



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

Approved on:

Minutes of the December 19, 2012, 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.; Michael T. Healy, Esq.; Hon. Jane A. Amero
Staff: Executive Director Jonathan Wayne; Phyllis Gardiner, Counsel

At 9:10 a.m., Chair Walter McKee convened the meeting.

The Commission considered the following items:

Agenda Item #1. Ratification of Minutes of the November 5, 2012 Special Meeting

Ms. Matheson moved to accept the minutes as drafted. Mr. Duchette seconded.

Mr. Healy asked whether the Commission would be bound by its finding of fact in the Michael Nadeau matter at the hearing which has been rescheduled to January.

Mr. McKee explained the Commission made a probable cause determination only in order to initiate an investigation and that probable cause finding has no evidentiary value going forward in the investigation. He said the minutes are accurate and the November 5 determination simply gives the Commission legal authority to go forward with the investigation.

Motion to accept the minutes as drafted passed unanimously (5-0).

Agenda Item #2. Hearing on Potential Campaign Finance Violations/House of Representatives, District 1 *(postponed to January 17, 2013)*

Agenda Item #3. Acceptance of Over-the-Limit Loan by Rep. Alan M. Casavant

Mr. Wayne explained that this issue came up during the staff's routine review of campaign finance reports. On September 14, 2012, Rep. Casavant's legislative campaign accepted a loan of \$1,000 from his 2011 mayoral campaign committee. Rep. Casavant is also the mayor of Biddeford. The legislative campaign repaid the loan on October 20, 2012. If a loan is not from the candidate, the candidate's spouse or domestic partner, or a financial institution, a loan from any other entity must be no more than the contribution limit for legislative candidates, which is \$350. Therefore, the receipt of the loan from his mayoral campaign is a violation of the \$350 contribution limit for legislative candidates. Rep. Casavant has responded that he did not view the loan as a contribution, the loan was repaid and publicly reported, any violation was unintentional, and that he relied on advice from others before receiving the loan.

Mr. McKee asked what the range was for the penalty amount and Mr. Wayne said between \$0 and \$650.

Mr. Healy asked how long the loan was outstanding and Mr. Wayne said approximately six weeks.

Rep. Alan M. Casavant explained that he had no intention of violating the law and believed that transferring funds from a campaign account with his name on it to another campaign account with his name on it was acceptable. He said he gained no advantage by doing this and was only trying to be pragmatic. He explained that the funds were left over from his mayoral campaign and he intended to reimburse the account after he had done some fundraising for his legislative campaign. He said the amount of the fine, in his view, implies that he did something unethical and he does not feel that he did. He said he was being very transparent in reporting the loan and was not trying to be deceitful. He simply needed money to pay for an order of palm cards. He said he was ignorant of the loan law but the law was not specific to his situation.

Mr. McKee stated there was no argument that there was a violation however the severity of the violation and the assessment of the penalty were the issues for discussion.

Mr. Duchette asked if the situation would be treated differently if the loan was given by a company in which the candidate was the sole owner. Mr. Wayne said that would be considered separate from the candidate. Mr. Wayne said there is no specific policy or rule for this situation.

Mr. Healy asked if the mayoral committee was a separate entity from the candidate. Mr. Wayne said he assumed it was not a separate legal entity.

Mr. McKee moved that the Commission find that there was a violation. Mr. Healy seconded.

Ms. Matheson said there was a violation of the rule and also the statute.

Mr. Duchette noted that the funds were in the candidate's mayoral account instead of the candidate's personal account and the statute does not get that specific to make a distinction between the two.

Mr. Healy asked whether it was acceptable for the candidate to take money out of his own pocket and loan it to the legislative committee. Mr. Wayne said that was acceptable because the candidate and spouse can loan an unlimited amount.

Mr. Healy said the real question then was, was the money he loaned his or was it another entity's money.

Mr. McKee asked Mr. Casavant if the account was set up as a committee account or individual account. Mr. Casavant explained that it was a political account in his name with a treasurer. He explained that originally he intended to disburse the remaining balance in the account to a food pantry; however, he got busy with other issues and it was placed on the back burner. He said people donated the money for political purposes and he believed that he could not use those funds for anything other than a political purpose.

Mr. Healy explained that if the funds belonged to the candidate, then the loan was legal but if the funds were someone else's money, then the loan was not legal and a violation occurred.

Mr. Casavant said that in his view it was his money to use for political purposes.

Mr. McKee said Mr. Casavant has the full authority to use the account as he wishes.

Mr. Wayne said the law requires that the funds in any campaign account be kept separate and cannot be commingled with any other funds. Rep. Casavant's mayoral account was subject to all campaign finance reporting laws. He explained further that after an election there are specific restrictions on how campaign funds can be disbursed, for example for certain political purposes or donations to a charity.

Mr. Healy stated that the mayoral account was not in the name of a registered political committee. He asked if there were a surplus in that account after the election, were there restrictions in the law as to what Rep. Casavant can do with that surplus. Mr. Wayne said there were restrictions.

Ms. Gardiner referred to section 1017(8) which listed those restrictions and explained that since Biddeford was a city over of 15,000 or more, this statute applies.

