

# Exhibit #2

Minutes of the October 13, 2006  
Special Meeting of the  
Commission on Governmental Ethics and Election Practices  
Held via conference call.

Present: Chair Jean Ginn Marvin, Hon. Vinton Cassidy, Hon. A. Mavourneen Thompson, Hon. Michael Friedman, Hon. Andrew Ketterer.

Interested Parties: Matthew Reading and Rep. Herb Adams, candidates for House District 119.

Staff: Jonathan Wayne, Executive Director, Phyllis Gardiner, Counsel.

At 1:30 P.M., Chair Ginn Marvin convened the meeting. Jonathan Wayne introduced the two items considered by the Commission:

**Issue #1: Effect of Seed Money in Matching Fund Calculations** Matthew Reading is a Green-Independent replacement candidate for the House in District 119, registered on July 24 replacing Jason Rogers. Mr. Reading collected approximately \$495 in seed money during his qualifying period. Under the Commission's rules that seed money should be counted as general election funds, being money he received and or spent in order to influence general election and should be counted in calculating matching funds. When House Democrats Campaign Committee (HDCC) spent money on Rep Adams, our view was Mr. Reading was not entitled to any matching funds because the HDCC's independent expenditure did not exceed the \$495 seed money Mr. Reading collected. His first request is he believes the \$495 should be viewed as money used for the purpose of qualifying for public funds, not towards influencing the general election.

**Issue #2: Eligibility for Matching Funds** Representative Herb Adams made an expenditure of \$462 on June 9, 2006 for primary election for postage. If Representative Adams did spend this for the general election rather than primary election, Mr. Reading may be entitled to matching funds on this basis.

Chair Ginn-Marvin asking Mr. Reading if he wanted to speak on these issues.

Mr. Reading stated that he thought that Rep. Adams spent a lot on postage immediately before the election. However, he said that he was not going to question what Rep. Adams says he did with the postage. He had not heard from any Democrats that he knew that any mailing was done prior to the primary. He said that he asked Mr. Wayne for clarification of the rule and was told that postage was not covered. He contested that interpretation and stated that he believed that postage should be included under consulting services, design, printing, and distribution of literature.

Mr. Reading said that the more complicated matter is whether seed money counts during the general election period. He said that seed money is separate from general election and primary election funds due to the fact that it is raised in the qualification period. He stated that he had a significant disadvantage as a replacement candidate trying to qualify for public funds during the general election period. He said that having professionally designed literature was important in getting his name out to voters in order to qualify for public funds and that was what the seed money was used for.

Andrew Ketterer joined the group at 1:40 p.m.

Mr. Reading said that the purpose of his expenditures from seed money was to help him qualify for public funds. However, he had to purchase more printed material than he needed for the qualifying period because he could not purchase smaller quantities that would apply to only one month period of time. He did purchase signs and materials for a campaign kick off event for volunteers who were helping him by collecting a significant number of qualifying contributions. He said that it seemed strange to him that his opponent was able to raise and spend seed money before the primary without an impact on the public funds he received in the general election. As for him, he said it created a campaign deficit as he understood it based on Mr. Wayne's explanation. He stated that his original understanding of the qualifying period and seed money purpose was validated

by the fact that when he received his general election distribution, it was not reduced by the seed money raised, but rather offset by any remaining unspent seed money at the end of the qualification period. He said that indicated to him that the qualifying period was distinct from the general election period. He said that he was taken aback when he was told that the independent expenditure was made, but that it would not trigger any matching funds on his behalf. He stated that it seemed to him that there was an independent expenditure allowance due to the fact that he had raised seed money to qualify for clean election funds. He said that, to his understanding, there is still \$192 that can be made in independent expenditures on Rep. Adams' behalf before it triggers any matching funds for his campaign which puts him at a disadvantage. In referring to the memo that Mr. Wayne prepared, Mr. Reading stated that he believes that if there is immediate matching funds available to any candidate, as required by law, there should never be an imbalance between two MCEA candidates. However, by counting a replacement candidate's seed money in calculating matching funds in the general election, the Commission created an imbalance. Mr. Reading said that the clean election law should not be allowed to create any sort of campaign imbalance.

Chair Ginn-Marvin asked whether anyone had questions for Mr. Reading and seeing none, requested Rep. Adams to speak on this issue.

Rep. Adams stated that he did buy stamps for a mailing for the primary. He said that he had many cards left from previous campaigns that were unspecific but promoted him. He bought postage and in the last weekend mailed them. He said that he had three rolls of unused 24 cent stamps.

Mr. Wayne said that there was \$72 left according to what Rep. Adams said, out of the total original purchase of \$462. Under the Commission's rule, if more than 51% of the purchase was used for general election, the purchase would be considered as a general election. But in this case, most of the stamps were used for the primary election and no portion of that would be counted as a general election expenditure.

Regarding the seed money issue, Rep. Adams said that the issue was a little more obscure. He said that he did not think that a replacement candidate was under disadvantage. It was well known that the Green-Independent candidate nominated for the primary in District 119 was a stand-in. It was understood there would be a replacement. Rep. Adams said that Mr. Reading was recruited in Auburn and came to Portland and registered to vote on the 24th of July and was nominated on the 24th by his party. He was fully aware of the circumstances, including timing, and accepted all those circumstances. Therefore, given the fact that neither of his opponents raised or spent any seed money and that he was well aware of the circumstances when he was recruited to run, Rep. Adams stated that he did not think there was a disadvantage against Mr. Reading.

Chair Ginn-Marvin asked Mr. Wayne how the Commission should proceed.

Mr. Wayne said that the staff recommendation was to treat Mr. Reading's seed money as a receipt for his general election based on the Commission's rules on when funds are received by a candidate. The staff's past practice is that, when there is a replacement candidate who collects seed money to qualify for clean election funds, it is presumed that all is being spent for the general election. Mr. Wayne suggested that it might be appropriate for Mr. Reading to comment on whether he gets no value in the general election for all that literature and postage that he bought during the qualifying period. However, the Commission staff has heard from other replacement candidates who also feel they are at a disadvantage because they are running against someone who qualified in April and was able to spend some money in the primary election period for some goods and services that are of value to them in the general. In short, some replacement candidates feel like the slate is not totally wiped clean on the day of the primary election. There are some primary campaign materials that primary candidates bring forward into the general election period. Mr. Wayne suggested that, if the Commission wanted to change the policy, it could be handled through rule making.

Ms. Thompson asked how would his seed money be treated if Mr. Reading was in the primary election and what would be his relationship financially to Rep. Adams and Mr. Lavoie.

Mr. Wayne responded that Mr. Reading could have raised up to \$500 in seed money. If Mr. Reading had been a primary candidate he would have received an additional \$512 in clean election act funds for the primary election. But the only amount that could be considered to be brought forward to the general would be any amount remaining unspent as of the day of the primary election.

Ms. Thompson asked what the other candidate who Mr. Reading replaced raised or spent.

Mr. Wayne said that the candidate's name was Jason Rogers and he raised and spent no money. If what Rep. Adams is saying is correct, he knew he wasn't going to raise or spend money.

Ms. Thompson asked whether the Commission had previously had a situation in which a candidate was not active early on, during the primary, and is then considered to have been disadvantaged because he or she had not been active early on in the primary. Mr. Wayne responded that he did not think this had been before the Commission before.

Ms. Thompson stated that when a candidate starts to run, the candidate is starting from ground zero and is not necessarily considered disadvantaged because he or she was not involved since the April date. Whereas other candidates would have been involved since April.

Mr. Wayne agreed and stated that what happens before the primary is off the books for consideration of the general election matching funds. Whatever money the candidates raise and spend prior to the primary election does not count, except as in Rep. Adams case, he had \$50 left over on the day of the primary so that counted as an amount toward the general election receipt.

