



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

December 6th, 1991

Minutes of the December 6th, 1991 meeting of the Commission on Governmental Ethics and Election Practices held in Room 113 of the State Office Building, Augusta, Maine

Present: Members Henry G. Beyer, Gregory G. Cyr, Joseph B. Ezhaya, Paul E. Violette;
Commission Counsel William R. Stokes

Absent: Chairman Paul K. McCann; Members Richard H. Pierce, Richard L. Trafton

The meeting was called to order at 10:50 a.m. by Gregory Cyr, acting chair. Minutes of the September 6th, 1991 meeting were unanimously approved as written.

First, the Commission reviewed late registrations of certain Knox County budget committee candidates. It was moved, seconded and voted to accept staff recommendations to waive the penalty because

- 1) the filing deadline is only 6 days after the notification date, and
- 2) registrations were no more than two days late.

Next, the Commission considered Mr. James Nicholson's request for postponement of agenda item #3, involving the House Republican Fund. Mr. Ezhaya moved, and it was seconded and voted, to table the matter until the next meeting.

The Commission then considered the late registration of UA Local 321 Political Action Committee (PAC). Staff findings indicated that while the registration clearly was submitted late under 21-A MRSA Section 1053, the penalty provision does not apply because of an ambiguity in 21-A MRSA Section 1062. On that basis, Mr. Violette moved, and it was seconded, to accept staff recommendations to impose no penalty. The motion carried unanimously.

Next, out of order, the Commission considered the lateness of registration and finance reports of Jobs for Maine's Future Political Action Committee (JMFPAC). For discussion purposes, Mr. Violette moved to accept staff recommendations to penalize the PAC \$225 for late filing of an October quarterly report. Mr. Charles Mercer, representing JMFPAC, stated that the PAC was delinquent because officials were unaware of legal requirements; but that they submitted

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required documents immediately upon being apprised of the law. Thereupon, Mr. Ezhaya suggested suspending the fine. There followed a lengthy discussion on the question of whether the Commission has authority to suspend or reduce penalties. Mr. Stokes held that there is precedent for the Commission's reducing penalties under some circumstances; but no legal basis for its granting suspensions. Mr. Beyer then moved to amend the motion, suggesting instead a \$100 fine. The motion to amend was seconded and carried unanimously. It was then moved, seconded, and voted to accept the motion as amended.

Next, the Commission turned to consideration of three 48-hour reports allegedly filed late by the Campaign for Sensible Transportation PAC (CST). For discussion purposes, Mr. Beyer moved and it was seconded, to accept staff recommendations calling for a \$300 penalty. Mr. Violette requested and was granted permission to abstain. Ms. Beth Nagusky, attorney for the Natural Resources Council was present and represented the PAC. She stated that although two attorneys for CST studied the law thoroughly, confusion prevailed over what was required to comply with the law; and that ambiguities in the reporting form resulted in further misunderstanding. She then claimed that CST records showed one report was faxed on time. Findings indicated that a staff member had provided detailed instructions and applicable statutory citations to PAC officials on October 30th, according to staff logs.

On that basis, members agreed to accept staff recommendations for a penalty; but it was also generally felt that some consideration should be given to the fact that the faxed report may not have been transmitted properly. Accordingly, a motion was made to reduce the penalty to \$250. The motion was seconded and accepted. Mr. Ezhaya again suggested suspending the penalty. It was then moved, seconded, and voted to accept the motion as amended, Mr. Ezhaya alone dissenting.

Next, the Commission considered William R. Donovan's complaint, in which it was alleged that Citizens Against Proposed Androscoggin County Charter (CAPACC) failed to register and file reports on time. Mr. Donovan further claimed that CAPACC's campaign literature did not carry the required disclaimer. Staff findings indicated that CAPACC had filed timely reports; albeit with the wrong agency (city of Auburn). Findings further showed that the literature in question was informational and did not advocate the promotion or defeat of a candidate or question; thus no disclaimer was required. On these facts, it was moved, seconded and voted to accept staff's recommendation to excuse any penalties that would apply.

The Commission then considered a complaint filed by Mr. Eric Bruner on behalf of the Campaign for Sensible Transportation. Mr. Bruner asked the Commission to examine the practice of municipalities sending political communications to voters. Named in the complaint was the Town of Ashland. A staff investigation revealed that town councilors had spent more than \$50 to mail literature to voters. The literature advocated the support of one ballot question, and the defeat of another. After some discussion and a review of counsel Stokes's memorandum, members concluded that the Town of Ashland is not a political action committee under the law; hence, it is not required to file campaign spending reports. Members also determined that the question whether a town may spend money in support of or opposition to a ballot question does not fall within the scope of the Commission's jurisdiction.

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Accordingly, Mr. Ezhaya moved, and it was seconded and voted, not to pursue the matter further. Mr. Violette abstained.

The Commission next considered a complaint lodged by Mr. Ray Lee of South Portland against South Portland candidates Sheila McDonough, James MacDonald, James Soule, Burton Edwards, and Doreen Gay. Mr. Lee alleged that Ms. Gay and Mr. Edwards failed to properly itemize expenditures on reports, and that Ms. McDonough, and Messrs. MacDonald and Soule omitted a transaction. He further alleged that all of the above-mentioned candidates except Mr. Soule filed late, and that date stamps on their reports were handwritten, not machine validated. There being no precedent for the Commission ruling on a case involving municipal candidates, members discussed at length whether to accept jurisdiction. Staff pointed to Title 30-A MRSA Section 2502 which states that "candidates in cities with a population of 10,000 or more are governed by 21-A MRSA Section 1001 - 1020."

