Agenda Item #1

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

Minutes of the January 29, 2009, Meeting of the
Commission on Governmental Ethics and Election Practices
Held in the PUC Hearing Room, PUC Building,
242 State Street, Augusta, Maine

Present: Michael Friedman, Esq., Chair; Hon. Edward M. Youngblood; Walter F. McKee, Esq.; Hon. Francis C. Marsano (by phone); Staff: Executive Director Jonathan Wayne; Phyllis Gardiner, Counsel.

At 9:00 a.m., Chair Michael Friedman convened the meeting.

The Commission considered the following items:

Agenda Item #1. Ratification of Minutes of the November 24 and December 29, 2008, Meetings
Mr. McKee moved to accept the November 24 and December 29 meeting minutes. Mr. Marsano seconded. The motion passed (3-1), with Mr. Youngblood abstaining.

In consideration of the Commission's practice to address agenda items out of order to accommodate the attendance of public participants regarding particular items, the following agenda items were taken out of order:

Agenda Item #5. Civil Penalty for Failing to File an Independent Expenditure Report/Frank Weatherhead
Mr. Wayne explained that Frank Weatherhead of Caribou, Maine, was required to file an independent expenditure report for a newspaper advertisement he purchased for $787.50 in opposition to then Representative Troy Jackson, who was a 2008 candidate for the Senate in District #1. He stated that after writing Mr. Weatherhead several times and speaking with him on the phone, Mr. Weatherhead had refused to file the report. Mr. Wayne said that in a January 20 phone conversation with Mr. Weatherhead, he agreed to file the report but would not pay any penalty. Mr. Weatherhead was not in attendance at this meeting. Mr. Wayne explained that the missing report did not affect the payment of Maine Clean Election Act funds to Senator Jackson. He said that the Commission may assess a civil penalty of up to $5,000 for

the reporting violation; however, the staff recommends assessing a penalty of $250 for failing to file an independent expenditure report.

Senator Troy Jackson said that he did not know Mr. Weatherhead and that until this election Sen. Jackson has never represented the district in which Mr. Weatherhead lives. Sen. Jackson said he did not know of any reason for Mr. Weatherhead to place such an egregious ad. He said the ad was run within the last week of campaigning, so he did not have any opportunity to respond to the ad. Senator Jackson said that he was told by employees of the Aroostook Republican (the newspaper in which the ad ran) that Mr. Weatherhead said that he was purchasing this negative ad spot at the request of someone else and was working in conjunction with others. Sen. Jackson said that he had received a mailer that had the same pictures as the ones in the newspaper ad that had been paid for by a Republican political action committee. He also expressed concern that Mr. Weatherhead does not want to take responsibility for his actions and file the required report.

Mr. McKee asked Mr. Wayne whether the Commission needed to take any action regarding Senator Jackson's complaint.

Mr. Wayne said Senator Jackson's issue is whether anyone else paid for the ad other than Mr. Weatherhead. He said the staff could conduct further investigation if the Commission thought it necessary. Mr. Weatherhead told Mr. Wayne that he paid for the ad himself and was not reimbursed by anyone. Mr. Wayne said that he confirmed with the newspaper that Mr. Weatherhead paid for the ad himself with a personal check. He said it would be difficult to ascertain whether someone else helped pay for an ad without investigating Mr. Weatherhead's bank accounts. The staff recommends that the Commission consider whether Mr. Weatherhead's actions warrant a penalty or not. Mr. Wayne pointed out some factors that the Commission may want to consider to mitigate the penalty. He said Mr. Weatherhead did cooperate in the beginning by calling the Commission on the day the ad ran notifying the staff of the expenditure and the amount. This enabled Senator Jackson to get the correct amount of matching funds in a timely fashion. Mr. Wayne said even though the content of the ad was objectionable to Senator Jackson, he was not disadvantaged due to a delayed payment. Mr. Wayne said that, after talking with Mr. Weatherhead, he appears to be a novice at campaigning and campaign reporting and he may have cooperated with others

regarding the ad. Mr. Wayne said that this was most likely a one-time effort for Mr. Weatherhead, and the Commission may want to consider that in its determination.

