Agenda Item #1

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

Minutes of the December 7, 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: Michael Friedman, Esq., Chair; Hon. David Shiah; Hon. Francis C. Marsano; Hon. Edward M. Youngblood. Staff: Executive Director Jonathan Wayne; Phyllis Gardiner, Counsel.

At 9:04 A.M., Chair Michael Friedman convened the meeting.

The Commission considered the following items:

Agenda Item #1 Ratification of Minutes: October 30, 2007 Meeting

Mr. Wayne reviewed a few grammatical changes and word changes made to the drafted minutes. On motion by Mr. Marsano and seconded by Mr. Shiah, the minutes as amended were adopted unanimously.

Agenda Item #2 Public Hearing on Rulemaking

Mr. Wayne reminded the members that at the last meeting, the proposed changes to the rules were accepted by the Commission in order to receive public comments. He said as of today, no written comments had been received.

Carl Lindemann, Truedialog.org, addressed the Commission. He said that the issue he wanted to address was not brought up in the proposed rules. The issue of concern to Mr. Lindemann was how the Commission decided whether an issue brought before it was within the Commission's jurisdiction and whether the issue should be on the Commission's agenda or not. He suggested that there may be matters that are of general concern to the Commission but which are not specifically within the ambit of the Commission's jurisdiction. He said that there is a need for greater clarity on the process of how those jurisdictional questions are resolved.

Mr. Marsano asked for Mr. Lindemann's view on the process currently used for matters brought before the Commission.

Mr. Lindemann expressed concern that matters coming before the Commission be within the Commission's ambit and that the Commission be able to address issues of concern to the Commission *sua sponte* or that are otherwise brought to its attention.

At this point the public hearing on rulemaking was closed.

Agenda Item #3 Maine Clean Election Act Violation/Clyde E. Dyar

Mr. Wayne reviewed the background for arriving at the penalty amount for Mr. Dyar. The staff recommended finding Mr. Dyar in violation of 21-A M.R.S.A. §1125(6), for over spending $409.71 of his MCEA funds to promote his campaign, and assessing a $50 penalty.

Mr. Dyar stated that this was his first running as a candidate and felt very overwhelmed at running a campaign in a six week period, while trying to keep track of all the reporting requirements during this time. He expressed his gratitude to the Commission staff for all the help he received during his campaign. Mr. Dyar further stated that the matching fund process was confusing and difficult to react to in a timely, constructive fashion. As a result, a bill was forgotten in the haste of campaigning and he notified the Commission right away when this mistake was discovered. Mr. Dyar paid the bill from his own personal funds.

Mr. Dennis Keschl, Mr. Dyar's treasurer, stated this was his first time being involved in the election process. He stated that due to the shorter timeframe for the special election cycle, the process became very difficult and confusing. Mr. Keschl also stated that had he and Mr. Dyar been through the process before, the time challenge may not have been an issue.

Mr. Friedman asked what in particular was difficult about the process.

Mr. Dyar said in a regular election the time constraints are not a problem. In a six week period for the special election, the matching funds piece is very difficult to manage. He feels there should be an allotted

amount of money for all candidates and when that runs out, that is the end of funding. The shorter election cycle is not conducive to the clean election process.

Mr. Youngblood stated that the rules for clean elections need to be understood and followed by all candidates. He moved to follow the staff recommendation and find Mr. Dyar in violation of §1125(6) for over spending. Mr. Marsano seconded.

Mr. Friedman recognized the difficulty with being a first time candidate and the condensed timeframe for campaigning.

The motion passed (4-0).

Agenda Item #4 Audit of 2006 Candidate Paul Hatch and
Agenda Item #5 Audit of 2006 Candidate Pamela Hatch

Mr. Friedman asked whether both items should be taken together. Mr. Wayne said they were related and could be taken together. After discussion, it was decided to make a motion to combine the two items. Mr. Marsano moved that Items 4 and 5 be joined for the purpose of discussion, deliberation, and decision. The motion was seconded by Mr. Youngblood. Mr. and Mrs. Hatch had no objection to the joining of the two matters. The motion passed by a vote of 4-0.

