



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

April 29, 1999

Minutes of the April 14, 1999, meeting of the Commission on Governmental Ethics and Election Practices held in the First Floor Hearing Room, PUC Building, 242 State Street, 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 Commission Assistant Diana True.

Chairman Webster called the meeting to order at 9:10 a.m.

In consideration of the Commission's practice of addressing agenda items out of order to accommodate the attendance of public participants regarding particular items, the Commission considered the published agenda as follows:

Agenda Item #2: Patricia A. Peard, Esq. and Christine Young Complaint/Inquiry Regarding The Christian Civic League of Maine (The League): The Commission continued consideration of this matter tabled from the March 10, 1999 meeting. Chairman Webster invited Ms. Christine Young to explain the basis of her inquiry, following which Attorney Whiting addressed new materials that had been presented by Ms. Young subsequent to her original inquiry.

Ms. Cronkhite inquired of Attorney Whiting regarding the "primary purpose" of The League, to which was responded that the essence of The League's mission is to take a Christian perspective on legislation and to present a voice to people who may have a similar perspective.

Chairman Webster asked about Attorney Whiting's letter of April 7, 1999, particularly about the difference between the statements regarding the "need for funds" compared to a "solicitation for funds." Attorney Whiting explained that he considered a "solicitation" to be a "call for action," for example, "please give us money," versus a statement such as "please pray that God gives us the resources to do" whatever, etc. The distinction, Attorney Whiting stated, was between a "call to action" versus a mere "statement of need for money." In response to Mrs. Nelson's question, Attorney Whiting acknowledged that the "People's Veto" web page and the pledge form found therein did constitute a "solicitation" under the distinction he made. Mrs. Nelson also inquired when the so-called "slip up" to which Attorney Whiting referred in his correspondence began, to which Attorney Whiting responded that he did not know.

Mr. Mackenzie then inquired of Attorney Whiting regarding the application of the so-called "primary purpose rule." Attorney Whiting responded that Attorney James Bopp had raised and briefed that issue the previous month.

Regarding the statement in the last paragraph on page 6 of Attorney Whiting's materials, Judge Henry inquired whether it was possible to segregate that statement from the general purpose of The League. Attorney Whiting responded that he has a great concern regarding The League's



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“slip ups” and whether the contributions in question would inadvertently result in The League being required to register as a political action committee and report all contributors to The League. He indicated that The League received over \$300,000 in contributions, of which the amounts in question here are only a very small part, and that a requirement for The League to report the names of all of its contributors would be well beyond the scope of the applicable statute and infringe upon free speech issues.

Counsel Gardiner inquired of Attorney Whiting regarding the \$6,111 in “cash sales” reported in his letter, and asked why that amount had not been shown as checks written to the political action committees. Attorney Whiting responded that they should have been itemized as checks to the PACs, and accordingly also should be reflected as contributions received by one or the other of the two PACs. Attorney Whiting indicated that he had asked The League’s bookkeeper whether the checks had been endorsed over to one of the PACs, and that he had been advised that the checks had been cashed and new checks sent to one of the PACs.

Chairman Webster inquired of Attorney Whiting which checks were being represented as having been written to The League and which to the PACs. Attorney Whiting responded that if The League had received a check designated on the check or in a cover letter as intended for the benefit of a referendum, it went to a PAC, otherwise a check to The League went to The League’s general operating fund. Chairman Webster then asked why activity as described by Attorney Whiting does not qualify as a “funding and transfer mechanism.” Attorney Whiting responded that the activities are similar, but that it is not the primary purpose of The League to act as a funding and transfer mechanism and, therefore, The League’s conduct in this case should not be considered as covered by that provision.

Mrs. Cronkhite inquired whether The League at any time had asked people to give money directly to the PACs. Attorney Whiting responded that he had not seen anything in writing to suggest that, but that he had been told by Mr. Heath, The League’s Executive Director, that Mr. Heath had told people to give any money specifically intended for the benefit of a referendum directly to the PACs.

Mrs. Nelson then asked Attorney Whiting how he would define the term “slip up,” citing the significant number of checks reported in the materials before the Commission. Attorney Whiting responded that he views a “slip up” as something done “unintentionally” and “not often.” He acknowledged as a problem the possibility of the continued existence of The League’s web site containing the original “solicitation.”

