



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

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**May 1<sup>st</sup>, 2002**

Minutes of the May 1<sup>st</sup>, 2002, meeting of the Commission on Governmental Ethics and Election Practices held in the Commission's Meeting Room, PUC Building, 242 State Street, Augusta, Maine.

Present: Chair: Alan Harding, Esq.; Members: Hon. Andrew Ketterer, Hon. David Ott, and Hon James Donnelly; Director William C. Hain, III; Counsel Phyllis Gardiner, Esq.; and Commission Assistant Kendra Danforth.

At 10:58 a.m., Chair Harding convened the meeting, announcing consideration of items on the published agenda as follows:

**Agenda Item #5B: Mr. Jonathan Carter; Request for Case-by-Case Exception Under MCEA**

By letter dated April 27<sup>th</sup>, 2002, Mr. Carter requested an exception to Maine Clean Election certification requirements regarding seed money restrictions. Mr. Carter addressed the Commission to explain the reasons for his request. He responded to the assertions made by Kurt W. Adams, Esq. on behalf of the Maine Democratic Party in Mr. Adams' letter dated April 22<sup>nd</sup>, 2002, and the accompanying affidavit of Thomas R. Kiley, alleging seed money restriction violations on the part of Jonathan Carter.

Attorney Alice Knapp addressed the Commission on behalf of Mr. Carter, specifically focusing on the definition of the term "candidate" and questioning the relationship of that term to the acceptance of seed money contributions, suggesting ambiguity in the definition and use of that term between the general campaign finance statute and the Maine Clean Election Act requirements. Members engaged Attorney Knapp in dialogue, questioning her interpretation of the applicable statutory provisions.

Kurt W. Adams, Esq., addressed the Commission on behalf of the Maine Democratic Party and expounded upon the points made in his letter of April 22<sup>nd</sup>, 2002 and its accompanying affidavit, focusing his attention on the issue of the value of the contents of the memorandum Mr. Carter received from Abacus Associates sometime before August 1<sup>st</sup>, 2001, that Mr. Carter used as an enclosure to a fundraising letter he mailed to friends. Mr. Adams asserted that Mr. Carter's acceptance of that memorandum, constituting "something of value" to be determined by the Commission, resulted in his having become a "candidate." Thereafter Mr. Carter was subject to the requirements of the general candidate campaign finance laws and the Maine Clean Election Act, to the extent Mr. Carter may have intended to become a candidate under that law.

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WEBSITE: [WWW.MAINE.GOV/ETHICS](http://WWW.MAINE.GOV/ETHICS)



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Mr. Adams emphasized the central issue as the value of the underlying polling data that Mr. Carter had received, not the cost to Abacus of preparing the memorandum as a volunteer service. Members questioned Mr. Adams regarding the issue of ascribing value to the memorandum and how that value may have impacted Mr. Carter's candidacy status and Maine Clean Election Act eligibility.

Mr. Thomas R. Kiley, President of Kiley and Company, Inc., a public opinion research firm based in Boston, MA, addressed the Commission and explained his affidavit of April 22<sup>nd</sup>, 2002. That affidavit contains the results of two analyses Mr. Kiley conducted to arrive at valuations for the Abacus memorandum. He explained how he first looked at the probable "cost-value" of the three components of the services Abacus provided to Mr. Carter: the 1997 Abacus survey of 500 Maine voters, the 2000 Abacus survey of Maine voters, and the memorandum reviewing the results from those surveys. Using that method, Mr. Kiley estimated that the Abacus memorandum's "cost-value" was between \$2,800 and \$3,300 when used by Mr. Carter in the summer of 2001.

Mr. Kiley then explained how he estimated the value of the memorandum and data to Mr. Carter as a whole if Abacus had not been able to rely on the surveys that it conducted for third parties, i.e., the "actual value." Mr. Kiley stated that if Mr. Carter had not received the polling data from Abacus and its client at no charge, Mr. Carter would have had to commission his own survey to determine the viability of his candidacy. At the same sample size of 500 used in the 1997 and 2000 Abacus polls, Mr. Kiley explained how his polling firm would have charged between \$6,000 and \$8,000 to complete such a survey, depending upon the actual cost of interviewing. Consequently, Mr. Kiley estimated that the value of the memorandum to Mr. Carter was between \$2,800 and \$8,000, depending upon which valuation method may be selected. Members questioned Mr. Kiley regarding his assumptions, analytical approach, and conclusions.

The Commission recessed at 12:40 p.m. and reconvened and resumed consideration of agenda item #5B at 12:50 p.m.

