



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 1<sup>st</sup>, 1992

Minutes of the December 1<sup>st</sup>, 1992 Commission meeting held at 10:00 a.m. in Room 113 of the State Office Building

Present: Chair Robert P. McArthur; members Virginia Chamberlin, Gregory G. Cyr, Joseph B. Ezhaya, Richard G. Morton, Robert E. Tierney, Richard L. Trafton, Paul E. Violette, Peter B. Webster; Deputy Attorney General Cabanne Howard

The meeting was called to order at 10:10 by Chairman Robert McArthur. First, the Commission approved the minutes of the October 30<sup>th</sup>, 1992 meeting as written.

Next, out of order, the Commission considered a staff claim that Senator John O'Dea had exceeded contribution limitations in accepting \$6,000 in loans from Mr. David Smallwood. According to findings, Mr. O'Dea disclosed the transactions in pre-election reports filed with the Commission. For discussion purposes, Mr. Violette moved, and it was seconded, to accept staff recommendations. Discussion revolved around 21-A MRSA Section 1015 which limits to \$1,000 the amount an individual may contribute in support of a candidate; and 21-A MRSA Section 1014 which makes it a Class E crime for a person, candidate, and political committee to knowingly make or accept any contribution in violation of the law.

Mr. O'Dea was present and represented himself. In addressing the Commission, he freely admitted to accepting the loans, explained the error was unintentional and pointed out that all but \$200 of the loans in question had been repaid. Mr. Tierney expressed the opinion that no criminality was involved because Mr. O'Dea had not knowingly broken the law. He then suggested the Commission recommend the establishment of a civil penalty for violations of this kind.

Mr. Violette then withdrew his motion and thereupon Mr. Trafton moved to find Mr. O'Dea in violation of 21-A M.R.S.A. Section 1015(l). He further moved that no civil penalty be assessed, there being none prescribed by law. The motion was seconded and passed unanimously. A proposal was then made to examine the entire issue of a civil penalty at a later date. No motion was made on the proposal.

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Next, the Commission considered the appeal of Bryan Dench of the Maine Right to Life Committee State Candidate PAC (MRLC) from a \$1,500 penalty assessed in August 1992. The penalty was levied pursuant to a Commission determination that MRLC failed to file required reports for the period covering 1982-1992.

Mr. Dench was present and represented MRLC. He contended that the penalty was disproportionate to the offense because 1) the Commission did not notify the PAC of filing requirements until January 1993 and 2) the PAC's activity during the period for which the penalty was assessed was very limited. Mr. Trafton then called the panel's attention to a memo indicating the Commission had communicated with Mr. Dench in 1986. Mr. Dench acknowledged the initials on the response were probably his but said he did not remember sending it. Mr. Tierney then moved, and Mr. Cyr seconded, to reduce the penalty to \$150. The motion passed unanimously.

The Commission then removed from the table the request of Mr. Everett Thurlow for an investigation into the "legality" of a document entitled Article Ten. Mr. Robert Celeste, publisher of the document, asked and was granted permission to address the Commission. He expressed the opinion that Article Ten is a newspaper and as such, is protected by the first amendment. He then questioned why the matter was under consideration at all. Mr. Violette explained that the law requires the Commission to review all complaints to determine whether there is reason to believe a violation of law has occurred.

Mr. Trafton asserted the matter was not a first amendment issue -- that the issues at hand were

- 1) whether the publication requires a disclaimer and
- 2) whether the document is eligible for the "news story" exemption under the definition of expenditure.

Thereupon, Mr. Celeste distributed four issues of the paper for the Commission's review.

Ms. Chamberlin offered that the format of Article Ten was very similar to that of a 1770 newspaper, the legitimacy of which had been widely accepted. Mr. Trafton then withdrew his previous motion, and Mr. Cyr moved that the Commission treat Article Ten as a newspaper for purposes of the disclaimer law; that it claims no jurisdiction in the matter. The motion was seconded and passed unanimously.

Next, the Commission removed from the table the request of Senate President Charles Pray for an opinion as to whether the activities of certain individuals who allegedly coordinated fundraising at a political gathering constitute a "de facto" political action committee. For purposes of discussion Mr. Violette moved that the Commission find that the activities of the Maine Republican Party (MRP) in organizing the event did not constitute a political action committee within the meaning of the law. The motion was seconded.

Staff findings showed the MRP had paid all costs -- except one -- for staging the fundraiser. The exception was the cost of the facility room in which the events were held. Those were paid for



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by club members and later reimbursed. A question was raised as to whether the latter transactions were technically loans to the MRP and, as such, reportable by party officials.