Mr. McKee moved that the Commission make a finding of violation. Mr. Healy seconded.

Motion passed unanimously (5-0).

Mr. McKee moved to assess a penalty of \$75. Mr. Duchette seconded.

Motion passed unanimously (5-0).

Agenda Item #4. Use of Maine Clean Election Act Funds for Mailing by Rep. James Parker

Former Rep. James Parker of Veazie reported making two payments of Maine Clean Election Act funds in June 2012 totaling roughly \$59 for stamps and envelopes. A constituent has requested that the Commission investigate whether Rep. Parker used the stamps and envelopes for a June 29 mailing related to the annual meeting of the Veazie Sewer District. Rep. Parker responded that the sewer district mailing was paid for with personal funds, not public campaign funds.

Mr. McKee moved to find that there is no basis for further investigation. Ms. Amero seconded.

Motion passed unanimously (5-0).

Agenda Item #5. Request for Waiver of Late Filing Penalty by L PAC

L PAC is a national political action committee formed in April 2012. In early September, the PAC solicited contributions on its Facebook page for the purpose of influencing the marriage initiative on Maine's November 6, 2012 election ballot. It registered and filed an initial report with the Commission on October 15, 2012. Based on the dates of its contributions, however, L PAC's registration, initial campaign finance report, and October 5 quarterly report were late. L PAC was also late in filing a report due on October 26, 2012. The PAC requests a waiver of the late-filing penalties because of a lack of familiarity with Maine campaign finance laws and because it made a bona fide effort to comply with statutory requirements.

Kate Knox, Esq., representing L PAC, said her client accepts the reduced amount of the penalty. She said this matter was quite complicated and took some time to get all the information organized. She said that L PAC does not dispute that the reports were filed late and believes that the staff's recommended penalty is fair.

Mr. Healy said he understood that the PAC had hired a Washington, D.C., attorney during the filing process and Ms. Knox confirmed this. Ms. Knox said there were conversations with the Commission's Assistant Director and someone at the law office regarding registration requirements and filing deadlines.

Mr. Healy asked if the amount of the reduced penalty was consistent with past cases of out-of-state political action committees that had penalties reduced. Mr. Wayne said it was. Mr. Healy said out-of-state PACs should be consulting with Maine attorneys regarding the filing requirements before engaging in political activity in Maine.

Ms. Matheson moved that the Commission find L PAC in violation for late-filing of its registration, as well as the initial, October quarterly, and 11-day pre-general election campaign finance reports. Mr. Duchette seconded.

Motion passed unanimously (5-0).

Ms. Matheson moved to adopt the staff recommendation for a reduced penalty and assess a penalty of \$889.50. Ms. Amero seconded.

Motion passed unanimously (5-0).

Agenda Item #6. Consideration of Statute Changes Proposed by Commission Staff

The Commission considered whether to include statute changes proposed by its staff in legislation which the Commission will submit for the 2013 session.

William P. Logan, Esq., spoke to the issue of accelerated reports for party committee and PAC expenditures over \$1,000 in the last two weeks before an election. He would support exempting staff time and payroll expenses from the 24-hour report. He said these are reported on other reports and does not add any value by including them in the 24-hour reports. However, it does create a large burden on treasurers for the PAC and party committees. He said if the purpose is to capture expenditures on newly hired staff in the last two weeks before an election, his experience is that it is unlikely that a campaign is hiring field staff during that time period before an election. There is very little public benefit in disclosing routine payroll payments on an accelerated basis.

In response to a question by Mr. Duchette, Mr. Wayne explained that the proposed change specifically states that payments of \$1,000 or more to staff would have to be reported in a 24-hour report.

Mr. Logan also noted that there may be some ambiguity with regard to who is required to file an independent expenditure report. In the past there have been issues when a treasurer files the report instead of the person who made the expenditure and spoke with the vendor. He said the person filing the report, usually the treasurer, is required to sign the affidavit but the person more practically suited to sign is the person who deals with the vendor. He said there needs to be clarification as to where the responsibility for filing the reports lies, which could eliminate the issue of a treasurer claiming he did not have all the information regarding the expenditure.

Mr. Duchette said the proposed changes to the treasurer's responsibility addressed that issue and would ultimately make the treasurer responsible so that he could not claim ignorance.

Mr. Wayne said the intention was to have a clearer delineation of the treasurer's duties for candidates and PACs without locking them into being the only person that could file the reports, but make the treasurer responsible for ensuring the reports are filed correctly.

Mr. Healy asked Mr. Logan whether in the case of a Clean Election campaign, the treasurer's responsibilities should include check writing authority to insure the public funds are expended for proper purposes. As it is right now, the treasurer has no responsibility for oversight of how the funds are spent.

Mr. Logan said that would be a very good safeguard and would create a check and balance process. He said practically speaking it may cause undue burden on some campaigns and the candidate usually has a better knowledge of the process.