Mr. Youngblood stated that the Commission must take action and impose a penalty in order to send the message that failure to file independent expenditure reports is not acceptable. He said everyone must follow the law.

Mr. Friedman agreed. He said that the law must be followed when independent expenditures are made by organizations and by individuals. He said that the fact that Sen. Jackson received matching funds in a timely manner did not excuse the significant lack of cooperation by Mr. Weatherhead.

Mr. McKee said if Mr. Weatherhead claims sole responsibility for the ad, he must be held solely accountable for the penalty assessed.

Mr. McKee moved to accept the staff recommendation to assess a penalty of $250. Mr. Youngblood seconded.

Mr. Marsano said this fine is minimal. He said that he would vote in favor of the motion but expressed concern that any further investigation into the financing of the ad will be averted by taking this action.

Mr. Friedman agreed and said if there were no mitigating factors, he could support a $500 assessment. He said there were mitigating circumstances and some cooperation with staff, therefore he cannot justify an increased penalty.

The motion passed by a vote of 4 – 0.

Agenda Item #7. Overspending by Maine Clean Election Act Candidate Frederick H. Austin

Mr. Wayne explained that Frederick H. Austin was a 2008 MCEA candidate for the House in District #25. His total campaign spending accidentally exceeded his MCEA funding by $29.85. Mr. Wayne said the staff believes this was a good-faith mistake. He said the staff recommends finding Mr. Austin in violation of 21-A M.R.S.A. § 1125(6) for spending money other than his MCEA funds to promote his campaign, and

assessing a $50 penalty. Mr. Austin has submitted his written comments in which he said that he believes the penalty is excessive.

Mr. McKee moved to accept the staff recommendation and assess a penalty of $50. Mr. Youngblood seconded.

The motion passed unanimously (4 – 0).

Agenda Item #8. Overspending by Maine Clean Election Act Candidate Seth Yentes

Mr. Friedman explained that this is the same situation as Frederick Austin. Seth Yentes was a 2008 Maine MCEA candidate for the House in District #42. His total campaign spending accidentally exceeded his MCEA funding by $51.80. The staff recommendation is that the Commission find Mr. Yentes in violation of 21-A M.R.S.A. § 1125(6) for spending money other than his MCEA funds to promote his campaign, and assess a $50 penalty.

Mr. McKee moved to accept the staff recommendation and assess a penalty of $50. Mr. Youngblood seconded.

The motion passed unanimously (4 – 0).

Agenda Item #9. Reversal of 2006 Commission Determination against Michael D. Mowles

Mr. Wayne said on October 21, 2008, the Maine Supreme Judicial Court decided that a provision in the State Election Law concerning candidates' unauthorized use of another's endorsement (21-A M.R.S.A. § 1014-A) was unconstitutional. As a result, the Superior Court has issued an Order of Remand directing the Commission to strike the Commission's 2006 finding of violation against Michael D. Mowles.

Mr. McKee moved, consistent with the Order of Remand of Justice Robert Crowley, Docket # AP-06-35, dated December 4, 2008, to strike the finding of violation. Mr. Youngblood seconded.

The motion passed unanimously (4 – 0).

Other Business

Complaint filed by the Republican Party against the Democratic Party

Mr. Wayne explained a request had been made by the Maine Republican Party for the Commission to consider an additional civil penalty against the Maine Democratic Party (MDP) for the late filing of an independent expenditure report for a special election in House District #89. He said the candidates running are Dennis Haszko, the Democratic candidate, and Lance Harvell, who is a Republican. Mr. Wayne explained that on January 21, the MDP filed an independent expenditure stating that it had spent $873.05 in support of Mr. Haszko. He said the date of the expenditure was Friday, January 16, and if the report had been filed on time, the Commission should have received it on Saturday, January 17. Mr. Harvell was eligible to receive matching funds on Saturday. He further explained that the long weekend, Martin Luther King Day, fell on Monday, January 19. Mr. Wayne said practically speaking, due to the Commission office not being open on Saturday, the matching funds would not have been processed until Tuesday after the long weekend. He said Mr. Harvell received his matching funds four days late on Wednesday, January 21. Mr. Wayne noted that under § 1127(1), the Commission may assess an additional penalty if matching funds have been delayed by a late independent expenditure report. Mr. Wayne said the staff recommends assessing an additional penalty in this matter; however, mitigating circumstances such as a holiday weekend and the Ethics Commission office being closed until Tuesday, January 20 should be considered.