Mr. Wayne reviewed the history of Mr. and Mrs. Hatch's campaigning over the past several elections. He stated that documentation for expenditures was missing from both campaigns in 2006 and some expenditures were paid from personal funds and reimbursed by public MCEA funds. While it was permissible to use personal funds for campaign expenditures and make reimbursements from campaign funds, the campaigns are required to keep documentation to support their expenditures. There were seven expenditures totaling almost $3,000 between the two campaigns for which there was no documentation. Mr. Wayne outlined different options the Commission could take regarding the findings of these audits. He said the Commission could view this as a well-intentioned campaign, with poor recordkeeping standards, or the Commission could find the lack of documentation a critical deficiency and ask the campaigns return the amounts of these expenditures, or the Commission could request the campaign to produce more documents to support the expenditures and postpone the matters to a later meeting.

Mr. Dinan reviewed the detailed audit findings for the Commission and proposed that the Commission may want to have Mr. Hatch respond to each finding as Mr. Dinan went through them. Regarding the first audit finding, Mr. Dinan expressed concern that seed money contributions were not deposited into the campaign bank account and therefore there is no independent way to confirm how much the campaign received in seed money contributions which could have an impact on the amount of the initial MCEA distribution to the campaign. He also stated that Mr. Hatch said there was no bank account, when in fact there was an account dating back to 2005.

Mr. Hatch proposed an explanation would cover everything that the Commission was about to consider. Mr. Hatch said that the documentation was simply lost and he takes responsibility for it. He said the documents were probably thrown out with the Sunday newspaper. Mrs. Hatch uses the dining room table as campaign headquarters and he has a long-standing habit of reading the newspaper at the dining room table. He said that he probably shuffled the documents into the newspaper when he was picking it up from the table. He said it was stupid on his part but not intended. He said he and his wife cannot hold up their end of the contract, so they will pay the money back and pay any penalty assessed against them. They do not want to draw these proceedings out.

Mr. Friedman asked Mr. Hatch if his position was the same for all six findings that the documents were lost for all six expenditures.

Mr. Hatch said it was.

Mr. Friedman further asked if Mr. Hatch would like more time to get the documentation from the vendors.

Mrs. Hatch stated that they had checked with Staples and the US Post Office and were told in both cases that additional receipts could not be provided.

Mr. Dinan continued the remainder of the detailed findings for Mr. Hatch. He also said the staff had extended every possible time line for getting the documentation materials required by law from Mr. and Mrs. Hatch. Regarding Finding No. 2, Mr. Dinan said a volunteer, John Ring, provided a statement that said he received $100 in payment from the Hatches, and the campaign reported the expenditure; however, later Mr. Ring stated he did not receive payment, so the expenditure is being questioned. Mr. Dinan also

reviewed the comingling of funds violation, unreported expenditure violation, and undocumented expenditures violation.

Mr. Hatch restated that he owes some money and he will pay it but has nothing to add to the technicalities of the bookkeeping since he was not involved in it. He also said he really did not want to run as a clean election candidate, but was talked into it. He would recommend anyone running for office to pay for their own campaign. He would not run again as a clean election act candidate.

Mr. Friedman asked how many clean election campaigns Mr. Hatch had run. Mr. Hatch said he had run three times, but had to withdraw from one due to health reasons.

Mr. Dinan reviewed Mrs. Hatch's audit findings. These findings and recommendations are very similar to Paul Hatch's audit - undocumented expenditures, commingling of funds, and seed money violations.

Mrs. Hatch stated they had done several things wrong and should have contacted the Commission early on. She said she was a bookkeeper for many years and has lost some of that capacity. The expenditures for postage and Staples were paid for in cash in case they did not need to use them. The postage was purchased very early in the campaign with personal funds because she had the cash in hand and always reported personal funds used. She was running her own campaign and feels she may have taken on more than she could handle.

Mr. Friedman summarized the recommendations for Mr. Hatch. For the seed money violation, a penalty of $100; for undocumented expenditures, the recommendation is either assess a $300 penalty if the Commission believes the expenditures were made, or if the Commission does not accept the assertion that the expenditures were made, then the staff recommendation is for Mr. Hatch to repay $590.63 back to the MCEA fund plus an appropriate penalty. For unreported expenditures, the recommendation is a $250 penalty. For misreported expenditures, comingling of funds, and unexplained excess balance in campaign bank account, the recommendation is to find technical violations with no penalties.

