

Agenda

Item #1



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

Minutes of the May 14, 2007 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: Hon. Jean Ginn Marvin, Acting Chair; Hon. Vinton Cassidy, Hon. Mavourneen Thompson;
Michael Friedman, Esq. Staff: Executive Director Jonathan Wayne; Phyllis Gardiner, Counsel.

At 9:06 A.M., Jean Ginn Marvin convened the meeting. The Commission considered the following items:

Agenda Item #1 Ratification of Minutes: January 19, February 27, and April 6, 2007 Meetings

Ms. Thompson moved, Mr. Friedman seconded, and the Commission voted unanimously (4-0) to ratify the minutes of the January 19, February 27, and April 6, 2007 meetings.

Agenda Item #2 Audit Findings/Hon. Philip A. Cressey

Mr. Wayne explained the auditing process and informed the Commission that the staff is now auditing approximately 20% of the legislative candidates participating in the MCEA. Two main documents that are requested from the candidates are: receipts and/or invoices for purchases and proof of the payment by cancelled check or bank statements. Representative Cressey, Mr. Wayne explained, wrote a check out to himself and used the cash for a payment to Staples for literature. Mr. Cressey does not have a receipt for this literature. The staff recommends finding a violation for not having a receipt, but not assessing a penalty.

The second audit finding was the purchase with MCEA funds of a flash drive for storing digital information. This would be considered campaign equipment that should be sold after the election and funds returned to the MCEA account. Representative Cressey has thrown out the flash drive. Mr.

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Wayne's recommendation is to find Rep. Cressey in violation, but not require him to pay for the flash drive since he did not understand that the flash drive could be used over again.

Representative Cressey, House District 99, addressed the Commission. He had a sample for the Commission of the literature he had printed at Staples. Rep. Cressey went on to explain that when he went to Staples to pay for the literature, he was told that he could not use a 'starter' check from his new checking account, so he went to the bank to cash a check and paid Staples with the cash. He also stated that his fax machine is very old and when he put the receipts into his fax machine to send to the Ethics Commission, he thought the copy had gone through. However, the receipt got caught inside his fax machine and he did not realize this. As for the flash drive, he thought it was like a CD and thought once it had been used, it had to be thrown out.

Mr. Friedman asked what makes this case different from other cases in the past where people have not been able to produce documentation for expenditures and the Commission has not waived the entire penalty.

Mr. Wayne explained this situation does not come before the Commission all that often. In a couple of cases from the 2004 election, the Commission required the return of funds from two candidates who could not produce back-up documentation to support the expenditures. In those cases, even though the candidates said that they used the funds for campaign-related purposes, the Commission found their explanations to lack credibility. Most candidates have been able to come up with the documentation given enough time. This case appears to be the first time a candidate simply cannot find a receipt but has a credible explanation for the expenditure.

Mr. Friedman questioned whether the fact that a candidate cannot find a receipt would be used as a defense.

Mr. Wayne said that the possibility exists. He said that this is a policy decision for the Commission to make: whether to disallow the expenditure and require the return of funds if a candidate cannot provide documentation or whether to allow the candidate to come before the Commission to explain the situation and provide any additional information and base a determination on the credibility of the explanation and the candidate.

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Ms. Thompson agreed with Mr. Friedman as far as setting precedent for future occurrences where documentation 'simply cannot be found.' She felt there does need to be some penalty even though she understands how this could happen. The Commission needs to be accountable for the public's money used by candidates and proof of purchases is very important. As far as the flash drive goes, Ms. Thompson saw how a mistake could be made with this type of equipment. She believes if Rep. Cressey purchased the flash drive, that would be acceptable.

Ms. Gardiner asked whether Rep. Cressey had contacted Staples himself to find out the actual price of the literature and whether he had asked Staples to give him a quote for an order similar to the order he actually got. Rep. Cressey stated he had not but that it was something he could do.

Ms. Ginn Marvin asked when he was notified that he would be audited. Rep. Cressey stated it was some time in October. He stated that he thought it was a burden to get a letter telling him that he was being audited for primary activity so close to the general election.

When asked by Ms. Ginn Marvin, Rep. Cressey stated that he had all the receipts for other expenditures except for the Staples expenditure. He said that he threw out copies of receipts but not the receipts themselves.

Rep. Cressey reiterated that Staples would not take a starter check in response to a question from Mr. Friedman.

Rep. Cressey also informed the Commission that he did not claim any mileage during his campaign. He paid out of pocket.

Mr. Wayne provided some background regarding this type of circumstance and provided the Commission with three options. The first option was to allow a candidate who cannot provide documentation to present oral testimony, and if the testimony is believable, find the candidate in violation but not assess a penalty. Another option would be if a penalty was deemed necessary because documentation was not kept, the Commission could assess a penalty for not keeping the documents (as opposed to penalty for misusing funds). Mr. Wayne also suggested the third option to disallow the

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expenditure. This has been the staff's preferred method in the past and is in line with other governmental audit and reimbursement policies, including the State's policy for employees and contractors. However, even though the MCEA program needs to be accessible, it also needs to be accountable to tax payers. He expressed concern that first time candidates may have these sorts of issues and may not be adept at keeping records. Mr. Wayne also expressed the concern he has heard from others, including Legislators, that the program may become too regulated.

Mr. Cassidy asked what the staff recommendation is. Mr. Wayne stated that there may be other cases where candidates are acting in good faith when they cannot come up with documentation. In these instances, finding a violation without a penalty may be appropriate. He said the staff recommendation for Rep. Cressey's case would be to find him in violation for not keeping receipts, and not ask for repayment for the Staples purchase in question.

Mr. Cassidy made a motion to accept the staff recommendation; Mr. Friedman seconded.

Mr. Friedman expressed concern over letting candidates off the hook, especially veteran candidates. Rep. Cressey has been through the program before. He stated that he believed Rep. Cressey's explanation, but was troubled by the message that could be sent to candidates if the Commission excuses the lack of a receipt.

Ms. Thompson cautioned against discouraging people from running for office because of the rigors of the Clean Election recordkeeping process but acknowledged that it was necessary to hold candidates accountable. Ms. Thompson feels there should be a penalty in absence of a policy which speaks to this issue directly and therefore said she would vote against the motion.

Ms. Ginn Marvin indicated that she would vote against the motion. She would suggest going back to Staples to get some sort of proof of this purchase. She cautioned the Commission not to make exceptions for people on case by case basis. It needs to be the same standard for all. Without receipts, there should be no reimbursement. As far as the flash drive, Ms. Ginn Marvin stated she understands how someone could think it was a one-time use and technology changes so quickly. Thus, she would not require repayment for the flash drive.

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The motion failed by a vote of 1-3 (Mr. Cassidy in favor, all others opposed.)

Ms. Thompson asked if Rep. Cressey would be allowed to go back to Staples and get a receipt or proof of purchase.

Ms. Ginn Marvin asked Rep. Cressey if he could go back to Staples. He confirmed that he would be willing to do that.

Ms. Thompson moved and Mr. Cassidy seconded to table the matter for determination at a future meeting after Rep. Cressey has approached Staples for documentation. The motion passed (4-0).

Agenda Item #3 Complaints/Carol Grose and Susan Wasserott Campaigns

Mr. Wayne explained that these two candidates ran against each other. There are complaints by each candidate and one by Daniel Billings, Esq.

Rep. Carol Grose, House District 65, addressed the Commission and handed out some additional materials. She informed the Commission that she ran in the 2004 election. Her opponent, Fred Kahrl, is now the editor of a local paper, The Coastal Journal. She called this newspaper to get some space to write articles but he denied her space. She continued to request space and was denied. Ms. Wasserott began writing articles every week for the Coastal Journal after Rep. Grose had made several requests for space. She further learned that Ms. Wasserott's articles were 'advertorials' and was informed that 'advertorials' were costly. When Rep. Grose questioned Mr. Kahrl, he said he was giving Ms. Wasserott the space in the paper because she works at Mid-Coast Hospital. Rep. Grose was concerned since Ms. Wasserott was putting her campaign e-mail address at the bottom of the articles which put Ms. Wasserott at an advantage. Mr. Kahrl later gave Rep. Grose space for two articles. Rep. Grose felt she was the 'targeted' candidate during this campaign. Mr. Kahrl wrote an article just prior to the election which was very negative towards her. She went on with other examples of negative actions against her. Rep. Grose stated her main concern was the campaign e-mail address Ms. Wasserott put in her articles and the fact that it was free space for Ms. Wasserott. If two or more people are running, she believes they should all get the same treatment by the newspapers.

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Rep. Grose said that the printing of Ms. Wasserott's articles constitutes unreported contributions to Ms. Wasserott's campaign.

Rep. Grose explained the sign issue portion of her complaint, saying the signs were very elaborate and ornate and a previous opponent, Rick Tetrev, gave them to Susan Wasserott. They were not left over wood, as was claimed by the Wasserott campaign.

Mr. Friedman asked Rep. Grose to clarify that these signs were used by Mr. Tetrev in a previous election running against Rep. Grose, his name was removed and they were repainted for Ms. Wasserott's campaign.

Rep. Grose stated that Ms. Wasserott should have paid for the articles in the paper since her campaign e-mail and website address and 'running for candidate in District 65' were printed on the articles. If they were not paid for then they should have been reported as in-kind contributions.