Mr. Friedman said he understood that Mark Ellis has waived the 24-hour notice of hearing in this matter.

Mr. Wayne confirmed this.

Mr. Daniel Billings, Esq., on behalf of the Maine Republican Party, said that he does not think that the Commission should give too much weight to the fact that there was a holiday weekend between the date the report should have been filed and when it was filed. The law is very clear that the report is due within 24 hours of the expenditure even if it falls on a weekend or holiday. He said he does give credit to the Maine Democratic Party for correctly reporting the date on which the expenditure was made. Nonetheless, he said a violation occurred and the Commission should impose some penalty. He thought a penalty of $1,000 or less would be appropriate due to the amount of the expenditure, the timing of filing, and the fact that the expenditure was made only 13 days before the election.

Mr. Friedman asked Mr. Billings for clarification on the reason why a substantial penalty should not be assessed.

Mr. Billings said the fact that the MDP self-reported the late report should be considered along with the amount of money that was expended. He said that an expenditure of $8,000 would be more significant than an $800 expenditure.

Daniel Walker, Esq., counsel for the Maine Democratic Party, spoke about the mitigating factors and said the statute (§ 1127(1)) is unclear as to the penalty amount when a late filing does not result in late payment of matching funds. He said this mistake was reported right away when the MDP realized its error and he called the Commission office as soon as he found out about it. He said the Commission needs to consider past penalties in their consideration, which historically have been low. Mr. Walker said that the receipt of matching funds by Mr. Harvell was also affected by the long holiday weekend.

Mr. Friedman asked whether the MDP's self reporting of the error was due, in part, to the previous penalties imposed by this Commission.

Mr. Walker said it was not. He said his practice is to be forthright by reporting issues and be transparent about dealing with errors as quickly as possible. He said the Ethics Commission understands what can happen during elections and that errors are made. He said the outcome could be worse if issues are hidden.

Mr. Friedman expressed concern that there have been prior violations by the MDP. He said the delay was not that significant; however, the message needs to be sent that the law has requirements that must be met. He said there are no excuses for late filing of these types of reports because everyone on the staffs of the parties know the law.

Mr. Marsano pointed out that a penalty should be assessed; however, it should be a small one. He said this is a special election and should be looked at differently, given how easily this mailing can be counteracted. He said after the general election, parties are winding down and may overlook the obvious steps they need to take to file reports. He would support a smaller penalty of $250 due to these considerations and due to the fact that both parties have been cooperative and should be commended for that.

Mr. McKee expressed concern with regard to prior violations by the MDP and that this report was a simple filing that should not have been overlooked. He said he was impressed with the Republican Party's recognition that this issue does not warrant a significant additional penalty. He said this cooperation among the parties should be encouraged. He said he would support a reduction in the penalty.

Mr. Youngblood agreed that a penalty is in order, however, not a significant amount. He said this basic, simple report should not be overlooked by a professional staff who are familiar with the laws, especially since the MDP just paid a $10,000 penalty during the general election for the same reason. He said if the penalty is too small, then the parties will not view late filings as serious violations.

Mr. Marsano said the error was quickly recognized and reported, which shows compliance. He said the matching funds were paid out because of the MDP's quick action.

Mr. Marsano moved to assess an additional penalty of $250 to the Maine Democratic Party. Mr. McKee seconded.

