



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 135
STATE OFFICE BUILDING
AUGUSTA, ME 04330**

October 25th, 1994

Minutes of the October 25th, 1994 meeting of the Commission held in Room 109 of the State Office Building, Augusta.

Present: Chairman Robert P. McArthur; Members Virginia Chamberlin, Nelson Madore, Richard G. Morton, Patricia A. Riley, Robert E. Tierney, Richard L. Trafton, Paul E. Violette, and Peter B. Webster; Deputy Attorney General Cabanne Howard; Director Marilyn Canavan

Chairman McArthur called the meeting to order at 1:45 p.m.

On motion of Mr. Webster, seconded by Ms. Riley, members voted to accept the minutes of the September 23rd, 1994 as written.

First, the Commission considered the late reports of lobbyist Marshall Stern. This item was taken out of order of its appearance on the agenda. Findings indicated that Mr. Stern had accrued a total of \$2,100 in penalties, having failed to file reports for the months of April, May, June, July, and August. Mr. Scott Maker was present and represented Mr. Stern. Mr. Maker claimed that Mr. Stern had directed an employee to file the reports, but that the employee had failed to do so. A further mitigating circumstance, said Mr. Maker, was that Mr. Stern had conducted no lobbying activity during the period covered by the reports. He then asked that his client be granted a 5 day grace period in which to submit the reports and that the penalties accrued be forgiven.

Thereupon, Mr. Violette moved that the matter be dismissed. The motion failed, no second being offered. Mr. Webster then moved, and Mr. Tierney seconded, to accept the staff recommendation calling for suspension of Mr. Stern's lobbying privileges. At that point, Mr. Violette stated that he had telephoned Mr. Stern en route to Augusta; that Mr. Stern claimed to have received no notice of the meeting. The staff then affirmed that the notice was sent via U.S. certified mail; and that documentation would be provided momentarily. With other matters awaiting resolution, Mr. Trafton moved to table the matter until the next meeting. Ms. Riley seconded and the motion carried, Mr. Webster voting in the negative.

At 2:10 p.m. Mr. Madore moved, and Mr. Webster seconded, to meet in executive session pursuant to 1 M.R.S.A. Section 1014. The Commission then reviewed two separate complaints, each of which alleged possible wrongdoing by a member of the Legislature. At 2:37 p.m. Mr.

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McArthur left the meeting, Mr. Trafton assuming the position of Chair pro-tem. The executive session was adjourned at 2:55 p.m.

Next, the Commission reviewed the request of Representative Ralph Coffman for an investigation into the activities of certain public officials who had allegedly used government resources for political purposes. Mr. Webster moved, and Mr. Madore seconded, to affirm the determination of the director; i.e., that the issues raised in Mr. Coffman's complaint were not relevant to the Commission's jurisdiction. The motion carried. Mr. Coffman then inquired as to whether any state entity was authorized to hear such complaints; whereupon, Mr. Howard replied in the negative.

The Commission then considered the complaint of Mr. Coffman that Attorney General Michael Carpenter had used his official title in making political endorsements, thus violating ethical standards. Mr. Webster moved, and Mr. Madore seconded, that the panel decline to accept the complaint on the basis that it lacks jurisdiction. Mr. Carpenter then addressed the Commission, expressing the belief that the endorsements in question were entirely appropriate and violated no laws. Mr. Webster's motion was then voted.

Next, the Commission reviewed the complaint of Susan Cook against candidate John Buck. Ms. Cook alleged that Mr. Buck's campaign literature and yard signs were not properly disclaimed. Mr. Violette moved, and Mr. Madore seconded, to assess no penalty on the basis of findings which showed that Mr. Buck had made a good faith effort to correct the error, having affixed disclaimers to the signs and having published attribution via a newspaper ad.

The Commission then considered the complaint of Mr. Ben Coes that the bumper stickers of candidate Patrick Demers contained no disclaimer. Also reviewed was the statement of Mr. Demers that he had attempted to affix a disclaimer to the stickers; that nothing would adhere to them; and that he had thus taken steps to end their distribution. Mr. Coes then addressed the Commission, asserting that he had reason to believe the stickers were still being distributed; whereupon Mr. Violette moved, and Mr. Madore seconded, to notify Mr. Demers that a \$20 penalty was being levied; and that distribution of the stickers must stop. The motion carried.

The Commission then considered the written requests of Messrs. Kenneth Hayes and Al Smith of Common Cause; Mr. Bernard Angst, Treasurer of the Faircloth for Senate; and Ms. Victoria Murphy, Chair of the Maine Democratic Party for an investigation of certain corporate advertisements produced by Tom Sawyer Environmental Services, Inc.(SES). The fundamental issue raised by each was whether payment for the ads constituted a contribution/expenditure under Maine law. Mr. Al Smith was present and spoke on behalf of Common Cause, expressing concern that the use of corporate ads could provide a means for circumventing the campaign finance laws; and that such ads could create an unfair playing field in the political process. Ms. Murphy then rose to address the Commission, raising questions about the timing of the ads, and the frequency with which they were run during the election period. She contended that the purpose of the ads was reflected in the fact that they were classified as political in nature by the station running them. At that point, Mr. Webster moved, and Mr. Madore seconded, to conduct a preliminary review of the facts at hand to determine whether further investigation was warranted.

