Agenda Item #1

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

Approved on:

Minutes of the January 17, 2013, Meeting of the
Commission on Governmental Ethics and Election Practices
Held at the Commission Office, 45 Memorial Circle, Augusta, Maine
and DHHS Main Office, 221 State Street, 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 28 and December 19, 2012 Meetings
Ms. Matheson moved to accept the minutes of November 28 and December 19, 2012 meetings as drafted. Mr. Duchette seconded. Motion passed unanimously (5-0).

Agenda Item #2. Public Hearing for Rule-Making
No public comments were received. Mr. McKee stated that the written comment period goes until January 30, 2013.

Agenda Item #3. Request for Waiver of Late-Filing Penalty/Rep. Kenneth Wade Fredette
Rep. Kenneth Fredette was one day late filing a campaign finance report due December 18, 2012. The preliminary penalty is $31.99. He requested a waiver of the penalty because of a medical situation affecting his office assistant who usually files all his campaign finance reports.

Mr. Wayne explained that Rep. Fredette does not feel the penalty is disproportionately high. His concern was that he did not have all the information necessary to complete the report. His office assistant who keeps all his campaign records was unavailable because she was out of the office taking care of her husband who had recently undergone surgery.

Mr. McKee said this was not an emergency situation which prevented Mr. Fredette from filing.

Mr. Duchette stated the surgery was a month before the deadline.

Ms. Matheson moved the Commission not grant a waiver and assess a penalty of $31.99. Mr. Duchette seconded.

Motion passed unanimously (5-0).

Agenda Item #4. Guidance on Equipment Purchased with Maine Clean Election Act Funds

Todd Delaney is a resident of Standish who was a candidate for the Maine House of Representatives, District 102. He spent $245 in Maine Clean Election Act funds for styluses which are used for iPads, and other tablets and smart phones. Mr. Wayne explained this purchase seemed somewhat unusual to the staff and may not be consistent with the Commission's expenditure guidelines. He said within a month's time, Mr. Delaney has purchased 16 styluses. Mr. Delaney claims they were purchased for himself because he loses them often. Mr. Wayne explained that under the guidelines, candidates should consider the public nature of the Clean Election funds, the objective of the Act, and the reasonableness of the expenditures under the circumstances. The staff considered the amount of this purchase to be unusually high and possibly wasteful. Mr. Delaney considers the expenditure to be a legitimate campaign expense.

Ms. Matheson asked whether Mr. Delaney had any remaining styluses and Mr. Wayne said he believed Mr. Delaney had somewhere around 6 or 7 of the 16 purchased.

Mr. Healy said the guidelines require a candidate to sell leftover equipment that could be converted to personal use after the campaign at fair market value and return the funds to the Commission.

Mr. Wayne said the rule refers to items of value of more than $50. Mr. Wayne said staff advised Mr. Delaney to purchase the remaining 14 styluses at full value and repay the Clean Election fund since reselling a used stylus at fair market value may not be realistic.

Sandy Thompson, candidate registrar, explained that staff looked at the reasonableness of this purchase in the same way that the purchase of food is looked at during compliance reviews of candidates' campaigns. She said most candidates are willing to return items for credit or sell items at fair market value whichever is more appropriate. She explained that the review of Mr. Delaney's filed reports indicated that he had almost $1,000 in purchases of office supplies in about six weeks. After the staff's review, some of the expenditures had to be re-categorized as equipment purchases, such as a printer and cell phone. Candidates receive a great deal of instruction and information on how to spend their public funds as well as how to report those expenditures.

Mr. McKee said purchasing large quantities of an item because a candidate anticipates that he will lose some is wasteful and is not a reasonable expense. He said most people do not spend personal funds to buy several items simply because they may lose that item, so why should using public funds be any different. He said this is not a reasonable expense in his view.

Mr. Duchette asked whether it would be reasonable for a candidate who lost an iPad purchased with Clean Election funds to purchase another one with Clean Election funds.

Ms. Matheson said that the purchase of 16 styluses for one campaign looks as if they were purchased with a future use in mind.

Mr. Healy said buying 16 styluses does not seem reasonable; however, he questioned whether the Commission should get involved with deciding what expenses are reasonable and what are not.