Mr. Friedman said he would support the motion, but does not feel the penalty is enough. He said he appreciated Mr. McKee and Mr. Marsano's comments and the Republican Party's position on this matter.

The motion passed by a vote of 3-1 (Mr. Youngblood opposed).

Agenda Item #2 Proposed Statutory Changes

Mr. Wayne said the staff has drafted for consideration by the Commission members proposed changes to the statutes within the Commission's jurisdiction. If the Commission approves of them, the Commission may submit them to the Legislature in the form of a bill no later than February 2, 2009 (90 days after the general election). He said the changes have been amended slightly from the December meeting; however, the changes are not significant. He noted that Mr. Marsano had sent an e-mail late in the evening regarding § 1004-B regarding collection of unpaid penalties.

Mr. Marsano said that he liked the proposed changes to the enforcement statute (21-A M.R.S.A. § 1004-B) but that he did not like the language of the amendment.

Ms. Gardiner said the language in this statute was taken from the Workers Compensation Board statute and could be improved.

Mr. Friedman opened the Public Hearing for comments.

Mr. Donald Simoneau, a member of the American Legion, spoke to the issue of mileage reimbursement for non-profit organizations and individuals who are not registered, paid lobbyists. He said the American Legion offered to pay his expenses for traveling between his home and the State House but that would require him to register as a lobbyist under current law. The Legion also offered to pay the registration fee for him to become a registered lobbyist but he does not wish to be a lobbyist. He has put in many hours over the years on a voluntary basis promoting issues for veterans but he can no longer afford to drive to Augusta. He said that he did not think that it was fair that an individual volunteer should have to register as a lobbyist because he gets $600 per year in travel reimbursements.

Mr. Marsano applauded Mr. Simoneau's efforts on behalf of veterans. He said what Mr. Simoneau is proposing is a good idea but needs some comprehensive legislative analysis in order to be sure the proposal is written correctly and covers all the items Mr. Simoneau outlined in his letter dated October 29, 2008. He referred to subsections 9 and 10 of title 3 M.R.S.A. § 312-A, the definition of lobbying and lobbyist, and he said Mr. Simoneau's ideas are better than the proposed revisions as drafted; however, he expressed concern that the proposed amendment does not cover what Mr. Simoneau is trying to accomplish.

Mr. McKee agreed that the proposed language may create more problems than it would solve. He said perhaps more analysis would improve it. Mr. McKee suggested changing the language in subsections 4, 5, and 6 to a simple statement concerning compensation from an employer or employment, such as, "other than mileage reimbursement for travel to and from the individual's home and the Legislature." This would prevent individuals from having to register as a lobbyist but allow them to receive some reimbursement.

Mr. Marsano said subsections 9 and 10 would need to be adjusted also. He also expressed concern that any changes may make it easier for some individuals to take advantage of the system and open doors that are currently not available.

Mr. Friedman said that the language in the last three lines of subsection 10, "who lobbies on behalf of another person" is troubling because it presupposes that a person could be a lobbyist. He suggested taking out some of the more specific wording that all Commission members could agree with, then the Legislature could make any changes they see necessary.

Mr. Marsano agreed with striking the phrase, "who lobbies on behalf of another person." However, he believes the concept of the words "lobby" and "compensation" need to remain.

Ann Luther, speaking as a private citizen and not as a representative of the organizations that she often represents in front of the Commission, said she is in a similar situation as Mr. Simoneau as an advocacy volunteer and is not reimbursed for her lobbying-related travel. She said it has not occurred to her that travel reimbursement would be considered compensation under the lobbyist registration statute. She said that she encourages the Commission to draft an exception in this statute for volunteers who advocate at the State House on issues and incur out-of-pockets expenses in doing so.

Joseph Greenier agreed that more should be done for "concerned citizens" who advocate for issues but are not lobbyists nor want to be lobbyists.