Mr. Kenneth Colo. was present and represented the MRP. He claimed the club members were reimbursed by consultant Anthony Payne after Payne was reimbursed by the MRP. Mr. Cole asserted that all expenditures associated with the events were duly disclosed in MRP reports filed with the Commission. At that time, Mr. Violette's motion was voted and passed unanimously.

The Commission then considered late 48-hour reports of state and county candidates. On motion of Mr. Tierney, the following penalties were assessed:

Russell Alexander	0	Robert Gould	50
Peter Angell	50	Philip Harriman	0
Beverly Bustin	0	Robert Leo Kieffer	100
John Fink	50	Stephen Simonds	50
Catherine Goodwin	0	Richard Trott	0

Next, the Commission considered the lateness of five 48-hour reports submitted by Mr. Donald Esty. Mr. James Foley, official campaign manager for Mr. Esty, was present and represented Mr. Esty. Mr. Foley said he filed the reports late because of the unexpected death of his former spouse. On that basis, Mr. Violette moved, and it was seconded, to assess no penalty.

The Commission then considered Mr. Robert Cummings' explanation of the reason for his filing a late 48-hour report. Mr. Cummings stated that during the last week of the campaign he made contingency plans to run several television spots in the hope that sufficient last minute contributions would materialize. He paid for the ads with the stipulation that the check not be cashed until there was enough money in his account to cover the check. Mr. Cummings contended the report was timely filed because the payment was made early and on a contingency basis. After some discussion of the definition of expenditure, Mr. Tierney moved to waive the \$50 penalty. Mr. Ezhaya seconded and the motion carried.

At this time, Mr. Webster asked Ms. Canavan to explain her rationale for recommending penalties for some candidates and not others. She explained that 48-hour reports often arrive late because mail service is slow. For that reason, she said, penalties are recommended only where reports are filed after the fourth day before the election; that other late reports are not penalized because they are available for public review when the demand for them is greatest.

Mr. Morton then moved to assess a penalty of \$50 against Sally Bell and to assess no penalty against Joseph Bruno. The motion was seconded and carried 7-1.

At that point, Mr. Al Smith, Executive Director of Common Cause, requested and was granted permission to address the Commission. Mr. Smith distributed a draft copy of a bill Common Cause plans to submit to the 116th Legislature. He explained the bill places limits on campaign contribution and spending levels, provides for limited public funding of campaigns, and includes a plan for providing the Commission with staffing and funding resources to administer the law.



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He then invited Commission members to attend the next meeting of Common Cause or to demonstrate their support of the bill by writing to members of the Legislature.

Next, the Commission then considered late 6-day pre-election reports of state and county candidates. Mr. Morton moved, and it was seconded, to assess the following penalties:

Jason Burleigh	\$25	Harold Marden	\$50
Robert Carr	\$0	John Marshall	\$75
Santo DiPietro	\$50	Gary McGrane	\$0
David Carrier	\$0	Terrence Parker	\$125
Robert Hartnett	\$0	Ronald Prevoir	\$0
William Lemke	\$50	William Reiff	\$0
Kenneth Lemont	\$50	Clayburn Ryder	\$25
B. Carolyn Mahany	\$100	Albert Stevens	\$75
Frank Wood	\$0		

The Commission then directed staff to contact candidates Calvin Hamblen and Peter Harvey a second time to urge them to file reports and to notify them that if reports are submitted within 10 days of the notice, a penalty of only \$20 will be assessed, provided no money was collected/spent. Staff was also directed to refer the matter of Douglas Lane's unpaid penalties to the Attorney General's office.

Next, the Commission considered late pre-election reports of political action committees. It was moved, seconded, and voted to assess the following penalties:

- Central Maine Labor Council 0
- Committee for 99 33 500
- Maine Optometrists 250
- Committee to Assure Maine People Equal 0
- Access to Health and Disability Benefits

Mr. Cyr then opened discussion about a complaint filed by Speaker John Martin alleging that the Maine Republican Party had made false claims in a paid political advertisement. Commission Counsel, Cabanne Howard, advised that it was not within the purview of the Commission to determine the accuracy of statements made in political campaigns; that attempts to monitor the content of political ads could result in first amendment problems. There followed a lengthy discussion of how the Commission could best work toward minimizing the number of false and malicious campaign ads. Suggestions included the establishment of a sub-committee to review last-minute political advertisements. Mr. Ezhaya raised the question of whether other states provide for enforcement of fair campaign practices codes. Ms. Canavan offered that statutes in both Washington State and Florida contain such provisions, but their agencies are far better equipped than Maine's -- in terms of staffing and funding -- to conduct investigations of code violations.



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Finally, a motion was made to table a memo from Commission staff proposing revisions in the procedure for assessing penalties.

The meeting adjourned at 12:30 p.m.

Respectfully submitted,

Marilyn Canavan  
Director