Mr. Friedman reviewed the recommendations regarding Mrs. Hatch's audit. For the seed money violation, the recommendation is a penalty of $100. For undocumented expenditures, the recommendation is either to assess a $500 penalty if the Commission believes the expenditures were made, or if the Commission does

not accept that the expenditures were made, then the recommendation is for Mrs. Hatch to repay $1,879.98 and to assess an appropriate penalty. For the undocumented payment of MCEA funds, the recommendation is to repay $78 if the Commission determines that the payment was not made for campaign purposes or, if the Commission accepts that the payment was for campaign purposes, a finding of a technical violation but no penalty. For comingling of funds, the recommendation is a finding of technical violation with no penalty. For the unexplained excess balance in campaign bank account, the recommendation is for Mrs. Hatch to repay the difference between $1,879.98 (undocumented expenditures) and $2,396.53 (bank balance), which is $516.57 if the Commission determines that the expenditures were not made and to assess an appropriate penalty. If it is determined that the expenditures were made, no action needs to be taken.

Mr. Shiah asked if there were bookkeeping issues in past campaigns. Mrs. Hatch said there were no bookkeeping issues in the past.

Mr. Friedman asked if their campaigns had been audited before. Mrs. Hatch said they had not been audited before.

Mr. Shiah asked Mr. and Mrs. Hatch if the expenditures had actually been made.

Mr. Hatch said that considering the amount of money being questioned, he would prefer to just pay the fines. He said he would not do something stupid for only $3,000, which was six days pay for him in the past.

Mr. Marsano asked Mr. Hatch specifically about the bank account, which Mr. Hatch stated in his letter did not exist. Yet upon further investigation by the Commission, it was discovered that the bank account dated back to 2005. Mr. Marsano said this discrepancy was a significant factor regarding Mr. Hatch's credibility.

Mrs. Hatch clarified that the account was in existence before 2005.

Mr. Marsano stated, if that was the case, then Mr. Hatch's letter was wrong.

Mr. Hatch stated again that he was not involved in the bookkeeping of the campaign.

Mr. Marsano said the burden of proof lies with Mr. and Mrs. Hatch at this point. He said they can offer statements or produce facts that will establish proof. Mr. Marsano stated that he does not want the findings to involve a marriage. If it were a cumulative finding, it would mean that the Commission was not singling out one or the other. He said that there may be some benefit to that approach so that the Commission is not allocating blame between the two parties.

Mr. Youngblood asked how the difference was arrived at assessing a $300 penalty for Mr. Hatch and $500 penalty for Mrs. Hatch.

Mr. Wayne said he made that decision since Mr. Hatch's undocumented expenditures totaled $1,000 and Mrs. Hatch's totaled almost $1,900, so the amount of the penalty is proportionate to the amount of undocumented expenditures. Mr. Wayne said the Commission had a great deal of latitude regarding the amount of a penalty to assess.

Ms. Gardiner stated that in the past when there have been credibility issues, the candidate has had the burden of proof as to whether expenditures were in fact made by providing documentation or through testimony. If the Commission determined that the expenditures were not made, the Commission has required the return of the funds. The Commission is not locked into that, but that is how previous cases were handled. The assessment of a penalty was then handled as a separate step and the Commission considered the particular circumstances involved in the case before them.

Mr. Wayne said this is the first year that audits have been undertaken. Most campaigns have been able to come up with documentation. He said it depends on how the Commission wants to administer the MCEA program. Mr. Wayne advised that there are no rules or policies that say it is the candidate's burden to come up with documentation and if documentation of expenditures cannot be provided then the candidate has to return the money spent.

Mr. Marsano reminded the Commission that at the last meeting, there was a case where documentation was not provided due to a tornado in the candidate's hometown. The Commission decided in that case to accept the explanation for undocumented expenditures.

Mr. Wayne said if the Commission wished to adopt this policy, then they should do so.

Mr. Friedman said the candidates have to take certain steps, according to the statute, to prove that expenditures were made. In the case of the Hatches, he said if the Commission feels the proof has not been provided for expenditures, then the amount of funds to be returned totals $2,973.54 and the Commission could assess a penalty, or not, in addition.

