



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

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October 8th, 1997

Minutes of the October 8th, 1997 meeting of the Commission on Governmental Ethics and Election Practices held in Room 122 of the State Office Building, Augusta.

Present: Chairman Peter W. Webster; members Linda W. Cronkhite, Harriet P. Henry, G. Calvin Mackenzie, Merle R. Nelson; Commission Counsel Phyllis Gardiner; Interim Counsel Paul Stern; Director Marilyn Canavan.

At 9:05 a.m., Chairman Webster called the meeting to order. First, on behalf of the members and the staff, Mr. Webster welcomed the Commission's newly appointed Counsel, Ms. Phyllis Gardiner.

Next, the Chair moved that the Commission enter into executive session to continue its discussion of

- 1) the filing of Representative John Underwood's sources of income statement; and
- 2) pending litigation on the Clean Election Act.

At 9:30 a.m. the Commission reconvened in regular session, whereupon Mr. Mackenzie moved, and Ms. Nelson seconded, to dismiss the case involving Mr. Underwood on the basis that no evidence could be found to show that Mr. Underwood had willfully failed to file the statement. The motion was voted.

The Commission then considered the minutes of the September 10th, 1997 meeting; whereupon Mr. Mackenzie moved, and Judge Henry seconded, that the minutes be approved as written.

The next matter to undergo review was the request of Representative John Vedral for an advisory opinion on the permissibility of his raising campaign funds through the sale of ad space on his own personal website. He said the funds derived from the sale would be used to support his candidacy for the office of State Representative; that vendors would be apprised of that fact when solicited; and that prospective buyers included corporations, groups, and various organizations. He then inquired as to how vendor payments should be reported, where payments for a series of ads are made in a lump sum; and whether the law bars candidates from displaying the ads during the legislative session. After a brief discussion of the matter, the Commission directed the staff and counsel to examine the issues raised by Representative Vedral; to identify

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the sections of the law relevant to those issues; to prepare findings for the Commission's review; and to report those findings at the next meeting.

Next, the Commission turned to agenda Item #II: the written request of Ms. Ann Robinson for relief from the penalties assessed against the firm of Preti, Flaherty, Beliveau & Pachios (PFBP) for the following late reports:

Lobbyist name/ employer	Date report due	Date filed	Penalty incurred
Severin M. Beliveau/ Anheuser-Busch Companies, Inc. Maine State Grocers Assn. Northern Outdoors, Inc. Pharmaceutical Research & Mfrs. of America Ski Maine Association Theatre Owners of New England The Tobacco Institute	8/15/97	8/26/97	\$700
Michael J. Gentile/ Town of Jay	8/15/97	8/26/97	\$100
Bruce C. Gerrity/ American Insurance Association Maine Assn. of Professional Accountants Maine Automobile Dealers Assn.	8/15/97	8/26/97	\$300
Ann R. Robinson/ American Ash Recycling Corp. of New England American Express Travel Related Services Co. DeHart and Darr Associates Maine Health Care Association Motorcycle Industry Council, Inc. Saco, City of	8/15/97	8/26/97	\$600

Mr. Bruce Gerrity was present and represented PFBP. He said the person responsible for completing and filing lobbyists disclosure reports at the firm of PFBP had resigned about the time non-session waivers were due; that consequently, the firm failed to file both the waiver requests and the required reports. He pointed out that the reports in question contained little of substance since the firm had conducted no activity during the period covered by the report. At the conclusion of Mr. Gerrity's presentation, Mr. Mackenzie moved that the Commission reduce by 50 percent the penalties of Mr. Gentile and Mr. Gerrity, this being the first violation for each; and that the Commission let stand the penalties of Mr. Beliveau and Ms. Robinson since the record showed a previous violation for each. Ms. Nelson seconded, and the motion was voted.



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The next matter to undergo review was the request of lobbyist Jamie Py for relief from the penalty assessed for the late report of his client, Guilford Oil Company (GOC). Staff findings indicated that the report was due September 15th; that it arrived in the Commission office September 23rd; and that the penalty accrued therefrom was \$100. Mr. Py was present and represented himself. He acknowledges that GOC's office manager had failed to file a non-session waiver; that as a result, the firm owed a monthly disclosure report; and that the report was filed late. But he said that the company had since taken steps to ensure the error would not be repeated; and that he hoped the Commission would take that into consideration in determining the penalty. Thereupon, Mr. Mackenzie moved, and Judge Henry seconded, that the penalty incurred by Mr. Py be reduced 50 percent -- there being no record of a prior violation. The motion was voted.

The Commission then considered the written requests of lobbyist Eugene Guilford of Maine Oil Dealers Association and lobbyist Richard Trahey of the Maine State Employees Association for relief from late penalty fees. The staff reported that Mr. Guilford filed 7 days late and that Mr. Trahey filed 30 days late; that the penalty for each was thus \$100. The staff further reported that Mr. Guilford had filed late once before, that Mr. Trahey had not. On those findings, Mr. Mackenzie moved, and Judge Henry seconded, to accept the staff recommendation calling for assessment of the full penalty for Mr. Guilford and a 50 percent reduction of the penalty for Mr. Trahey. The motion was voted.

