



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

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**May 13<sup>th</sup>, 1998**

Minutes of the May 13<sup>th</sup>, 1998, meeting of the Commission on Governmental Ethics and Election Practices held in Room 315, State Office Building, Augusta, Maine.

Present: Chairman Peter B. Webster; Members Linda W. Cronkhite, Harriet P. Henry, G. Calvin Mackenzie, and Merle R. Nelson; Director William C. Hain, III, Counsel Phyllis Gardiner; and Lobbyist Registrar Annette Jones.

Chairman Webster called the meeting to order at 9:05 a.m.

The minutes of the April 8<sup>th</sup>, 1998, meeting were approved with one change: the final minutes shall be amended to reflect that the Commission voted to go out of executive session and ratified its vote on Agenda Item #8.

Agenda Item #2 was postponed for consideration at a later date at the request of Mr. Jon R. Doyle, the item's sponsor and proponent.

Karin Tilberg, Esq., was present and addressed Agenda Item #3. She explained that she had received comments from various individuals in preparing the draft regulations to implement the Maine Clean Election Act. She accepted the advice not to include text of the Act in the draft rules, but cited certain sections of the law. The response she received helped focus some of the options the Commission will have to address in the proposed regulation. Draft rule topics discussed included:

- 5-day period for original of fax to reach the Commission office
- Definition of "express advocacy"
- Use of Federal tax identification number
- Section 101 7(8) and proper uses of surplus funds
- Need for common sense in deciding how to deal with the issue of surplus equipment and property such as computers, etc., so as not to make the rules so tight that it will be difficult for a candidate to operate efficiently
- Authority for case-by-case exemptions
- Verification issue could be resolved by the Commission engaging trained, temporary staff personnel

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Suggestion that the Commission publish guidelines regarding use of Fund revenues, i.e., permissible campaign-related expenses Distribution of Fund revenues to candidates through Bureau of Accounts and Control Record keeping and reporting requirements

The Director distributed a handout outlining the Maine Administrative Procedure Act requirements, including a timeline that is triggered by the formal presentation of a Notice of Rule-Making Proposal to the Secretary of State by the Commission. The publication of that Notice announces the proposed rules and invites attendance at public meetings and/or written public comment on the proposed rules.

Regarding Agenda Item #3A, the Director was informed by Senator Beverly Daggett that the Executive Director of the Legislative Council had not received a Regulatory Agenda from the Commission for 1997, although one appears to have been prepared on July 15<sup>th</sup>, 1997, and sent to the APA Office of the Secretary of State. The APA permits amendment of regulatory agendas and the 1997 agenda will be amended and submitted to the Executive Director of the Legislative Council as suggested by the APA staff attorney with the Office of Policy and Legal Analysis. The apparently inadvertent oversight should not impact the current rulemaking process. Additionally, a 1998 Regulatory Agenda also will be submitted reflecting the current status of the rulemaking process for implementation of the Maine Clean Election Act.

The locations of possible public hearings were discussed, including Portland, Augusta, Bangor, and one other site in the northeastern part of the state such as Presque Isle, Houlton or Machias. A decision would be presented at the June 10<sup>th</sup> meeting.

Mr. Ted Potter, Deputy Secretary of State, appearing on his own behalf, spoke to the issue of verification of signatures to qualify as a Clean Election Candidate. He suggested that the door would be opened for fraudulent signatures if the rules permit candidates to verify petition signatures on their qualifying petitions. He stated a preference for local verification. He does not believe that town clerks would be overburdened by that process because there probably will be only a couple of candidates in most cases.

Mr. John Brautigam questioned whether written comments could be submitted to the Commission for its consideration during the remaining drafting stage. The Chairman responded that the Commission would accept all suggestions for consideration in developing the draft rules.