Mr. Marsano asked Ms. Gardiner if the cumulative approach would be legally appropriate.

Ms. Gardiner stated that it would not be inappropriate. She does not think it would make a difference either way, cumulative or separately, other than the cumulative approach would avoid the issue of assigning blame to one person or the other. The ultimate conclusion is in finding whether there is satisfactory proof of the expenditures.

Mr. Marsano said the daughter should be left out of these considerations. He moved that the Commission require the return of $2,973.54 in clean election act funds and assess a civil penalty for false reporting and spending MCEA funds for purposes not related to the campaigns in an amount of $500.

Mr. Friedman clarified that Mr. Marsano accepts the staff findings that there has not been proper documentation provided, therefore the expenditures are being disallowed.

Mr. Marsano confirmed.

Ms. Gardiner asked if the motion included the findings regarding seed money expenditures or comingling or just to the findings regarding the expenditures which the Hatches have not proven to have occurred.

Mr. Marsano said the intent of his motion is to recognize that the Hatches agreed to join their two audits; to find that they have failed to meet the burden of proof that the expenditures were made; to require that the amount of MCEA funds spent on these undocumented expenditures be returned to the Fund; and to propose a minimum penalty of $500 for the other findings with recommended penalties in each audit, *i.e.*, the seed money violations, failure to document expenditures, and failure to report expenditures.

Mr. Friedman seconded.

Mr. Shiah said that the Hatches have not met their burden of proof in the traditional ways and that is unfortunate. In the past, there have been other candidates who have stated the same thing as the Hatches. It is difficult in this case considering that the Hatches have not had problems in the past.

The motion passed by a vote of 3-1. Mr. Shiah opposed.

Agenda Item #6 Request for Waiver of Late-Filing Penalty/Gary C. Wood

This item was postponed to the January meeting.

Agenda Item #7 Request for Waiver of Late-Filing Penalty/Benjamin T. Collings

Mr. Wayne stated that Mr. Collings was not able to attend the meeting. Benjamin T. Collings is a registered lobbyist for the Penobscot Nation. His monthly lobbyist report was filed 24 minutes late. Mr. Wayne provided a letter from Mr. Collings which Mr. Collings hand delivered to the Commission the day before the meeting. Mr. Wayne reviewed the Commission's past process in handling late-filed lobbyist's reports, which ranged from an automatic waiver for lobbyists who had not filed late for the previous 2 years to a strict policy of imposing a $100 penalty for any late-filed monthly report.

Mr. Youngblood stated that he has no sympathy for a lobbyist who knows the rules and reporting requirements and still filed a late report.

Mr. Marsano stated that he did not think that a waiver of the penalty was in order, but asked the other Commission members whether a minor penalty would be appropriate if the lobbyist's explanation was credible. He said that especially if the lobbyist was working pro bono and admitted to being wrong, a minor penalty would be in order.

Mr. Friedman asked if there was anyone who wanted to comment on this matter. There was no one.

Mr. Friedman stated that lobbyists know the requirements and rules very well. He further stated that if a complaint were filed 24 minutes late in court, there would be ramifications for that. He agrees with Mr. Youngblood to not grant a waiver or reduction.

Mr. Marsano said he is not in favor of a waiver, only a reduction in the penalty.

Mr. Shiah stated that he knows Mr. Collings a little. There are different levels of lobbyists and some are more in tuned to the legal requirements than others. He believes that $100 is too much of a penalty for being 24 minutes late.

Mr. Youngblood moved to assess the recommended penalty of $100; Mr. Friedman seconded. The motion failed by a tie vote; Mr. Friedman and Mr. Youngblood in favor and Mr. Marsano and Mr. Shiah opposed.

Mr. Marsano moved to find a violation and assess a $25 penalty; Mr. Shiah seconded. The motion failed by a tie vote; Mr. Marsano and Mr. Shiah in favor and Mr. Friedman and Mr. Youngblood opposed.

Mr. Friedman moved to find a violation and assess a $75 penalty; Mr. Youngblood seconded. The motion failed by a tie vote; Mr. Friedman and Mr. Youngblood in favor and Mr. Marsano and Mr. Shiah opposed.