Susan Wasserott addressed the Commission and was represented by Daniel Billings, Esq. Mr. Billings addressed the articles published in the Coastal Journal. Mr. Billings cited the definition of expenditure, according to Maine law, "does not include any news story, or periodical." Mr. Billings stated that the newspaper which ran these articles is not controlled by a political party or candidate, therefore it is not within jurisdiction of the Commission. It is not a contribution. Newspapers do not have to be fair, nor provide equal space.

Mr. Billings explained how the website was financed. The work on the website was initially provided by Mr. Stevenson as a volunteer. The costs for web-hosting and domain registration were reported by Ms. Wasserott and she did pay \$250 compensation to the website design service after the campaign after consulting with Commission staff. This was a voluntary service provided to the campaign and was partially compensated after the campaign. The signs were loaned by a previous candidate, which is done regularly. Candidates pass them on and just repaint with the new candidate's name.

Mr. Friedman expressed concern over the newspaper articles. He questioned whether the articles are news articles or promoting candidacy.

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Ms. Susan Wasserott stated that Mr. Kahrl contacted her to write eight health and wellness articles in the summer. She was not aware of the 'bad blood' between Rep. Grose and Mr. Kahrl. Her job as a human resource provider for the hospital is educating the public and she thought this opportunity was perfectly natural. She thought putting her name and e-mail on the articles was part of the disclosure requirement and was more interested in the educational aspect than in promoting her campaign.

Mr. Friedman asked if these articles were still being published in the paper. Ms. Wasserott confirmed that they were being written by other people. She said that she was a replacement candidate and did not begin campaigning until June which is when she was asked to write the articles.

Mr. Friedman said he believes the request to write articles feels more like political rivalry.

Ms. Wasserott could understand his feelings; however, she was not aware of any of history until today, after listening to Rep. Grose. If she was, in fact, used as a pawn, Ms. Wasserott does not feel it fair to hold that against her. She believed Rep. Grose would receive equal space in the newspaper at some point. Rep. Grose was given space right before the election.

Mr. Billings stressed that the Commission should not judge editorial decisions made by newspapers. The law is broad, and the history between the parties (Rep. Grose and Mr. Kahrl) should not be held against Ms. Wasserott.

Mr. Cassidy asked what 'advertorial' means.

Jeanna Hamilton, staff reporter for the Coastal Journal, stated that an advertorial is an article given to the newspaper, sometimes paid for, to be placed in the paper. The newspaper does not take responsibility for the content of the article.

Ms. Wasserott addressed the sign issue and explained that Mr. Tetrev had used the signs for his campaign. He offered to loan the signs to Ms. Wasserott and her husband repainted them. Mr. Tetrev told Ms. Wasserott he did not buy the wood for campaign purposes, and that since his last campaign he had used the signs for his daughter's wedding. She reported that her husband had repainted the signs with used paint that was around the house.

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Ms. Wasserott also informed the Commission that the web design services were provided by a volunteer. When she checked with the Commission about compensation after the election, she was told she could pay him a token amount for his help.

Mr. Billings addressed his complaint, saying the error was as a result of the advertising company who printed the disclaimer. He would suggest finding a violation, but not assessing any penalty.

Ms. Jeanna Hamilton was asked by Mr. Cassidy if the paper charges for the advertorial. Ms. Hamilton stated that some times there is a charge. She also informed the Commission that there are local professionals in the health and wellness industry who write for the newspaper from time to time and purchase space to do so.

Ms. Thompson stated she cannot see where the articles are anything other than newspaper articles, so her opinion is it would not be considered an expenditure.

Mr. Friedman stated that is the case only if the article is a news story, commentary or editorial. He is not convinced that is what these articles fall under and asked Ms. Gardiner for her thoughts on the news article issue.

Ms. Gardiner stated that "commentary" is not defined in the statute, and it is difficult to judge what is and is not a commentary. It is clear that this is not news reporting or an official editorial, so it and more or less falls into the 'all other' category. However, she has not done any research on this issue as to past practice. Her sense was that the exception in section 1012(3)(B)(1) was written to be broad.

Ms. Ginn Marvin stated her local paper writes information articles like this one by Ms. Wasserott occasionally also. They are just informational.

Mr. Cassidy noted that during election time, newspapers write many articles regarding candidates both in favor and not favorable and he understands how broad the area of commentary is.

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Ms. Thompson made a motion that the articles in the Coastal Journal written by Susan Wasserott do not fall under the term expenditure; Mr. Cassidy seconded.

Ms. Ginn Marvin noted that Rep. Grose won the election.

The motion passed (3-1) with Mr. Friedman opposing.

Mr. Friedman made a motion that the website and the wood reused for campaign signs are not to be considered to be contributions or expenditures; Mr. Cassidy seconded. The motion passed (4-0).

Mr. Friedman reminded the Commission of Mr. Billings's allegation regarding the lack of a disclaimer on TV ads.

Mr. Friedman acknowledged that the absence of the disclaimer was an inadvertent error; however, the public needs to know who paid for the ad. Mr. Friedman made a motion that Commission adopt the staff recommendation to find a violation but no penalty. It was seconded by Ms. Thompson. The motion passed (4-0).

Agenda Item #4 Audit Findings/Hon. S. Peter Mills

Mr. Wayne explained the staff is in the process of auditing the four Clean Election candidates for Governor. Senator Mills received \$200,000 in the primary election and had four findings in the final audit report. The first finding involved a payment made on June 2 to reimburse Senator Mills for \$722.20. He purchased 830 money orders for the qualification process out of his own pocket and this amount was to reimburse him. The reimbursement was made with Clean Election funds instead of his seed money. Also, the campaign worker who made the calculations double counted; it should have been only \$253. The staff recommends a civil penalty in the amount of \$253. The message needs to be clear and consistent to all candidates to be careful about reimbursements. The staff is sure this was totally unintentional on the part of the Mills Campaign.

Senator Peter Mills addressed the Commission and stated he did not disagree with any findings of the Commission staff and he is content with the staff recommendation.

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Mr. Cassidy made a motion to adopt the staff recommendation; Mr. Friedman seconded. The motion passed (4-0).

Mr. Wayne explained that the second finding relates to cell phone use. The campaign had an agreement with the campaign manager to use his personal cell phone for campaign use and he would be reimbursed for half of the expenses. Documentation produced for this reimbursement was the personal cell phone bill which is not sufficient because there is no way to determine which calls are personal and which are campaign-related.

Senator Mills explained that he was not sure how to go about reimbursing his campaign manager for this expense. They agreed on half of the fee on the personal cell phone bill. Sen. Mills said that he would like some advice on how to deal with this issue in the future.

Mr. Dinan, staff auditor, explained that there was no written agreement between Senator Mills and the manager and no log of campaign phone calls; therefore, the documentation is incomplete. In other instances, campaigns have purchased phones for campaign use.

Mr. Billings noted that the agreement he had as counsel for the Woodcock campaign was that anything above the monthly limit for his personal plan would be reimbursed by the campaign.

Mr. Friedman moved to accept the staff recommendation that \$501.40 was for campaign-related purposes and not disallow the expenditure. This was seconded by Ms. Thompson. The motion passed (4-0).

Mr. Wayne explained the third finding which relates to car travel. The current rule states that if travel is to be reimbursed, a travel log must be kept and the reimbursement rate is 36 cents/mile. In the Mills' documentation, the reimbursement amount per mile was the amount paid for the gas, and in one case it was 41 cents/mile. Since so many candidates have not understood the rule that they are supposed to keep a log, the staff recommends no action. However, the case of reimbursing at 41 cents/mile, the staff believes the State should be reimbursed the difference for the correct amount of 36 cents/mile.

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Senator Mills explained that he thought he had discretion to pay up to the federal reimbursement rate of 41 cents/mile. He went on to say that he wants to make it clear that he was not misusing public funds.

Mr. Friedman asked if the \$242.21 represented the amount in excess of the 36 cents/mile. Mr. Dinan confirmed that it did.

Mr. Friedman made a motion to have Senator Mills repay the \$242.21. This was seconded by Ms. Thompson. The motion passed (4-0).

Mr. Wayne said the last finding relates to public relations work done for the campaign. Bill Johnson who lives in Florida was not paid by the Mills campaign; he worked on a voluntary basis. The campaign reimbursed him for some personal expenses (food, travel, laundry). The Clean Election Act funds are not allowed to be spent on these types of personal expenses. Mr. Wayne did add that the consultant was from out of state and perhaps this would be an exception. The staff has no final recommendation.

Mr. Friedman stated that paying a volunteer does not seem right. If one volunteers, then they are not an employee. However, if someone (a volunteer) comes from out of state, a little more flexibility would be acceptable.

Mr. Cassidy agreed.

Ms. Thompson asked if any action needed to be taken. Mr. Wayne said that no action was necessary at this time. Ms. Thompson indicated she would like more feedback from the staff regarding this issue of out-of-state volunteers before she could make a determination.

Mr. Friedman suggested the Commission close out the audit and still have the staff come back with recommendations regarding this issue at a later time. He made a motion that the Commission not require reimbursement of MCEA funds and find no violation; Ms. Thompson seconded. The motion passed (4-0).

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Agenda Item #5 Request for Investigation/Carl Lindemann and Maine Heritage Policy Center

Due to a conflict of interest, Ms. Ginn Marvin recused herself from the discussion of this matter. Mr. Friedman chaired this portion of the meeting.

