



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

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**January 10<sup>th</sup>, 2001**

Minutes of the January 10<sup>th</sup>, 2001, 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. Michael Carpenter, Hon. Virginia Constantine, Dr. Linda W. Cronkhite, and Hon. Harriet P. Henry (telephonically); Executive Director William C. Hain, III; Counsel Phyllis Gardiner, Esq.; and Commission Assistant Diana True.

Chair Webster called the meeting to order at 10:05 a.m.

The Commission considered items on the published agenda as follows:

**Agenda Item #2B: Maine Republican State Committee Complaint Against Maine Democratic Party and Mr. Donald H. Gean**

By undated letter received October 31<sup>st</sup>, 2000, Dwayne Bickford, Executive Director, on behalf of the Maine Republican State Committee, filed a complaint requesting a determination regarding the legality of the expenditures listed on the Independent Expenditures Report dated October 27<sup>th</sup>, 2000, filed by the Maine Democratic State Committee on October 30<sup>th</sup>, 2000 in support of Senate Candidate Donald H. Gean. The complaint alleged both a violation of the contribution limitations provisions of Section 1015 and a violation of the attribution provisions of Section 1014. Mr. Carpenter recused himself from participation because of a past, personal association with Mr. Gean. Mr. Bickford summarized the complaint on behalf of the Maine Republican State Committee. Attorney Kurt W. Adams responded on behalf of the Maine Democratic Party. Based on the documents submitted and the information presented, Ms. Constantine moved, Ms. Cronkhite seconded, and the Commission voted 4-0 (Mr. Carpenter recused) to take no further action based upon the finding that the independent expenditure had been properly reported.

**Agenda Item #2D: Ms. Sandra S. Choate Complaint Against House Democratic Campaign Committee (HDCC)**

By letter dated November 1<sup>st</sup>, 2000, Ms. Choate filed a complaint against the House Democratic Campaign Committee questioning the nature of the expenditure by the Committee in support of Representative Elizabeth Watson and whether that expenditure constituted an in-kind contribution to Representative Watson's campaign or should have been reported as an independent expenditure that may have triggered matching funds for her opponent. Attorney

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Kurt W. Adams appeared on behalf of the HDCC and conceded that the \$875 expenditure that had been reported in support of Representative Watson had actually been incurred as an obligation on October 29<sup>th</sup>, 2001, and that a report of that expenditure should have been submitted on October 31<sup>st</sup>, 2000. The reported expenditure, therefore, was filed two (2) days late. Because of the uncertainty about whether any of the other expenditures included on the same report as the \$875 expenditure at issue, Mr. Carpenter moved, Ms. Constantine seconded and Members voted unanimously to table final consideration of the matter pending a determination by the staff of the appropriate penalty to be considered.

**Agenda Item #3D: Senator W. Tom Sawyer, Jr.**

Senator Sawyer requested a Commission determination of the appropriate penalty to be assessed for the one (1) day late filing of his 48-Hour Report of Late Contributions and Expenditures that was due on November 3<sup>rd</sup>, 2000 and filed on November 4<sup>th</sup>, 2000. A one (1) day late filing of a previous report had been paid without request for a Commission determination. Based upon the mitigating circumstances presented by Senator Sawyer in his letter of December 7<sup>th</sup>, 2000, and his oral presentation to the Commission, Mr. Carpenter moved, Ms. Constantine seconded and Members voted unanimously to assess a penalty in the amount of \$227.18 for the late filing in this case.

**Agenda Item #5A: Maine Democratic Party Complaint Against Maine Republican Party and Maine GOP Victory 2000/MRP**

By letter dated December 7<sup>th</sup>, 2000, Kurt W. Adams, Esq., Attorney for the Maine Democratic Party filed a complaint against the Maine Republican Party and Maine GOP Victory 2000/MRP alleging numerous violations of the reporting requirements for independent expenditures contained in 21-A M.R.S.A. § 1019; a violation of the registration requirements for political action committees contained in 21-A M.R.S.A. § 1053; a violation of the disclosure requirements of 21-A M.R.S.A. § 1014(2); and, because independent expenditures were made but not reported in 15 contests in which Maine Clean Election Act candidates were running, violation of the Maine Clean Election Act on those 15 occasions by Maine GOP Victory 2000/MRP. Judge Henry noted for the record that her husband works for the same law firm as Attorney Kenneth Cole. No objection was raised to her continued participation in the deliberation of this matter.