State Representative Rosita Gagne expressed concern with the Clean Election Act, and whether candidates would be willing to accept the limitations imposed upon qualifying candidates. She stated a preference for something that would convince candidates to participate, but that as of now it doesn't sound like something she would want to pursue. Chairman Webster reminded all in attendance that the Clean Election Act is the law of the State as of now, and that the Commission is responsible under the Act only to promulgate rules for its implementation. Mrs. Nelson asked Representative Gagne what would make it easier for her to accept the new law. Representative Gagne responded that she liked the idea of hearings and that the rules should be presented to the Legal and Veterans Affairs Committee.

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Ms. Anne Schink, the facilitator of the "stakeholder" meetings, explained that process and how the stakeholders were determined. Mr. Ted Potter suggested that many legislators may not have been aware of the stakeholder process since the meetings were held during the height of the legislative session.

Chairman Webster stated a strong preference for avoiding confrontation during the rulemaking process. He stated that the Commission worked very hard to include interested parties in the preliminary drafting process. He indicated that he personally feels very good about the current status of the Commission's efforts.

Ms. Schink indicated that among the ground rules for the stakeholder meetings was the requirement that the participants not debate the merits of the law and that they work within the framework of that law. The APA process will provide everyone with ample time and opportunity to provide views to the Commission for its consideration in implementing the final rules.

The Director indicated that he will send a copy of the present draft of the rules to appropriate legislative personnel and invite them to join the Commission at its June meeting or present written comment. Mrs. Cronkhite asked what the purpose of that invitation would be, to which the Director responded that it would enable legislative personnel who may have felt that they had not had any opportunity to comment previously an opportunity to participate in a working session and to ask questions about the current draft rules.

Ms. Tilberg indicated that she had summarized previous comments in her cover letters accompanying the drafts of the rules.

Counsel Gardiner suggested that the stakeholder meetings were, in effect, "brainstorming" sessions. She indicated that Ms. Tilberg's document is not the Commission's proposed rules, but rather is, at this stage, a draft of rules that is the result of a "think tank" for consideration by the Commission in determining what it will publish as its proposed rules for public comment.

The letter to the Executive Director of the Legislative Council and the Commission's corresponding Legislative Committee, extending an invitation to comment, was again raised. Counsel Gardiner indicated that such a letter would not violate the APA because the Commission is still in the preliminary stages of drafting rules and has not formally started the APA rulemaking process. The Director indicated that the Commission has heard from stakeholders, but there appears to be some sentiment among legislators that some would appreciate a similar opportunity to be heard. Ms. Tilberg suggested that any such opportunity should be opened to stakeholders who may want to appear. The Director will communicate with stakeholders concerning the process. Since Commission meetings are open to the public, stakeholders will be informed of the June 10<sup>th</sup> meeting agenda in the event any of them desire to attend.

Mrs. Cronkhite suggested that the Director make a list of those issues in the draft rules that remain unclear and that continue to need significant attention by the Commission in formulating



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the final draft. Counsel Gardiner suggested that reference be made to Ms. Tilberg's previous memoranda highlighting difficult areas. It was noted that the Commission is not endorsing the rules at this time, but rather will have another discussion of the draft at the June meeting.

The Chairman announced a 5 minute recess at 11:15 a.m.

Agenda Items 6A and 6B:

Mr. Paul Volle was present and addressed penalties assessed for late filing of political action committee (PAC) reports. He stated that he had tried to fax the reports before 5:00 p.m. on the filing deadline, but that the line was busy. After the deadline he continued trying to fax his reports but there was no answer at the Commission's fax number. He asked what harm was caused to the public because of his late filing. He suggested that there should be some relief under such circumstances because the fine is onerous and he felt obligated to state his position and ask for relief. Mr. Mackenzie moved, and Mrs. Cronkhite seconded, that the penalties in both of these cases be reduced by 50% each (i.e. from \$1,161.84 to \$580.92 for "Yes for Equal Rights" and from \$12.30 to \$6.15 for "Ad Hoc Committee for Common Sense"). The motions were unanimously approved.

The Commission then recommended that Staff use its discretion in assessing penalties of \$100 or less and subsequently notify the Commission of actions taken unless the party in question requests a hearing for the Commission to determine the amount of the penalty to be assessed, in which case the matter should be scheduled for Commission consideration.