Mr. Shiah moved to find a violation and assess a penalty of $50; Mr. Marsano seconded. The motion passed by a vote of 3 – 1. Mr. Youngblood opposed.

Agenda Item #8 Audit Reports for Robert F. Bauer and Sen. Earle L. McCormick

Mr. Dinan reviewed Senator McCormick's audit report. He said this audit was selected because of the large amount of matching funds ($40,164) Senator McCormick received and expended in the 2006 election. Mr. Dinan explained that there was one finding for incomplete documentation regarding postage. The receipt for the expenditure was not submitted originally and Senator McCormick was able to provide proof of the mailer and proof of payment made to the post office. The staff recommendation is to find a violation with no penalty.

Mr. Shiah moved to accept the staff recommendation; Mr. Marsano seconded. The motion passed (4-0).

Mr. Dinan reviewed the audit report of F. Robert Bauer, a House candidate in the 2006 election. He explained there were two findings, one for unreported seed money contributions and expenditures (for postage he purchased out of his own money). The recommendation is to find a technical violation with no penalty. The second finding was a purchase of sign materials for $178.15 with proof of payment but no

vendor invoice for the expenditure. The recommendation is also to find a technical violation with no penalty.

Mr. Youngblood asked if Mr. Bauer had to amend his seed money report. Mr. Dinan confirmed that this would be done.

Mr. Shiah moved to accept the staff recommendation; Mr. Marsano seconded. The motion passed (4-0).

Agenda Item #9 Guidance on Reporting under 21-A M.R.S.A. § 1056-B

Mr. Wayne said the staff has been getting many questions regarding reporting obligations for organizations which spend more than $1,500 on a ballot question but which are not political action committees. Mr. Wayne gave examples of these types of organizations – AARP, Maine Heritage Policy Center, Maine Center for Economic Policy – which were active in the TABOR ballot question but which are not PACs since their major purpose is not to influence ballot questions elections. Mr. Wayne outlined some new draft advice that the Commission counsel and staff have proposed. He drew attention in particular to the proposed advice regarding an organization's involvement in the drafting of a ballot question. Mr. Wayne suggested the Commission consider the advice that if an organization that drafted proposed legislation later submits the legislation as a citizen initiative or engages in any financial activity regarding the citizen initiative based on the proposed legislation it drafted, the costs for drafting the legislation would be reportable and count towards the $1,500 threshold. It would not be reportable if the organization does not know whether the draft legislation will actually become a ballot question and does not spend money in connection with the citizen initiative.

Mr. Friedman asked if the public had seen this guidance. Mr. Wayne said the public had not seen it yet.

Mr. Youngblood asked if this creates a loophole to help existing Legislators create legislation.

Ms. Gardiner said this would not apply to Legislators. She said the only person who can submit a citizen initiative is a registered voter. Organizations cannot submit a citizen initiative.

Mr. Wayne said there may be a loophole; however, if the legislation drafted by the organization does become a ballot question issue, then the costs associated with the drafting would become reportable at the point that the organization made any expenditures to influence the ballot question.

Mr. Friedman expressed concern over the lack of public input on this issue. He said he wants to be certain the public can and will comment, so he would like to put this item back on the agenda for next meeting and hope that more comments will be received.

Mr. Marsano expressed a concern about the impact on organizations that may have to reconstruct the history of work that had been done a number of years prior to the citizen initiative. He said that he agreed with the Chair's suggestion that the Commission receive more comments from the public.

Mr. Wayne said that he would notify all 1056-B filers, PACs, and other interested parties of these proposed guidelines and request comments.

Mr. Carl Lindemann, TrueDialogue.org, addressed the Commission. He wondered what the effect of the proposed legislation regarding PACs and 1056-B organizations would be if it were enacted. He said that it would considerably narrow the field of organizations that would fall into the 1056-B category.

