large in proportion to the Committee's overall budget.

Mr. Saxl said, although misguided, he felt the Committee relied on the Commission to review the report for accuracy when it was filed. He said the errors were not intentional and as soon as the errors were discovered, the Committee corrected them. He said there was no harm done due to the errors. The Committee has spent a substantial amount of money already over this dispute and the treasurer and assistant treasurer have resigned from their positions.

Mr. McKee stated for clarity that the Commission does not take this matter lightly. He said he was disappointed in the way it was brought forward so late. He said the Commission takes these types of errors and omissions very seriously and party committees need to know that accurate reporting is a serious matter.

Had the complaint been brought forward at the time of the filing, the outcome could have been different. He stated he appreciated all the time the Committee spent going through the books and taking that effort.

Mr. Youngblood moved that the Commission conduct no further investigation of these matters. Mr. Duchette seconded.

The motion passed unanimously (4-0).

Mr. McKee moved that the Commission find that four reports filed by the Piscataquis County Democratic Committee did not substantially conform to the disclosure requirements, thereby making them not timely filed. Mr. Youngblood seconded.

Motion passed unanimously (4-0).

Mr. Youngblood moved that the Commission adopt the staff recommendation of a 90% reduction of the $2,000 penalty, which would be $50 per late report for a total of $200. Mr. McKee seconded.

Ms. Matheson said it is important to send a message; however, many issues here have already been dealt with by the court and she would support cutting the figure in half.

Mr. Duchette said he supported and recognized both sides and would support a further reduction.

Motion failed (2-2), with Mr. McKee and Mr. Youngblood in favor. Mr. Duchette and Ms. Matheson opposed.

Mr. Duchette moved that the Commission assess a penalty of $25 per late report for a total of $100. Ms. Matheson seconded.

Motion passed unanimously (4-0).

Agenda Item #4. Petition by National Organization for Marriage to Dismiss Investigation

Mr. Wayne explained that on June 2, 1010, the National Organization for Marriage (NOM) petitioned the Commission to dismiss its investigation of NOM as outside the Commission's scope of legal authority. He said there were no representatives from NOM present at the meeting today. He said NOM is now claiming that the Commission did not have the legal authority to conduct the investigation based on their interpretation of the investigation statute, 21-A M.R.S.A. § 1003(1). Their argument is that the statute says, "The commission may undertake audits and investigations to determine the facts concerning the registration of a candidate, treasurer, political committee or political action committee ...." NOM claims that because "ballot question committee" is not listed in the statute, the investigation to determine if NOM should have registered as a ballot question committee is not authorized. Mr. Wayne said this argument was not raised at the beginning of the investigation but has come about due to the proceedings in the Superior Court case.

Ms. Gardiner explained that the question arose during oral argument in Superior Court with Justice Marden. She said Justice Marden, on his own, asked whether the Commission had authority to investigate given that the words "ballot question committee" do not appear in § 1003 of Title 21-A. She said the question may have raised a flag for NOM because a few weeks after, NOM filed this petition. She said they have not brought it forward to the courts because she believes they realize they would have to bring it before the Commission first.

Mr. McKee confirmed with Mr. Wayne that no one from NOM was present today to speak to this issue.

Fred Karger, of California, who filed the original complaint against NOM last August, explained the background for the complaint and some activities by NOM. He expressed his appreciation for the Commission standing up against NOM's scare tactics. He said the ballot question committees do fall under Maine's election law; therefore, NOM's claims have no legal standing. He commended the Commission for their courage in this matter.

Joseph Greenier, concerned citizen from Stockton Springs, was neither for nor against either party in this matter but stated the importance of disclosure and knowing who is supporting any initiative.

Ms. Matheson thanked the staff for their compelling analysis and said she supported the staff recommendation for denial of the petition.

Mr. McKee expressed concern over issues that seem to keep arising even though they were not raised in the original petition. He said this decision, as all the others before, will be appealed to Superior Court, most likely.