Kate Knox, Esq., said the changes with regard to PAC treasurer/principal officer requirements and the 24-hour reporting are good. She said it was important to determine the level of knowledge and involvement of officers involved with a PAC because currently it was virtually impossible to ascertain the level of involvement of the people listed on the forms. She said the proposed changes create a structure that can be helpful in determining responsibility. She said she also supports the 24-hour report change which requires reporting of any single contribution of \$5,000 or more close to the election. She explained that having to review previous reports in order to determine whether the aggregate threshold had been reached was burdensome for smaller PACs so changing the requirement to a single contribution instead of aggregate was helpful. She agreed with Mr. Logan regarding accelerated reporting of staff time in 24-hour reports. She said PACs who hire new people during the last two weeks of a campaign should definitely be reporting that; however, it does not happen very often. She said having to report expenditures of regular staff is burdensome and suggested having an exempt category for reporting those ongoing field staff cases. She said there needs to be a way for full disclosure without being overly burdensome to treasurers.

Mr. Healy asked Ms. Knox for her thoughts on whether MCEA treasurers or deputy treasurers should have the sole check writing authority for the campaigns. Although she has not considered the issue comprehensively, Ms. Knox said her instinct is to think that it would be a good policy but, like Mr. Logan, she said she also was concerned about logistics and burdens on campaigns if that change were to take place.

She said given the responsibilities of the treasurers and the records they are required to keep, it seems logical that they would have check writing authority.

Regarding accelerated reporting for certain expenditures prior to the election, Mr. McKee stated that he would support exempting payroll expenditures for ongoing campaign staff from the reporting requirement. He said hiring staff within the last few days of the election would be cause for concern and should be reported accordingly.

Mr. McKee said that he approved of the proposed changes that would clarify the duties and responsibilities of PAC treasurers and principal officers. He thought that it was a good idea to require that PAC treasurers and principal officers sign a statement of responsibilities. It would put those individuals on notice that they were subject to certain legal obligations and liabilities.

Mr. Duchette asked why there was concern over a candidate filing their own reports. Mr. Wayne explained that if the candidate were the only person writing the checks and filing the reports, it could create an opportunity for the misuse of funds if there are no other people involved with the reporting. Although those cases of misuse of public funds are rare, it may still be a good policy to have some segregation of duties or a second set of eyes to review expenditures of public campaign funds.

Mr. McKee said this issue could cause some pushback from candidates running for office. Mr. Wayne agreed but if the Commissioners believed that this was a good policy, they should include it in the bill.

Mr. Wayne explained, in response to a question from Mr. Duchette, that traditionally financed candidates may name themselves as treasurer but Clean Election Act candidates cannot, they are required to have another person be treasurer.

Mr. McKee said having another set of eyes watching over how public funds are spent may be burdensome for some candidates but makes sense.

Mr. Wayne explained the statute change to the Maine Clean Election Act reinforces the requirement that the treasurer must file the campaign finance reports but it allows the candidate to input the information into the system.

Mr. McKee said this is the best way to keep an eye on public funds and even though it will impose some additional obligations on the candidates involved, it seems the responsible thing to do. He said the Legislature will make the final decision whether it passes or not.

Mr. Healy asked if the treasurer would be responsible for maintaining records. Mr. Wayne said the proposal allows for a more flexible approach which would mean either the candidate or the treasurer could keep the records. Mr. Healy said the Clean Election candidates should have a treasurer who is responsible for the records, writing the checks and making sure that expenditures are appropriate and insist on having an invoice for each expenditure. He said this requirement makes the treasurer responsible. He explained that if either the treasurer or the candidate were allowed to be responsible, then the responsibility is not clear which creates a messy situation.

Mr. McKee said whoever signs the report is responsible for the accuracy and truthfulness of the reporting.

Mr. Healy said in his view, when the state's money is involved, the treasurer should be the one responsible for check writing and it should be separate from other duties. This diminishes the ambiguity of joint responsibilities.

Mr. McKee said the treasurer has the option of not signing the report if the documentation is not accurate. Mr. Healy agreed but stated that most people do not operate that way unless they are professional accountants and know the consequences of the failure to make sure the report is accurate. He said most treasurers are just average people who may not adhere to those kinds of standards.

Mr. Wayne said it would require some candidates to change their practice but the change is manageable. He suggested having an exception which would allow the treasurer to transfer the records and responsibility over to the candidate after the election.

Mr. Healy suggested requiring Clean Election Act candidates to state on the registration form whether the candidate or the treasurer would be responsible for maintaining the campaigns records. In addition, he thought that it would be reasonable to recommend to the Legislature that MCEA treasurers and deputy treasurers have sole check writing authority in order to place a greater level of accountability and control over how public campaign funds are used.

Mr. Wayne said this suggestion could be put into the statute recognizing that there may be pushback from the Legislature.

Mr. McKee stated the Commission is in the position of recommending this policy change because it is the body that deals with the issue of the misuse of public funds on a relatively frequent basis. Therefore, the Commission can recommend this proposal as an adequate safeguard. However, it is ultimately up to the Legislature to decide what it will do with the recommendation.

Ms. Matheson raised concern over making the process more difficult for someone who simply wishes to run for the House of Representatives. Mr. McKee said that was a valid concern.

