



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

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**September 14<sup>th</sup>, 2000**

Minutes of the September 14<sup>th</sup>, 2000, meeting of the Commission on Governmental Ethics and Election Practices held in the Commission Hearing Room, 242 State Street, Augusta, Maine.

Present: Chairman: Peter B. Webster; Members: Hon. Virginia Constantine, Dr. Linda W. Cronkhite, and Hon. Harriet P. Henry; Executive Director William C. Hain, III; Counsel Phyllis Gardiner, Esq.; and Commission Assistant Diana True.

Absent: Hon. Michael Carpenter.

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

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

**Agenda Item #2: James B. Moulton Request for Reconsideration**

By letter dated June 12<sup>th</sup>, 2000, Mr. Barry Watson questioned the absence of an attribution statement for an advertisement in *The Gray News* supporting Mr. Jim Moulton for State Senate District 26. The Commission staff had not received a response from Mr. Moulton inquiring about the circumstances of the complaint. At the July 2000 meeting, the Commission voted unanimously to assess a \$100 penalty for failure to include the required "attribution" statement. Mr. Moulton requested the Commission's reconsideration of its previous action based upon the information provided in his letter dated August 24<sup>th</sup>, 2000.

Mr. Moulton addressed the Commission, explaining the circumstances surrounding his failure to accept delivery of the June 16<sup>th</sup> Commission letter. Following discussion of the information provided by Mr. Moulton, Judge Henry moved, Ms. Cronkhite seconded, and the Member voted unanimously to reconsider the action taken by the Commission at the July 2000 meeting. Thereafter, Ms. Cronkhite moved, Judge Henry seconded and Commission Members voted 3-1 (Ms. Constantine opposed) to rescind the assessment of a \$100 penalty in this matter.

**Agenda Item #5: Maine Clean Election Act Appeal; Matthew J. Sanfacon**

Mr. Sanfacon appealed the denial of his Request for Certification as a Maine Clean Election Act candidate. That denial was based on:

- (1) Submission of Declaration of Intent after close of qualifying period;

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- (2) Receipt of qualifying contributions before start of qualifying period and after Request for Certification was signed: and
- (3) Use of ineffective Durable Power of Attorney by Agent (Principal out of country August 12<sup>th</sup>-23<sup>rd</sup>) to sign all Qualifying Contributions Receipt and Acknowledgment forms and Seed Money Report.

Mr. Sanfacon and his attorney, Jeff Ashby, Esq., both addressed the Commission on the issues that served as the basis for the staff denial of his request for certification, explaining the circumstances regarding the action taken in each case. Mr. Hain acknowledged that each individual situation alone may not have been a sufficient basis to warrant denial of the request for certification, but the aggregate total of all three bases warranted consideration by the Commission. Mr. Hain recommended specific steps to remedy each of the problems that had been identified. Mr. Hain recommended that the Commission waive the original deficiencies and approve the certification of Mr. Sanfacon as a Maine Clean Election Act candidate if Mr. Sanfacon takes the appropriate steps to remedy each of the original deficiencies. Mr. Sanfacon agreed to take such steps as are necessary to do so.

Based on those representations, Judge Henry moved, Ms. Cronkhite seconded to waive each of the technical deficiencies and approve certification of Mr. Sanfacon as a Maine Clean Election Act candidate. Ms. Constantine offered a “friendly amendment” that Mr. Sanfacon be directed to work with the Commission staff to resolve the technical problems, including affirmation of the signatures submitted by authority of Mr. Sanfacon’s power of attorney. The motion as amended was approved unanimously.

### **Agenda Item #6B: Interpretation of Maine Clean Election Act; Treatment of Loan Repayment for Computing Matching Funds**

A nonparticipating candidate who made a personal loan to his campaign before the primary election had received sufficient contributions since the primary to repay that loan. The candidate requested to know whether the total of all contributions and expenditures since the primary election should include the amount of the loan repayment for the purpose of filing an accelerated 101% report and triggering the payment of matching funds to an MCEA opponent.

Following a lengthy factual explanation of the situation by Mr. Frederic Johnson, a detailed explanation of the statutory and regulatory provisions that apply to consideration of this matter by Mr. Hain, and testimonial contributions from John Brautigam, Esq., Executive Director, Maine Citizen Leadership Fund, and Ms. Heather Priest regarding Commission consideration of this matter, Ms. Constantine moved, Ms. Cronkhite seconded, and Commission Members voted unanimously to interpret the totality of the statutory provisions to exclude the amount of loan repayments from “contributions” provided the loan is repaid before occurrence of the triggering event for computing matching funds. Any loan amount that is not repaid should be included as a contribution from the candidate in computing total contributions for determining matching funds.

Chairman Webster announced a brief recess at 11:05 a.m. The Commission reconvened at 11:15 a.m.

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### **Agenda Item #7: Thomas J. Harder Complaint Concerning Candidate Alton Morgan**

Mr. Harder filed a complaint against Mr. Morgan, candidate for Maine State House District 27, alleging a violation of the Hatch Act based on Mr. Morgan's status as a Federal employee of the U. S. Census Bureau. Mr. Harder submitted a sworn affidavit in support of his original letter. Representative Adam Mack appeared on behalf of Mr. Harder and expressed concerns regarding the identification of the correct agency responsible for addressing situations such as Mr. Harder had identified.