Chair Ginn-Marvin asked whether there were any other questions or whether there was a motion.

Mr. Friedman stated that he was concerned that Rep. Adams did get \$512 prior to the primary election and had funds left over from that. With a replacement candidate coming in after primary, obviously they would not get credit for that previous payment. He said that he was troubled because there seems to be a bit of a disadvantage, although he would be more troubled if the Commission went against what the rule says on this point. He suggested that the Commission look at this issue in the future. Mr. Friedman made a motion that the Commission accept the staff recommendation that no further seed money is warranted. Mr. Ketterer seconded.

Ms. Gardiner asked for a clarification on whether Mr. Friedman meant to say "further matching funds" when he said "further seed money." Mr. Friedman said that he meant to say matching funds.

Ms. Gardiner further inquired whether the motion applied to both issues postage and counting of seed money. Mr. Friedman said that it did.

Ms. Thompson asked whether the Commission should add or clarify that the motion is based on these particular requests. Ms. Gardiner said that it would be implicit in the motion to accept the staff recommendation.

Chair Ginn-Marvin asked whether there was any discussion on the motion.

Ms. Thompson questioned if the Maine Clean Election Act would consider making adjustments for a candidate who in fact comes into the campaign after the primary, or if the intention of the law is to make adjustments to create a level playing field for any candidate who comes into a campaign late. Ms. Thompson said that she thought the issue was whether the Act had to take a stand on creating a level playing field for someone

who comes in after others have already been actively campaigning either in primary or general election.

Mr. Ketterer said that the philosophical goal of the Act is to level the playing field, to the extent possible, amongst all candidates. However, the Act can only level the playing field from the time the person gets in the game and that timing is up to the candidates. This candidate, for whatever reason, entered late and so is not on the same footing as a candidate who ran in the primary.

Mr. Cassidy asked whether Rep. Adams had \$120 going into general election, based on \$50 left from his primary money and \$70 left in stamps and whether that would go towards the general election. Mr. Wayne said he can use the \$50 for the general election and use the \$72 in stamps for the general.

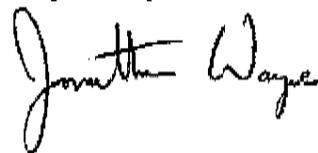
Mr. Cassidy went on to ask whether that would affect his opponent at all as far as matching funds he receives for the general.

Mr. Wayne said the \$50 would be taken into consideration, but the \$72 in stamps would not because under the Commission's rule it would be treated as a primary election expenditure.

Chair Ginn-Marvin asked whether there were any further comments. Seeing none, she called for a vote on the motion. The vote was unanimous to pass the motion and adopt the staff's recommendation.

The meeting was adjourned.

Respectfully submitted,



Jonathan Wayne  
Executive Director



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

Minutes of the October 20, 2006 Meeting of the  
Commission on Governmental Ethics and Election Practices  
Held in the Commission's Meeting Room,  
PUC Building, 242 State Street, Augusta, Maine

Present: Chair (Pro Tempore) Hon. Andrew Ketterer; Hon. Vinton E. Cassidy; Hon. Michael P. Friedman. Staff: Executive Director Jonathan Wayne; Phyllis Gardiner, Counsel.

At 9:05 A.M., Chair (Pro Tempore) Andrew Ketterer convened the meeting. The Commission considered the following items:

**Agenda Item #1 – Ratification of Minutes of the September 22, 2006 Meeting**

Mr. Cassidy moved, and Mr. Friedman seconded, that the Commission adopt the minutes as printed.

Ms. Gardiner said that the minutes should include a description of the discussion and motion that occurred during the transcribed portion of the meeting.

Mr. Wayne asked if the staff should amend the minutes and present them to the Commission at its next meeting.

Mr. Ketterer asked if the ratification of the minutes was necessary for an appeal to go forward. Ms. Gardiner replied that it was not.

Mr. Cassidy moved, Mr. Friedman seconded, and the Commission voted unanimously (3-0) to table Agenda Item #1.

OFFICE LOCATED AT: 242 STATE STREET, AUGUSTA, MAINE  
WEBSITE: WWW.MAINE.GOV/ETHICS

**Agenda Item #2 – Request for Penalty Waiver/Edward Blais**

Mr. Wayne said that Mr. Blais was a write-in candidate in the primary election for the position of sheriff in Cumberland County. Mr. Wayne said that Mr. Blais received enough votes in the primary to become the Republican nominee in the general election. Mr. Wayne said that Mr. Blais did not file the 42-day post-primary report that was due on July 25. Mr. Wayne said that Mr. Blais had difficulty with the Secretary of State's office in determining whether or not he was a candidate in the general election. Mr. Wayne said that the Secretary of State's Director of Elections called him to say that the office was counting the votes of regular candidates before counting write-in votes. Mr. Wayne said that Mr. Blais was also confused about having to file financial reports with the Commission when the Secretary of State's office oversees elections. Mr. Wayne said that the preliminary penalty was \$115, but the staff recommended reducing it by half to \$57.50. Mr. Wayne said that this reflected the Commission's vote at its last meeting in regard to a similar situation.

Mr. Friedman moved, and Mr. Cassidy seconded, that the Commission accept the staff recommendation and reduce the penalty to \$57.50.

Mr. Ketterer said that write-in candidates had been treated differently because they were not as visible to the Commission as regular candidates.

The Commission voted unanimously (3-0) to accept the staff recommendation and reduce the penalty to \$57.50.

**Agenda Item #3 – Report on Auditing Maine Clean Election Act Candidates**

Vincent Dinan introduced himself as the Commission's auditor. Mr. Dinan said that he submitted 11 results from the latest candidate audit, with all of them resulting in no exceptions. Mr. Dinan asked if the Commission would like to see audit results containing no exceptions or if they would only like to see audits that resulted in deficiency findings. Mr. Dinan said that 14 additional audits were in progress.

Mr. Friedman said that it was important for the public to see that the majority of candidates have no issues with their campaigns.

Mr. Ketterer asked Mr. Dinan how he selected campaigns for audit. Mr. Dinan responded that the audits were randomly selected from a list of all Maine Clean Election Act candidates.

Mr. Ketterer asked if Mr. Dinan weighted the results to ensure equal representation from all political parties. Mr. Dinan said that he did not and that the selection was truly random, although statistically more Democrats ran as publicly financed candidates than Republicans. Mr. Ketterer said that the results were valuable to include in the meeting's minutes.

**Agenda Item #4 – Request for Matching Funds/Cumberland County Democratic Committee Newsletter**

Mr. Wayne said that some of the language within the Cumberland County Democratic Committee newsletter could be considered express advocacy. Mr. Wayne said that the Woodcock campaign requested a determination on whether it was entitled to receive matching funds as a result of the newsletter. Mr. Wayne said that Rep. Lawrence Bliss, treasurer of the Cumberland County Democratic Committee, told him in a letter that the cost of the newsletter was \$784. Mr. Wayne said that the amount spent to expressly advocate the election of John Baldacci was less than \$100, which was the threshold for filing an independent expenditure report. Mr. Wayne said that the staff recommendation was to pay no matching funds to Woodcock or any other gubernatorial campaign. Mr. Wayne said the committee had conducted fundraising and spending in 2006 but was unaware that it had to file regular party committee reports with the Commission. Mr. Wayne said that there was a breakdown in communication with some of the county and town party committees on filing requirements.

Mr. Ketterer said that there seemed to be a problem either with the state party committees communicating with local party committees or high turnover among local party committee

treasurers. Mr. Wayne said that there was still a legal requirement to file the reports and that the reports could effect the election.