Rep. Les Fossel said over the last ten years he has run both as a traditionally financed candidate as well as a Clean Election Act candidate. He said having a competent treasurer is a wonderful thing but is not always possible. He said as a candidate, he feels his obligation is to make sure the records and reports are accurate. He said this past election he ran as a traditionally financed candidate and was his own treasurer and kept all the records himself. He said having a treasurer who can perform checks and balances is valuable; however, the Commission should keep in mind that this is not a huge amount of money for the House races. He cautioned that if the process is too burdensome it may discourage people from running. He said he understands that the Commission has to oversee the process. He said if someone cannot find a treasurer they can trust, they will stay away from the Clean Election process because the candidate is the one who is ultimately responsible for the money. It is the candidate's name that will be in the newspaper headline if there is a problem.

Rep. Terry Hayes said she ran as a Clean Election Act candidate four times and this past election as a traditionally financed candidate. The candidate is the person who signs the declaration of intent, agrees to

follow the rules and laws, and should be responsible for how the money is spent. If someone is running for the Legislature and they cannot keep track of \$4,800, that is a bigger problem than picking a treasurer. She said safeguarding the use of the money has nothing to do with the treasurer, the responsibility lies with the candidate. Their name is on the line. She said requiring a treasurer to sign checks simply adds another layer of bureaucracy in a small House campaign. She said the candidate signs the contract with the Ethics Commission stating that he/she agrees to do certain things as a candidate. She said the treasurer is a quite often a treasurer in name only.

Mr. McKee said having someone else keep an eye on a candidate's campaign finances was important to safeguard public funds. However, he said he did not want to discourage folks from running for office.

Rep. Hayes said a solution could be a training session for new candidates and treasurers. She said the bottom line should be about the candidate and holding them responsible. The candidate qualifies for the funds, not the treasurer. She said someone who wants to cheat cannot be stopped, they will figure out a way around the safeguards. She said the remainder of the candidates who are doing everything correctly are getting punished when there is no intent to do anything wrong.

Mr. Healy stated that this testimony causes him to sit back and think again about his position. However, he said opening it up and letting the candidates do all the bookkeeping without any safeguard of another set of eyes will increase the chance of misuse of public funds.

Rep. Fossel disagreed. He said with any group of people there will be some who will game the system. He said the candidates more likely to misuse funds are those that are not in a competitive race. There will be candidates that do not need the money and will find legal creative ways to waste it. He said changing the rules will not change that fact.

Mr. Healy said, what Rep. Fossel was saying in summary, was that the change is not worth the trouble and will discourage people from running.

Rep. Fossel said further that adding yet another bar for new candidates coming into the process who have not had experience with the system, would be more discouraging.

Ms. Gardiner asked if the language provided in the change drafted by staff which provides a second set of eyes and makes the treasurer jointly responsible with the candidate was acceptable in Rep. Fossel's view.

Rep. Fossel said it would not make any difference who reports to the Commission. He said the candidate will appoint a treasurer who can be trusted. He said Maine is a place of relationships and a place where we trust each other. He said he knows what the Commission goes through on a regular basis but this is not going to make a difference in honest reporting practices.

Mr. Healy said he would like to withdraw his suggestion and move on.

Robert S. Howe of Howe, Cahill & Company, representing the Maine Citizens for Clean Elections, said he had been a candidate many years ago. He said his treasurer was someone well known in the district and gave him recognition as a candidate. He said he served as a Clean Election candidate's treasurer recently to give that candidate the benefit of his name recognition. He said if the current law allows MCEA candidates to choose treasurers simply for name recognition, the requirement that an MCEA candidate cannot serve as the treasurer does not serve any purpose. An option may be to require the candidate to write the checks and file the reports unless the candidate chooses to have a treasurer that will actually do the work. He said allowing candidates to choose and note on the registration form who they want to be responsible is another option. He said the candidate should be held responsible but in a busy campaign he/she should be allowed to appoint someone. He recommended the Commission put something forward for debate and not leave the status quo.

Mr. McKee said regarding the issue of allowing governors-elect to personally raise contributions or authorize others to raise funds for their campaign, he would support the latter. He said having others raise funds for a committee is a step in the direction of diminishing the influence of contributors.

Ms. Amero asked whether this issue was specific to Clean Election candidates and Mr. Wayne said it applied to the governor-elect, regardless of financing.

It was decided to go forward with the staff's proposal with the modifications that had been discussed and agreed upon at the meeting.

Agenda Item #7. Initiation of Rule-Making

The Commission considered whether to initiate a rulemaking concerning amendments proposed by Commission staff. If the Commission agrees, the Commission could hold a public hearing to receive comments at the Commission's January 17, 2013 meeting.

Mr. McKee moved to initiate rulemaking concerning the proposed amendments to the Commission's rules and to receive public comments at the January 17, 2013 meeting. Mr. Duchette seconded.

Motion passed unanimously (5-0).