Next, the Commission reviewed the proposal of Ms. Karen Tilberg for implementing preliminary rulemaking; and the staff's recommendation that the Commission retain Ms. Tilberg as a drafter and consultant for the project. Asked to comment on the appropriateness of the Commission retaining Ms. Tilberg, Counsel Gardiner cautioned that while Ms. Tilberg's credentials appeared to be impeccable, some might question her ability to serve as an unbiased facilitator in light of her prolonged professional association with the proponents of the Clean Election Act. Mr. John Brautigam then rose to express his support for Ms. Tilberg's candidacy, saying that he thought she would be an ideal choice for the job; and that he fully concurred with the time frame she had outlined for completing the project. Following a brief discussion of the matter, members concluded that the prudent course of action would be to engage both a facilitator and a drafter, and to seek qualified candidates for the positions through the State procurement process. Hence, the staff was directed to develop and submit RFP's for publication before the next meeting; and to specify in the RFPs that the Commission intends to hold at least three stakeholder meetings at three separate sites.

Next, the Commission considered agenda Item #2: the request of a political action committee (PAC) for guidance in interpreting the requirements governing ballot issue groups; specifically, whether a PAC may register and report transactions on multiple issues in a consolidated fashion.

Mr. Mackenzie moved that the recommendation of the staff be approved; and that the Commission advise the PAC that it must file separate registrations and separate reports for each ballot issue the group supports/opposes, to ensure full disclosure.



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Asked to comment on the recommendation, Counsel Gardiner said that the Commission might properly adopt the interpretation of the statute recommended by the staff but that it might find it difficult to enforce, there being no express statutory language to support it. After a lengthy discussion of the laws governing PACs, the Commission concluded that, absent any statutory directive, it could not accept the pending recommendation. Thereupon, Mr. Mackenzie withdrew his motion and discussion on the matter ceased.

Next, the Commission considered the late report of lobbyist Kevin Gordon. Findings indicated that Mr. Gordon registered on May 6th, 1997 and that he commenced lobbying on April 29th, 1997. Findings further indicated that Mr. Gordon's first monthly disclosure report was due on May 15th, 1997 for the month of April, but that he failed to file until June 16th, 1997. As part of its review, the Commission reviewed the communication of Ms. Abby Holman in which she contended that Mr. Gordon was not subject to the April reporting requirements because he had not met the legal definition of "lobbyist"; i.e., he had not lobbied more than 8 hours during that month. Following a lengthy discussion of the definition of lobbyist and an analysis of its relevance to the issue at hand, Judge Henry expressed the view that Mr. Gordon had essentially acknowledged his status as lobbyist by filing a registration; that he therefore should be subject to the requirements of the lobbyist disclosure law. The item was tabled momentarily to allow the staff time to review Mr. Gordon's filing record. Shortly thereafter, the item was removed from the table; whereupon Mr. Mackenzie moved, and Judge Henry seconded, to reduce Mr. Gordon's penalty by 50 percent, this being his first violation. The motion was voted.

The next item to undergo review was a draft amendment to the legislative ethics law prepared by the staff. After salient points of the draft had been reviewed, a motion was made, seconded and voted to approve the draft for submission to the Legislature.

Next, Mr. Mackenzie discussed the status of plans to establish electronic filing. He recommended that the Commission hire a computer technician as soon as possible to work with Mr. Tony Raymond and the staff on software development. The director then expressed support for Mr. Mackenzie's recommendation and asked that the Commission also consider upgrading the position of the elections agent to the level of "investigator." She said that any request for additional personnel must be made in the supplemental budget in order to be considered in the next legislative session. Thereupon, a motion was made, seconded and voted to approve the requests of Mr. Mackenzie and Ms. Canavan.

Next, the Commission voted unanimously to refer to the Attorney General's office the cases of the following delinquent filers:

CANDIDATES:

Elbridge Baker
Debbie Bolen-Morin
William Linnell, 11
Jeffrey More
Clark Phinney

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John Spruill, Jr.
Gordon Gates
Gary Seavey

POLITICAL ACTION COMMITTEES:

Cheaper, Safer Power PAC
Concerned Coastal Clarnmers
Maine Bikers PAC

At that point, Judge Henry inquired as to whether Mr. John Brautigam would be willing to prepare and present to the Commission a list of the salient legal issues to be dealt with in implementing rule-making. Mr. Brautigam consented, whereupon the director offered to work with him in fashioning the list.

Ms. Canavan than inquired as to whether the Commission might be willing to cancel the November meeting in light of the fact that she and one other staff member would be on vacation during that month.

The request was denied.

At 12:05, a motion was made, seconded and voted to adjourn.

Respectfully submitted,

Marilyn Canavan
Director