



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

October 5, 1999

Minutes of the September 8, 1999, meeting of the Commission on Governmental Ethics and Election Practices held in the MLRB Hearing Room, PUC Building, 242 State Street, Augusta, Maine.

Present: Chairman: Peter B. Webster; Members: Hon. Virginia Constantine, Linda W. Cronkhite, and Hon. Harriet P. Henry; Director William C. Hain, III; Counsel Phyllis Gardiner; and Candidate Registrar Dorothy Perry.

Chairman Webster called the meeting to order at 9:00 a.m.

In keeping with its practice of addressing agenda items of those personally present first, the Commission considered the published agenda items as follows:

Agenda Item #1: Introduction of New Commission Staff Members: Mr. Hain introduced Mr. Andrew Seaman, new Commission Auditor, and Ms. Sally Costello, new Commission Accountant. Both were retained as employees effective August 30, 1999.

Agenda Item #3: Rep. Stavros J. Mendros Request for Reconsideration: Representative Mendros addressed the Commission pursuant to his request for reconsideration of the Commission's action on July 12, 1999, in assessing a penalty of \$1,000 for the willful failure to file a statement of sources of income and liabilities as required by 1 MRSA sections 1016-A and 1016-B, and provided a detailed explanation of his failure to file the report as required. Judge Henry inquired regarding the correspondence between the Commission and Representative Mendros. Representative Mendros acknowledged the repeated reminders he had received, but indicated that he thought the report would be handled as any other report submitted late and that he would not incur such a large penalty. Chairman Webster noted that the Commission in July 1999 unanimously had determined that Representative Mendros had willfully failed to submit the required report, reflecting the extensive reminder communications and Rep. Mendros' apparent knowledge that the report was due and that, unless any member moved for reconsideration of that original vote, no further action by the Commission was warranted. No member made such a motion. The original determination of the Commission remained unchanged.

Agenda Item #9: Contribution Limitation Violations: Mr. Hain presented the background of the problem that arose with the report of possible violations of contribution limitations by candidates for the Portland City Council. Review of Commission records of semiannual reports filed on July 15 disclosed several apparent violations involving State legislative candidates. The matter of the Commission's authority to exercise jurisdiction over cases arising in Portland was discussed. Attorney Gary Wood, Portland City Counsel, addressed the Commission. After discussing the statutory provisions regarding contribution limitations, Judge Henry moved, Ms. Constantine seconded and the Commission unanimously directed Mr. Hain to include any suspected Portland (and possibly South Portland) campaign contribution violation cases on the agenda for the October meeting. The following apparent violations then were addressed:

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Agenda Item #9A: Thomas J. Connolly: Mr. Connolly addressed the Commission in considerable detail, stating that he had been unaware of the new limitations. He indicated that his acceptance of a contribution in excess of the limitation was an error rather than a knowing or intentional act and that he had already taken action to return the amount in excess of the contribution limitation to its source. After the Commission's discussion of the extent of its responsibility to address the element of "knowledge" in determining whether a violation of the contribution limitation statute had possibly occurred, Judge Henry moved, Ms. Constantine seconded, and the Commission voted unanimously to dismiss the matter involving Mr. Connolly. Ms. Constantine noted a distinction between actions that arose due to lack of information compared to intentional acts of wrongdoing.

Agenda Item #9C: Senator Marge Kilkelly: Senator Kilkelly addressed the Commission and explained that the contribution from HWW PAC that was reported as having been received on February 8, 1999, actually had been received in December 1998 and incorrectly reported. Mr. Hain confirmed that the HWW PAC report corroborated that contribution as having been made on December 8, 1998. Based on that information, Judge Henry moved, Ms. Constantine seconded, and the Commission unanimously voted to dismiss the matter involving Senator Kilkelly.

Agenda Item #9E: Senator Anne M. Rand: Senator Rand addressed the Commission and explained that she had accepted a contribution in the amount of \$1,000 from Mr. Nalamalapu but had not known that the new contribution limitations applied to her. She stated that she learned that the new limits applied to all candidates, not just Maine Clean Election Act candidates, at a MCEA training session in August. She then contacted the Commission to determine how to proceed and was advised to await a determination by the Commission. She indicated that the \$1,000 contribution had been intended for the Senate 21 leadership PAC, but had been given to her in error. Chairman Webster inquired about the status of the excess contribution. She indicated that she had not repaid that, but would do so and file an amended report reflecting that fact. Judge Henry inquired regarding whether there had been any correspondence or action in the Legislature to make candidates aware of the new contribution limitations. Senator Rand responded that she was not aware of any, but that there would be now. Based on that information, Judge Henry moved, Ms. Constantine seconded, and the Commission voted unanimously to dismiss the matter involving Senator Rand provided she file an amended report reflecting the return of the excess contribution.