Dan Billings, appearing on behalf of the Woodcock campaign, said that the campaign was satisfied with the staff recommendation. Mr. Billings said that while the committee claims that its newsletters were sent to members, some of them were available in public locations.

Mr. Friedman asked Mr. Billings if he was withdrawing his request for matching funds. Mr. Billings replied that he was withdrawing the request and was satisfied with the results of the Commission staff's investigation.

Mr. Friedman moved, Mr. Cassidy seconded, and the Commission voted unanimously (3-0) to accept the staff recommendation.

#### **Agenda Item #5 – Policies Regarding Legislative Mailings to Constituents**

Mr. Wayne said that the Commission staff received complaints from candidates stating that their opponents' legislative newsletters were campaign-related. Mr. Wayne said that the Commission decided to take no action on those issues, but did hold a public workshop on July 19. Mr. Wayne said that the staff recommended that the current law was adequate and no changes were needed. Mr. Wayne said that distinguishing between campaign materials and legislative newsletters was not a major problem. Mr. Wayne said that the Commission should be cautious not to impede legislators' ability to communicate with their constituents. Mr. Wayne said that one of the issues brought to the Commission involved a legislator who sent constituent mailings outside his current district. Mr. Wayne said that the Commission could decide to add language to its rules or the candidate guidebook stating that mailings outside a legislator's district could be considered campaign expenditures.

Mr. Ketterer said that the Clerk of the House and Secretary of the Senate had the ability to screen and edit constituent newsletters to avoid sending campaign materials. Mr. Ketterer said that when he served as a legislator, he did communicate with citizens outside his own district who

were affected by specific issues that came before the legislature. Mr. Ketterer said that this was different from conducting a mass mailing outside of one's district. Mr. Ketterer agreed with Mr. Wayne's suggestion that language be added to the candidate guidebook on the issue.

Mr. Friedman said that having information on constituent mailings in the guidebook will inform candidates about what practices may raise an issue with the Commission. Mr. Friedman said that it would also educate the parties. Mr. Friedman said that the problem was not significant enough to justify a change to the Commission rules.

Mr. Cassidy agreed on the need for constituent mailings information in the candidate guidebook.

Mr. Cassidy moved, Mr. Friedman seconded, and the Commission voted unanimously (3-0) to adopt the staff recommendation and include guidance on constituent mailings in the candidate guidebook.

The Commission decided to return to Agenda Item #6 later in the meeting.

#### **Agenda Item #7 – Administrative Question: Posting Statements of Sources of Income**

Mr. Wayne said that legislators are required to file a form once a year disclosing their sources of income.

Mr. Ketterer asked if the form required the reporting of specific amounts. Mr. Wayne replied that only the sources of income are reported and not amounts.

Mr. Wayne said that the sources of income forms were kept in the Commission offices, but were not posted on the Internet. Mr. Wayne said that posting the forms online would make them more accessible to the public. Mr. Wayne said that some legislators may be concerned about the availability of personal information such as the receipt of social services benefits. Mr. Wayne said that the staff was generally in favor of posting the forms online. Mr. Wayne said that the matter of posting the forms was raised by the League of Women Voters at a meeting of the

Advisory Committee on Legislative Ethics. Mr. Wayne said that the advisory committee voted unanimously in favor of recommending to the Commission that it post the sources of income forms on its Web site.

Mr. Cassidy said that the forms were already public documents and were not being kept secret.

Mr. Friedman said that the Commission should recognize that most people have access to the Internet and post the forms on the Web site.

Mr. Ketterer asked if past practice had been that legislators filed the sources of income forms with the Secretary of State. Ms. Gardiner said that executive branch employees have a form they must file with the Secretary of State, but legislators file the sources of income form with the Commission.

Mr. Ketterer said that disclosure was part of being a legislator. Mr. Ketterer said that it would go against the spirit of the statute to collect the information and never make it publicly accessible. Mr. Ketterer said that the Commission should not disregard the recommendation from the Advisory Committee.

Mr. Friedman moved, Mr. Cassidy seconded, and the Commission voted unanimously (3-0) to approve the staff recommendation that the sources of income forms be posted on the Commission Web site.

#### **Agenda Item #8 -- Sufficiency of Maine Clean Election Fund for the 2008 Elections**

Mr. Wayne said that a major source of funding for the Maine Clean Election Act has been a \$2 million transfer every year from the General Fund to the Maine Clean Election Fund. Mr. Wayne said that there was also a check-off on state income tax returns, providing additional revenue. Mr. Wayne said that in 2002 and 2003, the legislature removed \$7 million from the Maine Clean Election Fund to be used for other purposes. Mr. Wayne said that there was an understanding that the money would be returned. Mr. Wayne said that it may be necessary to

request the return of some of the funds during the next legislative session. Mr. Wayne said that the amount of the request is dependent upon the amount of funds distributed to candidates before the election. Mr. Wayne recommended that he e-mail the Commission members when he determined the proper amount to request from the legislature, if any. Mr. Wayne said that the alternative was to wait until the Commission's November meeting.

Mr. Ketterer agreed with Mr. Wayne's suggestion and said that the Commission should report its communication in the minutes of a public meeting.

#### **Agenda Item #9 – Update on LaMarche Appeal**

Ms. Gardiner said that oral argument was heard on Wednesday. Ms. Gardiner said that the judge had his own internal deadline for a decision. Ms. Gardiner said that she was unsure whether the LaMarche campaign would appeal the judge's verdict.

#### **Agenda Item #4 – Request for Matching Funds/Cumberland County Democratic Committee Newsletter (continued)**

Mr. Wayne said that Rep. Lawrence Bliss was present and may have wished to speak on Agenda Item #4.

Rep. Bliss said that he did not need to speak on the issue if it was going to be addressed at a future meeting.

Mr. Ketterer told Rep. Bliss that the Commission had already adopted the staff recommendation that the committee was not required to file an independent expenditure report. Mr. Ketterer said that other issues were raised during the discussion and will be addressed by the Commission staff. Mr. Ketterer said that there was an ongoing issue with party committees communicating about reporting requirements. Rep. Bliss said that he was aware that there was a problem that the committee will address. Mr. Ketterer said that the problem was due to a lack of

communication and ignorance of the filing requirements rather than an intent to hide information from the public.

Mr. Friedman said that the Woodcock campaign withdrew its claim that the printed materials were express advocacy. Mr. Friedman said that the only action the Commission took was to approve the staff's recommendation on the reporting issue.

Mr. Wayne said that the committee already conceded that it was late filing the July report, resulting in a penalty matter. Mr. Wayne said that he was uncertain whether the committee was required to file reports from years before 2006. Mr. Wayne said that it would be a reasonable burden on the committee to ask it to determine whether it owed reports from 2005.

Mr. Friedman said that it would be easier for the Commission staff to look at one year than to go back further. Mr. Wayne said that he was more concerned with the burden on the committee than on the staff.

Rep. Bliss said that his committee was gathering information on both 2005 and 2006.

Mr. Ketterer said that the Commission seemed to agree that it would only request reports from 2006.

The Commission decided to return to Agenda Item #11 later in the meeting.