Agenda Item #10 Proposed Annual Disclosure Statement for Commission Members

Mr. Wayne said that the Commission had heard several suggestions, including the possibility of proposed legislation, that the Commission members should consider filing annual disclosure statements regarding the kinds of affiliations and activities that may be considered a conflict of interest. The proposed disclosure statement was sent out for public comment. Mr. Wayne said he had received comments from Mr. Lindemann expressing concern that the policy did not go far enough because it did not outline what would be the consequence if a conflict of interest did arise. Mr. Wayne explained that there is proposed legislation relating to what constitutes conflicts of interest for a Commission member, how the Commission responds, etc. He said the Commission could let the legislative process decide what the procedures would be, or the Commission could include procedures in this proposed policy. Mr. Wayne advised the Commission that the Speaker of the House has introduced legislation to require the Ethics Commission members to file an annual disclosure statement.

Alison Smith and Ann Luther, Maine Citizens for Clean Elections, addressed the Commission. Ms. Smith said that she had made a comment to Mr. Wayne regarding the inclusion of affiliations with lobbyists. She stated that the public benefits from disclosure. However, she did express concern that mere disclosure may not achieve the stated purpose of the disclosure statement, which was to provide the public assurance that the Commission was acting independently and in its interest.

Ms. Luther said the new legislation concerning conflicts of interest may address this issue. She said that in their view, it was as much an abrogation of duty for a Commission member to recuse himself or herself when there was no real conflict as it was to sit on a case where there was a real conflict of interest. She hoped the legislation would provide guidance on these important considerations.

Mr. Friedman asked for clarification on adding affiliations with lobbyists. Ms. Smith stated that it was just a gut reaction to the form and felt it should probably be included because lobbyists form a large segment of the Commission's regulated communities. She said disclosure only goes so far, but how to deal with conflicts is another whole issue that needs to be addressed for the benefit of the public.

Mr. Marsano expressed concern that there ought to be a reserved right for a Commission to recuse himself or herself without comment as to the basis for that recusal so as not the unduly impair the judgment of his or her colleagues. He gave the example of a Commission member who has no faith in the credibility of a witness or someone before the Commission. That Commission member ought to be able to recuse himself or herself without comment otherwise the Commission member, in stating the reason for the recusal, may impair the judgment of the other Commission members.

Ms. Luther said that she could not agree or disagree with Mr. Marsano's comments. She said that she considers it to be a problem for someone who has been speciously accused of a conflict of interest to recuse himself or herself in order to avoid the appearance of a conflict.

Mr. Lindemann, Truedialog.org, addressed the Commission. He expressed concern that there is no consequence for failing to disclose or falsely disclosing conflicts of interest in the nomination process and in the re-appointment process. He also said that this issue came up because of former Commission Chair Ginn-Marvin who was the treasurer of a regulated entity. He said that it was important to find the balance between being knowledgeable of the regulated communities and knowing too much.

Mr. Marsano asked Mr. Lindemann if the Ginn Marvin matter had not come up, would his views still be the same regarding disclosure of Commission members.

Mr. Lindemann said laws arise out of violations, and the issue would not have occurred to him if the Ginn Marvin matter had not arisen.

Mr. Marsano asked if it would be acceptable for a Commissioner to remain involved in a matter after making a disclosure, such as Mr. Shiah's earlier disclosure that he knew a lobbyist that was before the Commission.

Mr. Lindemann said that if later found out that the relationship was a close one, he would have problems with that.

Mr. Marsano asked whether Mr. Lindemann would be willing to accept the statement of a Commissioner who said that he knew the person appearing before the Commission but that he believes it would not impair his ability to proceed in the matter or would Mr. Lindemann have to know how close that relationship was before accepting that statement. Mr. Lindemann said that Commissioners should be given the benefit of the doubt.

Mr. Marsano expressed concern over defining "close" and "affiliation."

Mr. Friedman said he believes the framework with which to deal with these issues should come from the Legislature, as that is the body that grants the Commission its authority. If there is legislation being considered regarding disqualification and recusal, the Commission ought to wait for that. All Commission members are governed by their own personal reflection on whether there is a conflict of interest. He also said that Ms. Ginn Marvin always recused herself and left the room whenever discussions took place regarding the Maine Heritage Policy Center matter.

Mr. Marsano said he supports letting the Legislature tell the Commissioners what the expectations are regarding this issue. The governance of the Legislature is significantly important in this matter.

Mr. Friedman said at the last meeting everyone agreed disclosure was something the Commission should be doing and directed the staff to come up with a format which he believes this draft has accomplished; however, he would add the lobbyist section to the form.