Daniel Billings, Esq., speaking as a private citizen, said being a registered lobbyist is quite burdensome and time consuming for someone who does not do lobbying on a professional basis. He said that it was important to keep in mind in any discussion regarding lobbying that the Commission is dealing with fundamental First Amendment rights to petition the government. He said any citizen has the right to go before the Legislature to present and address issues of concern to that citizen. He also said that it was important to balance disclosure requirements with those fundamental rights. He said the eight hour requirement in the statute is not really beneficial for disclosure purposes. He pointed out that someone could be paid a great deal of money to influence legislation and put in less than eight hours and not have to report as a lobbyist. He said the public's concern is how much money is being spent on influencing

legislation, not necessarily the number of hours. He suggested that it may be more appropriate to establish a dollar threshold similar to referendum campaign reporting. He said some of the issues addressed here today would not exist if the dollar amount was the threshold.

Mr. Marsano expressed concern that groups would be formed with the sole purpose of sending speakers to the Legislature in Augusta and pay them for going which would circumvent the lobbying registration requirement.

Mr. Billings said he did not believe this should be a concern and that it was unlikely that anyone would try to circumvent the lobbyist disclosure statute by paying only travel reimbursement.

Mr. Marsano asked Mr. Billings whether he thought the organization that paid the travel reimbursements to individuals should have to report those expenditures. Mr. Billings said he thought that could be done.

Alison Smith, speaking as a private citizen, urged the Commission to put some form of this amendment before the LVA Committee to get the discussion started in that forum and to worry less about the exact wording of the amendment. She also advised the Commission that their purpose is to regulate money not speech. She said the intended effect of the amendment may be accomplished by removing reimbursement for out-of-pocket expenses from the definition of compensation and employment.

Mr. Friedman agreed with Ms. Smith that something should be put in the bill regarding this issue. He made the following two suggestions in order to move the amendment forward: change the definition of compensation to read "compensation means anything of value other than travel related expenses…" and delete the phrase "or reimbursement of expenditures" in subsection 6.

Mr. Marsano agreed with Mr. Friedman's suggestion and suggested that the exception in subsection 10 be changed to "An individual is not a lobbyist if that individual receives no compensation for lobbying other than reimbursement for lobbying related travel within the state…."

Mr. Friedman said the language in subsection 10 should be changed as suggested by Mr. Marsano.

Ann Luther, co-chair of Maine Citizens for Clean Elections, stated her group supports the changes regarding payments to family members and the calculation for initial distribution.

Daniel I. Billings stated that, in a previous Commission meeting, a suggestion was made that the staff convene a meeting of interested parties to discuss the proposed statutory changes. He said that meeting did take place and a great deal of information and ideas were exchanged among a broad based group of participants. He said some of the issues discussed were included in the proposals and some were not, based upon the results of the discussions and the consensus of the group.

Mr. Friedman closed the public comment session. He commended the Commission staff for their efforts in putting together a bill that contains solutions and responses to many of the issues that the Commission dealt with over the last year. He said the bill addresses the issues the Commission feels are important.

In response to a question from Mr. Friedman, Mr. Marsano said that he was concerned by the language in the new provision on the enforcement procedure as contained in proposed § 1004-B of Title 21-A. He said that, while he understood that the language came from the statute on workers' compensation, he believed that the language required more examination before it was included in the Commission's bill. He said that he sent the Commission members by e-mail a revision to § 1004-B which he thought accomplished the intended change and that he hoped the Commission would consider as a replacement for the provision as written. He also said that he thought the proposed provision's last sentence which dealt with appeals should be in a separate paragraph.

Mr. Marsano also questioned whether the specific provisions that spelled out what constituted mitigating circumstances were necessary in § 1020-A and § 1062-A if the phrase "in whole or in part" were added to those sections. He said that inclusion of that phrase obviated the need for a delineation of specific mitigating circumstances. Mr. Marsano also questioned the use of the word "otherwise" in § 1125(5)(D-3). Ms. Gardiner responded that the subsection was intended to be a catch-all for other substantial violations that were not specifically enumerated above.

Mr. Friedman moved that the Commission approve and submit to the Legislature the proposed statutory changes with the additional changes to the lobbying statute as discussed and with Mr. Marsano's suggested language changes for section § 1004-B. Mr. Youngblood seconded the motion.