**Agenda Item #12 – Request for Inquiry Regarding Endorsements/Reginald W. Arsenault, Jr.**

Mr. Wayne said that Ben Gilman of the State Republican Party filed a request that the Commission consider an endorsement issue regarding Reginald Arsenault. Mr. Wayne said that both candidates in the race received positive ratings from the Maine Credit Union League and the Sportsman's Alliance of Maine. Mr. Wayne said that both candidates received an "A" rating from the Sportsman's Alliance. Mr. Wayne said that Mr. Gilman's complaint referred to a press

release sent out by Reginald Arsenault claiming that he received endorsements from the Sportsman's Alliance and Maine Credit Union League. Mr. Wayne said that Randy Hotham received the endorsements and not Mr. Arsenault. Mr. Wayne said that the Arsenault campaign has publicly stated that it made an error and misinterpreted the letters it received. Mr. Wayne said that the Arsenault campaign sent a letter of apology to the local newspaper recognizing Rep. Hotham as the proper endorsee. Mr. Wayne said that it seemed that Mr. Gilman and Rep. Hotham wanted to get a correction on the record rather than a finding of violation. Mr. Wayne said that the staff recommended not finding a violation and not assessing any penalty. Mr. Wayne said that this case was similar to the issue of Michael Mowles' use of an endorsement, where Mr. Mowles challenged the constitutionality of the statute. Mr. Wayne said that given Mr. Mowles' appeal, it would be best not to take any action against Mr. Arsenault.

Mr. Friedman asked if the Republican Party made the complaint and was satisfied with no further action after hearing about Mr. Arsenault's apology. Mr. Wayne said that he heard that from the Republican candidate in the race, not from the Republican Party staff. Mr. Wayne said that he had not talked to Mr. Gilman about their current view.

Mr. Cassidy moved to accept the staff's recommendation to find no violation and impose no civil penalties.

Mr. Friedman questioned whether the Commission should pass the motion when it did not discuss the matter at length.

Mr. Wayne said that Rep. Hotham left a voicemail message stating that he would like an admonishment from the commission but did not wish a monetary penalty to be imposed on Mr. Arsenault.

Mr. Friedman seconded Mr. Cassidy's motion and the Commission voted unanimously (3-0) to accept the staff's recommendation to find no violation and impose no civil penalties.

Mr. Ketterer said that Mr. Arsenault had apologized and Rep. Hotham was being reasonable with his request.

The Commission decided to take up the following items out of order and return to Agenda Item #13.

**Agenda Item #6 – Administrative Question: Payment of Matching Funds to Gubernatorial Candidates**

Mr. Wayne said that there were two ways that the staff could pay matching funds resulting from independent expenditure reports. Mr. Wayne said that the staff could calculate matching funds once a day, which may result in some independent expenditures offsetting others. Mr. Wayne said that this method would keep all gubernatorial candidates on a level playing field while saving money.

Mr. Ketterer asked what the past practice had been. Mr. Wayne said that it was not an issue in 2002 due to only one candidate receiving matching funds. Mr. Wayne said that additional staff members were now available to make matching funds authorizations, providing the option of making several authorizations a day.

Dan Billings, speaking on behalf of the Woodcock for Governor campaign, said that the issue was a reasonable one. Mr. Billings said that the staff proposal took into consideration the Maine Clean Election Act's purpose of providing a level playing field. Mr. Billings said that the Woodcock campaign requested that matching funds calculations be done on at least a daily basis. Mr. Billings said that having a set time to calculate matching funds may allow those making independent expenditures to take advantage of the system. Mr. Billings said that overall, the campaign had no objections to the staff proposal.

Michael Saxl said that he agreed with Mr. Billings.

Mr. Ketterer said that due to the volume of independent expenditure reports, it may become problematic in the few days before the election to only authorize matching funds once a day. Mr. Wayne said that the staff would change its policy for the last three days before the election and use its discretion to decide when to authorize matching funds.

Mr. Friedman suggested that the staff consider extending the three-day policy to a longer period of time before the election. Mr. Friedman asked Ms. Gardiner if the statute referenced batch processing of matching funds authorizations. Ms. Gardiner said that it did not and that there was room for discretion.

Beryl Leach, campaign manager for Barbara Merrill, asked if subsequent independent expenditure reports would result in an adjustment to a previously made authorization.

Mr. Wayne said that the authorization amounts given to the campaigns would not change after the next matching funds calculation. Mr. Wayne said that he proposed that the staff would still have discretion over batch processing matching funds if multiple reports are received within a short span of time.

Ms. Gardiner said that an independent expenditure report offsetting another report would affect the next matching funds authorization but would not affect or revoke authorizations that have already been made.

Michael Saxl recommended batch processing matching funds at two different times each day.

Jon Bartholomew, representing Common Cause Maine and the Maine Citizens for Clean Elections Coalition, said that independent expenditure reports must be filed based on when an obligation is made. Mr. Bartholomew said because of this, the Commission may not need a different policy for authorizing matching funds four days before the election.

Mr. Ketterer said that there seemed to be a consensus in support of daily batching of matching funds authorizations.

Mr. Friedman moved, Mr. Cassidy seconded, and the Commission voted unanimously (3-0) to permit the staff to consider independent expenditure reports in batches rather than independently and to give the staff discretion to establish a time of day to consider matching funds authorizations and discretion to use alternative methods in the days before an election.

#### **Agenda Item #11 – Matching Funds Questions/Douglas Smith**

Dan Billings spoke on behalf of Douglas Smith, a Senate candidate. Mr. Billings said that Douglas Smith was in a contested primary, obligating more in expenditures than he had raised in contributions at that time. Mr. Billings said that it was not appropriate to pay \$7,000 in matching funds to Mr. Smith's general election opponent based on the money raised after the primary to pay pre-primary obligations. Mr. Billings asked that the Commission consider these to be pre-primary expenditures that are not used to calculate general election matching funds. Mr. Billings recommended separate primary election finance reports that only cover the primary election rather than the current 42-day post-primary report that includes activity from both elections.

Mr. Friedman asked if it mattered that Mr. Smith was involved in a hotly contested primary election. Mr. Billings said that the Democratic gubernatorial primary was an example of a primary that was not hotly contested. Mr. Billings said that in that case, the Baldacci campaign's expenditures were made toward the general election more so than toward the primary.

Mr. Friedman asked if the Commission should make an exception for Mr. Smith. Mr. Billings said that the Commission should consider when the expenditures were made and materials used. Mr. Billings said that Mr. Smith purchased 400 signs before the primary that were used in the general election, so that portion of the expenditure should be included in matching funds calculations made for the general election. Mr. Billings said that his request was in keeping with the statute and rules, since the issue resulted from an administrative procedure.

Mr. Wayne said that the campaign treasurer originally said that \$7,350 should be attributed to the primary election. Mr. Wayne said that this amount included a payment to Creative Printing, but 60% of that payment was used toward the general election. Mr. Billings said that the \$7,350

amount was not correct, but he did not have the correct figures available. Mr. Billings said that the Commission should deal with the policy issue rather than the specific number.

Michael Saxl said that it was possible to report loans and unpaid debts on finance reports. Mr. Saxl asked that the Commission verify that any loans were reported accurately by the campaign. Mr. Saxl said that attributing money to the primary election may have affected matching funds to Mr. Smith's primary opponent. Mr. Saxl said that separate reporting for each election was a good idea.

Mr. Friedman asked what the staff recommended.

Mr. Wayne said that Sharon Libby Jones did not contest Mr. Smith's claim that a portion of his general election fundraising was used toward the primary election. Mr. Wayne said that Ms. Libby Jones had already obligated some of the matching funds that she had been authorized. Mr. Wayne said that with the exception of those obligations, he recommended that her authorization be reduced based on Mr. Smith's general election funds used toward the primary election.

Mr. Cassidy moved, and Mr. Friedman seconded, that the Commission accept the staff recommendation.

Mr. Friedman asked what the staff recommendation would be if there was not a strongly contested primary election. Mr. Wayne said that under the current system, all activity before the primary election is presumed to be used toward that election and is not included in calculating matching funds for the general election.

Ms. Gardiner said that it would be difficult for the Commission to determine whether an expenditure was for the primary or general election using any criteria other than when the goods and services were actually used. Ms. Gardiner said that the Commission's rules allow for an expenditure made before the primary election to be considered a general election expenditure if a preponderance of the expenditure was used in the general election.