The Honorable Priscilla Lane, former State Representative and member of The Christian Civic League of Maine, indicated her desire to address the Commission. Attorney Whiting objected to other members of The Christian Civic League attacking The League and using Channel 8 as a “staged media event” and turning the hearing into a mockery. Chairman Webster acknowledged Attorney Whiting’s objection but informed him of the Commission’s statutory obligation to hold

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full, fair, and open meetings at which the public is entitled to participate fully in the process by which the Commission considers the facts of an individual case and the application of those facts to the laws that the Commission is charged with enforcing.

Ms. Lane then informed the Commission of the existence of League records suggesting that other "fund codes" may have been used to account for other contributions (not yet reported to the Commission) received by The League for the two referenda at issue. She provided documentation with references to fund codes PVETO, VETO, and AS527/AS604/AS605 apparently totaling \$15,886. She also questioned contributions of \$6,241 and \$6,136, essentially raising concerns regarding the accuracy of the information provided by The League to the Commission, including a check for \$10,000 for which no fund code was provided. Attorney Whiting responded that he would investigate the information raised by Ms. Lane and provide clarification to the Commission.

Attorney Patricia Peard stated that she did not intend to argue the "primary purpose" test or the "de minimis" standard, and that she had no information to offer regarding the checks in question. She stated, however, that she knows with certainty that none of the checks representing alleged contributions to the PACs are reflected on the PAC reports as contributions from The League. She stated her opinion that the facts presented represented more than a "slip up," that things are improper and have nothing to do with "primary purpose." She stated that it is somewhat of a "red herring" to suggest that The League would have to report all contributions for whatever purpose received if they are required to register as a PAC because of its solicitation for the two referenda. She stated her belief that there is no way Attorney Whiting can say with certainty how much money The League received for the "People's Veto" referendum. She noted that all operating costs for both of the PACs came either from The League or the Christian Coalition, and that neither of the PACs could have existed or been run without the support of those two organizations. Attorney Whiting noted that the PAC reports did show the in-kind contributions received by the PACs from The League. Ms. Young confirmed that she, too, had examined the PAC reports and that they do not show any contributions, either in cash or by check, from The League or the Christian Coalition.

The Honorable June Meres, former State Representative, indicated her desire to address the Commission regarding the accuracy of the information received from The League. She addressed the matter of the unexplained fund codes previously addressed by Ms. Lane. She indicated that she had contributed to The League in the past, but that she had no other history of activity with The League. However, she did remember the lobbying activities of The League when she served in the Legislature, and noted that she has been solicited by The League for these issues. She stated that she is concerned about the lack of disclosure by The League of its activities regarding the two referenda, and particularly regarding \$15,886 reflected in the three unexplained fund codes she questioned. Attorney Whiting again responded that he would find out about those codes.

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Attorney Ronald Kreisman addressed the Commission regarding two concerns: (1) that the Commission not require the disclosure of all contributors to a non-profit organization of the type represented here; and (2) clarity of the Commission's interpretation of the underlying statute. Regarding his concern for clarity, he raised two points: (1) the meaning under PAC definition element #4 of "direct and earmarked" contributions (which was directly related to Mr. Mackenzie's motion that disposed of the matter regarding the Christian Coalition of Maine at the March meeting); and (2) the meaning of the term "funding and transfer mechanism." He stated that there are reasons individuals contribute to a 501(c)(3) organization rather than a PAC; namely, that those contributors remain anonymous, and that they receive a tax benefit. Therefore, organizations would prefer to fund political questions by receiving money into a 501(c)(3) organization rather than a PAC. He also requested clarity from the Commission regarding when the definition of the PAC is triggered so that an entity that is in the early stages of "initiating" a political question would know when it must register as a PAC and begin to submit financial activity reports.

Mr. Mackenzie asked Attorney Kreisman whether the Family Planning Association would be a political action committee if it solicited money from its supporters explicitly for the partial birth abortion issue, received more than \$1,500, and then contributed that money to a PAC? Attorney Kreisman replied that, under the Commission's interpretation of PAC definition element #4, if the Family Planning Association solicited funds earmarked for an initiative and then gave more than \$1,500 of those funds to a PAC, it would trigger the PAC registration and reporting requirements. He then stated that he has advised the Family Planning Association that it should not expressly solicit earmarked funds for a political question if it did not want to raise a constitutional problem.