Ms. Gardiner asked for clarification as to which version of the revision to § 1004-B would be included in the bill, the one drafted by Mr. Marsano or the one Mr. Wayne drafted based on Mr. Marsano's revision.

Mr. Friedman said overall the Commission agreed with Mr. Marsano's concept and suggested that Mr. Wayne and Ms. Gardiner refine the language of the revision.

The motion passed unanimously (4-0).

Agenda Item #4. Waiver of Penalties for Late Registration and Campaign Finance Reports/ Scarborough Village Partnership PAC

Mr. Friedman stated that additional materials were submitted this morning to the Commission regarding this issue and which will require further investigation. Mr. Friedman proposed that this matter be moved forward to the March agenda in order to have more time to evaluate these issues. He also said this would allow any interested parties to be present for the discussion of this matter.

Mr. McKee agreed. He said the additional materials put this complaint in a very different light. The additional materials have changed his initial understanding of this matter and have raised different issues than those in the original complaint. He stated he has additional questions for the people who have submitted this information and he would benefit from having them present in making his determination.

Mr. Youngblood agreed.

Mr. McKee moved to table this issue until the March meeting. Mr. Marsano seconded.

Mr. Wayne asked for guidance regarding who the Commission would want to have invited at the next meeting in March, such as Dennis Bailey, of CasinosNO, and Edward MacColl, an attorney for the Scarborough Village Partnership PAC, who offered advice regarding the PAC's filing responsibilities.

Mr. Friedman confirmed that these individuals should receive an invitation to the March meeting.

Mr. Marsano said he would vote in favor of the motion; however, he wondered if Ms. Rolston wished to speak at this time.

Mr. Friedman said he would be happy to have Ms. Rolston comment with the understanding that she would need to return for the March meeting.

Kathryn Rolston, treasurer for the Scarborough Village Partnership PAC, stated that people involved in this matter were notified of this meeting and could have been present if they wished. She expressed concern over the last minute comments submitted by Mr. Bailey. She said Mr. MacColl could be reached by phone at this time, if the Commission wished.

Mr. Wayne stated that no notice was provided to Mr. Bailey directly. Mr. Wayne said he has not spoken to Mr. Bailey at this point. Though Mr. Bailey was on the other side of this issue, this complaint did not come from Mr. Bailey. He said Mr. Bailey has information that would be relevant to the Commission's consideration of this matter and that there is more information that has not been provided to the Commission at this time.

Mr. Friedman said it is very important to have all the information and individuals involved in this matter available to the Commission. For that reason, he supports putting off discussion until the March meeting.

The motion to table this item until the March meeting passed unanimously (4-0).

Agenda Item #3. Proposed Changes to Commission Rules

Mr. Wayne explained that at the December 29, 2008, meeting, the Commission agreed to accept public comment on changes that were drafted by staff to Chapter 1 and Chapter 3 of the Commission Rules. He said that the staff has drafted slightly different rule changes since the December meeting based on some of the comments received from the public and the Commission's counsel. He said interested persons were notified of the opportunity to comment today. Mr. Wayne noted that the new changes to the proposed rule

amendments were not significant enough to warrant a new notice for a public comment period and the Commission may still adopt the changes at the March meeting as originally scheduled.

Daniel I. Billings, Esq., said that his comments were in response to the proposed changes to Section 7(C), on the liquidation of property and equipment purchased by a campaign. He said the problem for campaigns when purchasing equipment such as computers, audio devices, etc. is the actual market value for resale of these items is very small. He said this proposed rule does not recognize that reality. He referred to the staff's spreadsheet containing the proceeds realized from the resale of equipment and said these amounts are much less than what the staff proposes. He questioned what a campaign would do if the item could not be sold for the required amount. He stated that he understands the reason for the rule, but he does not believe campaigns will be able to comply with it. He said using a percentage may be a good idea, but these amounts are not reasonable. He said the existing rule which simply refers to liquidation at fair market value, is better than having a percentage amount specified.