The Commission voted unanimously (3-0) to accept the staff recommendation.

**Agenda Item #13 – Request for Matching Funds/Benjamin Meiklejohn**

Jon Bartholomew said that there was no other reasonable interpretation of the mailer sent by the Democratic Party than as advocacy for the election of Anne Rand.

Mr. Ketterer asked Mr. Bartholomew what he would recommend. Mr. Bartholomew said that the Commission should consider the mailers to be express advocacy and trigger matching funds.

Michael Saxl said that the Commission decided that some of the advertisements aired in the gubernatorial election were not express advocacy. Mr. Saxl said that the party designed its mailers based on that decision.

Benjamin Meiklejohn joined the meeting by telephone.

Mr. Meiklejohn said that the mailer included the words "Anne Rand, State Representative." Mr. Meiklejohn said that considering that Anne Rand was not at the time a state representative, the mailing must have advocated for her election. Mr. Meiklejohn said that the mailer fit the "other language" provision of the statute.

Mr. Wayne said that the staff recommendation was based on the Commission's ruling on the Republican Governors Association ads. Mr. Wayne said that it was hard to consider the Democratic Party mailings express advocacy when the Commission determined that the RGA ads were not.

Mr. Meiklejohn said that based on the Commission's decisions, the parties could put up signs that do not contain express advocacy without triggering matching funds.

Mr. Ketterer said that Mr. Meiklejohn's comments were well received and there may be statute changes in the future.

Mr. Meiklejohn said that his matter was a separate issue from the ads in the gubernatorial race.

Mr. Wayne said that the Republican Governors Association ad displayed Chandler Woodcock's name and office sought at the very end. Mr. Wayne said that the Commission determined that the other language in the ad related to issues. Mr. Wayne said that a sign or bumper sticker with just the name of a candidate and the office sought could be considered to be express advocacy because it would not contain any other language.

Ms. Gardiner said that the Commission's September 22 decision should not be taken to mean that mentioning the name of the office does not make a communication express advocacy. Ms. Gardiner said that the ads were considered in context.

Mr. Cassidy asked Mr. Wayne how he determined the staff recommendation. Mr. Wayne said that both of the mailers contained enough issue content so that they were not express advocacy.

Mr. Cassidy asked if a lawn sign stating only "Anne Rand, Representative" would be considered express advocacy. Mr. Wayne said that it would be express advocacy because there would be no discussion of issues. Mr. Wayne said that the Commission's rules have specific examples of express advocacy, including signs and bumper stickers.

Mr. Cassidy moved, and Mr. Friedman seconded, that the Commission accept the staff's recommendation and pay no matching funds.

Mr. Friedman said that the mailers contained express advocacy. Mr. Friedman said that there was little discussion of issues in the mailers and they should trigger matching funds.

Mr. Cassidy said that the mailers were similar to the ads discussed at the September 22 meeting.

The Commission voted 2-1 to accept the staff recommendation. Mr. Cassidy and Mr. Ketterer voted for the motion; Mr. Friedman voted against the motion.

**Agenda Item #14 – Request for Matching Funds/W. Bruce MacDonald**

Mr. Cassidy moved, and Mr. Friedman seconded, that the Commission accept the staff recommendation and pay no matching funds.

Mr. Friedman said that unlike the mailers discussed in the previous agenda item, the materials seemed to be issue-oriented. Mr. Friedman said that they did not include the name of the office sought by the candidate.

The Commission voted unanimously (3-0) to accept the staff recommendation.

**Agenda Item #15 – Request for Matching Funds/Jayne Crosby Giles**

Jayne Crosby Giles said that she received both campaign and non-campaign mailers relating to Walter Ash on the same day. Ms. Crosby Giles said that the mailers contained overlapping themes, causing confusion among voters as to which of the mailings were advocating for Walter Ash's election.

Mr. Friedman asked if it would have made a difference if Ms. Crosby Giles had not received the mailings all at the same time. Ms. Crosby Giles said that receiving them at the same time resulted in the mailings being a different issue from her previous complaint and clearly express advocacy.

Jon Bartholomew said that he disagreed with some of the Commission's previous decisions and supported Ms. Crosby Giles' complaint. Mr. Bartholomew said that the Commission should consider the context of the mailings and not just look for the "magic words" to determine express advocacy.

Dan Billings said that Patricia LaMarche's appeal of the Commission's decision on the Republican Governors Association ads was currently before the court. Mr. Billings said that if

the court were to strike down the Commission's earlier decision, it should revisit the items discussed at the present meeting.

Mr. Ketterer asked Mr. Billings for his opinion on the issue of campaign and non-campaign mailings arriving at the same time. Mr. Billings said that it was likely a coincidence and not a coordinated act.

Mr. Cassidy said that he didn't see a connection between the mailings. Mr. Cassidy said that if they were coordinated, they probably wouldn't have been mailed at the same time.

Mr. Cassidy moved, and Mr. Friedman seconded, that the Commission accept the staff recommendation and pay no matching funds.

Mr. Friedman said that the mailing was express advocacy because despite some mention of issues, the ultimate purpose of the mailing was to advocate for Walter Ash's election.

Mr. Ketterer said that he agreed with Mr. Cassidy but the Commission should consider each case individually and in context.

The Commission voted 2-1 to accept the staff recommendation. Mr. Cassidy and Mr. Ketterer voted for the motion; Mr. Friedman voted against the motion.

**Agenda Item #16 – Request for Matching Funds/John N. Frary**

Mr. Wayne said that John Frary, chair of the Franklin County Republicans, brought the request on behalf of Republican candidate Lance Harvell. Mr. Wayne said that the literature was handed out at the University of Maine at Farmington. Mr. Wayne said that the literature contained Mr. Harvell's responses to a survey from the Maine Economic Research Institute. Mr. Wayne said that it was not clear whether the literature was intended to oppose Mr. Harvell.

Mr. Frary said that the document contained no disclosure statement. Mr. Frary said that both the College Democrats and Mr. Harvell's opponent, Janet Mills, claimed not to be responsible for the flyers.

Mr. Friedman asked how Mr. Frary obtained the flyer. Mr. Frary said it was given to him by a student at UMF. Mr. Frary said it was being handed out at the college.

Mr. Wayne asked if the flyer was distributed on or before October 18. Mr. Frary said that he obtained the flyer on October 17.

Mr. Wayne said that since the flyer was distributed before the 21-day presumption period and contained no express advocacy, it should not trigger matching funds.

Mr. Ketterer asked what the result would be if the flyers contained no disclaimer and were distributed more than 21 days before the election. Mr. Wayne said that if the flyers contained express advocacy and lacked a disclosure, there would be a violation resulting in a civil penalty.

Mr. Wayne said that the Commission could direct him to investigate further into who distributed the flyer and whether it was distributed after October 18. Mr. Wayne said that no report would be required unless the flyers cost more than \$100. Mr. Wayne said that based on what was currently known, there was no reason to award Mr. Harvell matching funds or find anyone in violation for lack of a disclosure statement.

Mr. Friedman said that college students with no connection to the Democratic Party may have created the flyers.

Mr. Friedman said that he was unable to determine whether the flyer was in support of or opposition to Mr. Harvell.

Mr. Cassidy moved, Mr. Friedman seconded, and the Commission voted unanimously (3-0) to take no further action.

**Agenda Item #17**

Mr. Wayne said that a political action committee, Alliance for Maine's Future, reported an independent expenditure on behalf of Rep. Jeremy Fischer in the amount of \$2,400. Mr. Wayne said that Rep. Fischer questioned whether \$2,400 was the true cost of the mailer. Mr. Wayne said that the address for AMF's Web site was included in the mailer, which then linked to the Web site for the Maine Economic Research Institute. Mr. Wayne said that Rep. Fischer said that MERI gave him an unfavorable rating.