EXECUTIVE SESSION

At 11:10 a.m. Mr. McKee moved to go into executive session pursuant to Title 1 of the Maine Statutes, section 405(4). The Commission went into executive session pursuant to Title 1, section 405(6)(E) to consult with the Commission's counsel concerning pending or contemplated litigation and pursuant to Title 1, section 1013(3-A) to discuss whether to pursue an ethics complaint.

Mr. Duchette seconded. Motion passed unanimously.

At 11:20 a.m., Mr. McKee moved to come out of executive session. Ms. Amero seconded. Motion passed unanimously.

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

The meeting adjourned at 11:21 a.m.

Respectfully submitted,

/s/ Jonathan Wayne

Jonathan Wayne, Executive Director



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Approved on:

Minutes of the November 28, 2012, 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.; Michael T. Healy, 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 the October 31, 2012 Meeting

Mr. McKee moved to accept the minutes as drafted. Ms. Matheson seconded. The motion passed (5-0).

Agenda Item #2. Consideration of Statute Changes Proposed by Commission Staff

Mr. Wayne said the staff was proposing statutory changes for the Commission to consider for inclusion in the bill it will send to the Legislature in early 2013. The staff distributed the proposed changes to interested parties and received some helpful feedback. He explained that there would be more proposed statute changes to be considered at the December 19 meeting in addition to today's submission. He said that the comments from the public at today's meeting may be preliminary but that there will be another opportunity for the public to be heard at the meeting on December 19.

John Brautigam, Esq., representing Maine Citizens for Clean Elections (MCCE), said he was not prepared to give a final view on the proposed changes at this point and appreciated that they could submit additional comments before the December 19 meeting. He said the MCCE will be submitting its own legislative package for consideration during the next session which will likely contain amendments regarding the Maine Clean Election Act, disclosure, and political action committees.

Mr. Brautigam said the MCCE's goals regarding the changes to the Clean Election Act and the disclosure requirements are to maximize transparency to the public, access to the democratic process for individuals, and clarity and certainty for the regulated community. He said other guiding principles are accountability, legal defensibility, and keeping the system workable for candidates and other political actors.

Mr. Brautigam said the MCCE supported the changes regarding donations to persons considering running for office and would like to be able to comment further on the specifics of how that would play out at a later date. He said also MCCE supports the change that makes the rebuttable presumption regarding independent expenditures applicable to all candidate races even if there is no MCEA candidate in the race. This will result in more disclosure. He said MCCE supports legislation to address the issue of raising funds to pay for inaugural activities and the transition costs of a new administration. They have looked at how other states regulate donations for these activities and would like to comment further on the issue at a later date. Accelerated reporting of large contributions to party committees and political action committees (PACs) is an important part of disclosure and MCCE supports the proposed requirement to report contributions of \$5,000 or more during the last 13 days before the election. He said the PAC registration changes are quite detailed. He said the Commission should consider a bright line rule about where the responsibilities lie in order to eliminate the uncertainty and misunderstanding when someone is named as a PAC officer or treasurer on a registration form. He stated that this clarity may be established without infringing upon a person's right to be politically active.

Mr. Healy asked Mr. Brautigam what the statutory duties of a PAC treasurer were. Mr. Brautigam said that it is a matter of interpretation with respect to what the statutory responsibilities of the treasurer are because they are not spelled out clearly. He said it is implied that the treasurer is responsible for the committee's finances and filing of the reports. Mr. Healy said that it seemed the statute is mostly silent on the treasurer's duties. So if a case comes before the Commission regarding who is responsible, then the determination would be based upon the facts of that case.

Mr. Brautigam agreed that each case may require a factual determination. However, in a case involving coordination, for example, the treasurer is responsible and should be held accountable for activities of the PAC.

Mr. Healy asked about the situation where a treasurer is simply a name on the registration form and has nothing to do with the activities of the PAC. Mr. Brautigam said he did not believe the Legislature intended to create a designation that did not mean anything. He said if the form lists someone as the treasurer, that means something

and that person has some responsibility. He said the degree of responsibility could be interpreted differently but a reasonable interpretation would not relieve the treasurer of all responsibility.

Mr. Healy agreed but said unless that is spelled out, it is very unclear. Mr. Brautigam agreed there needs to be clarification in this area. Mr. Brautigam said MCCE is very concerned about the lack of understanding by the people who accept this responsibility. He said it appears that some believe they can just be listed on the form in name only and that it does not mean anything legally. He said, however, if a treasurer should decide to resign and for whatever reason their name was not removed due to a clerical error, that would be a different scenario. If someone agrees to be treasurer and claims they did not think it really meant anything, he said that is not acceptable.

Mr. Brautigam said MCCE supports the Commission's proposal regarding attributions on paid communications for ballot questions as well as the proposal to allow electronic filing of independent expenditure reports and would like to work on the details further with staff. He explained that there was some concern regarding the amendment to provisions on contributions to defray a candidate's expenses related to recounts since it appears that the proposal would allow for unlimited contributions from any entity.