Mr. Wayne explained that Mr. Lindemann's appeal of the Commission's determination in December as to whether Maine Heritage Policy Center should be considered a PAC is still pending. Mr. Lindemann is complaining that the 1056-B report filed in January by MHPC at the request of the Commission is not complete. MHPC has filed a response requesting the Commission decide whether this second complaint is worth considering at this time, since the appeal is still in the Court's hands.

Mr. Friedman expressed concerns as to whether this discussion has any validity at this point in time since the appeal is still pending. He asked Assistant Attorney General, Phyllis Gardiner for her thoughts on whether this is the appropriate time to consider this second complaint. Mr. Friedman reviewed the order of events and the status of the appeal.

Mr. Friedman asked whether, if the Superior Court does rule in Mr. Lindemann's favor and MHPC is a PAC, that would cause the 1056-B report filed by MHPC to be withdrawn or subsumed.

Ms. Gardiner thought it would then be subsumed, in effect, because a PAC report would be broader in terms of reporting all contributions and expenditures and thus include more than the 1056-B report.

Mr. Friedman stressed that the issue is not whether these complaints are worth pursuing; the issue here is whether the complaints should be pursued at this time. Procedurally, Mr. Friedman does not believe the complaint is ripe because the Commission has not received a final adjudication as to MHPC's status. At this point, he thinks Mr. Lindemann and Mr. Billings should be heard as to the appropriateness of addressing the issue today. Mr. Friedman thought this hearing ought to be delayed until after the court has ruled.

Mr. Cassidy asked whether MHPC would have to report retroactively if the court determined it was a PAC. Ms. Gardiner confirmed that it would. Mr. Cassidy agreed that it would be wise to wait at this point; however, he would like to hear from Mr. Lindemann and Mr. Billings on the issue of delaying the hearing on this complaint.

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Ms. Thompson expressed concern with the Commission not hearing a complaint that has been filed against someone who submits a 1056-B report. She believes all complaints should be heard when they are filed regardless of what may be pending. Ms. Thompson asked what the normal procedure is when someone files a complaint against a 1056-B filer. She asked if the staff looked at the MHPC 1056-B report. Mr. Wayne said that the staff did review it. Ms. Thompson does not think this complaint should wait since there is no legal prohibition against hearing the complaint in light of the pending appeal.

Mr. Friedman stressed that this is not a normal situation since there are pending issues regarding the complaint. If this were in front of a court, the court would probably not want to take the complaint up until a final decision had been made regarding MHPC's status because it would not want to take time on an issue that may become moot because of a decision in another forum.

Mr. Cassidy stated that he would favor scheduling the complaint at a later time when the loose ends were more tied up.

Mr. Lindemann addressed the Commission as to whether this is the right time to hear his second complaint. His two major concerns are: 1) how to deal with a 1056-B filing when the reported expenditures far exceed contributions, and 2) the larger issue of new political public relation firms operating under the guise of public policy groups. Mr. Lindemann thought that MHPC should voluntarily disclose all its financial activity in the same way that Democracy Maine had voluntarily disclosed its financial activity on a PAC report as a part of its response to a complaint brought against it by Roy Lenardson. Mr. Lindemann said that the Commission tabled the complaint against Democracy Maine (March 9, 2007 meeting) after it had considered the complaint and thought that the same should be done in this case.

Mr. Lindemann addressed two procedural issues regarding this matter brought up in Mr. Billings' response. First, he believes that this matter is worth pursuing. The Commission has the authority to conduct an investigation if there are sufficient grounds for believing that a violation may have occurred. Mr. Lindemann said that the materials he has presented the Commission more than sufficiently state the grounds for an investigation. Second, Mr. Lindemann said that Mr. Billings asked that the complaint be

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summarily dismissed. However, Mr. Lindemann stated that Mr. Billings has not provided any sworn statement to substantiate his request for a summary dismissal.

He feels that it would have been appropriate for MHPC to ask for a stay for filing the 1056-B report pending the appeal back in January; however, it did not. It accepted the Commission's determination that it had to file the report and filed one. The 1056-B filing itself is separate and apart from the appeal. For example, if there were material false statements in the report, that would be a separate violation that would not be dependent on the Superior Court's ruling. He believes the fact finding should go forward and stop short of a final determination until the court decision.

Mr. Billings addressed the Commission. He expressed concern with the amount of time his client, MHPC, has already had to put into this issue and this second complaint today will just add more time to process. If there is going to be a fact finding investigation, Mr. Billings believes it should be done once, in accordance with the court's direction. If the complaint were unrelated and a separate factual matter, it would be justified to investigate further. He agreed that the Commission has the discretion to decide how it should proceed. He noted that a similar complaint against the AARP had been tabled pending resolution of the court case. In response to Mr. Lindemann's point about the stay, Mr. Billings noted that since MHPC had decided not to appeal the Commission's earlier ruling, it had no basis to request a stay.

Ms. Thompson stated that she thought the Commission should hear the substantive issues presented in the complaint and not delay because of pending Superior Court case.

Mr. Cassidy made a motion to reschedule this complaint until after the Superior Court decision; Mr. Friedman seconded. The motion passed 2-1, Ms. Thompson opposed.

Mr. Friedman stated that the vote to delay does not cast any doubt on the validity of the complaint. The complaint is worthy of hearing, but the Commission needs to be concerned with administrative economy. The Commission will look at every aspect of the complaint when the time is right.

Ms. Ginn Marvin took the Chair at the conclusion of this item and stated that items would be taken out of order to prevent parties from having to wait longer.

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Agenda Item #9 Request for Waiver of Late Filing Penalty/Richard Dort

Mr. Wayne explained that Mr. Dort is requesting a waiver of a late filing penalty for his last report, the 42-Day Post-General, due December 19, which he filed fifteen days late. Under the statutory formula, a penalty of \$1,908 would be assessed because this was Mr. Dort's third report that he filed late. He paid prior penalties with his campaign funds, which is a violation. The staff does not feel Mr. Dort's excuse for lateness is valid. However, the staff does feel the penalty should be reduced to \$300 total for all three penalties since the statutory penalty is disproportionate to the level of harm done to the public from late disclosure and the fact that he is a first time candidate. The staff also recommends that Mr. Dort be required to reimburse the Fund for the \$403.49 in previous penalties that he had paid out of his Maine Clean Election Act funds.

Mr. Cassidy asked if there were payment schedules set up for candidates. Mr. Wayne said this has been done; however, most candidates who do file late usually pay late also. The best method is to have them pay all up front.

Mr. Dort stated that he did not have a valid reason for not filing on time. He did not realize he could not use Clean Election funds to pay his penalties. He did say that he lost his job and access to the internet so one of the earlier reports was late due to that. He expressed thanks for the reduction in the penalty.

Mr. Friedman asked if the penalty were reduced, would Mr. Dort be able to pay the penalty. Mr. Dort stated he could pay with a credit card.

Mr. Friedman asked if he understood that if he did not pay the penalty, he would be referred to the Attorney General's Office for further action. Mr. Dort said he understood this.

Mr. Friedman made a motion to accept the staff recommendation to reduce Mr. Dort's total penalty to \$300 and require reimbursement of \$403.49, for a total payment of \$703.49; Mr. Cassidy seconded. The motion passed (4-0).

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Agenda Item #13 Violations of Maine Clean Election Act Funds/Thomas J. Bossie

Mr. Wayne explained that Mr. Bossie received \$13,000 from the MCEA fund and spent some of the funds on personal expenses. His personal and campaign bank account records were subpoenaed by the Commission. The findings were that Mr. Bossie had 95 payments in the campaign account totaling \$2,867 that appeared to be personal in nature and were made after the election. In addition, \$1,200 was transferred from his campaign account to his personal account and was used to pay a car loan and other loans. There were other payments made for personal expenses. The violation would be for using MCEA funds for purposes that were not campaign-related. The staff recommends a penalty of \$1,250. Mr. Wayne stated that all the funds have been repaid to the Clean Election Fund, so the State has not lost any money.

The second violation is failure to return unspent campaign funds which were due back to the Commission on November 21 and December 19. The funds were finally returned two months late after repeated requests and referral to the Attorney General's Office. The recommended penalty for this violation is \$750.

A penalty of \$500 is recommended for failing to report expenditures accurately. His original December 19 report had no expenditures listed, when in fact he had made several. Finally, staff recommended a penalty of \$250 for commingling campaign funds with personal funds.

Mr. Wayne summarized there are a total of four penalties in the amount of \$2,750. Mr. Wayne also stated that Mr. Bossie has submitted a letter of apology dated May 3. Mr. Wayne advised that his goal is to keep the penalty under \$3,000 since the Clean Election Fund has been reimbursed completely and he is also concerned that when penalties are too high, it may discourage candidates from choosing to run as Clean Election candidates.

Mr. Bossie addressed the Commission. He expressed his apologies and embarrassment. He appreciates the professionalism of Sandy Thompson, his candidate registrar. He does not wish to deny the seriousness of his mistakes and would like to pay the fine and move forward.

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Mr. Friedman made a motion to accept the staff recommendation and assess a penalty of \$2,750 with a credit of \$384.85 which has already been paid. This was seconded by Ms. Thompson. The motion passed (4-0).

Agenda Item #6 Presentation of Audit Reports

The audit reports were accepted as written.

Agenda Item #7 Request for Waiver of Late Filing Penalty/Jennifer Anderson

Mr. Wayne informed the Commission that Ms. Anderson, a registered lobbyist, chose not to attend the meeting today. She was one day late filing her April report due to being ill and also she had a loss of power at her home. She lives on Peaks Island and the power was out for a few days.