Following Commission discussion, Chair Webster informed Representative Mack regarding the Commission's limited jurisdiction as defined by State statute and the limitations on the Commission's authority to act on matters that are not included within that jurisdiction. Judge Henry and Ms. Constantine both agreed with the Chair's conclusion regarding the lack of jurisdiction for the Commission to take any action in this matter.

Mr. Hain suggested that he prepare a response advising Mr. Harder that no State law prohibits a Federal employee from being a candidate for State elective office and, therefore, the Commission lacks jurisdiction over this complaint. However, since the Federal Hatch Act does prohibit a Federal Employee from engaging in partisan political activity (possibly including candidacy for State elective office), it may be appropriate for him to file his complaint with the U. S. Office of Special Counsel in Washington, D.C., the appropriate Federal entity with jurisdiction over such matters.

### **Agenda Item #1: Ratification of Minutes**

Judge Henry moved, Ms. Constantine seconded, and the Commission voted unanimously to approve the minutes of the August 9<sup>th</sup>, 2000, meeting as distributed.

### **Agenda Item #3: Reporting Form for Membership Organizations and Corporations**

Ms. Constantine moved, Ms. Cronkhite seconded and Commission Members voted unanimously to approve the form for reporting communications by membership organizations and corporations pursuant to the Commission's action at the August meeting.

### **Agenda Item #4A: Candidate Penalty Determination; Donald H. Gean**

Following a brief summation by Mr. Hain of the circumstances surrounding Mr. Gean's late filing as shown in the meeting agenda and provided in greater detail to Members in their meeting packets, Ms. Constantine moved, Ms. Cronkhite seconded, and Commission Members unanimously approved the assessment of a penalty of \$64.55, reducing the statutory maximum penalty by 50% based on the mitigating circumstances presented by Mr. Gean.

### **Agenda Item #4B: Candidate Penalty Determination; Jacqueline Lundeen**

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Following a brief summation by Mr. Hain of the circumstances surrounding Ms. Lundeen's late filing as shown in the meeting agenda and provided in greater detail to Members in their meeting packets, Ms. Constantine moved, Judge Henry seconded, and Commission Members voted 2-2 (Ms. Cronkhite and Judge Henry opposed) to assess a penalty of \$65.04, reducing the statutory maximum penalty by 75% based on the mitigating circumstances presented by Ms. Lundeen. Having failed to receive a majority of the votes, the motion failed.

Thereafter, Ms. Cronkhite moved, Ms. Constantine seconded, and the Commission voted unanimously to assess a penalty of \$130.08, reducing the statutory maximum penalty by 50% based on the mitigating circumstances presented by Ms. Lundeen.

**Agenda Item #6A: Interpretation of Maine Clean Election Act; Seed Money Contribution**

A replacement candidate who requested Maine Clean Election Act (MCEA) certification reported seed money contributions totaling \$500.00 (the statutory limit) and a personal loan of \$148.30 to his campaign that had been repaid. The total of actual expenditures for the campaign was \$500.00 (\$351.70 for printing and \$148.30 for advertising). The statutory definition of "contribution" includes a loan. Therefore, by strict statutory construction the total of contributions would be \$648.30. However, the personal loan was made to alleviate a cash flow problem until other contributions could be collected, and the actual amount spent for the campaign did not exceed the seed money limit of \$500.00. The issue before the Commission was whether the candidate be certified under the Maine Clean Election Act.

Following discussion among Commission Members of the factual circumstances of this case and the governing statutory and regulatory authority, Judge Henry moved, Ms. Cronkhite seconded, and Commission Members voted unanimously to interpret the application of the totality of the statutory provisions to exclude the loan amount and repayments from seed money contribution limits and waive the limitations based on the fact that not more than \$500 (the statutory seed money limit) actually had been expended for the purpose of collecting qualifying contributions.

**Agenda Item #8: Consideration of Lobbyist Reporting Requirements**

Members engaged in a brief discussion of the background and considered the Commission's position regarding the rulemaking process for the purpose of clarifying the statutory requirements for lobbyist disclosure. Further discussion was tabled until the October meeting. Mr. Hain provided Members with copies of relevant statutory and reporting materials to review and offered to send additional background materials to all Members for consideration in preparation for the October meeting discussion.

**Agenda Item #9: Push Polling Rulemaking**

Commission Counsel Gardiner presented her analysis of several legal issues associated with push polling rulemaking and the options for Commission action regarding Chapter 133 of the Resolves, directing the Commission to adopt rules regulating push polling. Among those issues raised include the adequacy of the statutory authority for the Commission to engage in



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rulemaking on this subject, the possibility of constitutional issues associated with an impermissible delegation of authority, and possible constitutional issues associated with limitations that may be placed on polling activity. Alternative approaches were considered including the possibility of a written response to the Legislature addressing the lack of authority for the Commission to proceed without clearer direction from the Legislature. After individual Members commented on Counsel's briefing, Chair Webster suggested that the matter be tabled and included on the October agenda for further consideration and discussion based on additional research by Counsel.

**Agenda Item #10: Other**

Judge Henry requested that the October meeting be scheduled for Tuesday, October 10<sup>th</sup>. There being no objection, the October meeting was so scheduled. Ms. Cronkhite indicated that she would not be present for the November 8<sup>th</sup> meeting, but Judge Henry noted that she would be present for the November meeting contrary to her previous indication. Members set the November meeting for November 8<sup>th</sup> and the December meeting for December 13<sup>th</sup>.

There being no further business, on motion and unanimous vote, the Commission adjourned at 12:45 p.m.

Respectfully submitted,

William C. Hain, III  
Executive Director