Mr. Marsano expressed concern over the word "affiliation" as it is used. He feels the Commission should review it very closely and have more discussion on the areas or language that may be vague. He stated that he needs more guidance before he would be able to fill out the current form.

Mr. Youngblood had the same concerns regarding "affiliation." He stated that "affiliation" is a broad term in his view. He explained that he is an incorporator of the Eastern Maine Medical Center, whose main function is to hire the board of directors, which hires management, which hires lobbyists. Mr. Youngblood asked whether that was an affiliation that would be a problem.

Mr. Friedman stated anyone on the Commission who has come up through the political process, which is usually the case, would have affiliations with all sorts of political entities that may need to be disclosed.

Mr. Marsano stated he felt this matter should be tabled until the results of the legislative action are known. He said he wants to know what the Legislature thinks about this issue. The Legislature will conduct their own hearing anyway to determine what the language should be.

Mr. Marsano also stated he would like to see an opportunity for the Commission members to discuss this amongst themselves and with Commission staff and counsel to get advice. He moved to table the matter. Mr. Shiah seconded.

Ms. Luther stated that the legislative committee will probably ask for the Commissioners' comments ultimately, so tabling may not get this Commission out of the process.

Mr. Marsano said he would be willing to speak to the Legislature. He believes if the policy is passed today, the opportunity to get the Legislature's input may not happen.

The motion to table this matter passed by a vote of 3-1 Mr. Friedman opposed.

Agenda Item #10 Presentation of Audit Summary Report

Mr. Dinan reported that the staff had not done an organized audit prior to the 2006 elections. In 2006, audits were done randomly; however, all publicly funded gubernatorial candidates were audited. There were 61 legislative candidates, four gubernatorial candidates and three 'special purpose' audits that were warranted by circumstances that arose during the campaigns. Mr. Dinan said two-thirds of the audits of the legislative candidates found no exceptions. In most cases, he said, candidates did not have the documentation that is required under the law. However, in most cases, these candidates were able to provide this documentation when asked. The remaining third had committed violations ranging from mundane to serious. There are sixteen different kinds of violations, the most common being missing or incomplete documentation. Mr. Dinan said there were very few cases of misuse of public funds. He reported there were three cases where candidates used public funds for personal reasons and seven cases of comingling of funds. He felt these problems can be overcome in the future with more training and education for first-time candidates. Mr. Dinan said that knowledge of possible audits is also a reason for candidates to be more diligent in keeping good records. He said most people are honest and do not want to be in violation. He also said the Commission would rather help the candidate solve the problem, than issue penalties.

Mr. Friedman asked if there would be a document that outlines the most commonly found violations and remedies to prevent them. Mr. Dinan said the 2008 Candidate Guide has this type of information included as a result of the 2006 audit process.

Mr. Marsano asked how the random selection was arrived at. Mr. Dinan said the selection process is done by a numbering process and then those numbers are put into an electronic number generator, which provides a 20% random selection.

Mr. Shiah asked if the candidates knew ahead there would be a 20% audit selection. Mr. Dinan confirmed that the candidates knew this from the beginning since it was printed in the Candidate Guide. He said the audit process does influence the behavior of candidates, especially when the news media covers the issues.

Mr. Shiah said candidate education for first-time candidates is very important and proactive.

Mr. Dinan said training sessions were held by staff in the spring prior to the 2006 election all around the state. This will be done again for the 2008 election cycle. He said expectations are spelled out for candidates at these sessions. Mr. Dinan said all of the candidates' campaign finance reports are reviewed by staff very carefully.

Mr. Shiah said he believes there is a fear by candidates of calling the Commission office with questions and would support making sure the candidates know that the Commission welcomes questions and phone calls.

Mr. Youngblood expressed appreciation for the outstanding job Mr. Dinan has done with the audit process.

Mr. Friedman also commended Mr. Dinan on his professionalism and expertise. He said Mr. Dinan is tenacious, but compassionate with findings and violation recommendations.

Alison Smith, Maine Citizens for Clean Elections, also expressed the value of the audit process. She said compliance of candidates is a direct result of the audit process. She felt giving examples of the good ideas and best practices for candidates to follow would be more helpful than listing the wrong steps to keep records.