The Commission then addressed the matter of suspected improper dispositions of surplus funds. Mr. Hain explained the statutory provisions regarding the requirements for reporting surplus funds and deficits exceeding \$50 and the permissible uses that a candidate may make of surplus funds. The following apparent violations then were addressed:

Agenda Item #10C: Suzanne R. Scott: Judge Henry recused herself from consideration and action in the matter involving Ms. Scott. Ms. Scott addressed the Commission and explained that the expenditures in question were related to the completion of tax returns as a result of reportable income received by her campaign account and not for completion of her person tax documents,

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and consequently were campaign-related expenses. Based on that information, Ms. Constantine moved, Ms. Cronkhite seconded, and the Commission voted 3-0 (Judge Henry abstaining) to dismiss the matter provided Ms. Scott amends her report to reflect the fact that the expenditures were for campaign related purposes.

Agenda Item #10D: Sheriff Bryan T. Lamoreau: Sheriff Lamoreau addressed the Commission and explained that the questioned expenditure for construction of a storage shed for signs was campaign-related because he lost the use of the previous storage location, intended to run for office in the future, and needed a storage location because of previous losses of signs when stored outside. He stated that if the expenditure had been made before the election it would have been permissible and, therefore, he thought that it also would be permissible afterward for the same purpose. Based on that information, Judge Henry moved, Ms. Cronkhite seconded, and the Commission voted unanimously to require Sheriff Lamoreau to file a letter explaining the campaign-related purpose of the expenditure and assess a \$10 penalty for failure to register within the required time after accepting a contribution while in a surplus status.

Chairman Webster declared a 10 minute recess at 10:50 and the Commission reconvened at 11:00.

Agenda Item #2: Ratification of Minutes: Judge Henry moved, Ms. Constantine seconded, and the Commission voted unanimously to approve the minutes of the August 11, 1999, meeting as submitted.

Agenda Item #4: Paul F. Driscoll, Esq., Request for Commission Opinion: Mr. Hain discussed the background of several letters from and a meeting with Mr. Driscoll requesting the Commission's position on certain questions regarding the interpretation and application of the political action committee statutes as applied to issue referenda. Chairman Webster informed the Commission that Mr. Driscoll's spouse is a partner in Mr. Webster's law firm. He also expressed his concern about the Commission providing legal advice in response to public request and particularly his concern about the Commission being bound by any purported "agreements" in which the Commission had not participated. He and Judge Henry also expressed concern about the inability to identify the source of contributions that may be received by "passing the plate" and the problem of meeting the reporting requirements merely by the method used to collect contributions as reflected in Mr. Driscoll's letter. Mr. Hain suggested that he and Counsel Gardiner draft a letter to be approved by Chairman Webster on behalf of the Commission reflecting the Commission's stated concerns and reluctance to provide legal advice in response to Mr. Driscoll's letter. Mr. Hain was directed to proceed as he suggested.

Agenda Item #5: Commission Penalty Assessment Authority: The Commission reviewed the various statutory provisions governing the determination of penalties in the lobbyist disclosure, candidate, and political action committee reporting laws. Mr. Hain suggested that the draft "omnibus" bill currently before the Legislature would be available as a vehicle for possible statutory changes to provide the Commission with more discretion in assessing penalties and not

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to be constrained by the differing definitions of "mitigating circumstances" provided by the existing statutes.

Agenda Item #6: COGEL Conference: The conference registration materials were discussed. Chairman Webster and Judge Henry indicated an interest in attending.

Agenda Item #7: Electronic Filing, etc. Status: Mr. Hain announced that he will be meeting with a group of interested Legislators appointed by the Speaker and members of the public on October 5 to discuss the possible revision of the Campaign Finance Report form in preparation for its eventual use in the development of electronic filing capabilities.

Agenda Item #8: Status of Lawsuits: Counsel Gardiner briefed the Commission on the status of the various pending lawsuits involving the Commission as defendants.