Judge Henry asked Attorney Kreisman if he saw a distinction between a check received for an organization's general fund rather than one designated for a particular purpose, to which Attorney Kreisman responded that an earmarked solicitation that resulted in receipt of a check designated for that purpose would trigger the PAC reporting requirements.

Attorney Whiting noted that The Christian Civic League of Maine is a 501(c)(4), rather than a 501(c)(3) organization.

Attorney Gordon Scott referred the Commission's attention to the North Carolina Right to Life case (i.e., *North Carolina Right to Life, Inc., et al. v. Gary O. Bartlett, et al.*, 4th Cir., 2/17/99) regarding the issue of PACs that receive money and spend it to do issue advocacy.

At 10:45 a.m. Chairman Webster ordered a brief recess, and at 10:55 a.m. recalled the Commission meeting to order.

Counsel Gardiner addressed the Commission. She suggested that the Commission focus on the facts of the complaint before them and not try to address hypothetical situations that may not be

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presented. She discussed the evidence of direct solicitations and the receipt of earmarked contributions received by The League that had been deposited and an equivalent amount of money apparently then sent to one or the other of the two PACs. She noted that the statute does not contain a definition of "funding and transfer mechanism," but that The League acknowledged receiving funds for the referenda and transferring an equal amount to one of the PACs. She discussed the reference to the phrase "spends for" in element #2 of the PAC definition and whether that phrase includes either spending directly or by contribution to a PAC. She discussed element #4 of the PAC definition, i.e. soliciting and spending earmarked funds for issue advocacy, and concluded that either definition element #2 or #4, or both, conceivably would be applicable to the facts of this case, concluding that it is the task of the Commission to interpret and apply the legislative scheme found in the wording of the statute, and not to determine the constitutionality of that statute.

Chairman Webster inquired of Counsel Gardiner what place the so-called "primary purpose" test has in the instant matter. She responded that how the "major purpose" test is applied depends upon the statute and facts. Where courts have looked to "major purpose," they have compared the burdens being imposed on the exercise of 1st Amendment rights compared to other rights. She also noted that courts have distinguished between the protections associated with issue advocacy compared to candidate advocacy, suggesting a greater level of protection for the exercise of 1st Amendment rights in cases involving issue advocacy. The "major purpose" test would not be a factor in the matter before the Commission. Counsel Gardiner noted that if funds had gone directly from their contributors to a PAC, this matter would not be before the Commission.

Chairman Webster then refocused the discussion to the identification of the task at hand, namely to determine whether The League was a PAC that had failed to register as such, noting that the Commission's task is not to make law, but rather to apply the law as the Commission interprets it to the known facts in order to reach its conclusion.

Mr. Mackenzie then moved and Judge Henry and Mrs. Nelson seconded as follows:

"Moved that the Christian Civic League of Maine did solicit funds and did spend more than \$1,500 in a calendar year to promote a referendum. Because it directly and explicitly solicited funds for the purpose of promoting a referendum, it should have registered as a political action committee, as required by law, and it should have reported those contributions, in excess of \$50, that were specifically designated for the purpose of influencing the referendum. The staff is directed to determine whether the Christian Civic League's failure duly to register as a political action committee incurs any penalty and, if so, to make recommendation to the Commission for action at its next meeting as to application of that penalty."

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Judge Henry commented that the 1st Amendment guarantees the right of free speech, but not to not know who is speaking. Mr. Mackenzie stated that he wanted it to be clear that the basis of his motion was the direct solicitation of contributions with the intent to affect the referenda, and that if an organization does not directly solicit for the purpose of influencing a political question, its action does not trigger the PAC reporting requirements.

In response to a request for clarification regarding the interpretation of the term "funding and transfer mechanism" and the issue of the timing of the registration requirements with regard to the "initiation" of activity in support or opposition to a political question, Judge Henry noted that those issues are not before the Commission in the facts of this matter.

Mr. Hain requested the Commission to provide clarification regarding its interpretation of the PAC definition and when the various elements would be considered by the Commission to trigger the registration and reporting requirements. Chairman Webster responded that he was reluctant to engage in what may be construed as appellate activity based on hypothetical facts, that the issue is too complex to be addressed hypothetically, and that the Commission should address only those issues before it based on the facts presented.

Assuming that the Commission's decision was made under element #4 of the PAC definition interpreting "spend" to include "contribution," Attorney Peard requested to know whether that interpretation of "spend" may be transferred to element #2 of the definition. Again, Chairman Webster declined to speculate because the facts of the instant case do not require the Commission's interpretation and application of element #2.

