



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

## COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES

STATE HOUSE STATION 101  
OFFICE OF THE SECRETARY OF STATE  
AUGUSTA, MAINE 04333

September 18<sup>th</sup>, 1990

Minutes of the September 18<sup>th</sup>, 1990 meeting of the Commission on Governmental Ethics and Election Practices held in Room 113 of the State Office Building, Augusta, Maine

Present: Chairman Paul K. McCann; Members Henry G. Beyer, Gregory G. Cyr, Joseph B. Ezhaya, Richard H. Pierce, Richard L. Trafton, Paul E. Violette; Commission Counsel William Stokes

Chairman McCann called the meeting to order at 1:00 p.m.

### **ROUTINE BUSINESS**

Travel and expense vouchers were distributed.

Minutes of the June 29<sup>th</sup>, 1990 meeting were approved as submitted.

At the request of the Chair, the Director submitted an account of staff activities for the period covering June through September including statistics on mailings to candidates and municipal clerks, auditing of campaign finance reports, and a budget up-date.

Next, the Commission Chair reported on plans to:

- 1) Upgrade the Director's salary
- 2) Schedule a meeting of the Chair, Director, and Commission Counsel to develop a format for the Ethics Seminar mandated by the Legislature.

He further reported that the Subcommittee to Study Fair Campaign Practices had tentatively scheduled for November 20<sup>th</sup>, 1990 a public meeting to air views of various groups and experts on the issue of negative campaigning. A planning meeting will be held to review a list of prospective speakers and to solicit further suggestions.

Mr. Trafton offered a news clipping on negative campaigning in response to the Subcommittee's request for such literature. There followed some discussion of the Commission's role in discouraging negative campaigning and it was agreed that the Commission might act in some kind of watchdog capacity. Mr. Stokes cautioned that attempts to regulate the content of political statements might pose First Amendment problems.

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Continuing his report, the Chair discussed the Part II budget needs of the Commission. These include computer equipment and space. He pointed out that present staff quarters lack the privacy needed to adhere to the confidentiality requirement in the legislative ethics laws. Before initiating plans to move, however, he will consult with Secretary of State William Diamond.

### **OLD BUSINESS**

Next, Mr. Stokes apprised members of the status of the Robin Lambert complaint, reporting that the investigator assigned continues to be actively involved but was unable to be present.

### **NEW BUSINESS**

Lateness of campaign finance reports due July 24<sup>th</sup>, 1990 was determined as follows:

Mr. Cyr moved to forgive Mr. Wayne Marston's penalty on the basis that his report was postmarked August 2<sup>nd</sup>, one (1) day before the end of the grace period. The motion carried 4-3. Discussion ensued on the law which allows a ten day grace period for the post-primary filing deadline, but makes no allowance for postmarks. Mr. Pierce suggested that the law be changed to allow consideration of postmarks, thus giving equal advantage to candidates who live some distance from Augusta; and he asked that the Director study the question and make recommendations. He then moved for reconsideration, Mr. Cyr seconding. Mr. Pierce then moved, and Mr. Trafton seconded, that the report of Mr. Marston be found nine (9) days late (@ \$10.00 per business day = \$90.00). The motion carried, Mr. Ezhaya alone voting in the negative.

Mr. Violette proposed that procedures for determining lateness of campaign finance reports be revised such that Commission staff would recommend or even make such decisions. Mr. Trafton further suggested that the procedure include a limited right of appeal from a staff decision. No motion was made on the proposal.

Mr. Pierce then moved, and Mr. Trafton seconded, to assess Mr. Harry Moore a 14-day (\$140.00) penalty. The motion carried unanimously.

The Commission then considered the lateness of Ms. Juliet Perreault's report. The Director reported that the Attorney General's office had ruled Ms. Perreault unqualified to retain candidate status on the basis that she received only 24 of the 25 votes required by law in the primary election. Having been thus disqualified, Ms. Perreault considered herself exempt from reporting requirements, even though finance reports put the balance of her campaign funds at \$380.61. Following some discussion, Mr. Trafton moved, and Mr. Violette seconded, to assess a nine (9) day penalty (\$90.00).

Mr. Violette moved to take out of order Item #8 of the agenda. Mr. Beyer seconded and the motion carried unanimously.



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The Commission then considered the lateness of registration and campaign finance reports of Retail Federation of Maine, a political action committee (PAC).

Mr. Harold Pachios was present and represented Retail Federation of Maine PAC. He explained that the Committee's failure to register in a timely fashion was inadvertent and that it failed to report on time because members relied on language in 21-A MRSA Section 1058 -- in effect until April 16<sup>th</sup>, 1990 -- which stated that "any political action committee that makes expenditures in an aggregate amount in excess of \$50 on any one or more campaigns for . . . the support or defeat of a referendum or initiated petition shall file a report on its activities in that campaign with the commission . . ."

The group thus assumed, according to Mr. Pachios, that reports are required only when an issue becomes a ballot question and when the spending criterion is met. 21-A MRSA Section 1058, amended as of April 17<sup>th</sup>, 1990, requires all registered PACs to file campaign finance reports and, additionally, changes the criteria for filing such that PACs which accept contributions, incur obligations, and make expenditures are required to file reports. Mr. Pachios admitted that the PAC met these criteria in May, but failed to file the next required quarterly report (due July 15<sup>th</sup>, 1990) until September 4<sup>th</sup>, 1990 because they were unaware that the law had changed.

The Director then informed members that penalties associated with late PAC filings include: \$250 for late registration; \$250 plus an additional penalty of \$50 for each business day beginning with the 2nd such day that a campaign finance report is late up to a maximum of \$1,000. Hence, a report due July 15<sup>th</sup>, 1990 and filed in September would accrue the maximum penalty.