Ms. Thompson commented that the power outages are regular on Peaks Island.

Mr. Wayne stated that the staff recommends finding a violation of late filing but waiving the penalty, since power was out at her home.

Mr. Cassidy moved to accept the staff recommendation; Ms. Thompson seconded. The motion passed (4-0).

Agenda Item #8 Referral to Attorney General for Possible Criminal Prosecution/Kenneth Anderson

Mr. Wayne informed the Commission that this matter had been resolved.

Agenda Item #10 Referral to Attorney General for Collection of Penalty/Phillip Morris Napier

Mr. Wayne explained that Mr. Napier was a candidate for Governor. He filed his 6-Day Pre-General report one day late. The statutory penalty amount is \$32.63. When the candidate registrar called Mr. Napier and asked that he pay the penalty or request a waiver, he refused to do either. The Commission is required to refer to the Attorney General if the penalty has not been paid within 30 days.

Mr. Cassidy made a motion to refer to the Attorney General Office; Ms. Thompson seconded. The motion passed (4-0).

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Agenda Item #11 Violations of Maine Clean Election Act/Hon. Arthur H. Clement AND

Agenda Item #12 Request for Waiver of Late-Filing Penalty/ Hon. Arthur H. Clement

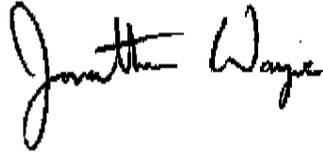
Mr. Clement did not attend the meeting.

Mr. Wayne recommended that Mr. Clement's issues be put off for one month until the next meeting since the penalties are in excess of \$2,000.

Ms. Thompson moved to postpone; Mr. Friedman seconded. The motion passed (4-0).

There being no further business, the meeting 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 March 9, 2007 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: Hon. Jean Ginn Marvin, Acting Chair; Hon. Vinton Cassidy; Hon. Mavourneen Thompson; Michael Friedman, Esq.; Staff: Executive Director Jonathan Wayne; Phyllis Gardiner; Counsel.

At 9:13 a.m., Jean Ginn Marvin convened the meeting. The Commission considered the following items:

Agenda Item #1 – Public Hearing on Proposed Rule Changes

Mr. Wayne reviewed the procedures reminding the Commission that comments are welcome until March 19 and final review of rule changes will take place at the April 5 meeting.

Daniel Walker, Esq., representing the Maine Democratic Party, addressed the Commission. -Mr. Walker commented on the amendment to Chapter 1, Section 7, §1 (expenditures). He felt this change would create an unnecessary burden on the candidate and committees and would require vendors to keep track of all expenditures, which would double the tracking of expenditures. He stated that the MCEA is to level the playing field for funding purposes, not strategy. He said that this would slow process down.

Regarding the elimination of 15 day time period to correct errors and omissions in campaign finance reports as contained in Chapter 1, Section 4, §2, he believes the intent of this amendment is good; however, it removes incentive to make sure that report is correct. Flexibility is often good but hard lines are easier to follow.

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Regarding the requirement to keep travel logs, Mr. Walker believes this is a really important piece of the reporting process and is in favor of it.

Mr. Friedman asked Mr. Walker how good the parties are at advising their candidates.

Mr. Walker admitted that the parties would need to get better at training, etc.

Daniel Billings, Esq., addressed the Commission. He said that he was not representing any candidate or party but was speaking from his experience. He felt overall the rule changes were very good and addressed issues that have come up in the past. In particular, Mr. Billings felt the changes in Chapter 3 regarding qualifying contributions forms were extremely important. Having the collector sign the form and verify contributions is a major improvement.

Mr. Billings also concurred with Mr. Walker's comments regarding tracking expenditures made by consultants. Mr. Billings felt some detail was necessary to account for the public funds, but he felt that there needs to be a middle ground so as not to become too cumbersome for parties and candidates.

Senator Debra Plowman addressed the Commission regarding 24-Hour Reports. Her concern was whether MCEA candidates were required to file the 24-Hour Report. Sen. Plowman's opinion is that all candidates should file this report, not only the privately financed candidates.

Mr. Wayne addressed this concern. He advised the Commission that its bill which will be before the LVA Committee will clarify the requirement. Mr. Wayne did confirm that the MCEA candidates are currently required to file 24-Hour Reports. The bill will make the threshold the same for all candidates, private or MCEA.

Agenda Item #2 – Complaints/Carol Grose and Susan Wasserott Campaigns (postponed until May 14)

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Agenda Item #3 – Complaint/Late Filing of Independent Expenditures

Mr. Wayne reviewed the background of the law that applies. In 2004 elections, the Commission received several complaints from candidates that PACs and parties were not filing independent expenditure reports promptly. As a result, in 2005, the statute and rules were amended to improve the expenditure definition and reporting requirements. Mr. Wayne shared a calendar which indicates the timeline for reporting expenditures.

Mr. Billings addressed the Commission. He said that the complaints were filed because questions were raised by specific expenditure dates reported in several independent expenditure reports filed by the Maine Democratic Party (MDP). He said that the dates raised questions as to whether the reports should have been filed earlier and whether they were filed later in order to delay matching funds to the Democratic candidates' opponents. He said the MDP's IE report #84 illustrated these problems. The report submitted by MDP showed a specific date indicating start of the design process and a later date for actual mailing. The MDP defended its report by saying that it reported the expenditure after it found out how much the mailing cost would be. Mr. Billings questioned whether the date of the actual expenditure was when the order for the mail piece was placed or when the final postage cost was known. Mr. Billings said that he has advised his clients to get a full estimate of the cost – from design to postage – and report the amount of the estimate. Mail house expenditure dates vary since designing, printing and mailing date are all different dates but it is possible to get an estimate. The approved practice is once order is placed with vendor, and then expenditure is recorded.

Mr. Friedman asked what changes Mr. Billings would like to see happen.

Mr. Billings stated that he felt the Commission has to consider whether design services are a separate expenditure when ordered and/or only when the decision has been made to disseminate the communication to the public. That is a policy interpretation for the Commission to make. He said the date of placing the design order was perhaps too premature to trigger a report because it is not truly known whether the piece will be disseminated to the public. But he felt that the placement of a print order was a good indication that the piece would be distributed and the expenditure should be reported then. He said that it was also possible to get an estimate at the design stage for postage, file a report, and then amend the report after getting the actual amount from vendor.

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Ms. Ginn Marvin recalled facing this issue before and the Commission had decided that the reporting had to take place when the vendor was asked to print. Ms. Ginn Marvin was under the impression that the printing and mailing costs had to be reported.

Mr. Wayne stated that the mail house should have a figure for printing and mailing when the order is placed.

Daniel Walker, Esq., addressed the Commission on behalf of the Maine Democratic Party. Mr. Walker stated that, in his opinion, an order to design a piece is not influencing an election, and, therefore, should not need to be reported or trigger any matching funds.

Ms. Ginn Marvin read the section of the rule that states, "... expenditures must be reported at the earliest of these events ... placement of an order for a good or service." She understood that to mean that when you place the order, the expense would need to be reported.

Mr. Walker felt that the statute definition of expenditure reads, "..... made for the purpose of influencing the election" He said that he did not believe that anything had influenced the election at the design stage.

Ms. Ginn Marvin stated that it would be highly unlikely to print information and then not mail it out. Once vendors design something, then the expenditure is made in her opinion.

Mr. Wayne did inform the Commission that some parties did have designs done for several candidates and then fewer of the mailers were disseminated than were designed. If these mailers are reported as expenditures, matching funds go out, and then the report is amended to delete some of those expenditures because they were not mailed out. This then puts the Commission in a tough spot because matching funds were paid out based on the original number of mailers. The Commission then has to go to the candidate who received the matching funds and ask whether the money has been spent. This is the difficulty in reporting design costs at the outset. Mr. Wayne felt that if the mailer has not been printed, then they should not report it until it is. This would save

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amending reports and matching fund payments. Mr. Wayne's opinion was that once the step is taken to print, then it should be reported.

Ms. Ginn Marvin felt the design service date would be one charge to report and then, once the materials are printed, another report would be due.

Discussion took place regarding design cost, printing costs and mailing costs time line for reporting.

Mr. Friedman noted that the postage fee should be separate from the design fee; however, the postage costs are a promise to pay.

Ms. Thompson asked whether a House candidate making expenditures from their own pocket would be less likely to cancel a project, whereas parties are more apt to cancel and if so, should they be treated differently.

Ms. Ginn Marvin asked Mr. Walker for clarification on when the expenditure should be reported. Mr. Walker feels that the expenditure should not be reported until it has been mailed. If they do not use the piece, it should not have to be reported. He believes if the decision is made to use it, then the design and printing should be reported at the same time.

Ms. Ginn Marvin asked about the postage.

Mr. Walker stated that the postage should be separate because it is a separate vendor, the US Postal Service. The check is separate from the vendor who created the flyer.

Mr. Friedman pointed out that when the vendor is told to proceed, the number of pieces is known, so the postage fee should be known at that point also. Mr. Friedman stated that, if the print order is given to the vendor, then the commitment is made for postage at that time also and should be reported.

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Mr. Cassidy stated the timing is a factor as the election day draws near. In fairness, an opponent would need time to respond to any mailer in an equal manner. To level the playing field, that has to be considered when making the rule.

Newell Auger addressed the Commission in order to receive any questions regarding IE #83. No questions were raised.