Mr. Stokes asserted that the statute is ambiguous because

- 1) it requires city clerks to receive filings, thus implying municipalities have enforcement authority, and
- 2) states that candidates are governed by Section 1003, suggesting the Commission is charged with enforcement.

There followed some discussion of whether the Commission is equipped to deal with municipal elections, given current budgetary constraints.

The Commission then considered the following staff findings:

- 1) prior to the meeting, respondents submitted amended reports to the city clerk of South Portland supplying the required information,
- 2) lateness of the reports did not significantly violate disclosure since they were filed within 1 3/4 hours of the 5 p.m. deadline, and
- 3) handwritten date stamps are not prohibited by law. On these facts, it was moved, seconded, and voted to accept staff recommendations waiving any penalties that would apply.

Next, the Commission turned to a complaint filed by Mr. and Mrs. James Michalec alleging that campaign signs of South Portland candidates Doreen Gay, James Soule, and James MacDonald failed to carry appropriate disclaimers. Staff submitted the following findings: a staff member contacted Ms. Gay and Messrs. Soule and MacDonald prior to the election, suggesting that each affix appropriate disclaimers to signs. In follow-up telephone calls, candidates affirmed that attribution had been duly made. On that basis, Mr. Violette moved to accept staff recommendations. The motion was seconded and carried unanimously.

The Commission then considered the complaint of Peter Larsen against the Committee to Save South Portland (CSSP). According to staff findings, the committee solicited funds and made expenditures on behalf of certain South Portland candidates, but filed no reports. The question was raised whether the group constitutes a political action committee under the law. Mr. Larsen was present and asked to be recognized. He held that disclosure is the key to leveling the playing field in elections and asked the committee to rule on the applicability of reporting laws to



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CSSP, Mr. Richard Spencer, representing CSSP, contended that the Committee was not subject to PAC laws because it supported only municipal candidates.

A review of 30-A MRSA Section 2502 revealed that the law expressly excludes municipal referenda committees from the application, but omits any reference to committees that support municipal candidates. The Commission also considered the applicability of 21-A MRSA Section 1014 which requires earmarked funds to be reported and deemed it not relevant. Mr. Violette moved that the Commission find that it has no jurisdiction to rule on the matter. The motion was seconded and carried unanimously.

The complainant then expressed the view that it was the responsibility of the Commission to hear such matters; that voters on the municipal level have no where else to turn for remedy when campaign finance laws are violated. Members responded sympathetically, but explained that the Commission's budget has been reduced three times in the last two years while its responsibilities have increased. The complainant was then advised to discuss his concerns with state legislators.

Next, the Commission reviewed a complaint filed by S.A.D. #75 Communities Referendum Committee. The complaint was deemed to be a local matter, and not within the scope of the Commission's authority.

The Commission then reviewed revised rules. It was moved, seconded and approved unanimously to adopt the revisions as submitted.

Members then turned to the draft report of the subcommittee to study fair campaign practices in Maine. Mr. Ezhaya indicated his opposition to any legislation proposing structural changes in the Commission, including balancing the Commission politically. Mr. Cyr suggested adding the sentence: "There was one dissenting opinion." The draft report was otherwise accepted as written.

Next, the Commission reviewed draft legislation prepared by Counsel which provides for the issuance of Commission advisory opinions by means of conference call. It was suggested that members discuss with Legislators who appointed them, the advantages of the legislation in terms of expediting requests for guidance, and saving time and money.

The Director then summarized the Commission's budget status. Figures showed a reduction of nearly \$500 in "all other" allocations for the month of December. After some discussion, Ms. Canavan reported that she had submitted a proposal to both the Governor's office and the Appropriations Committee calling for a dedicated fund for the Commission. Under the proposal, filing fees submitted by PACs would be deposited into the dedicated account. The plan was rejected by both the Governor and Appropriations Committee. Mr. Violette suggested resubmitting the draft; and there followed some discussion of whether it might be worthwhile to enlist the support of legislative leadership. Thereupon, it was moved, seconded, and voted to direct staff to draft a letter to leadership.



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Next, the Director reported that the Commission bill amending the campaign finance laws had been resubmitted to the Legislature.

Mr. Stokes then provided an update on the Robert McNally case. He said that the Attorney General's office will enforce the Commission's original order the filing of a complaint with the Augusta District Court for collecting the \$600 penalty. Additionally, Mr. Stokes reported that the Harrigan case will go to trial on February 24th, 1992.

At the Commission's request, staff submitted a report of findings concerning the legality of candidates converting campaign funds to personal use. Examples of questionable entries in reports included purchase of a canoe and car payments. She pointed out that the law does not appear to restrict the use of campaign funds. Mr. Ezhaya said he could see no problem as long as full disclosure is made. It was suggested that the issue be revisited at a later date.

The 48-hour reporting form for referendum committees was then reviewed and accepted unanimously. Mr. Violette suggested that the Commission pursue the issue of penalty suspensions at a subsequent meeting.

The meeting was adjourned at 1:35 p.m.

Respectfully submitted,

Marilyn Canavan
Director