Agenda Item #9B: Annette M. Hoglund Campaign Contribution: Based on the request by Ms. Hoglund's attorney, Judge Henry moved, Ms. Constantine seconded, and the Commission voted unanimously to table further consideration of this item until the October meeting.

Agenda Item #9D: E. Stephen Murray Campaign Contribution: Mr. Murray previously filed an amended report and an affidavit explaining the erroneous date on his original report. Based on that information, Ms. Cronkhite moved, Ms. Constantine seconded, and the Commission voted unanimously to dismiss the matter involving Mr. Murray based on the Commission's action in the Kilkelly case.

Agenda Item #9F: Robert W. Spear Campaign Contributions: Mr. Hain summarized the matter involving Mr. Spear's report, including the most recent explanatory correspondence from the Deputy Treasurer. After clarifying questions and discussion by Members, Mr. Hain recommended that this matter be tabled pending further development of the report information and an opportunity for response to those developments by Mr. Spear. Based on that discussion and recommendation, Judge Henry moved, Ms. Constantine seconded, and the Commission voted unanimously to table further consideration of this item until the October meeting.

Agenda Item #10B: Sheriff Mark Dion Use of Surplus Funds: Chairman Webster recused himself from consideration of this matter and Judge Henry assumed the Chair. Based upon a letter from Sheriff Dion explaining that the reported expenditure in question was to pay for legal expenses as a result of a ballot issue associated with his previous campaign, Ms. Constantine moved, Ms. Cronkhite seconded, and the Commission voted 3-0 (Chairman Webster abstaining) to dismiss the matter regarding the questioned use of surplus funds and to inform Sheriff Dion that the unpaid penalty of \$170.45 should be paid. Thereafter, Mr. Webster resumed the Chair.

Agenda Item #11A: Megan D. Hannan Late Lobbyist Report: Mr. Hain summarized the matter as reflected in the agenda. Judge Henry moved, Ms. Cronkhite seconded, and the Commission voted 3-0 (Chairman Webster abstaining) to assess a penalty of \$100 for this late filing.

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Agenda Item #11B: Charlotte Pease Late Lobbyist Report: Mr. Hain summarized the matter as reflected in the agenda. Judge Henry moved, Ms. Cronkhite seconded, and the Commission voted unanimously to assess a penalty of \$100 for this late filing.

Agenda Item #12A: Senator Richard Carey Late Candidate Report: After considering correspondence from Senator Carey, Ms. Constantine moved, Ms. Cronkhite seconded, and the Commission voted 3-1 (Judge Henry opposed) to assess the computed penalty of \$124.45 based on the statutory formula for computing late filing penalties.

Agenda Item #12B: Senator Betty Lou Mitchell Late Candidate Report: After considering correspondence from Senator Mitchell, Ms. Constantine moved, Ms. Cronkhite seconded, and the Commission voted 3-1 (Judge Henry opposed) to assess the computed penalty of \$127.05 based on the statutory formula for computing late filing penalties.

Agenda Item #12C: Mr. Jones F. Gallagher Late Candidate Report: After considering correspondence from Mr. Gallagher, Ms. Constantine moved, Judge Henry seconded, and the Commission voted unanimously to waive in full the assessment of a penalty based on the representations made by the U. S. Postal Service employee regarding Mr. Gallagher's failure to receive notice of the report, a mitigating circumstance under the statute.

At 12:15 p.m., on motion and unanimous vote, the Commission went into executive session to discuss the recently filed lawsuit, *Volle v. Webster, et. al.*, challenging the statutory definition of a political action committee for registration and reporting purposes. At 12:30 p.m. Judge Henry moved, Ms. Cronkhite seconded, and the Commission voted unanimously to go out of executive session and resume regular order. No actions were taken during the executive session that required ratification in open session.

Agenda Item #13: Prototype Performance Budgeting: Mr. Hain briefed Members regarding the State's new performance budgeting process. After discussing the materials contained in the agenda packet and distributing additional materials offered by Judge Henry on the subject, Chairman Webster suggested that Members review those materials and independently provide any suggestions to Mr. Hain not later than September 14 in order to meet the due date for submission of the required prototype performance budget documents to the Bureau of Budget.

On motion and unanimous vote, the Commission adjourned at 1:20 p.m.

Respectfully submitted,



William C. Hain, III
Executive Director