Agenda Item #1

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

Minutes of the July 29, 2010, Meeting of the
Commission on Governmental Ethics and Election Practices
Held at the Commission Office, 45 Memorial Circle,
2nd Floor, Augusta, Maine

Present: Walter F. McKee, Esq., Chair; André G. Duchette, Esq.; Hon. Edward M. Youngblood; Margaret E. Matheson, Esq. Staff: Executive Director Jonathan Wayne; Phyllis Gardiner, Counsel.

At 9:00 a.m., Chair Walter McKee convened the meeting.

The Commission considered the following items:

Agenda Item #1. Ratification of Minutes of the June 24, 2010 Meeting

Ms. Matheson moved to accept the minutes of the June 24, 2010 meeting as drafted. Mr. Youngblood seconded the motion.

The motion passed unanimously (4-0).

Agenda Item #2. Request for Waiver of Late-Filing Penalty/Daniel J. Schweitzer

Mr. Wayne explained that Daniel J. Schweitzer is a first-time candidate (unenrolled) for State Senate, District 20 in Wiscasset. He was required to file a campaign finance report by May 28, 2010. He filed the report 36 days late due to the fact he was at sea because he is a merchant marine. He did not realize he had a report due until he came back from sea and saw the reminder notice sent by the staff in his mail. The preliminary penalty for the late filing is $73.27. He asked for a waiver of the penalty because he was not aware of the filing requirements and did not receive a notice of the filing deadline from the Commission. Mr. Wayne said the staff recommends a reduction in penalty to $25 because he is a first-time candidate and no harm was caused to the public from the late filing.

Mr. McKee stated that he was sympathetic to some degree since Mr. Schweitzer is at sea; however, candidates are also accountable for complying with reporting requirements. He said Mr. Schweitzer should

have researched what his responsibilities were as a candidate and realized that reports were due at certain times throughout his campaign. He said the penalty is fairly modest and he would not want to set a precedent for merchant marines. He said there are obligations that need to be met when someone is a candidate for public office, and a candidate may have to change his or her personal routines to make sure that those obligations are met.

Mr. Duchette asked what prompted Mr. Schweitzer to file his report.

Mr. Wayne explained that Mr. Schweitzer found the reminder notice in his mailbox when he returned from sea.

Mr. McKee said the Commission may have found mitigating circumstances in the past; however, it is the duty of the candidate to know the laws and requirements in advance when deciding to run for office.

Mr. McKee moved that the Commission deny Mr. Schweitzer's request for a waiver of late filing penalty of $73.27. Mr. Youngblood seconded the motion.

Motion passed unanimously (4-0).

Agenda Item #3. Request for Waiver of Late-Filing Penalty/Samme Bailey

Mr. Wayne said Samme Bailey registered with the Commission as an independent candidate for Governor, but did not qualify for the ballot by the deadline in June 2010. He filed both his April and May campaign finance reports one day late. The preliminary penalties for the late reports are $152.55 and $60.00 respectively. Mr. Bailey requests a waiver of the penalties because his former treasurer accepted an offer of employment. Mr. Wayne stated that when a treasurer leaves their post, it is up to the candidate to step in and file the reports.

Mr. McKee said he did not understand the connection between the two late filings and losing the treasurer.

Mr. Wayne said most likely the reports were late by one day because that is when the candidate registrars call candidates who have not filed. In both cases, Mr. Bailey received a phone call the day after the report was due, reminding him he needed to file.

Mr. Youngblood said the reason given for the late filing does not explain why the report was late two months in a row.

Mr. Youngblood moved to deny a waiver of the late filing penalty. Mr. Duchette seconded the motion.

Motion passed unanimously (4-0).

Agenda Item #4. Update on National Organization for Marriage Litigation

Ms. Gardiner gave an update on the status of the federal litigation first. She said NOM has produced some documents that were requested in the discovery request. She said the discovery deadline is the end of August. She said, in terms of the merits of the case, it is easiest to divide the issues into two areas: the ballot question committee challenge that was initially brought in October, and the challenge in the amended complaint to the constitutionality of the PAC laws, the independent expenditure reporting laws, and attribution and disclosure requirements for political communications. She said NOM filed a preliminary injunction motion in June seeking to enjoin the state from enforcing the PAC laws, independent expenditure laws, and disclosure requirement for political communications. NOM is challenging the constitutionality of these laws on their face and as applied to NOM. NOM has also filed a motion to consolidate the hearing on the preliminary injunction and the hearing on the merits of the case for a permanent injunction. Both of those motions – for a preliminary injunction and for a consolidation of the hearings – are pending. The state has filed its memorandum opposing the preliminary injunction. The hearing on that motion will be on August 12 before Judge Hornby. The motion to consolidate is still pending. The state opposed consolidation initially because discovery has not been completed. She said that it appears that the court may view consolidation as the most efficient way for the case to proceed. She stated the NOM's BQC challenge has no particular urgency since NOM has no on-going ballot question campaign at this time. NOM views this issue as a purely legal question and has moved for a summary judgment. The state has until August 27 to reply to that motion. No hearing date has been set for this motion. Ms. Gardiner said it is possible that the case could be resolved within the next couple of months.

Ms. Gardiner said regarding the case in Superior Court (an Rule 80C appeal of the Commission's decision not to modify or vacate the witness and document subpoenas for NOM, Stand for Marriage Maine, and Brian Brown), Justice Marden denied the Commission's motion to dismiss the appeal, and granted NOM's motion for a stay. Unfortunately, the judge signed the order to stay the investigation submitted by the appellant, which provided much broader relief than NOM requested, which was simply to block the release of donor names. The Commission has filed a motion to clarify and narrow the scope of the stay. That motion is pending, in part because Justice Marden has recused himself from further involvement. NOM is also seeking to appeal Justice Marden's recusal. Justice Murphy has been assigned to the case.

Other Business

Mr. Wayne informed the Commission that due to a challenge in Arizona regarding their matching funds law, the Commission may be asked to take part in future public discussions with the Legal and Veteran's Affairs Committee with regard to a backup plan should Maine be faced with having to withhold matching funds.

EXECUTIVE SESSION

At 9:30 a.m., Mr. McKee moved to go into executive session in accordance with Section 405, subsection 6(A) of Title 1 for the purpose of discussing a personnel matter. Mr. Youngblood seconded the motion. The motion passed unanimously (4-0).

At 9:40 a.m., it was moved and unanimously approved to come out of executive session.

Meeting adjourned at 9:41 a.m.

Respectfully submitted,

Jonathan Wayne, Executive Director