Mr. Dinan said the 2008 Candidate Guidebook will cover this.

Mr. Youngblood asked how much of this information is available under the public's right to know law. Mr. Dinan said all of his audit records are.

Agenda Item #11 Report to Oversight Committee on Legislative Ethics

Mr. Wayne said members of the Legal & Veterans Affairs Committee directed him to provide some historical data regarding legislative ethics complaints received in the last ten years and whether the laws are sufficient to properly resolve these complaints. Mr. Wayne reviewed the report that he drafted in consultation with Assistant Director, Paul Lavin and Commission counsel, Phyllis Gardiner. He requested any comments by the Commission members and whether the Commissioners wanted the report to be submitted through him or through them. He thought the most contentious matter is that the current law appears to allow Legislators to file complaints against other Legislators, but that the public could not. Mr. Wayne did point out that the Commission could conduct an investigation on its own motion if a matter was

brought to the Commission by a member of the public and which the Commission thought warranted an investigation. The report recommends that the public be allowed to file complaints against Legislators. Before submitting the report to the Legislature, Mr. Wayne said he wanted the Commission to have an opportunity to provide input regarding the report's proposals. He said the Legislature may feel that if the law is changed to allow the public to file complaints, the Ethics Commission may become a forum for political grudge matches and frivolous complaints.

Mr. Marsano said he felt that if the Legislature directs Mr. Wayne to develop a report, then he should be the one submitting the report since he has the expertise in these matters and the Legislature mandated him to develop the research and report back.

Mr. Friedman said that if the Legislature directs the Executive Director to submit a report regarding legislative ethics complaints rather than a resolve to get the Commission's point of view, then the Commission members do not need to be involved in the submission.

Mr. Youngblood recommended that any proposal take into consideration the staff resources are adequate to handle the additional work.

Ms. Gardiner pointed out that even though the law does not provide an express process for an individual citizen to file a complaint with the Commission, the history of legislative ethics complaints shows that several complaints were originated by individual citizens. She said there is nothing to preclude a citizen from bringing matters to the staff's attention and for the staff to bring that matter to the Commission. She said that she thought it was important to be aware of the potential for an increase in the number of complaints filed but that we have no way of knowing at this point whether there would be an increase.

Mr. Friedman stated that if he were defending a Legislator in a citizen-filed complaint with the Ethics Commission, he would raise jurisdictional issues. He feels the grant of authority this Commission has does not include citizen's complaints; we can only act within that authority.

Agenda Item #12 Scheduling Meetings

Mr. Friedman thought putting together a few dates for meetings ahead of time would be beneficial. After discussion, several dates were tentatively scheduled.

Other Business - William Walcott

Mr. Wayne reported that the Attorney General's office was in the process of investigating Rep. William Walcott for misuse of MCEA funds. The prosecuting attorney for the Attorney General's Office has requested that the staff review Mr. Walcott's bank account records from his 2004 campaign to see whether the staff saw any misuse of funds during that campaign. Because the AAG received the 2004 bank records through the grand jury process, she cannot share those records with the staff. Mr. Wayne asked the Commission to consider issuing a subpoena for the bank records for Mr. Walcott's 2004 campaign.

Ms. Gardiner said the Commission has the authority to audit and investigate to determine the facts concerning the expenditures by a candidate.

Mr. Friedman said that step would be in connection with an audit initiated by the Commission.

Mr. Youngblood said that by subpoenaing and reviewing the records, the staff would be opened up to a subpoena to testify at a trial.

Mr. Marsano expressed concern over the Commission getting back involved in the investigation at this point, given that the Commission referred the case to the Attorney General, which put the Attorney General in charge of the investigation. Mr. Marsano expressed concern that the Commission would be exceeding its authority by using its statutory powers for the purpose of becoming a witness.

Mr. Wayne said he would withdraw his suggestion of obtaining a subpoena due to these concerns.

Mr. Marsano said if prosecution is declined, then the Commission would proceed with its own investigation.

By motion of Mr. Shiah, the meeting adjourned at 12:30 p.m.

Respectfully submitted,

Jonathan Wayne, Executive Director