Mr. Wayne recommended that the Commission find the MDP in violation for late reporting of postage on IE #84. He would encourage all parties to be more forthcoming with getting the postage costs reported in a timely fashion. Regarding when an independent expenditure has to be reported, Mr. Wayne stated that the reporting requirement is for communications. The statute is not specific about actual and intended communications. The issue is to decide at what point a communication actually becomes an expenditure, and what constitutes a communication. Mr. Wayne feels that a design is not really a communication; when the mailer is printed, then it becomes a communication.

Mr. Wayne further stated that he did not think it was fair to request reports for design services only because the design had not influenced voters. If the literature is not printed and sent out yet matching funds have already been distributed to the opponent, that will give the opponent an unfair advantage because the literature did not influence the voters.

Mr. Wayne advised that for the sake of clarity, the requirement should be that once a communication is printed, the report should include design, printing and postage. No report is necessary at the design stage.

Mr. Friedman asked whether that would be the case if the communication is not mailed out after printing. Mr. Wayne stated that, in almost all cases, if the literature was designed and printed, the literature would be sent.

Mr. Cassidy noted that this would prevent parties from holding onto literature until the last minute and preventing response from opponent.

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Mr. Friedman stated that the intent to communicate and influence voters happens when the vendor is called and told to print the literature. You can estimate the postage because you know how many pieces you have and you know the amount of postage; therefore the postage should be reported at that time.

Mr. Walker disagreed. He believes there are two separate items and two separate vendors.

Mr. Cassidy agreed that the postage should be a given at the point of printing.

Mr. Augur noted that some orders to mailhouses are bulk orders – an order for three candidates at once. However, there may only be a definite decision to send out a mailing for one candidate. He said that the expenses for the other two communications should not have to be reported at the same time as the communication that was definitely going out. The parties needed to have the flexibility to make a decision about any changes to the other mailings.

Ms. Thompson felt the vote should be handled separately for each IE.

Mr. Friedman made a motion that IE reports #48 and #71 were timely filed; IE report #84 was not timely filed and the Commission needs further information to assess a penalty on IE Report #84. Seconded by Mr. Cassidy. The motion passed (4-0).

Agenda Item #4 – Assessment of Civil Penalty for Late Filing/Nancy Bessey

Mr. Wayne explained that this was brought up by the Commission staff and Ms. Bessey is currently in Florida so would be participating via phone.

Mr. Wayne explained that Ms. Bessey ran as a privately funded candidate against an MCEA candidate. She was required to file a 101% Report. Her receipts went over that amount on October 21, so she was required to file on October 23. She filed eight days late on October 31. The maximum penalty would be \$6,108. Her opponent would have received matching funds earlier if she had submitted her report on time; therefore, he was at a disadvantage due to the delay. Mr. Wayne handed out a calendar with the dates and amount of matching funds which should have been disbursed to her opponent had her 101% Report been filed on the required date. The staff believes a

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substantial penalty is required since her MCEA opponent did not receive the matching funds he was entitled to until six days before the election instead of ten days before the election. The potential that this may have influenced the campaign was great. This was a very close race and her opponent won by a very small margin. She also received several notices from the staff regarding the reporting requirements.

Daniel Billings, Esq., approached the Commission, representing Nancy Bessey. He stressed that Ms. Bessey self-funded her campaign and did not understand how to manage her account balances in her favor with regard to receipt amounts. There is a violation; however it was unintentional on the part of a first time candidate.

Ms. Bessey also added that she received two unexpected contributions within the month of October which put her over the 101% amount in receipts. She was not clear on how or when to repay the loan she had taken for campaign expenses, so her receipts got higher and expenses remained the same. She did not realize money she donated to herself counted as receipts.

Mr. Billings also noted that most candidates are not clear that they have to look at both the receipts and expenditures. He did not agree that the closeness of the election should be a factor in deciding the penalty.

Mr. Friedman made motion to adopt the Commission staff's recommendation to assess a penalty of \$1,527.04 which represents 25% of the maximum penalty allowed. This was seconded by Ms. Thompson. The motion passed (4-0).

Agenda Item #5 - Request for Reconsideration of Late Filing Penalty/South Portland Democratic City Committee

Mr. Wayne explained that the Chair of the South Portland Democratic City Committee, Richard Rottcov, was present to address the Commission for reconsideration of a penalty that was issued at a prior meeting which Mr. Rottcov could not attend. Local party committees who raise or spend more than \$1,500 are required to file three reports during an election year. This committee had a fund raiser in October 2005 to fund scholarships. There was a problem collecting the credit card

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payments electronically, so the receipts were not collected as expected in 2005 but had to be recollected from the contributors in 2006.

Mr. Friedman asked if reconsideration was a practice the Commission usually upheld.

Mr. Wayne explained that there is no rule regarding reconsideration. Requests are considered on a case by case basis.

Mr. Friedman asked if the facts had changed or new evidence had been provided and Mr. Wayne believed there may be new information that was not available previously.

Mr. Wayne briefly reviewed the past decision of the Commission to assess a penalty of \$500. It was decided that the Commission first needed to establish if there was enough new evidence to warrant reconsideration; therefore, Mr. Rottcov was allowed to speak to the new evidence.

Mr. Richard Rottcov addressed the Commission. His reason for seeking reconsideration of this penalty was to address the fact that this fundraising event was for high school scholarships and was not intended for political use. After the event, they realized that the Pay Pal system to deposit contributions was not functioning correctly and the money was not deposited into the scholarship account. The committee tried for several months to collect the pledge money. Mr. Rottcov produced a bank statement showing deposits that were recorded in 2006 but which represented contributions which should have been received in 2005. When he became chair in 2006, he was not aware of any fundraising in 2005. This bank statement was new evidence.

Ms. Thompson moved that the Commission reconsider its earlier decision, seconded by Mr. Cassidy. The motion passed (4-0).

Mr. Rottcov explained further that the money the committee received in 2006 was actually supposed to be received through the Pay Pal system and it was strictly for scholarship funding only. He reviewed the financial sheet which showed the activity for 2005 and 2006, indicating that the 2006 deposits were the 2005 scholarship fundraiser.

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Mr. Rottcov admitted that as the new chair of the committee he should have been paying closer attention to the bank statements and asked more questions of the treasurer.

Mr. Wayne made a staff recommendation to reduce the penalty by 50% as a result of the new evidence provided by Mr. Rottcov.

Mr. Cassidy moved to accept the staff recommendation to reduce the penalty to \$250; Ms. Thompson seconded. The motion passed. (4-0)

NEW BUSINESS

Agenda Item #6 - Ratification of Minutes of October 31, 2006

Mr. Friedman moved, Mr. Cassidy seconded and the Commission unanimously voted to ratify the minutes of October 31, 2006.

Agenda Item #7 - Request for Waiver of Late Filing Penalty/Newell Augur

Mr. Wayne informed the Commission that two monthly lobbyist reports were filed late by Mr. Augur on behalf of Maine Beverage Association and Bangor Hydro. Once a lobbyist registers they are responsible to file monthly reports. The preliminary penalty would be \$100 for each report. Mr. Augur would like a waiver. Mr. Wayne did state that the staff understands Mr. Augur claims he did not reach the eight hours per month threshold.

Mr. Newell Augur addressed the Commission. He explained that he had a third client he was lobbying for and was confused as to the timing. He also lost his secretary who had been doing the filing for him.

Ms. Thompson asked if he received notice from the Commission, and he confirmed that he did receive a notice by way of e-mail but was not in the office the day the e-mail was sent.

Mr. Wayne advised the Commission the staff recommendation would be to assess a penalty in order to enforce the timely filing of reports.

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Ms. Thompson moved to assess penalty of \$200 for late filing; and the motion was seconded by Mr. Friedman.

Ms. Thompson explained that the full penalty is necessary since consistency is very important and supporting the staff who enforce these rules is also critical. The motion passed (4-0).

Agenda Item #8 - Request for Waiver of Late Filing Penalty/MaineCasinoNow.com

Mr. Wayne explained that the report was two days late. The treasurer, Seth Carey, sent a letter in defense which stated that a volunteer who normally handled the report was hospitalized during the reporting time. The recommendation is to assess a penalty of \$18.24.

Mr. Cassidy moved to assess the penalty of \$18.24, seconded by Mr. Friedman. The motion passed (4-0).

Agenda Item #9 - Request for Waiver of Late Filing Penalty/Hancock County Democratic Committee

Mr. Wayne explained to the Commission that because the Committee raised more than \$1,500 last year, it was required to file a report. Due to computer problems, the report was a few hours late beyond the 5:00 p.m. deadline. The Committee can file paper reports. It is not required to e-file reports. The staff recommendation is to assess a penalty.

Sally Crowley, the Committee's treasurer, addressed the Commission. Ms. Crowley described how far out in the country she lives. Her internet connection kept going out off and on all afternoon. At that point, she could not mail it. After the wind stopped, she was able to get the report filed electronically. She is requesting that the penalty be dropped or reduced substantially since it was the weather than kept her from timely filing.

Mr. Cassidy asked whether she could have faxed her report, and she replied that she was not aware she could do this, but had no means of doing so anyway.

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Ms. Crowley stated that she has been Treasurer for approximately nine months and has not been late before. In the past, she has filed at her office in Ellsworth so the internet connection has not been an issue.

Mr. Friedman, recognizing the Commission's role, asked what Ms. Crowley felt was a fair penalty. Ms. Crowley responded that since she did get the report into the system only a few hours late, she felt that \$25 for a two hour late report was more than sufficient.