Mr. Trafton expressed the view that people who want to work within the initiative and referendum process should be alerted to the registration and reporting requirements. Mr. McCann proposed that the Commission schedule a workshop to review areas of the law needing change.

Mr. Beyer observed that Retail Federation of Maine had been caught in mid-stream by a change in the law, but that it demonstrated good faith in filing promptly when notified of the statutory requirements. He then moved to assess a fine of \$250 and Mr. Cyr seconded the motion. The vote carried 5-1 with Mr. Pierce opposing.

The Commission recessed at 2:25 p.m., reconvening at 2:50 p.m.

Next, the Commission considered a complaint filed by Senator Nancy Randall Clark alleging that bumper stickers distributed in Senate District #1 were in violation of 21-A MRSA Section 1014 because they failed to display the name and address of the person(s) who authorized and paid for them. Ms. Canavan reported that the stickers, carrying the slogan "Paid for by Citizens for Wanda Town State Senator," were distributed by candidate Wanda Lea Towns and paid for by Victory '90 Fund, a political action committee. She noted that both Ms. Towns and Victory '90 PAC had promptly sought to remedy the matter by affixing appropriate disclaimers on the stickers when notified of the violation; and that both had duly noted the transactions on finance reports.



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Mr. Trafton moved that the Commission assess no penalty, both parties having attempted to rectify the matter; but that it acknowledges that Ms. Towns and Victory '90 Fund had violated the campaign finance laws. Mr. Beyers seconded and the motion carried unanimously.

Mr. Violette moved to find the report of David Perkins four (4) days late -- @ \$10-00 per business day - \$40.00. Mr. Trafton seconded; the motion carried unanimously.

The Commission then considered the lateness of Charlene Kent, a new nominee. Mr. Pierce moved to find Ms. Kent's report ten (10) days late -- @ \$10 per business day - \$100.00. Mr. Cyr seconded and the motion carried unanimously. Reconsideration of the lateness of reports ruled late for the June 6<sup>th</sup>, 1990 filing deadline.

In a letter to the Commission, candidate Vivian St. Onge submitted that she failed to receive notices prior to the filing deadline. A May 17<sup>th</sup>, 1990 computer print-out from which mailing labels were generated included the name of Ms. St. Onge, and records indicated that her address has not changed since then. Mr. Cyr moved that the Commission adhere to its previous decision to find Ms. Onge's report one (1) day late. Mr. Beyer seconded and the motion carried unanimously.

The Director indicated that Maine Citizens for Independence PAC failed to receive notices prior to the 6-day pre-primary filing deadline due to an administrative error. Mr. Beyer moved, and Mr. Pierce seconded, to rescind the fine previously imposed. The motion carried unanimously.

Mr. Trafton asked to be excused at 3:15 to honor another commitment.

The Commission then responded as follows to a candidate query: Where a county candidate appears in a TV advertisement produced by her spouse for the sole purpose of furthering his candidacy for Federal office and where the county candidate's name, office, and occupation are not mentioned in the ad, no part of the cost of the ad would constitute an in-kind contribution from the Congressional candidate to the county candidate. Where a county candidate's spouse introduces her by title or states the fact of her candidacy that would constitute a reportable in-kind contribution, the fair market value of which would be determined by the candidate.

In response to the question of whether a subsidiary or affiliate of a corporation is considered a separate entity for the purposes of the contribution limitations set forth in 21-A M.R.S.A. Section 1015, the Commission noted that the law is silent on the matter. Mr. Beyer suggested that the issue be added to the list of items to be changed legislatively. It was then suggested that the Subcommittee study the matter and report back its findings to the Commission.

Next, the Commission reviewed the Part I budget. The Chairman explained that increases represent either adjustments for inflation (five percent), or projected expenses associated with functions of newly acquired staff.



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The Director then requested that the Commission reconsider exempting small items from the disclaimer law. Mr. Stokes, reviewing his memo of August 14<sup>th</sup>, 1990 to the Commission, expressed his support for the exemption. After some discussion of the matter, the Commission agreed to adhere to its previous stance on the issue; i.e., all items should carry a disclaimer. Members agreed to revisit the matter after the election year.

There followed a discussion of the implications for Maine candidates of the law that permits earmarking of funds. There was a consensus that any recommendations for changes in the law should be made after the election year. Mr. Pierce suggested that the Commission solicit advice on the matter from experts in the field of campaign finance before the next Legislative session. The Director suggested consultation with nonpartisan authorities in the field.

### **INFORMATIONAL ITEM**

The Commission then reviewed informational items on the agenda including two complaints on matters not within the jurisdiction of the Commission.

### **NEW BUSINESS**

Mr. Violette raised a question concerning the permissibility of foreign nationals, i.e., Fraser Paper Company, making contributions to candidates for state office. Ms. Canavan provided information on the applicable federal statute and advised that questions concerning the law be directed to the Federal Election Commission (FEC). Staff was directed to send copies of the law, along with FEC advisory opinions, to members of the Commission. Mr. Cyr suggested that candidates for state and county office be apprised of the law in an educational forum.

Dates for the next two Commission meetings were tentatively set for November 1<sup>st</sup>, 1990 at 10:00 a.m. and November 30<sup>th</sup>, 1990 at 10:00 a.m.

A topic proposed for consideration in the next meeting was the content of the Director's report, specifically the number and kinds of errors and violations found in campaign finance reports. Mr. Cyr suggested that staff provide an analysis of the data for the Commission to review so that it could determine what trends exist and how problems may be averted.

The Director agreed to send the information, along with a report on the recent COGEL Conference in Anchorage.

The meeting was adjourned at 4:30 p.m.

Respectfully submitted

Marilyn Canavan, Director

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