Mr. Ketterer asked whether the staff notified candidates when their opponents received matching funds. Mr. Wayne said that they were copied on the authorization letter.

Paul Brunetti with the House Democratic Campaign Committee said that the \$2,400 in matching funds represented a substantial amount of money available to Rep. Fischer's opponent within 21 days of the election. Mr. Brunetti said that the mailing discussed the Maine Prosperity PAC, so not all of the value of the mailing benefited Rep. Fischer. Mr. Brunetti said that Rep. Fischer had been attacked in the media for the ranking he received from MERI.

Jon Bartholomew said that unless they were the same organization, the link to MERI from AMF's Web site was not relevant. Mr. Bartholomew said that the cost of the mailing may be worth considering.

Mr. Ketterer asked Mr. Bartholomew what action the Commission should take. Mr. Bartholomew said that it was up to the candidates' opponent to bring forward a complaint to the Commission and look at the documentation provided.

Mr. Wayne said that the staff recommended not reconsidering the awarding of matching funds.

Mr. Cassidy moved, and Mr. Friedman seconded, a motion to accept the staff recommendation.

Mr. Friedman asked if there was any mechanism for requesting documentation of an expense filed on an independent expenditure report. Mr. Wayne said that the Commission staff could ask for an explanation of the amount, but the Commission may want a more formal procedure in its rules. Mr. Wayne said that the burden is ultimately on the candidates to bring a complaint, at which time the Commission staff would investigate.

Tony Payne, executive director of the Alliance for Maine's Future, provided a copy of the check used to pay for the mailings in question.

Mr. Ketterer said that while it was understandable that the candidate was concerned over his opponent receiving matching funds, it was the nature of independent expenditures that the candidate being supported does not have the ability to approve or disapprove.

The Commission voted unanimously (3-0) to accept the staff recommendation.

#### **Agenda Item #18**

Mr. Wayne said that the issue was whether a mailer that was sent out by the Oxford County Democratic Committee was a party candidate listing or whether it was an independent expenditure. If it was a party candidate listing, it would be exempt from independent expenditure reporting. The criteria for party candidate listings has become much more rigorous than it was in the past and the statute lays out very specifically what elements can and cannot be in a party candidate listing. Upon reviewing the mailer, the staff thought that there were some elements in it that fell outside the party candidate listing. The staff communicated that to Cathy Newell from the Oxford County Democratic Committee. Mr. Wayne said that one particularly important issue was what advice the staff gave to Ms. Newell regarding this mailer. The staff suggested to Ms. Newell that she may want to consider filing an independent expenditure if there was any doubt. The committee did file an independent expenditure report. The staff did question whether the report should have been filed because the staff believes it is the responsibility of the filer to know whether it has to file an independent expenditure report. Additionally, there was enough language in the mailer that suggested that it contained express

advocacy for the named candidates. The independent expenditure triggered matching funds for Republican candidates in Oxford County, including \$2,000 each to two Senate candidates. One of those candidates had already begun to obligate some of those matching funds.

Mr. Wayne said that the Oxford County Democratic Committee objected to the characterization that the mailer constituted express advocacy. He said that there was a lot of information about the candidates, their platforms and their histories, but there were no words of express advocacy. However, there was content that suggested that the mailer was promoting the candidates. The staff does not have a strong recommendation for the Commission.

Mr. Ketterer asked whether there was anyone present who wish to speak on this agenda item. Newell Augur introduced himself as counsel for Senate candidates Bruce Bryant and Marjorie Mcdd.

Mr. Newell said that the mailer was an insert to local newspapers. He said that Ms. Newell consulted with counsel about the mailer regarding whether the mailer constituted express advocacy. After reviewing the mailer, it was decided that it did not constitute express advocacy and did not require an independent expenditure report. However, at some point in time, Ms. Newell received a call from the Commission staff saying that the committee may be in violation because of the mailer if it did not file an independent expenditure report. Mr. Newell said that it was in response to that call that Ms. Newell filed the report. The committee's interest is that the award of matching funds be reversed or, if the funds have been obligated or used, that they be used as an offset against future matching funds. Mr. Newell said that since the mailer went out prior to the 21-day rebuttable presumption period, whether the mailer constituted a party candidate listing was not even an issue. The question was whether the mailer contained words of express advocacy. He said that it did not.

Mr. Ketterer asked Mr. Newell to explain the party candidate listing. Mr. Newell said that if a communication was a true party candidate listing, it was not considered an expenditure and would not have to be reported in an independent expenditure report. But since the mailer was

distributed prior 21 days before the election, the party candidate listing was not a factor in deciding this issue.

Cathy Newell introduced herself as the chair of the Oxford County Democratic Committee and the person who prepared the mailer. She said that she consulted with counsel in September and was assured that it did not constitute express advocacy. She said that she intended to report the expenditure on the committee's regular campaign finance report. However, she did get a call from the staff which questioned whether the mailer was a party candidate listing or an independent expenditure. She said that she was told by Commission staff that if it was an independent expenditure, the report was already late. Because she was concerned about avoiding penalties for a late filed report, she filed the report the same day.

Mr. Wayne asked Ms. Newell why she did not question the staff when she was told that the mailer should have been reported as an independent expenditure since she had received a legal opinion on this matter. Ms. Newell said that she realized now that she should have contacted her attorney but she thought that there was no alternative and that the report had to be filed.

Daniel Billings, on behalf of Senator Hastings, stated that Senator Hastings had already committed some portion of the matching funds. He said that he was concerned about the larger effect of a Commission's decision to require the return of obligated or spent matching funds under circumstances such as these. He recommended that the Commission consider the alternative that Mr. Auger suggested that obligated or spent matching funds be considered an offset against future awards of matching funds.

Mr. Billing referred to a previous Commission meeting at which Ms. Ginn Marvin said that the Commission had to rely on the information that was provided in reports. He said that he was not suggesting that this be applied rigidly but that it deserved consideration in this case. He also stated that whether the content of the mailer was free from express advocacy was not as black and white an issue as had been portrayed to the Commission. He cited some examples of language, e.g., "voter guide," and other content, e.g., a table comparing Democrats and Republicans. He maintained that the mailer was not a party candidate listing. He also

questioned whether, if the mailer was an independent expenditure, it was truly independent of candidate involvement and input.

Jon Bartholomew from Common Cause and the Maine Citizens for Clean Elections said that he thought the mailer was a party candidate listing. He said that he believed that the person who filed the report did so in good faith and was trying to cover all the bases. He also stated that the mailer was sent outside the 21-day period and therefore should not result in matching funds.

Mr. Wayne recommended that the Commission adopt the suggestion that Senator Hastings be allowed to use the matching funds to pay for the obligations that he has already incurred and use that amount as an offset against future matching funds. He explained that he thought that the Commission's needed to determine whether the mailer contained express advocacy. If the Commission decided that it was not, Mr. Wayne suggested that the awards of matching funds be undone. Mr. Wayne said that it was regrettable how this matter came up. However, even though it was understandable that people generally defer to Commission staff regarding filing requirements, it was the responsibility of the filer to know which reports to file and the Oxford County Democratic Committee had the benefit of advice from counsel on whether the mailer contained express advocacy.

Mr. Ketterer said that he could understand why someone would file a report if a government official told them that penalties would be accruing if the report was not filed. Mr. Cassidy said that the county chair of a party committee was not an ordinary person and should know better. Mr. Cassidy went on to say that the content in the mailer crossed the line into express advocacy.

Ms. Gardiner cautioned against basing a determination that merely a label of "voter guide" did not necessarily mean that something was express advocacy.

Mr. Friedman asked whether the staff presumed that the mailer contained express advocacy. Mr. Wayne responded that in looking at the mailer, he thought it was a close call. But that the mailer was not a party candidate listing.