Mr. McKee moved that the Commission deny NOM's petition to dismiss the investigation. Mr. Duchette seconded.

Motion passed unanimously (4-0).

Other Business

Complaint from Robert Stone

Mr. Wayne explained that a complaint had been received from Robert Stone of Auburn regarding the lack of a disclosure statement on automated phone calls ("robocalls") advocating the defeat of Paul LePage that were made on the day before the primary election. The robocalls contained a negative message critical of Mr. LePage's position on same sex marriage. Mr. Wayne said he received other calls from members of the public who also were concerned that the robocalls did not have a disclosure statement. Mr. Wayne said the law is very clear that when these types of expenditures on communications are made, the name of the organization that paid for the communication must be disclosed in the call as well as whether the communication was authorized by any candidate. He said none of this information was disclosed in the calls and that would constitute a legal violation.

Mr. McKee expressed concern over this issue and said it was very disturbing. He said this type of call is exactly the sort of political communication that warrants full disclosure. He said he would support further investigation by staff with whatever means of investigation are necessary including subpoenas of communication carriers.

Daniel I. Billings, Esq., stated that this matter meets the standard (*i.e.*, that a violation may have occurred) for further investigation by the Commission. He said the steps the staff is suggesting to take regarding the

robocalls goes beyond the preliminary fact finding stage and, if an investigation is to take place, that decision should be made by a vote of the Commission as required by the Commission's rules. He said that there should be some consideration of what constitutes preliminary fact-finding and what constitutes an investigation. He said the previous matter regarding the Piscataquis County Democratic Committee and Sharon Libby Jones investigations did go beyond fact finding, yet an investigation was not authorized by the Commission. He said it is important for the Commission to determine what constitutes preliminary fact finding and what warrants further investigation which requires authorization from the Commission.

Mr. Wayne stated the potential violation would fall under § 1014(5) which relates to telephone calls and what the disclosure requirements are. The standard with regard to conducting an investigation falls under § 1003(2), "A person may apply in writing to the commission requesting an investigation concerning [expenditures]. The commission shall review the application and shall make the investigation if the reasons stated for the request show sufficient grounds for believing that a violation may have occurred." He said the staff's view is a violation may have occurred because there was no disclosure statement included in the robocalls.

Mr. McKee moved that the Commission make a determination that there is sufficient information to believe that a violation may have occurred and to authorize an investigation. Mr. Duchette seconded.

Motion passed unanimously (4-0).

Maine Citizens for Clean Elections

Alison Smith, co-chair of MCCE, presented the results of a recent survey MCCE conducted regarding campaign finance disclosure laws. She said, in summary, that Maine voters strongly support Maine's campaign finance disclosure laws; believe that the names of political groups and donors should be available to the public; want to know who pays for campaign ads; and value the information that disclosure provides. The MCCE hopes that the Commission will find this information to be helpful since it is so central to the Commission's work.

Request from Concerned Citizens Joseph and Michelle Greenier

Mr. Greenier said he has brought this issue up previously to the Commission staff. He said a candidate who runs for office under the MCEA and loses that race should not be allowed to run another campaign with MCE funds for another seat during the same election. He said this creates a chance for candidates to "double-dip" in the process. He said people should only be allowed to receive public funds once.

Mr. McKee stated that this issue should be brought before the Legislature since that is where the laws are made and changed if need be. He said if a change is to be made, then Mr. Greenier should bring it before the Legislature during the next session.

Mr. Youngblood asked for an update with the MCEA funding.

Mr. Wayne stated that there are sufficient funds to cover the legislative and gubernatorial candidates with a small cushion.

Ms. Matheson moved to adjourn. Mr. McKee seconded. The motion passed unanimously (4-0).

Meeting adjourned at 10:30 a.m.

Respectfully submitted,

Jonathan Wayne, Executive Director