Mr. Brautigam said MCCE generally supports but has a few questions about the remainder of the proposed changes. With regard to reporting the source of funding for independent expenditures, he said this is an important improvement but would phrase it slightly differently. He said if the requirement is limited to contributions for a certain purpose, they feel the proposal is legally justifiable and would support keeping it in the changes. He said if there is a chain of contributions by several entities for a specific purpose to influence an election, the public should have the ability to know about them.

MCCE supported the proposal to require separate campaign accounts for ballot question committees and PACs. Mr. Brautigam said they were concerned about the phrase "organizations may pay employees to influence the election through their own treasury rather than separate accounts with the committee." He was concerned that this wording could have the potential to hamper full disclosure.

Mr. Brautigam said MCCE supported closing the loophole regarding in-kind contributions from organizations to ballot question committees, retention of account statements by PACs and ballot question committees, as well as increased fines for failing to register and failing to keep records. He said MCCE is of the philosophy that good

enforcement as well as clarity of the statute for the regulated community is the best way to achieve transparency rather than assessing large fines.

With regard to lobbyist disclosure, Mr. Brautigam said they support including direct communications with the Governor-elect as reportable lobbying. The proposed changes exempt communications with candidates for the Legislature. He suggested it would be good to retain the provision on reportable lobbying of candidates for the legislature under the current lobbying rule.

Mr. Healy asked for some guidance on where the line is drawn with regard to the First Amendment and the right to anonymous independent expenditures.

Ms. Gardiner said these proposals before the Commission do not raise any First Amendment concerns for her. Mr. Healy asked whether it was a concern that any communication costing more than \$500 to influence a ballot question will require disclosure. Ms. Gardiner said the \$500 amount would still leave enough room for someone to pay for flyers or communications on the internet without having to place a disclaimer on the communication. In addition, this disclaimer proposal is narrow and applies only to communications advocating expressly for or against an initiative or referendum on the ballot. She said this wording makes it clear that it does not apply to general issue advocacy, but only to express advocacy in a ballot question election. She said this proposal is consistent with other states' statutes that have been deemed constitutional in courts around the country.

Mr. McKee said he was comfortable with the six areas of the staff's proposals and supported going forward with the process to the December 19 meeting. He said if there are any issues at that time, they can be discussed and revised then.

Mr. Wayne said that he wished to bring a couple of issues to the Commission's attention. One was with regard to the proposed PAC registration and the requirement that individuals who are named as an officer of the PAC sign an affirmation stating they understand the legal responsibilities of their office. He said the proposal also includes a statement that they could be financially liable for any penalties assessed against the PAC. He wanted to know what the Commissioners thought about this provision, especially whether there would be any adverse impact of individual involvement in political campaigns.

In response to Mr. Duchette's question regarding how the current statute dealt with this issue, Mr. Wayne said it is not addressed in the law now. Mr. Duchette asked what would happen in a scenario where the Commission assessed a penalty and the PAC terminated.

Mr. Wayne said that has never happened. A large penalty has never been assessed and not paid. He said the proposed provision clears up an area of ambiguity.

Mr. Healy said that if the Commission were to find someone "jointly and severally" liable for the penalty, the Commission would have to find out who was responsible for the violation. There could be three or four people involved in the PAC. One person could be responsible for the violation but the others may not have known anything about the violation. Making them jointly liable would be making the innocent liable with the guilty party. He agreed with the concept of holding the responsible person liable for the penalty but was unsure about making all PAC officers jointly liable.

Mr. McKee said he would support having the flexibility to assess each situation on a case-by-case basis to determine how much the individuals involved with the PAC knew. He said the claim by PAC officers that they really did not have any involvement in the PAC was very disturbing for him. He said people should not be allowed to sign a form saying they are a decision maker and then claim no involvement. If you sign on as a player then you will be assumed to be playing. He said the Commission needs to be able to assess involvement on an individual basis.

Mr. Healy said the real problem in his view was the statute is very unclear as to the duties and obligations of the treasurer. He said the statute does not make it clear whether the treasurer and officers of a PAC have a fiduciary duty or to whom is owed. He said the treasurer should be responsible for writing the checks and making sure expenditures are legal and should not be able to avoid that responsibility. He said the statute needs to be clear and state that if someone is a treasurer or decision maker, they are legally responsible for these matters.

In response to Mr. Duchette's question, Mr. Wayne explained that a Clean Election Act candidate cannot be their own treasurer. Mr. Duchette noted in the case of a Clean Election candidate, there are checks and balances.

Mr. Healy said a Clean Election Act candidate needs to be sure their treasurer understands that they have fiduciary responsibility because they are handling public funds. He said the candidate should have to go through the treasurer to make expenditures to be sure that the funds are being used for the proper purpose.

Mr. McKee asked where in statute this matter would be addressed. Ms. Gardiner explained that section 1016 states that the treasurer has an obligation to keep the records for the campaign, but does not go so far as to say the treasurer is the only one who can write checks. She said this language could be made clearer and stronger. Ms. Gardiner referred to section 1057 of the PAC statute where it states the treasurer must keep record of all contributions and record a detailed account of expenditures. She said the language relates to recordkeeping only.

Mr. McKee asked why the candidate and PAC provisions regarding the treasurer's obligations were different. Ms. Gardiner said that they were not quite parallel but were very similar. The difference could be just how the statute developed over time.