Ms. Matheson said stylus can be purchased on line in a pack for a couple dollars which would be more reasonable in her view.

Mr. Duchette said, in his view, the staff gave him a reasonable solution to the matter and Mr. Delaney should accept it and move on.

Mr. Healy suggested Mr. Delaney sell the stylus that remain and return that amount to the Fund.

Mr. McKee wondered since the purchase was unreasonable from the start why the Commission should have to accept the reduced amount for the styluses.

Mr. Healy said he was not comfortable deciding whether a campaign expenditure was reasonable. He said most likely many candidates purchase office supplies for their campaigns and go on using those after the election.

Mr. Duchette agreed when the items are paper and pens but said this situation was very different from those types of expenditures, which was why it was brought before the Commission.

Mr. Healy moved to have Mr. Delaney's campaign reimburse the Commission for any styluses that remained after the election at the full market value. Ms. Amero seconded.

Motion passed unanimously (5-0).

Agenda Item #5. Audits of Maine Clean Election Act Candidates

The Commission accepted five audits, which showed no exceptions (violations) by the candidates.

Other Business – Contribution Limits [taken out of order due to the hearing schedule]

Mr. Wayne explained that every two years the Commission is required to adjust the contribution limits for gubernatorial and other state and county candidates based on any changes by the Consumer Price Index. He explained that the existing contribution limit of $350 for legislative candidates will be increased to $375. He said this is simply an informational matter, no action is required by the Commission.

Agenda Item #6. Hearing on Potential Campaign Finance Violations/Rep. Michael Nadeau, District 1

The Commission held a hearing to receive sworn testimony concerning expenditures by Philip Soucy, James Majka and others to promote the election of Allen Michael Nadeau to the Maine House of Representatives, District 1. The hearing was held at the office of the Department of Health and Human Services located at 221 State Street, Augusta, Maine.

The Commission received testimony from Julie Daigle and Dennis Michaud, employees of the Fiddlehead Times in Fort Kent (by phone), James Majka of Fort Kent and Dana Saucier of Eagle Lake (by videoconference), and Rep. Allen Michael Nadeau who was present at the hearing in Augusta. Mr. L. Philip Soucy of Fort Kent, treasurer for Citizens for Effective Government and the Nadeau campaign, was present at the hearing in Augusta. He exercised his 5th Amendment privilege and did not provide any testimony other than his name, address and occupation (retired). The Commission directed the staff to undertake additional investigation and decide whether there are any other witnesses who should testify at a future meeting. The Commission did not make any findings of fact or determinations at the conclusion of the hearing. The Commission will continue the hearing at a time to be determined.

EXECUTIVE SESSION

At 1:10 p.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 the pending investigation. Ms. Amero seconded. Motion passed unanimously.

At 1:45 p.m., Mr. McKee moved to come out of executive session. Ms. Amero seconded. Motion passed unanimously.

Agenda Item #7. Hearing on Potential Campaign Finance Violations/2010 Campaign of Rosa Scarcelli (withdrawn)

Mr. McKee explained that Mr. Norberg had filed a complaint against his step-daughter concerning a contribution to her 2010 gubernatorial campaign and a hearing was scheduled to hear the complaint several months ago. Mr. Norberg has now withdrawn his complaint. Mr. McKee said there are other issues remaining despite Mr. Norberg's decision; however, a determination would be difficult without sworn testimony by the parties.

Mr. Wayne explained that the guidance was unclear with regard to when a donor contributes to a campaign in the name of a family member since there are no standards in place about whether the money has to be directly from that family member. He used the example of a family member donating money to a campaign when that family member is listed as a student. The question remains whether the student did

actually give their money or was it given on behalf of that student. Mr. Wayne said the guidance issue can be addressed at a later time.

Mr. McKee moved to terminate any further investigation into this matter. Mr. Duchette seconded.

Motion passed (4-0). Mr. Healy recused himself from consideration of this matter.

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

The meeting adjourned at 3:30 p.m.

Respectfully submitted,

/s/ Jonathan Wayne

Jonathan Wayne, Executive Director