Mr. Friedman said that based on previous discussions regarding express advocacy he thought that the mailer was not express advocacy but was implied advocacy for the candidates in the mailer.

Mr. Ketterer said that it was clear that the mailer was not a party candidate listing.

Mr. Cassidy said that he thought there was enough evidence to support a finding.

Mr. Friedman moved that the Commission find that the mailer did not constitute express advocacy, that matching funds not be generated; however, if matching funds have already been obligated, the candidate be allowed to use the amount, but the staff would use that amount as an offset against future matching funds. Mr. Cassidy seconded.

Mr. Cassidy agreed with the second half of the motion but still thinks that the mailer constituted express advocacy.

Mr. Ketterer called for a vote. Mr. Ketterer and Mr. Friedman voted to adopt the motion. Mr. Cassidy voted against it. The motion carried by a vote of 2 to 1.

#### **Agenda Item #19**

In introducing the issue, Mr. Wayne said this matter only came to the Commission staff at the end of business on the day before the meeting. His oral recommendation to the Commission was that this matter be postponed to the next meeting because it deserved a response from the Maine Heritage Policy Center (MHPC) and more consideration by the Commission staff. Mr. Wayne explained the reports that are required for entities involved in supporting or opposing ballot initiatives. He said that they would either file as a PAC or, if the entity was not a PAC, on a §1056-B form. He said that the issue raised by Carl Lindemann was that the Maine Heritage Policy Center was very directly involved in actively supporting the Taxpayers' Bill of Right initiative but had not filed any reports disclosing its financial activities in that regard.

Mr. Ketterer asked Mr. Lindemann (attending via telephone) whether he wanted to address the Commission on this matter.

Mr. Lindemann said that the Maine Heritage Policy Center, a research organization, had taken on the role of advocating on behalf of and providing public relations support to the PAC which sponsored the initiative but there was no disclosure of what the MHPC was spending. He said that this introduced a new dynamic in the political process by which many expenditures can be hidden. He said that he was concerned that this dynamic could become the accepted norm.

Mr. Ketterer invited members of the public to comment.

Jon Krasnick, Executive Director of Democracy Maine, said that his organization supported Mr. Lindemann's complaint. He said that his organization contacted the Commission staff to find out what it needed to report in terms of its involvement opposing TABOR. He said that the MHPC has played an integral role in supporting TABOR for quite some time. Mr. Krasnick expressed his belief that Maine voters deserved to know where funds and resources come from that allow MHPC to do its work in support of TABOR. Mr. Krasnick offered the Commission copies of articles by MHPC that showed how involved it was.

Mr. Lindemann said that he also sent the Commission materials that would support his contention that MHPC is very involved in influence the election.

Dan Billings, counsel for the Maine Heritage Policy Center, said that it was important to address the role of MHPC. It is not acting as a PAC on behalf of TABOR. There is a separate organization which is a PAC which is working on behalf of TABOR. MHPC has not run advertisements, or solicited funds in support of TABOR. MHPC did draft the original legislation and wrote the initiative and has been vocal in support of TABOR. He said that the language in §1056-B was very broad and questioned whether it would withstand constitutional scrutiny. Mr. Billings said that with such a broad statute there should be many other entities, like the Roman Catholic Church, some municipalities, would fall within this provision but are not filing.

Jon Bartholomew said that his organization was in support of organizations disclosing any funds over \$1,500 to influence a referendum should disclose that activity.

Mr. Ketterer posed to the Commission whether this matter should be tabled in order that the issues be fully briefed by the parties and considered by the staff. Mr. Cassidy made a motion that the matter be tabled until the next meeting. Mr. Friedman seconded. The motion carried unanimously. He told the interested parties to submit in writing their arguments to the staff by 5:00 p.m. on October 31st.

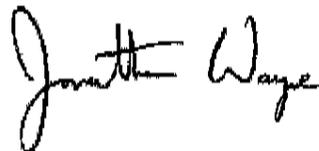
**Agenda Item #1 (continued)**

Mr. Ketterer returned to this item, the ratification of the minutes. The minutes had been amended during the meeting and were ready for re-consideration by the Commission. Mr. Cassidy moved that the minutes be ratified as amended. Mr. Friedman seconded. The motion carried unanimously.

Mr. Cassidy moved that the meeting be adjourned. Mr. Friedman seconded. The motion carried unanimously.

The meeting adjourned.

Respectfully submitted,



Jonathan Wayne  
Executive Director

Minutes of the November 2, 2006  
Special Meeting of the  
Commission on Governmental Ethics and Election Practices  
• Held via Teleconference

Present: Chair Andrew Ketterer, Hon. Jean Ginn Marvin; Hon. A. Mauvorneen Thompson, Hon. Michael Friedman

Interested Parties: Dan Billings, Esq.; Michael Mahoney, Esq.; Newell Augur, Esq.; Brian Hawkins; Gregory Olson.

Staff: Executive Director Jonathan Wayne, Counsel Phyllis Gardiner

At 9:50 A.M., Chair Andrew Ketterer convened the meeting. The Commission considered the following item:

**Complaint filed by Attorney Dan Billings o/b/o the Maine Senate Republican Victory Fund Alleging Late or Non-filed Independent Expenditure Reports by the Maine Democratic Party and/or Senate Democratic Campaign Committee**

Mr. Wayne explained the purpose of this meeting is to determine whether the Maine Democratic Party and the Senate Democratic Campaign Committee file independent expenditure reports on time. Originally the complaint was only about two reports, but late on November 1<sup>st</sup>, Attorney Billings questioned an additional two reports.

Mr. Wayne explained that independent expenditure reports must be filed within 24 hours once an expenditure has been made aggregating more than \$250 per candidate. It is therefore critical to know when that expenditure has been made. In 2004, the statutory definition of expenditure included a payment, contract, promise or agreement, expressed or implied, whether or not legally enforceable to make any expenditure. In light of late report filings in 2004, the Commission adopted rule changes in 2005 to include obligations as a form of expenditure. Regarding

independent expenditures, the date of the earliest of these events must be reported within 24 hours.

Mr. Billings explained the reason for the complaint was based on a review of the reports of the Senate Democratic Campaign Committee (SDCC) and Maine Democratic Party (MDP) which raised questions about the timing of certain independent expenditures. In addition, it appeared that the SDCC had a fairly large amount of money on hand that the Maine Republican Party (MRP) expected would be spent before the election. The initial independent expenditure report filing caused the MRP to wonder if the reports were timely filed with the Commission, and the MRP wanted to make sure all future filings were done on a timely basis. However, Mr. Billings said there were additional independent expenditure reports filed by the SDCC on November 1st, and it appears that most of the money has been spent, so his concerns about that have dissipated.

Mr. Billings suggested that it would be worthwhile to have a meeting after the election to ask questions of the people who made the expenditures. Mr. Billings referred to an e-mail by Mr. Wayne which suggested that the Commission members not make a final determination until those questions can be answered.

The first matter that raises a question for Mr. Billings is the large transfer of funds from the SDCC to Victory 2006, a sub account of the MDP. The second matter is the filing of independent expenditure reports #48 and #71 shortly after the reports were filed which gives the appearance that the transfer was made with those independent expenditure reports in mind.

Mr. Billings said that the contents of independent expenditure report #71 made it appear that some of the expenditures were made well before 10/30/06. In particular, regarding Senate District 21 the report stated that the vendor started providing services on 10/29/06, but late corrections were not approved until 10/30/06. Mr. Billings said that this caused one to conclude that services were being provided before the 10/30/06 and that the independent expenditure report was filed late. Regarding Senate District 32, the order was placed on 10/25/06, but the changes were not complete until 10/30/06.