Ms. Gardiner said there currently is no provision with language as Mr. Healy stated with regard to the treasurer's responsibility for ensuring that Clean Election funds are spent appropriately for campaign-related purposes.

Mr. Duchette said the question for him was should the entire burden be placed on the treasurer.

Ms. Matheson said decision makers and officers in PACs also need clarity about what their duties are, just as the treasurer does. Even though the statute lacks clarity in that regard, she said that the concept of naming "place holders" for officers and decision makers on the PAC registration is, at best, inappropriate, and at worst, can let things spin out of control. She said making them financially liable is one approach but it does not take into consideration how the PAC makes its spending decisions. The issue of holding PAC decision makers and officers accountable almost rises to the level of a presumption.

Mr. Wayne said there could be a presumption that the treasurer, decision makers and officers of a PAC are involved in the PAC's spending decisions. Mr. McKee said that it does add a level of accountability not currently in the statute but it may be too easy to rebut the presumption.

Mr. Healy said he would like to get away from a situation where it is a factual determination. If there were a statutory obligation and the obligation was not met, there would be a finding of violation. Mr. Healy said if a decision maker does not participate and something goes wrong, they would be responsible in his view.

Mr. Duchette asked whether the term “decision maker” was defined in statute and Mr. Wayne said it was not. He said the staff is encouraging that this be proposed. He explained that decision makers should have some financial responsibility as well.

Mr. McKee said the Commission will consider the proposed statute changes, as modified by the staff in light of the comments at this meeting, and will accept additional public comment at the December 19 meeting.

Agenda Item #3. Request for Waiver of Late Filing Penalty by L PAC (postponed until December 19)

Agenda Item #4. Request for Waiver of Late Filing Penalty by the National Organization for Marriage Maine PAC

The National Organization for Marriage Maine PAC is a registered PAC in Maine that opposes the same-sex marriage citizen initiative. It was required to file an 11-Day Pre-General Report on Friday, October 26, 2012. NOM PAC filed the report one day late on October 27. In the report, NOM PAC disclosed contributing \$800,000 to another PAC, Protect Marriage Maine, opposed to the initiative. The preliminary penalty amount is \$8,001.11. In a letter, NOM’s attorney stated that the PAC knew of the deadline and failed to timely file due to an oversight, but contended that the public suffered little harm from the late disclosure.

Mr. Duchette asked if consideration could be given to the past violations by NOM in determining the penalty.

Mr. Wayne said the Commission will be considering the 2009 activities of NOM at a future meeting and the staff felt this matter should be looked at separately.

Ms. Matheson suggested tabling this issue in order for staff to determine through further investigation whether there was a bona fide effort to file this report on time.

Mr. McKee said he was reluctant to table the matter because NOM PAC had an opportunity to state their case and they did not provide any additional information to support their case. He said NOM has a history in Maine concerning this particular issue and it was likely that people were very interested in monitoring its financial

activity, especially so close to the election. However, fourteen hours was not a significant amount of time and it is unlikely that there was much harm to the public. He said staff has been very generous with NOM and there will be another opportunity to review NOM's past actions here in Maine to determine if there were past violations. He said the amount of the penalty is not significant for NOM and they have to be treated fairly and consistently with others.

Mr. McKee moved to adopt the staff recommendation and reduce the penalty by 75% to \$2,000 because the public suffered little harm from the report being filed 14 hours late. Mr. Healy seconded.

Motion passed (5-0).

Agenda Item #5. Request for Waiver of Late Filing Penalty by the Sagadahoc County Republican Committee

The Sagadahoc County Republican Committee was required to file an 11-Day Pre-General Report on Friday, October 26, 2012. The committee treasurer was removed three days before the filing deadline. Other committee members took the treasurer's records in order to file the report, but the committee filed the report 11 days late on November 7 (one day after the general election). The preliminary penalty amount is \$729.60. The committee chair requests a waiver of the assessed penalty by letter.

Diane Simmler, state committeewoman for the Sagadahoc County Republican Committee, said she became familiar with campaign finance reporting requirements only recently because she was the treasurer for a candidate. However, she did not know there was a report required for the county committee because she is new in her role as committeewoman. She said the treasurer was replaced on the Tuesday before the filing deadline and the report was due on Friday. She said the next treasurer who was recruited looked at the committee's paperwork and decided not to be treasurer. She said she had some idea of what information was needed in order to file the report but there was not enough time for her to gather and organize all the information to file properly. She said three people pulled together the paperwork and just could not make sense of it. She said the original treasurer did not keep good records and the chair had not checked in with the treasurer to make sure that he was doing his job.

Mr. McKee said he had two concerns. First, this issue did not arise just before the filing deadline. It happened over a period of time and steps should have been taken to make sure that the correct records were kept and reports would be filed on time. Second, the report was filed on the day after the election which defeats the purpose of filing because the public wants to know what is going on before the election.