Attorney Adams appeared on behalf of the Maine Democratic Party and summarized the contents of his letter, concluding that the political communication at issue could lead to no other conclusion than that it constituted an “express advocacy” communication for which an independent expenditure report should have been filed. Ann R. Robinson, Esq., appeared on behalf of the Maine Republican Party and Maine GOP Victory 2000/MRP. She asserted, as noted in Attorney Kenneth M. Cole III’s letter of December 19<sup>th</sup>, 2000, that Maine GOP Victory 2000 is no more than a sub account of the Maine Republican Party and, as such, is not required to register and file reports as a political action committee. She also pointed out that the political communication in question does not say “vote for” or “vote against” any particular candidate, merely says “vote Republican on November 7<sup>th</sup>” and listed the Democrats who voted to tax



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social security and, therefore, should be considered “issue advocacy” and not “express advocacy” that would require the filing of an independent expenditure report.

Chair Webster suggested that the issue of whether the communication was “express” or “issue” advocacy should be resolved before proceeding with the remainder of the issues raised in the complaint. Mr. Carpenter moved, Ms. Constantine seconded and Members voted 3-2 (Chair Webster and Judge Henry opposed) to find that the political communication published by Maine GOP Victory 2000/MRP was an “express advocacy” communication that should have been the subject of an independent expenditure report. Mr. Carpenter then moved, Ms. Constantine seconded and Members voted unanimously to table further consideration of the matter pending development of the remaining issues based on the “express advocacy” determination.

**Agenda Item #5C: Maine Democratic Party Request for Investigation and Complaint Against Maine Unlimited PAC and Senator Richard A. Bennett**

By Kurt W. Adams, Esq., letter dated December 18<sup>th</sup>, 2000; the Maine Democratic Party submitted a request for an investigation and complaint against Maine Unlimited and Senator Richard A. Bennett, alleging numerous reporting violations and violations of the Maine Clean Election Act as detailed therein. Ann R. Robinson, Esq., appeared on behalf of Maine Unlimited PAC, noted that the political action committee’s treasurer, Mr. Daniel Billings, would be unavailable until later and proposed that further consideration of the matter be tabled. Judge Henry moved, Mr. Carpenter seconded, and Members voted unanimously to table further consideration pending additional fact-finding through Mr. Billings.

**Agenda Item # 5B: Kurt W. Adams, Esq. Request Regarding Return of Surplus Equipment**

By letter dated December 18<sup>th</sup>, 2000, Kurt W. Adams, Esq., challenged the requirement for Maine Clean Election Act candidates to liquidate at fair market value surplus campaign property purchased with public funds as the means of returning unspent revenues to the Maine Clean Election Fund on the basis that such requirement violates the Maine Administrative Procedures Act because the requirement was imposed without the benefit of public rulemaking. Judge Henry moved to require Maine Clean Election candidates to liquidate surplus campaign property at fair market value and return revenues generated thereby to the Maine Clean Election Fund. The motion failed for lack of a second. Ms. Alison Smith appeared on behalf of the Maine Citizen Leadership Fund and addressed that organization’s views on the issue, noting that the Maine Clean Election Act’s intent was to provide funds to candidates for campaign-related expenditures, not to enrich the candidate. She concluded that the use of public money to buy a computer, for example, might be campaign-related before the election, but continued use of that equipment after the election is not campaign-related.

Ms. Constantine observed that, while she understood and supported the concept of reimbursing to the Fund the fair market value of equipment and property purchased with revenues from the Fund, if the law and the Commission’s regulations are silent on that fact, that omission should be addressed. Attorney Adams reiterated his concerns that the reimbursement requirement was not

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supported by rulemaking and to require reimbursement after the election would constitute a change in the rules for Clean Election candidates in “mid-stream.” Mr. Hain responded that he had not only sent letters to all MCEA candidates who had reported purchasing property or equipment, but also he had contacted them by telephone to ascertain any problems that might be encountered in liquidating that property and none was noted to him. Chair Webster expressed concern about the possibility of a different set of expectations about the ability to retain property depending upon a Candidate’s success or failure in the election. Ms. Cronkhite then moved, Judge Henry seconded, and Members voted unanimously to notify candidates with reported property to proceed with the liquidation of that property or equipment purchased with MCEA funds and to return to the Fund the proceeds of that liquidation. Ms. Constantine then made a motion to submit a bill to the Legislature to address the issue, but withdrew that motion after Counsel confirmed that the problem could be addressed and resolved through rulemaking.