At the conclusion of the discussion, the motion was approved unanimously.

Mrs. Nelson then requested whether the staff knew if the PACs in question in this matter had reported the receipt of contributions from The League, to which Mr. Hain responded that he did not have that information but would examine the PAC reports and make appropriate inquiries of the PACs if the alleged contributions had not been reported.

Mrs. Nelson then thanked the public for participating in the Commission's consideration of this matter and expressed her appreciation on behalf of the Commission for the manner in which this complaint was handled.

Agenda Item #1: Approval of Minutes of March 10, 1999 Meeting: Mr. Mackenzie moved, Judge Henry seconded, and the Commission voted unanimously to approve the minutes of the March 10, 1999 meeting as presented.

Agenda Items #3A, 3C, 4A, and 4B: Late Lobbyist Disclosure and Party Committee Reports: Judge Henry moved, Mr. Mackenzie seconded, and the Commission voted unanimously to adopt the staff recommendations regarding disposition of each of the items as included in the Agenda.

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Agenda Item #3B: Late Lobbyist Disclosure Report; Lee J. Cyr: Chairman Webster recused himself from consideration of this matter, as a result of which Mr. Mackenzie assumed the Chair. Mrs. Nelson then moved, Judge Henry seconded, and the Commission voted 4-0 (Mr. Webster abstaining) to adopt the staff recommendation regarding disposition of this item.

Chairman Webster then resumed the Chair.

Agenda Item #5: Letter to Honorable A. David Trahan: After presentation of background information by Mr. Hain, Chairman Webster indicated that he was reluctant to "ratify" the letter as requested because that could be construed as suggesting that the Executive Director did not have the authority to issue the letter, which the Chairman stated would not be an accurate conclusion, the Director having the authority and responsibility to issue such letters when time constraints required. Therefore, no further action was required.

Agenda Item #6: Legislation Briefing: Mr. Hain summarized the materials that previously had been provided to Commission members, responding to questions about the status of particular items of legislation.

Agenda Item #7: Penalties Status: Mrs. Nelson moved, Mr. Mackenzie seconded, and Commission members voted unanimously to approve the list of penalties assessed for the reasons stated in the agenda item materials and to take appropriate action for their collection.

Agenda Item #8: Maine Clean Election Act Forms: After brief discussion, Commission members unanimously agreed to table consideration of this item until the May meeting to give members more time to review of the forms.

Agenda Item #9: Electronic Filing Status Report: Mr. Hain summarized the events to date regarding the solicitation of proposals, the receipt of bids, and the next steps in the bid review and selection process that includes Mr. Mackenzie and Mr. Hain as members of the Review Committee, along with Ms. Betty Lamoreau of the Division of Purchases and Mr. David Ellis of the Bureau of Information Services.

Agenda Item #10: Informational Items: No action was required on these items presented solely for the information of Commission members.

Agenda Item #11: Executive Session: At 12:10 p.m. Mrs. Nelson moved, Mr. Mackenzie seconded, and members agreed unanimously to go into executive session to receive a status report from Counsel Gardiner on the lawsuits challenging the lobbyist registration fees and the Maine Clean Election Act. At 12:16 p.m., Mr. Mackenzie moved, Mrs. Nelson seconded, and members agreed unanimously to go out of executive session. No action of the Commission in Executive Session required ratification.

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Chairman Webster then announced an additional Agenda Item #12, not included in the formal Agenda for consideration, and turned the floor over to Mrs. Nelson, who announced that she had communicated to the Governor her intention to resign as a member of the Commission effective May 1, 1999, or at such time thereafter as her replacement is appointed by the Governor. Commission members expressed their surprise at Mrs. Nelson's announcement, thanked her for her contribution of her service during the past two years, and wished her well in her future endeavors.

Mr. Hain then requested to change the scheduled date of the May meeting to Monday, May 10, 1999, instead of its regularly scheduled date of Wednesday, May 12. After discussion, members agreed that the change in date to May 10 would be acceptable for all except Mrs. Nelson, who indicated that, in the event the Governor has not appointed her replacement by May 1, she would not be able to be present because of a previous schedule conflict.

On motion and unanimous agreement, the Commission adjourned at 12:25 a.m.

Respectfully submitted,



William C. Hain, III
Executive Director