Ms. Simmler said all the committee members most likely were involved with candidate campaigns during the election, and trusted that the chair and the treasurer were following through with the reporting requirements. She said the information was being kept but it was not organized in a way that would be helpful in filing reports. She said it took several hours and people to figure out what needed to be reported. She said the full penalty amount would clean out the committee's checking account.

Mr. Duchette asked if she had any objection to the staff recommendation and Ms. Simmler said she did not.

Ms. Amero moved to adopt the staff recommendation and reduce the penalty by 70% to \$218.88, in light of the removal of the treasurer and the inexperience of the other committee members who worked on the report. Mr. Duchette seconded.

Motion passed. (5-0)

Agenda Item #6. Request for Waiver of Late Filing Penalty by the Somerset County Republican Committee

The Somerset County Republican Committee purchased radio and television advertising to promote ten Republican candidates for the Legislature, and was required to file two independent expenditure reports on October 22 and 25. Instead, the committee filed a single report late on October 29. The preliminary penalty amount is \$407.40. The committee treasurer requested a waiver of the penalty because it was the first time he was responsible for performing a substantial amount of independent expenditure reporting.

Mr. Duchette moved to adopt the staff recommendation and reduce the penalty by 50% to \$203.70 because the amount of the preliminary penalty is disproportionate to the level of experience of the treasurer. Mr. Healy seconded.

Motion passed. (5-0)

Agenda Item #7. Request for Waiver of Late Filing Penalty by the Washington County Republican Committee

The Washington County Republican Committee was required to file an 11-Day Pre-General Report on Friday, October 26, 2012. The committee filed the report five days late. The preliminary penalty amount is \$114.45. The committee chair requested a waiver of the penalty, contending that, due to inexperience, the treasurer

overlooked the filing deadline. He also contended the amount of the penalty is disproportionate to the size and sophistication of the committee.

Mr. McKee said the problem began in February 2012 when the committee's treasurer resigned. There was sufficient time for the new treasurer to become acquainted with the reporting requirements. With this large amount of money coming into an organization, more care needed to be taken.

Mr. Healy moved to adopt the staff recommendation and assess a penalty of \$114.45. Mr. Duchette seconded.

Motion passed. (5-0)

Agenda Item #8. Request for Waiver of Late Filing Penalty by the Aroostook Democratic County Committee

The Aroostook County Democratic Committee was required to file an independent expenditure report on Sunday, October 21, 2012. The committee filed the report eight days late on Monday, October 29, 2012 after the committee received a communication from the Commission staff that the report was late. The preliminary penalty amount is \$64.24. The committee treasurer requested a waiver of the penalty, because he was not aware that an independent expenditure report was expected from county committees, having never before made an expenditure which required an independent expenditure report.

Mr. Duchette moved to adopt the staff recommendation and assess a penalty of \$64.24. Ms. Amero seconded.

Motion passed. (5-0)

**Agenda Item #9. Request for Waiver of Late Filing Penalty by the National Association of Social Workers
Maine PAC**

The National Association of Social Workers Maine PAC is a PAC registered with the Commission. It was required to file an 11-Day Pre-General Report on Friday, October 26, 2012. The committee filed the report three days late. The preliminary penalty amount is \$21.75. By letter dated October 29, 2012, the committee executive director requested a waiver of the penalty.

Mr. Duchette moved to adopt the staff recommendation and assess a penalty of \$21.75. Ms. Amero seconded.

Motion passed. (5-0)

Agenda Item #10. Request for Waiver of Late Filing Finding by the Orono Democratic Committee

The Orono Democratic Committee was required to file an 11-Day Pre-General Report on Friday, October 26, 2012. The committee filed the report three days late (the following Monday). Because the preliminary penalty amount was less than \$10, the financial penalty was automatically waived. The committee treasurer requested a waiver of the finding of violation, contending that the committee made a good faith effort to file on time by sending the report by regular mail two days before the deadline.

Mr. McKee moved to adopt the staff recommendation and find the committee in violation because the report was late. Mr. Healy seconded.

Motion passed. (5-0)

Executive Session

Pursuant to Title 1 of the Maine Statutes, section 405(4), at 10:10 a.m. Mr. McKee moved to go into executive session pursuant to Title 1, section 405(6)(E) to consult with the Commission's counsel concerning pending or contemplated litigation. Mr. Duchette seconded.

Motion passed unanimously.

At 10:25 a.m., Mr. McKee moved to come out of executive session. Mr. Duchette seconded.

Motion passed unanimously.

Other Business

Mr. Wayne explained that the Commission was getting updates from Rosa Scarcelli's counsel regarding mediation with her step-father, Mr. Karl Norberg, to resolve some family business disputes. He said this has been delaying the Commission's proceeding on this issue. He said the last update was approximately ten days ago and has heard nothing since that time.

Mr. Duchette said the mediation really has no influence on the Commission's procedures.

Mr. McKee suggested notifying all parties that the Commission will have the hearing in January and make a determination at that time.

Mr. Healy moved to adjourn and Ms. Amero seconded the motion, which passed unanimously. The meeting adjourned at 10:35 a.m.

Respectfully submitted,

/s/ Jonathan Wayne

Jonathan Wayne, Executive Director