Mr. Wayne stated that a 50% reduction in the penalty would be appropriate.

Mr. Cassidy made a motion that the penalty be assessed at one-half of \$176.77 or \$88.38. This was seconded by Ms. Thompson. The motion passed (4-0).

Agenda Item #10 - Request for Waiver of Late Filing Penalty/Maine Taxpayer Action Network PAC

Mr. Wayne explained the Treasurer of this PAC, Carol Palesky, is incarcerated at the Women's Center at the Maine Correctional Center in Windham. Her husband has asked for a waiver on her behalf. The PAC has not had any activity during the report period – no contributions, no expenditures. However, the policy of the Commission is to assess a penalty of \$50 for perennial late filers, even when inactive since the staff still uses administrative time. Mr. Wayne pointed out that the PAC could appoint Mr. Palesky as treasurer and reminder notices are sent out prior to filing deadlines.

Mr. Cassidy moved and Mr. Friedman seconded to assess a \$50 penalty. The motion passed (4-0).

Agenda Item #11 - Request for Waiver of Late Filing Penalty/David F. Kirkpatrick

Mr. Wayne explained that Mr. Kirkpatrick did not file his post election report on time. He mailed his report from Freeport one day prior to the deadline. The statute states that the penalty is based on when the reports are received, not on the mailed date. The exception is when a candidate mails the report by registered mail and it is postmarked two days before the deadline. The staff recommends imposing the full penalty.

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Mr. Friedman stated concern over the fact that the US Postal Service cannot get mail from Augusta to Freeport within a day. He moved to waive the penalty, since blame rests with Post Office. There was no second.

Mr. Wayne further explained mitigating factors within the rules that would reduce a penalty, one being "unexplained delays in postal service."

Ms. Thompson asked why the penalty amount was low. Mr. Wayne explained the formula used to calculate the penalty. Ms. Thompson expressed concern that the penalty did not indicate the seriousness of filing on time. Other candidates could file the reports in the mail the day before, and hope that the report arrives on time. She felt the Commission should not be 'easy' on this issue; she would not have supported Mr. Friedman's motion to waive the penalty.

Mr. Cassidy asked for clarification on faxing reports. Mr. Wayne explained that it was permissible to fax a report as long as it was received by 5:00 p.m. on the due date and the original was received by the Commission within 5 days.

Ms. Thompson moved to accept staff recommendation and assess the statutory penalty of \$14.79. Mr. Cassidy seconded. The motion passed (3-1), Mr. Friedman opposing.

Agenda Item #12 - Waiver of Late Filing Penalty/Richard Dort (postponed until May 14)

Agenda Item #13 - PAC Reporting Requirement/Democracy Maine

Mr. Wayne advised the Commission that this was a request for an investigation filed by Roy Lenardson against Democracy Maine, which is a non-profit organization that opposed TABOR in 2006. The staff advised Democracy Maine to file a 1056-B Report since it did not qualify as a PAC, but was spending funds in regard to this ballot issue. Two reports were filed, showing expenditures of \$58,689 against TABOR, and also contributions. Mr. Lenardson's complaint is that Democracy Maine should have filed as a PAC and been filing regular reports.

Ms. Thompson asked for a review of previous discussions on PAC filing requirements.

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Mr. Wayne explained that a few months ago, a complaint had been filed against the Maine Heritage Policy Center (MHPC) by Carl Lindemann. The Commission at that time considered whether the MHPC should file a 1056-B report or whether it was a PAC. The Commission decided at the December meeting that MHPC did not qualify as a PAC since its major purpose was not influencing the TABOR ballot question. The purpose of the organization is the determining factor as to whether it would be considered as a PAC. The Commission required MHPC to file a 1056-B report if it raised or spent more than \$1,500 to influence the TABOR election. MHPC did file this report. Since then, Carl Lindemann and Democracy Maine have filed an appeal from the Commission's determination with Superior Court.

Mr. Wayne stated that using that same standard, it would appear that the major purpose of Democracy Maine is not to influence TABOR.

Mr. Roy Lenardson addressed the Commission regarding the three complaints he filed. He did note that his complaint was filed prior to the Commission's determination regarding proposed rule changes regarding PACs and 1056-B reporting. His major concern is creating a situation where active campaigning by a political committee is being confused with a 1056-B filer who is only 'weighing in' on an issue, not campaigning for that issue. Currently, an organization may spend \$300,000 on a campaign for a political issue and not be considered a PAC. Mr. Lenardson thought that the definition of what qualifies an organization to be PAC needs to be clearer. The loophole exists when an organization files as a PAC only when it is advantageous for that organization. Mr. Lenardson passed out an example of this type of flyer. He stressed that he is not interested in correcting past issues, only in moving forward for 2008 elections.

Mr. Friedman stated that this should be brought before the Legislature. Mr. Lenardson agreed and said he will be doing so. Mr. Friedman noted that the Commission is constrained to follow the existing statute.

Ms. Thompson asked whether an organization can switch back and forth as a PAC.

In response, Mr. Lenardson expressed his concern over the clarity of defining a PAC in order to prevent the cloudiness there is now between 1056-B filers and PACs. There is a difference between

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think tanks and PACs. He feels the 527 organizations, 501(c)(4) organizations and other national organizations that are not as restricted by federal law as 501(c)(3) organizations could see this loophole and take advantage on any issue they wish. He feels that running TV ads and mailers, saying "vote for" is influencing votes and therefore, creates a PAC. Mr. Lenardson wants the Commission to make a distinction between studies done on an issue versus running ad campaigns when defining a PAC. Any organization can spend big bucks on an issue and say "it is not our primary purpose." Mr. Lenardson believes the rule needs to change, going forward, to keep these two entities separate.

Ms. Gardiner questioned where the line should be drawn, based on the nature of the activity or communication and how it relates to the "major purpose" referred to in the statute.

Mr. Lenardson feels the "major purpose" relates to that moment, to the communication, or to each issue, not the organization's original purpose. He said any large organization could be involved in ballot issues in Maine and not be considered a PAC. He does not believe that is the way the statute was intended to be interpreted.

Mr. Cassidy asked if there were any pending legislation regarding this issue. Mr. Wayne pointed out that Item #16 on the Agenda speaks to this exact issue of a PAC definition. Mr. Wayne said that the staff does concur with Mr. Lenardson that it is preferable to bring organizations into the PAC law in order to get the disclosure out to the public.

Mr. Lenardson reiterated that he does not want to look backward nor seek penalties for past circumstances. He only wants to look ahead for 2008.

Mr. Friedman stated he understood Mr. Lenardson's view. He did say changes to a statute need to go before the Legislature.

There was a discussion as to how to proceed with Agenda Items #13, 14 and 15 given that Mr. Lenardson said that he was not interested in seeing penalties assessed but was more interested in the Commission developing a better policy for 2008. Mr. Lenardson filed the inquiries on these items because he wanted to come before the Commission and get the issue out in the open; he wishes to

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keep the complaints active. It was decided to continue hearing from the parties involved in these complaints.

Jonathan Crasnick, Executive Director of Democracy Maine, addressed the Commission along with counsel, Russ Pierce, Esq. Mr. Crasnick stated that he believes MHPC and MCEP had a greater impact on TABOR than Democracy Maine had. Democracy Maine is a 501(c)(4) organization. He feels Mr. Lenardson is inconsistent with his accusation that Democracy Maine is a PAC. Mr. Crasnick also stated that Mr. Lenardson's position that a 501(c)(3) organization (such as MHPC and the Maine Center for Economic Policy) should not have to file as a PAC because it only does studies yet a 501(c)(4) should have to file is inconsistent. Mr. Crasnick believes the Commission made the right decision in requiring MHPC to file a 1056-B report. Mr. Crasnick filed a 1056-B report after consulting with staff. He was told that if a non-profit organization was not created to support or oppose a referendum, specifically, then it did not meet the definition of PAC and did not have to file as a PAC. Martha Demeritt, the PAC Registrar, did state that Democracy Maine would need to file a 1056-B Report and report only those funds that went specifically to influence TABOR, which it did.

Mr. Crasnick told the Commission that in a letter from Mr. Wayne, Mr. Crasnick was advised that if Democracy Maine did receive contributions to its general activities fund from a founder and that founder was a board member who was able to vote on issues Democracy Maine became involved with, then they had to list those funds on the report. If these funds were not listed, then they would be shielding the source of those funds.

Mr. Crasnick stated that Mr. Wayne's questions in the letter show how weak the reporting laws are. He went on to say the report shows how much is spent, but not where the funds come from. PACs do have to report the sources. These loopholes are being taken advantage of by several organizations. They can spend much more money than is raised and the sources are hidden by claiming the money came from a general activities fund, which is not required to be disclosed. Democracy Maine believes any time an organization spends or raises money to influence an election, it should be required to report these activities as a registered PAC. The general activities fund should be part of the reporting. Mr. Crasnick demonstrated with a sample PAC finance report by Democracy Maine for 2006. The report showed that Democracy Maine spent just over \$66,000

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but raised only \$1,700 from solicitations specific to TABOR. Mr. Crasnick stated that Democracy Maine has decided to lead by example and fully disclose the sources behind the money it spent during the last election. He stated that the report discloses the original sources of the funds in the general activities account. Mr. Crasnick said that the bottom line is that more disclosure is required. He challenged MHPC and all Maine organizations to do the same.