Mr. Billings stated that the explanation for the MDP's independent expenditure report #84 being filed late was the postage amount became known on 11/1/06, but it appears some order was made before that date. Mr. Billings said that there is a big impact from large amounts of money being spent late in the race, and that late filings could delay the release of matching funds to the opponents in these races. Mr. Billings said that he would like the Commission staff to seek more information and eventually have the people who were involved in making these expenditures come forward and answer questions.

Regarding SDCC independent expenditure report #83, Mr. Billings said that it appeared to be a TV buy, and asked that Commission staff inquire about when the productions went into place. Mr. Billings said that the filing in and of itself doesn't raise the same questions as the other two. He is not making any allegations regarding independent expenditure #83, but wonders if the report should have been filed sooner.

Chair Ketterer clarified with Mr. Billings that he is not asking the Commission to make a final decision about whether these reports were filed late at this meeting. Additionally, he clarified that Mr. Billings simply questions whether the rules have been followed regarding the timing of the filing of independent expenditure reports #48 and #71. Mr. Billings said that his major point was that people to be put on notice. Although there are several factual questions that need to be addressed, Mr. Billings was agreeable to them being addressed after the election.

Mr. Billings went on to clarify his client's concern is that all of the independent expenditure reports have not been filed, and as of Monday of this week, it appeared that the SDCC was simply sitting on a large sum of money. However, since the filing of the complaint several independent expenditure reports have been filed. He cannot provide the Commission with any proof of an expenditure that has not been reported.

Mr. Mahoney, attorney for the Maine Democratic Party, was the next to speak. Regarding independent expenditure report #71, the party has kept a close eye on several close state senate races, with the general intent to spend money in support of the Democratic candidates. Those discussions were internal as late as 10/25 and 10/26. At that time there were proposed designs

and proposed mail pieces in a number of races, more than were subject of any of the pieces being discussed at this meeting. On 10/27/06, the MDP gave the approval to its mail production company, Ourso Beychok in Louisiana, for mail pieces in three Senate districts (SD 1, SD 15, and SD 19). At that time, MDP filed independent expenditure #48 on 10/28/06.

Mr. Mahoney said that there was a lot of internal discussion subsequently about where the remaining resources should be spent. He said that it was not until 10/30 that the leadership determined which races to spend its money (SD 1, SD 21, and SD 32). Of note, significant decisions were made internally on 10/30 regarding pieces in those districts, such as number of pieces to be mailed and the content of ads. In addition, the candidate was endorsed by the Kennebec Journal which lead to a redesign. These factors explain why they made a verbal agreement to the mail production company on 10/30, and why the expenditure was subsequently reported on 10/31. Mr. Mahoney was unable to speak with all of the individuals, and like Mr. Billings, would like to have the individuals involved to discuss the circumstances surrounding the situation to be questioned by the Commission at a later date.

Regarding independent expenditure #84 and the postage amount for the mail pieces, Mr. Mahoney was unable to uncover any facts regarding when communications took place, when commitments occurred, or any other information prior to the Commission meeting, but would welcome the chance to follow-up at a later date.

Mr. Friedman said, regarding independent expenditure #71, that it seemed like there was an underlying order for something that was made before the changes. Mr. Mahoney clarified that all of the decisions to target Senate districts 1, 21 and 32 were made at the leadership meeting of 10/30. He went on to state that there were several designs that were put together by an outside consultant without a decision being made as to which were going to be sent out. The party really just wanted to have options to make decisions quickly. Mr. Mahoney said that the question becomes if a piece is designed, but never sees the light of day beyond the MDP, is it still an expenditure to influence the outcome of the election? If there is a nominal amount of money spent designing a piece, should matching funds be issued to the opponent of the candidate who is featured in that piece?

Mr. Friedman said that it seems that Ourso Beychok has an expectation that he will be paid for the work done. Mr. Friedman stated that he thought that a critical point in the analysis was not whether a piece saw the light of day but whether the vendor had an expectation of payment.

Ms. Thompson asked for clarification about the terms "contract, promise or agreement" as contained in the definition of "expenditure." Specifically, Ms. Thompson asked whether those terms would apply to internal agreements within a party or whether it applies to an agreement between the party and a commercial vendor. Chair Ketterer and Mr. Wayne confirmed that it would be the latter.

Mr. Wayne asked Mr. Mahoney about the designs made as early as 10/25 and 10/26 regarding independent expenditure #71, and whether the designs related to specific candidates or were they interchangeable designs that could be used for any number of candidates. Mr. Mahoney was unsure of the exact answer, but his recollection was that those pieces were very different from one another. The pieces were prepared as options, but they weren't sure until 10/30 that they would be used, prior to that it was unknown if they would be used to influence the outcome of the election.

Mr. Wayne asked Mr. Mahoney whether the party's interpretation of the law was that although candidate-specific pieces were designed and prepared for distribution, it was not until the decision was made to use those pieces to influence an election that a reportable expenditure occurred. In other words, if the designed piece did not see the light of day, it was not intended to influence the outcome of the election and not reportable as an independent expenditure. Mr. Mahoney said that, as far as the expenditure for the design is concerned, he does not believe that an independent expenditure report is due until that piece is out influencing the outcome of the election.

Mr. Wayne stated that this interpretation may put the Commission in a difficult position by having to weigh the credibility of filers and by having to rely heavily on trust that independent spenders would report expenditures in an appropriate and timely fashion. Mr. Mahoney said that perhaps the design of pieces should be reported separately.

Chair Ketterer said that an expenditure is reportable once the group decides to do the mailing, not than when the piece is finalized. Mr. Mahoney said that the MDP was looking at nine Senate races on 10/25 and that not until 10/30 was the decision made to influence the outcome of those three Senate races.

Mr. Friedman asked Mr. Mahoney whether Mr. Beychok expects payment for the design is made or only when the design is used. Mr. Mahoney understands that Mr. Beychok was on a long term, flat-fee monthly retainer to provide consulting services and the design of pieces may have been part of that flat-fee. Mr. Mahoney was unsure if there was a broken out, separate fee for a piece chosen for dissemination.

Chair Ketterer questioned Mr. Mahoney about the group called Victory 2006, to which he responded that it is an account of the MDP which has no legal standing.

At the conclusion of the public comment, Commission Counsel Phyllis Gardner articulated the legal issue for the members. She said that the Commission is being asked to provide guidance based on its understanding of the statute regarding the obligation to report and all other matters relating to this issue can be put off until a later date.

Ms. Ginn Marvin stated her concern about people buying things ahead of time and not reporting them; however, without more information it is difficult to make any further action on the matters today. She said that if a group pays a vendor for services which never are distributed publicly that matching funds might be due because those services help you put your campaign together as Mr. Friedman suggested.

Ms. Thompson stated that she agreed with Ms. Ginn Marvin's comments.

Mr. Friedman said the Commission needs a clear and concise rule which will enable the staff to provide the best advice possible. He said that the definition of "expenditure" should be

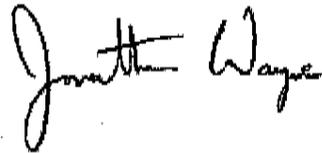
interpreted broadly, and that it would be preferable for reports earlier rather later, and that the Commission should not try and determine the thoughts of others.

Chair Ketterer echoed the sentiments of his colleagues and said that he believes in honest, candid, timely and accurate filings.

Mr. Wayne was hopeful that the late filing aspect of this matter be considered at the November meeting and that the statutory and rule changes be considered at the December meeting.

There being no further business, the Commission adjourned at 10:55 a.m.

Respectfully submitted,

A handwritten signature in cursive script that reads "Jonathan Wayne". The signature is written in dark ink and is positioned above the printed name and title.

Jonathan Wayne  
Executive Director