Agenda Item #10 was then considered out of order to accommodate the presence of its originator.

The issue of the definition of "express advocacy" was raised. Ms. Suzanne Goucher of the Maine Association of Broadcasters indicated a concern that the same kind of ads will be seen this election cycle as in 1996, referring to ads sponsored by the AFL-CIO. Counsel Gardiner indicated that the Commission had dealt with a similar issue last fall (i.e. clear-cutting), and that the Commission should adhere to the "bright line" test adopted by the Federal Election Commission, since the "reasonable person" test is not permitted as a result of a First Circuit Court of Appeals decision that controls in Maine.

Agenda Item #4 was addressed.

Mr. Mackenzie indicated that there has been an "implosion" at the Center for Responsive Politics (CRP), and that Tony Raymond (with whom Mr. Mackenzie and former Director Canavan had been working on the development of an electronic filing system) was no longer with the Center. While Mr. Raymond may still be interested in helping to develop the State's system, it appears he has lost the "institutional cover" (and the funding that accompanied it) to be of much assistance to us. Concerns were raised about stability of the project. The Director indicated that he had spoken with the State's directors of information systems and purchasing regarding the Commission's options. The result is that the Commission may continue to work with CRP, attempt to forge a "joint venture" between CRP and the State information systems staff, work exclusively to have an "in house" State system developed exclusively by State personnel, or



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develop a Request for Proposals (RFP) to solicit proposals exclusively from the private sector. All four of those options may be pursued simultaneously.

Mr. John Brautigam indicated an interest in the matter of the development of an electronic filing system and requested permission to meet with Mr. Mackenzie regarding the matter, to which Mr. Mackenzie replied that he would welcome such a discussion.

Agenda Item 5:

Mrs. Henry moved, and Mrs. Nelson seconded, to refer the matter of unpaid penalties of Maine Citizens for Access, Safety & Independence PAC to the Attorney General for appropriate action. The motion was approved unanimously.

Agenda Item #6C:

Mr. Mackenzie moved, and Mrs. Henry seconded, to accept Staff recommendation regarding the Maine Education Association's late April PAC report, i.e. assess the full penalty of \$439.44. The motion was approved unanimously.

Agenda Items #7A and #7B:

Mr. Mackenzie moved, and Mrs. Cronkhite seconded, to waive 50% of the penalties assessed against lobbyists Gerald F. Petruccelli and Dale F. Thistle (i.e. reduction from \$100 to \$50 each) based on the fact that the instant infractions had been the first such late filing for each. The motion was approved unanimously.

Agenda Item #8:

Mr. Mackenzie moved, and Mrs. Henry seconded, to accept the Staff recommendation that 2 V2" Styrofoam balls be exempt from the attribution requirements. The Commission further granted Staff the authority to apply the standard of the statute to further requests of this nature (after consultation in individual cases with the Chair, if necessary), subject to ratification of Staff decisions by the Commission at the next scheduled meeting.

Agenda Item #9:

Mr. Mackenzie moved, and Mrs. Cronkhite seconded, to table the issue of whether an attribution was required on the Joseph Ricci for Governor "press release." Mr. Mackenzie recalled apparently conflicting determinations of previous cases, citing the Robbins and D'Andrea cases, and suggested that those matters be researched and a recommendation be made for Commission consideration based on the results of that research of the Commission's previous actions. The Commission determined, however, that there did not appear to be a violation of any statutory authority under its jurisdiction by the use of Scarborough Downs stationery for the "press release." That determination may be subject to further Commission action depending upon the results of the previously stated research and recommendation.

Agenda Item #11:

Regarding the acceptance of trips by legislators, Counsel Gardiner suggested that the Commission should look at who is sponsoring the event. Mr. Mackenzie indicated that the previously constituted Commission was split on the issue of so-called "junkets." He stated his



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opinion that the sponsors of such trips would not pay for them unless some benefit accrued to the sponsor by the legislator's participation. Therefore, the legislator should be able to demonstrate the public purpose for taking trips sponsored by a private entity. He suggested that the Commission should consider refining its approach since it is likely that it will be getting questions on this issue in the future. He suggested that the burden of proof should be on those who want to pay for such trips.