Mr. Wayne asked if Democracy Maine wished to change its status to a PAC. Mr. Crasnick responded that the way the current law is written, Democracy Maine does not meet the requirements. The exhibit is an example of what they feel should be required by all.

Mr. Pierce also noted that the 1056-B filings report expenditures that exceed contributions.

Daniel Billings, Esq., representing the Maine Heritage Policy Center, addressed the Commission. Mr. Billings stated that he does not feel Democracy Maine is a PAC under current law. However, he does think the Commission should table the matter and postpone action on the issue until after the appeal filed by Democracy Maine to Superior Court is resolved. He feels if MHPC is to be considered a PAC as Mr. Crasnick contends, then Democracy Maine also should be. Democracy Maine certainly advocated for the defeat of TABOR.

Carl Lindemann addressed the Commission, indicating that he was neither for nor against the parties to these complaints. Mr. Lindemann restated that the lines are very blurry with regard to PAC definitions. The fact that reports indicate discrepancies between contributions and expenditures is very concerning.

Mr. Lindemann brought up the question as to whether Ms. Ginn Marvin should be involved in hearing Mr. Lenardson's complaint in light of the connection they have through involvement with MHPC. The Ethics Commission needs to be perceived by all to be above reproach, in his opinion.

Ms. Ginn Marvin asked for a vote on Item #13. Mr. Wayne stated that Mr. Lenardson does want to proceed with his complaint; however, the Commission may want to table the complaint.

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Ms. Thompson expressed her desire again to hear from Mr. Wayne regarding staff's research on Item #16, Changes for the Definition of Political Action Committee, and §1056-B Reporting since it relates to Items #13, 14 and 15.

Mr. Friedman stated that Items #13, 14 and 15 are dependent upon the Legislature and Superior Court in his view. The comments today have not altered his opinion. Mr. Lenardson is looking for changes in laws. He agrees with Mr. Billings's suggestion to wait until direction from the Legislature.

Mr. Friedman moved to table Items #13, 14 and 15, with Mr. Lenardson's approval, for discussion at a future time after the Legislature has provided the Commission with statutory guidance or the court has provided a judicial interpretation of the statutes already existing.

Mr. Lenardson stated the issue with Item #15 would need to be resolved in his opinion. Item #13 and 14 are identical.

Mr. Friedman then altered his motion to table only Items #13 and 14; Mr. Cassidy seconded. The motion passed (3-1). Ms. Thompson opposed.

Mr. Cassidy asked when we would hear from the court. Ms. Gardiner stated that this was very hard to predict. It could be a year or six months, but four months, minimum. She said it is up to the court to schedule oral argument and, after that, up to the Judge to determine when to render a decision.

Agenda Item #15 - Section 1056-B Reporting Requirement/The Katahdin Institute

Mr. Wayne pointed out for the Commission that the Katahdin Institute received a \$10,000 grant to conduct workshops regarding communications about taxation and government spending issues. The Executive Director of the Katahdin Institute spoke to Mr. Wayne and explained that part of the workshop related to TABOR. The grant proposal does seem to refer to the TABOR issue.

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Mr. Lenardson addressed the Commission. He expressed his frustration with the current law. The Legislature, he feels, is waiting for the Commission to react to this issue since they have tabled bills.

Mr. Lavin stated that the Legislature would like to consider all bills of this nature at the same time. He believes the Legislature does realize its role in determining policy.

Mr. Lenardson restated his concern regarding consistency and clarity – knowing what the rules are and being sure every one is playing by these same rules.

Mr. Lenardson raised the Katahdin Institute issue because of the grant of \$10,000 for workshops appears actually to be focused on TABOR. He believes the Katahdin Institute should be brought into compliance as the other groups discussed today – Democracy Maine, MHPC, etc.

Anna Marie Klein, Director of the Katahdin Institute, and Thomas Foley, staff writer for the Katahdin Institute, addressed the Commission. Ms. Klein said the grant was shared with Community Leadership Network, \$5,000 each. Since the workshops were dealing with several issues, they believed they were in compliance. She said clarification would benefit all organizations. She passed out examples of handbooks that were used at the workshops.

Ms. Klein reviewed the books and the philosophy of the Katahdin Institute and told how they used TABOR as a useful tool. The Katahdin Institute took no actual position on TABOR.

Mr. Foley stated that there was not an inordinate amount of time spent on TABOR; therefore filing did not seem necessary. He said they were more than willing to file, if that needs to happen.

Mr. Friedman asked how much was spent. Ms. Klein thought perhaps \$2,500. She explained how their workshops are conducted. She said the workshops were intended to get participants the tools they needed to address issues but did not tell people what to do regarding any specific issue.

Mr. Cassidy asked if the \$2,500 included staff time; Ms. Klein confirmed that it did.

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Mr. Cassidy further asked what the annual budget was. Ms. Klein responded somewhere around \$70,000 and \$75,000. She noted that this is not directly campaign-related; work is more related to government education, and not that many participants, maximum of 20 people. She clarified that of the \$5,000 grant, \$2,500 went to TABOR-related activities and that was for staff time.

Ms. Ginn Marvin noted that there were several knowledgeable people on the board that were aware of the rules and could have advised better.

Ms. Klein acknowledged that their board's input would have been very helpful.

Mr. Wayne advised that the Commission write a letter to Ms. Klein asking what Katahdin Institute's financial expenditures and contributions regarding TABOR were and suggesting that they file a 1056-B Report, which may include mail costs, workshop expenses, other such costs relating to TABOR.

Mr. Wayne said that under § 1056-B, "an organization is required to report contributions or expenditures made for the purpose of initiating, promoting, defeating, or influencing in any way a ballot question." He noted that one purpose of these workshops was to provide people with ways to talk about TABOR, and sample editorials were provided in the workshop that urged defeat of TABOR. Mr. Wayne said that if the purpose of that expense was in fact to defeat TABOR, it should be included on a 1056-B report.

Dan Billings, Esq., representing the Maine Heritage Policy Center, addressed the Commission. He said that Ms. Klein has appeared regularly on a radio program (WLOB) and often spoke against TABOR. In addition to staff time, he was aware of a couple of press releases by the Katahdin Institute urging defeat of TABOR; therefore, they should be required to file, since they went over the \$1,500 threshold. He went on to say this is why the 1056-B statute is too broad in his view and threshold is too low. Organizations involved in a small amount of activity as part of their overall mission, get brought within the scope of this filing requirement unnecessarily, in his view.

Carl Lindemann addressed the Commission. He spoke to the freedom of speech issue as it relates to 1056-B disclosure.

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Ms. Ginn Marvin noted that both sides want the same thing: clear directions to follow.

Mr. Friedman made a motion that the Commission direct the staff to communicate to the Katahdin Institute information regarding the filing of a 1056-B report, given that the facts show spending of more than \$1,500 on TABOR. Mr. Cassidy seconded, suggesting a time limit for reporting be imposed, as it was with MHPC the last time.

Mr. Friedman amended his motion to include a time frame of 30 days for the Katahdin Institute to file its 1056-B report after the staff's communication.

The motion passed (4-0).

Agenda Item #16 - Recommended Statutory Changes for the Definition of PAC, and §1056-B

Mr. Wayne reviewed the staff recommendation for changes to the PAC definition from the January meeting. The proposed definition would replace the § 1056-B requirement. The staff is now seeking the Commission's approval of a new proposal. The current bill at the Legislature may be revised before the public hearing scheduled for the bill.

Mr. Wayne reported that organizations are influencing either candidate elections or ballot question elections as PACs and are reporting as PACs, which is the way it should be. PACs are required to register and identify primary decision makers and fund raisers, which is helpful for public disclosure. PACs report through the Commission's e-filing system. The 1056-B Report is different because those reports are filed in hard copy, made into PDFs and posted under other disclosures on our website. Mr. Wayne noted the public thinks of disclosures by parties, PACs or candidates, and the staff prefers this financial activity be reported as a PAC. The old definition (current law) refers to a PAC as any person who serves as a "funding and transfer mechanism and spends money" Mr. Wayne stated that the staff believes this is confusing and ambiguous. The staff recommends deleting that provision. The newly proposed definition for a candidate PAC reads "any organization that raises or spends more than \$5,000 to influence a candidate election," even if organization does not have as its major purpose influencing elections, would be required to form a PAC. Mr. Wayne noted the possibility of constitutional issues with this definition.

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Mr. Cassidy asked how this would apply to an organization like the Maine Educational Association. It has a PAC that supports candidates and also has a dues paying organization that supports educational issues.

Mr. Wayne confirmed that they funnel their political activity through the PAC, so the union itself would not have to register.

Mr. Wayne went on to explain the constitutional issues. Under federal law, an organization is a political committee if the major purpose is political activity and would be subject to strict federal regulation. The Maine law is much less burdensome. It requires only disclosure. PACs are free to raise money from whomever – labor unions, corporations – without any contribution limits. Mr. Wayne said that even under the proposed law, he believes an organization's First Amendment rights remain intact.