Mr. Friedman said there must be a middle ground in order for campaigns to make a good faith effort when disposing of property that was purchased with clean election funds. He said 75% may be too high.

Mr. Billings said on-line markets, such as eBay, are a good resource for establishing a guideline amount and for disposing of property. He said candidates could use one of these auction websites to sell equipment and that would show a good faith effort and open up a wider range of buyers. He said this seemed like a reasonable, fairly simple way to liquidate.

Mr. Youngblood expressed concern over candidates selling these items back to themselves, as it is a very inexpensive way to receive new equipment. He suggested that placing a restriction on the ability of candidates to purchase equipment paid for with clean election funds from their own campaigns may be a good idea.

Mr. McKee suggested that if a candidate were to purchase the item back, it would need to be at a certain amount, perhaps 75% of the original purchase price. He said fortunately the amount spent on equipment is a small fraction of the total spent by clean election candidates.

Mr. Billings said when he worked with the Woodcock for Governor campaign, the office equipment and other items purchased were the least expensive, most basic type of equipment. He questioned whether, if candidates had to raise the funds to purchase equipment, expensive equipment would be purchased at all.

Mr. Friedman said the rule could specify that if the candidate wanted to purchase the item back after the election, they would need to pay 75% of the original price. If others purchase the item, then the price would be fair market value established perhaps through an on-line auction site. He said currently candidates are getting good deals by purchasing these items back from their own campaigns. He stated that he would rather see someone from the public get a good deal, rather than the candidate.

Joseph Greenier said that the State of Maine has a Surplus Property Division that could possibly be used for selling these items or knowing what the resale value would be on these items.

Mr. Wayne explained that when state agencies give equipment to Surplus Property Division, the value received is usually very low, so it would not be a recommendation he would support.

Mr. Friedman closed the public comment session on this item.

Mr. Wayne asked the Commission whether they would prefer the staff to develop some alternative ideas for this rule, since this proposal does not seem to meet the approval of many people.

Mr. McKee said he would favor a proposal along the lines of what Mr. Friedman suggested requiring candidates who buy items from their campaigns to pay 75% of the purchase price and to use the prices obtained for similar items on an on-line auction website, like eBay, as a factor to consider is determining fair market value.

Mr. Wayne said some purchases are made by people closely associated with the candidate, such as family members and campaign staff, and asked whether the same rules would apply for these individuals as well.

Mr. McKee said he thought the rules should be the same for candidate, immediate family and campaign staff.

Agenda Item #6. Decision by Supreme Judicial Court in Challenge by Carl Lindemann

Mr. Wayne said in 2007, Carl Lindemann began a court proceeding challenging a December 20, 2006 determination by the Commission regarding the Maine Heritage Policy Center. On December 16, 2008, the Maine Supreme Judicial Court upheld the lower court's decision that Mr. Lindemann did not have standing to appeal the Commission's 2006 decision. He said Mr. Lindemann has submitted comments to the Commission regarding the Supreme Judicial Court decision. He said Mr. Lindemann has a mailing address in Texas currently and was not able to attend the meeting today and his attorney was not present on his behalf.

Mr. Friedman said he recognized that Mr. Lindemann is upset at the Court's decision; however, it appears that Mr. Lindemann is requesting a change in the Maine Administrative Procedures Act which impacts this Commission and all state agencies. He said it is not appropriate for an individual commission to suggest a broadening of the standing standards. He said Mr. Lindemann, as an individual citizen of the state of Maine, is able to go before the Legislature with his concerns and plead his case. He said he would not support making the changes to the Commission's bill recommended by Mr. Lindemann.

Mr. Youngblood and Mr. McKee agreed with Mr. Friedman. Mr. Marsano agreed that nothing should be done at this time.

There being no further business, Mr. McKee moved to adjourn. Mr. Youngblood seconded.

The motion passed unanimously (4-0).

Respectfully submitted,

Jonathan Wayne, Executive Director