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

Judge Henry moved, Ms. Cronkhite seconded, and Members unanimously approved the minutes for the November 29<sup>th</sup>, 2000, meeting subject to revision of Agenda Item #4I to reflect Judge Henry’s firm opinion that the Commission should determine that the political communication at issue is “express advocacy” and be willing to litigate that issue, even to the extent of appealing to the Supreme Court, if necessary, in support of that position.

**Agenda Item #2A: Mr. Willard M. Kelley, Jr.**

By letter dated October 23<sup>rd</sup>, 2000, Mr. Kelley reported having erroneously accepted and returned an excess contribution in the amount of \$250 from the same source in the same election. The excess amount had been deposited in his campaign account, but repaid within approximately one (1) week thereafter upon discovery of the excess. Following brief discussion, Mr. Carpenter moved, Ms. Constantine seconded, and Members voted unanimously to take no further action, since excess contributions were returned immediately upon discovery and based on previous Commission actions, and to admonish Mr. Kelley against future violations.

**Agenda Item #2C: Senator Beth Edmonds Complaint Against Maine Unlimited PAC**

By telefax of November 4<sup>th</sup>, 2000 and letter dated November 6<sup>th</sup>, 2000, Senator Edmonds, successful State Senate candidate for District 23, filed a complaint questioning whether two (2) communications mailed within her district that were paid for and authorized by Maine Unlimited PAC should have been reported as independent expenditures in support of her opponent, Mr. David Snow, that may have triggered matching funds for Ms. Edmonds’ campaign. After review of the document at issue and brief discussion, Mr. Carpenter moved, Ms. Constantine seconded, and Members voted unanimously that the political communication did not constitute “express advocacy” and, therefore, to take no further action.



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**Agenda Item #2E: Letter from Ms. Patricia A. Callahan**

Ms. Callahan's letter to Ms. Cornelia Brown, Superintendent of Schools, Augusta School Department dated October 25<sup>th</sup>, 2000 regarding inclusion of a political advertisement paid for by a political action committee with employee paychecks was presented for the Commission's information only as there is no Commission jurisdiction or apparent violation of State law.

**Agenda Item #2F: Quorum Requirements**

Commission Counsel Phyllis Gardiner, Assistant Attorney General, memorandum dated November 7<sup>th</sup>, 2000, regarding "Quorum requirements" was presented for Commission information and future reference.

**Agenda Item #3A: Mr. Sumner Lymburner**

Following review of the facts by Mr. Hain, Mr. Carpenter moved, Ms. Constantine seconded, and Members voted unanimously to waive the penalty based upon Mr. Lymburner's *bona fide* effort to file his 6-Day Pre-General Campaign Finance Report in a timely manner.

**Agenda Item #3B: Representative Christina L. Baker**

Following review of the facts by Mr. Hain, Ms. Constantine moved, Ms. Cronkhite seconded, and Members voted unanimously to waive the penalty based upon Representative Baker's *bona fide* effort to file her 6-Day Pre-General Campaign Finance Report in a timely manner.

**Agenda Item #3C: Representative Brian Bolduc**

Following review of the facts by Mr. Hain, Mr. Carpenter moved, Ms. Constantine seconded, and Members voted unanimously to assess a \$500.00 penalty based upon the 5-day late filing of Representative Bolduc's 6-Day Pre-General Campaign Finance Report, noting two (2) previous late filings.

**Agenda Item #4A: Robert Madore, Treasurer, Maine United Auto Workers PAC Council**

Following review of the facts by Mr. Hain, Mr. Carpenter moved, Ms. Cronkhite seconded, and Members voted unanimously to assess a \$96.00 penalty based upon the 8-day late filing of Mr. Madore's 6-Day Pre-General Campaign Finance Report, noting one (1) previous late filing this biennium.

At 12:42 p.m., Ms. Constantine moved, Mr. Carpenter seconded, and Members unanimously voted to go into Executive Session for the purpose of consulting with Commission Counsel concerning the legal rights and duties of the Commission regarding pending or contemplated litigation where premature general public knowledge would clearly place the State at substantial disadvantage pursuant to 1 M.R.S.A. § 405(6)(E).

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At 1:00 p.m., Mr. Carpenter moved, Ms. Constantine seconded, and Members unanimously voted to go out of Executive Session. No action of the Commission required ratification.

There being no further business, on motion and unanimous vote, the Commission adjourned at 1:01 p.m.

Respectfully submitted,

William C. Hain, III  
Executive Director