Mr. Wayne stated that the parts of the proposed law regarding ballot question elections still refer to "the major purpose" of organizations. If political issue is not the major purpose, the organizations should be allowed to file a 1056-B Report instead of forming a PAC. Because, even though the Commission prefers that these organizations form a PAC, if challenged, courts may find it to be burdensome on these organizations and individuals to do so. Mr. Wayne explained that the 501(c)(3) organizations, as the staff understands it, are not allowed to form PACs because of their tax exempt status. This would prohibit them from getting involved in ballot question elections, which is not the intent of the Commission. Mr. Wayne suggested, at this point, to keep the 1056-B requirement for "non major purpose" organizations, but make the following improvements to this requirement: clarify that all expenditures made to influence the election need to be reported, not just ones over \$100; clarify which contributions need to be reported; clarify which contributors need to be reported and what is the purpose of the contributor in giving the funds. If an organization does not have as its major purpose influencing ballot question elections under this requirement, then it would not have to report money given to support its general activities. The State has an interest in having non-profit organizations disclose their financial activity for the purpose of influencing elections. However, Mr. Wayne feels the State cannot ask non-profit organizations to disclose all financial information related to their general purpose simply because a "non-major purpose"

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organization has decided to engage in electoral issues. The staff also proposed a record keeping requirement which would have organizations keep their records for two years after the election.

Mr. Cassidy noted the reporting amount requirement has increased from \$1,500 to \$5,000.

Mr. Friedman asked who has to report contributors. Mr. Wayne said it would be the filer. Mr. Friedman asked about a situation where an individual donates \$5,000 towards organization and 85% of the work done by organization is for one ballot issue. The contributor gave the money, telling the organization to use it however it liked but knew that 85% of that donation will go towards that issue. Mr. Friedman asked whether that contribution would be reported.

Mr. Wayne explained that the contributions that would be reported are those that were donated specifically for that purpose; those that were given in response to a specific solicitation which would lead the contributor to believe that the funds would be used for that purpose; and contributions that could be reasonably determined to be provided for the purpose of influencing a ballot question when viewed in the context in which they were given. Mr. Wayne said that the last option would likely pertain to Mr. Friedman's example.

Ms. Thompson asked how these recommendations proposed today would change the decisions that have been made in the last few months regarding PACs and 1056-B filers.

Mr. Wayne stated that the four organizations that have come before the Commission – MHPC, Democracy Maine, AARP, and Katahdin Institute – would only be required to file 1056-B Reports since their major purpose is not to influence political activity. If the organizations spent more than \$5,000 in candidate elections, they would be required to register and file as PACs. There are other elements that could be explored in crafting the proposed law; for example, defining “a major purpose” to be when organizations spend more than \$10,000 or 200 hours of staff time on communications to influence elections. Mr. Wayne pointed out that if the Commission is still unsure whether some of these previous organizations are 1056-B filers or PACs, then the Commission could ask the staff to begin thinking about these factors to determine the status of the different organizations.

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Ms. Thompson asked what kind of burden would be experienced by "small actors."

Mr. Wayne explained that the spending threshold would make a difference. If the threshold is \$5,000, an organization that wants to send out mailers, etc., regarding an issue, but spends less than \$5,000, would not have to file a PAC report. Mr. Wayne said the Legislators seem to want a lower threshold.

Ms. Thompson stated that raising the threshold does help the "small actors." Mr. Wayne agreed; however, it does decrease disclosures.

Daniel Billings, Esq., addressed the Commission, saying he agrees with this direction. It will be clearer where the lines are; he believes the current definition is not clear at all. The proposal does seem to dodge the issue of what type of activity would trigger a reporting requirement. There are many "small actors" that are spending small amounts and have not filed. There are many small organizations wanting to speak out on ballot issues. The current threshold is too low.

Jonathan Crasnick addressed the Commission saying he feels any group that takes part in a ballot question should disclose whether there is express advocacy or not, should include all areas of money spent, including staff time. Most organizations spend more than they raise in his opinion. Also, he believes the report has to show where the money comes from, the original source, and who is funding a PAC or funding an issue.

Mr. Friedman asked whether Mr. Crasnick agreed with the staff recommendation, and he said he did.

Ms. Gardiner asked if the \$5,000 threshold was sufficient. Mr. Crasnick stated he has no strong opinion. He believes the dollar amount should not be a factor.

Mr. Wayne questioned how a non-profit organization would choose as to which general activity donation went to a political issue and what if a donor wishes to remain anonymous.

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Mr. Crasnick acknowledged that this is a challenge, but that it needs to be addressed nevertheless, especially if the contribution comes from an out-of-state donor.

Mr. Friedman noted that there are donors that do not want to be identified and so will stop giving.

Mr. Crasnick said it may change past practice; however, PACs have to do this now. Non-profits have not been required to do this; this would be a positive change. Currently, any group can start a non-profit, get unlimited amounts of money from out-of-state or in-state, and put it towards a referendum and not have to disclose it.

Carl Lindemann addressed the Commission. He feels the 501(c)(3) organizations want you to give to the general fund and do not want earmarked contributions. Mr. Lindemann said the need to get to the sources for these specific ballot issues is important.

Roy Lenardson addressed the Commission. Mr. Lenardson believes the \$5,000 is reasonable. He believes the "major purpose" definition could be a checklist of three or four specific activities, which if met, would trigger an obligation to register as a PAC. If non-profits want to play in politics, they would have to form a PAC. He feels that between this proposal and the \$5,000 the Commission could eliminate 1056-B reporting in Maine.

Mr. Wayne stated he would like to investigate specific triggers for PAC registration.

Ms. Ginn Marvin asked when proposals need to be submitted to the Legislature. Mr. Wayne said that it would be by end of March or sooner.

Mr. Friedman acknowledged that there are First Amendment considerations. However, he feels that if an organization chooses to become involved in the political process, then it has to accept publicity.

Agenda Item #17 - Presentation of Audit Reports

Mr. Friedman moved to accept the audit reports presented; and Ms. Ginn Marvin seconded. The motion passed (3-0).

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Agenda Item #18 - Request for Further Advice by Rep. Thomas B. Saviello

Mr. Wayne did inform the Commission that there is a bill before the Legislature that would affect Verso Paper, Rep. Saviello's employer.

Rep. Saviello, District 90, addressed the Commission. He stated that the bill (L.D. 437) regarding oil spill reporting in Maine was sponsored by other Representatives, and he has not been to hearings or meetings regarding this bill. He also stated that this bill affects the entire industry, not just Verso Paper. This is an example of what he would be contacting the Commission staff for guidance on in the future.

Michael Herz addressed the Commission on behalf of Maine Rivers as board member. He has worked with Rep. Saviello on a Legislative task force in the past and respects his ability. Mr. Herz believes that the conflict of interest issue which was brought up last month regarding RGGI presents a similar conflict of interest issue but he believes that L.D. 437 presents an even clearer conflict. He believes Rep. Saviello will derive a benefit from this bill. Rep. Saviello's reputation in his company and his industry will be directly affected as will his employer's financial benefits in Mr. Herz opinion, and therefore Rep. Saviello should recuse himself in regards to L.D. 437.

Mr. Cassidy asked whether oil spills had to be reported to DEP. Mr. Herz said it would depend on the size; if the spill was less than a certain threshold level, it would not have to be reported. This will affect companies' bottom line because they will not have to do as much reporting as they do now, if the bill passes. Mr. Cassidy stated the intent of these kinds of bills is to protect the environment; therefore, we all benefit from these types of bills. Mr. Cassidy asked Mr. Herz if the entire Legislature has a conflict if we all benefit. Mr. Herz said that this bill would create a special benefit to a restricted class of people, i.e., the mill's employees.

Ms. Ginn Marvin explained that in the past the Commission determined that Rep. Saviello derives no special financial benefit as a result of the bills. Mr. Herz said that he thought that this specific bill will affect a small set of employers.

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Rep. Saviello stated that the bill exempts those mills within the State that fall within the 50 gallon reporting threshold, but they would still have to file a log, they would have to have a HAZMAT team on-site, an on-site waste treatment facility, etc., so these costs incurred by the industry are not a benefit to the industry at all. In fact, this bill will increase the costs to the industry.

Mr. Cassidy asked for clarification as to the intent to protect all citizens of the State of Maine. Rep. Saviello confirmed that this was the intent of the bill, keeping track and cleaning up any oil spills on their facility. Everyone is affected by this.

Mr. Wayne stated that Rep. Saviello wants to be sure he can vote on this bill. The amount of spills by IP (Verso Paper) last year was 20%, which is still not enough impact to constitute a conflict of interest since there are hundreds of facilities in Maine. However, with RGGI, there was a clearer impact because Rep. Saviello's employer was one in five or six companies that would have to buy carbon dioxide allowances.

Mr. Friedman stated that there needs to be proof that the Legislator acquires a direct, substantial personal financial interest. In his opinion, it is very difficult to disqualify someone from voting on a bill because it disenfranchises voters in his district, unless that individual has a "direct, personal, substantial financial interest."

Mr. Cassidy agreed.

Ms. Ginn Marvin stated that Rep. Saviello was only one out of 151 Representatives.

Mr. Saviello wants to be able to work with Mr. Wayne in the future and not have to come before the Commission.

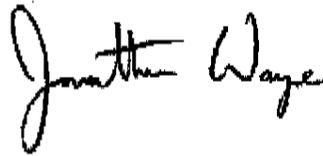
Mr. Friedman made a motion to issue an advisory opinion to Rep. Saviello which suggests that there is not a conflict of interest for his participation in debate and voting on L.D. 437 and that future questions of this nature be taken up with Executive Director, Jonathan Wayne.

Mr. Cassidy seconded. The vote was unanimous.

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There being no further business, Mr. Friedman motioned to adjourn, and Mr. Cassidy seconded.
The motion passed (3-0).

Respectfully submitted,

A handwritten signature in black ink that reads "Jonathan Wayne". The signature is written in a cursive, flowing style.

Jonathan Wayne
Executive Director