Discussion ensued. The Director suggested that the issue is whether there is a conflict of interest. Counsel Gardiner stated that the Commission must determine whether the payment for the trip constitutes a gift, citing previous distinctions between a nuclear waste dump trip versus a rafting trip. The distinguishing feature seems to be the relative "pecuniary benefit" to be derived. Mr. Mackenzie cited the Statement of Purpose (1 M.R.S.A. §1001) as the guiding principle for Commission deliberations on this subject. The Director raised the question of how to handle requests of this nature if there is insufficient time to bring the matter to the Commission for decision. Chairman Webster suggested that a preliminary opinion could be offered to the requesting party as long as the views of the Commission are fully and accurately reflected. Mr. Mackenzie stated that such cases should be decided on the basis of a majority decision by the Commission if time permits the matter to be brought before the full Commission. Mrs. Nelson suggested that the questions should be treated issue by issue in a timely manner. Counsel Gardiner indicated that cases involving legislators must come before the whole Commission. Mrs. Nelson suggested that the issue of trips funded by nonpublic sources should be raised independent of any specific case so that the views of individual Commissioners could be aired, and the issues fully addressed. She requested that time be scheduled at a future Commission meeting to more fully explore this and similar issues, something the Commission has not had or taken the opportunity to do in the past.

Agenda Item # 12:

Chairman Webster suggested that the issue was relatively minor and expressed his confidence in the ability of the Director to address such matters in the future.

Agenda Item # 13:

Discussion of the content of current forms being used for reporting information to the Commission indicated that the content of present forms is appropriate, but that possible revision of the contents of some forms should be considered along with other changes that may be required by changes in the law or to convert to electronic filing in the future.

Agenda Item # 14:

Chairman Webster asked if a 2-signature form is required. Since the signature requirements in the two separate places on the same form satisfy two different legal requirements, each is required, as applicable, in individual cases.

Agenda Item # 15:

Chairman Webster suggested, without opposition, that unsolicited \$10 checks for late registrations be retained since that is the appropriate statutory sanction for such tardiness.



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Miscellaneous Matters:

An inquiry was made regarding the views of Commission members on scheduling meetings during the months of July and August. After brief discussion, the decision was made that meetings will be held during July and August, on the regular dates.

The Director stated that he had spoken to the Appointments Clerk in the Governor's office concerning the appointments to fill the positions of two Commission members whose terms expire this year. He was asked to determine if each of those Commission members would accept a reappointment if offered. Both indicated that they would, and the Director stated that he would communicate those responses to the Governor's office.

The Director raised the matter of scheduling public hearings under the APA rulemaking process and inquired regarding the preference of Commission members. Discussion concluded with the determination that hearings in July would be preferable to August because of summer vacation scheduling problems for many Mainers. The APA process requires that two Commission members be present at each public hearing, but the same two Commission members do not have to attend all hearings. Mrs. Henry indicated that she would not be able to attend any hearings that may be scheduled between July 14<sup>th</sup> and July 26<sup>th</sup>.

Mrs. Henry raised a question about whether there is any restriction on Commission members making contributions to candidates for office in the state. Chairman Webster indicated that no such prohibition existed, but that a Commission member should disqualify him/herself from consideration of any matter that may come before the Commission involving an individual to whom the Commission member may have given a contribution.

The Director circulated a copy of a current article supplied by Ms. Allison Smith of the League of Women Voters. Mrs. Nelson requested that in the future the name of the person who supplied such items be indicated on the article before it is provided to Commission members,

On motion by Mrs. Henry and seconded by Mr. Mackenzie, the Commission adjourned at 12:45 p.m. The June meeting will be held on June 10<sup>th</sup>, 1998, the agenda of which primarily will include consideration of the draft rules on implementation of the Maine Clean Election Act.