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Mr. Philip Ahrens was present and represented Mr. Sawyer. He pointed out that FCC regulations require that a TV station provide equal time to the opponent of each candidate who appears on its station, whether or not the appearance is made for political purposes; hence ad of a candidate for public office is filed in the station's political file. He contended that a political ad is characterized by its clear and unambiguous intent to influence an election; that Mr. Sawyer's ads showed no such intent. He then stated that Mr. Sawyer had voluntarily provided a videotape containing four ads which SES had aired from 1984 through 1991; and a fifth, the ad in question, which was being run from September 19th, 1994 through November 21st, 1994 and again in January 1995. He said that Mr. Sawyer had additionally provided an audiotape containing 11 ads in all; 10 of which were 30 second spots and the 11th -- the ad in question -- a 60 second spot which had run since the end of 1993 to the present.

The Commission then reviewed the ads; whereupon a lengthy question and discussion period ensued, in which Mr. Ahrens explained that SES's ads were being aired with increasing frequency during that summer and fall, primarily to counter the establishment of a rival corporation in the Bangor area.

At the conclusion of the discussion, Mr. Webster moved that the Commission determine, on the basis of the facts presented, that no violation of the law had occurred. The motion was seconded by Mr. Tierney and carried 6-0-2, Ms. Riley and Mr. Madore abstaining.

Next, the Commission considered the request of the Angus King for Governor Committee for an investigation into certain polling practices, the alleged purpose of which was solely to discredit Mr. King's candidacy. Mr. John Patterson was present and represented the King Committee. He contended that the activity, referred to generally as "push polling," was in violation of 21-A M.R.S.A. Section 1014 which requires that political communications contain a statement of attribution. Mr. Tierney then moved to accept the complaint. At that, Ms. Estelle Lavoie, representing the Maine Democratic Party, rose to address the Commission. She asserted that the Party neither engages in nor condones the practice of push polling. She went on to express the opinion that the Commission lacked the statutory authority to consider the complaint. Mr. Gerald Petrocelli was present and represented the Brennan for Governor Committee. He held that 21-A M.R.S.A. Section 1014 applies solely to written communications; and he thus concurred with the opinion expressed by Ms. Lavoie that the issues raised are not relevant to the Commission's jurisdiction. There followed a lengthy discussion of the question of whether a telephone call is a Public communication requiring a disclaimer. The question remaining unresolved, Mr. Tierney withdrew his motion; moving instead that the Commission decline jurisdiction but that it conduct an investigation into the practice of "push polling" after the general election. The motion was seconded and voted.

The Commission then considered the request of the Brennan for Governor Committee for an investigation into the source of an anonymous flier containing several negative references to Mr. Brennan. Mr. Webster moved that the Commission investigate the matter on the basis that the flier contained no attribution. Mr. Violette seconded the motion and it was voted.



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Next, the Commission considered the complaint of Dorothy Meriwether against candidate Clayton Fowlie. Ms. Meriwether claimed that certain lawn signs supporting Mr. Fowlie's candidacy did not contain a disclaimer. As evidence, Ms. Meriwether provided photographs of two such signs. The staff then said that Mr. Fowlie had responded to P Commission notice, stating that he had affixed disclaimers to the signs in question. On those fact, Mr. Violette moved that Mr. Fowlie be assessed a penalty of \$20. Mr. Webster seconded and the motion carried.

The Commission then reviewed the complaint of Elvira Ridlon again Elwin Martin that Mr. Martin's campaign literature contained no disclaimer. Mr. Violette moved to accept the staff recommendation that a penalty of \$100 be assessed. Mr. Webster seconded, and the motion carried.

Next, the Commission ruled on the complaint of Stanley R. Howe against Craig E. Bryant. Mr. Howe alleged that Mr. Bryant's campaign literature and yard signs did not contain a disclaimer. Mr. Webster moved that no penalty be assessed on the basis that Mr. Bryant had responded to the Commission notice by attempting to retrieve as many of the handouts in question as possible, by affixing disclaimers to the yard signs, and by publishing an ad containing the required attribution. The motion was seconded and voted.

The next item considered was the request of candidate Lloyd Herrick for guidance on the question whether personal funds used to purchase calendars and tip cards are contributions/expenditures to his campaign, and whether the items in question should carry a disclaimer. Findings indicated the materials contained no reference to Mr. Herrick's candidacy for Sheriff. It was moved, seconded, and voted to table the item.

The Commission then reviewed the request of a municipal candidate for guidance as to whether he may donate surplus campaign funds to a municipality. Mr. Webster moved, and Mr. Tierney seconded, to advise the candidate that such a donation was impermissible under 21-A MRSA Section 1017(8). The motion carried 6-1, Ms. Chamberlin voting in the negative. Mr. Webster then suggested that the issues raised thereof be referred to the Subcommittee.

Next, the Commission considered the request of a candidate for guidance as to how he should report payment for a poll which the candidate conducted. Specifically the candidate inquired as to whether costs associated with conducting the survey a-re reportable as contributions to the candidates named in the survey, if the candidate provides the results of the survey to those candidates; and if so, what basis should be used for calculating the value of the information provided. Mr. Violette moved that the candidate be advised to report the transactions as in-kind contributions to the candidates involved, and that the basis for calculating each is the pro-rated fair market value of the survey. The motion was seconded and voted.

Next, the Commission removed from the table the draft of a proposed internal policy. After a brief discussion of the language contained therein, it was moved, seconded, and voted to seek the counsel of the Office of Employee Relations as to whether the draft complied with State regulations. Mr. Al Smith addressed the Commission concerning the draft, commending the



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staff for its efforts in seeking to establish standards that would enhance public confidence in the Commission.

Next, the Commission considered the proposed amended rates. Mr. Webster moved, and Mr. Tierney seconded, to table the item. It was so voted.

Counsel Howard then reported that the matter of the Crook flier has been reported to the criminal investigation division of the Attorney General's office, but that the investigation has not been completed.

The meeting was adjourned at 4:50 p.m.

Respectfully submitted,

Marilyn Canavan, Director