Attorney Adams addressed the Commission regarding the application of the requirements for case-by-case exception eligibility. He explained why, in his view, Mr. Carter should not receive the requested exception because of Mr. Carter's inability to satisfy those requirements. Members questioned Mr. Adams' interpretation of those requirements as applied to the specific facts before the Commission in this case. Members also discussed the policy and practice of previous Commission Members in granting exceptions in past cases where petitioners had been able to demonstrate a *bona fide* attempt to comply with the requirements of the Maine Clean Election Act, but had failed to do so as a result either of misunderstanding the requirements or being confused due to ambiguity in interpreting those requirements.

Senator Paul Davis, Assistant Senate Republican Leader, representing Senate President Richard Bennett, read a letter expressing President Bennett's views on the Commission's consideration of this matter.



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Arn Pearson, Esq., Executive Director of the Maine Citizen Leadership Fund, addressed the Commission representing the collective views of the members of that organization regarding the impact of the Commission's decision in this case on the general administration of the Maine Clean Election Act. He addressed a number of points made on behalf of Mr. Carter and the Maine Democratic Party, concluding that the organizations that he represents support the recommendation of the Commission Staff in this matter and encouraged its adoption by the Commission.

Mr. Benjamin J. Meiklejohn, Chairman of the Maine Green Independent Party, addressed the Commission and provided Members with what he characterized as a political perspective of the complaints filed by the Maine Democratic Party.

There being no further public comment on the matter, Mr. Ketterer moved and Mr. Donnelly seconded to adopt the Commission Staff report and recommendation. During discussion, Members noted that the staff recommendation should be narrowly interpreted for future application; Mr. Carter's reporting problem constituted a technical infraction, rather than an intentional violation of the Maine Clean Election Act; and, specifically, that polling data as a form of intellectual property has a special status in the election process and, if it is provided to candidates, it will be dealt with strictly for reporting purposes (i.e., if it is used to advance a campaign, it must be reported and failure to do so will not be treated leniently in the future).

Counsel Gardiner requested clarification of the issue of the "intellectual property" value of the memorandum. Members concluded that zero value is implied by the Staff recommendation based upon application of the Federal Election Commission rules in similar situations.

The Commission recessed at 2:15 p.m. and reconvened and resumed consideration of agenda items at 2:30 p.m.

**Agenda Item #6: Other; Prospective MCEA Certification Denials**

Mr. Hain briefed Members regarding two (2) Maine Clean Election Act certification requests that he had denied and which he expected to be appealed, suggesting that Members review the certification denial appeal provisions in anticipation of the necessity of convening a meeting on relatively short notice.

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

Mr. Ketterer moved, Mr. Donnelly seconded, and Members voted unanimously to accept the minutes of the April 17<sup>th</sup>, 2002 meeting as submitted.

**Agenda Item #2: Commission Staff Personnel**

Mr. Hain briefed Members regarding the hiring of Ms. Gina Pelletier, the new Candidate Registration and Reporting Officer, and the requirements for the Commission to employ a



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Counsel. Members directed Mr. Hain to begin working with the Bureau of Human Resources to establish and fill the new Counsel position.

**Agenda Item #3: Legislation Enacted in Second Session, 120<sup>th</sup> Legislature**

Mr. Hain summarized LD2169, “An Act to Ensure Proper Disbursement of Matching Funds Under the Maine Clean Election Act,” and LD2183, “Resolve, Regarding Legislative Review of Chapter 3: Maine Clean Election Act and Related Provisions Amendments, Major Substantive Rules of the Commission on Governmental Ethics and Election Practices.” Mr. Ott moved, Mr. Ketterer seconded, and Members voted unanimously to finally adopt the amendment to the Chapter 3 rules as authorized by LD2183, which rules become effective 60 days hereafter.

**Agenda Item #4: Late Lobbyist Monthly Disclosure Report; Kevin A. Lewis, Lobbyist for Maine Ambulatory Care Coalition**

Members considered the late filing of Mr. Lewis’s March monthly disclosure report that was due on April 15<sup>th</sup>, 2002 and filed April 17<sup>th</sup>, 2002. After discussion, Mr. Ketterer moved, Mr. Donnelly seconded, and Members voted unanimously to assess a \$50.00 penalty in consideration of Mr. Lewis’ letter dated April 24<sup>th</sup>, 2002.

**Agenda Item #5A: Maine Clean Election Act Case-by-Case Exception Request; Mr. Anthony Holt**

By letter dated April 19<sup>th</sup>, 2002, Mr. Holt requested an exception to the Maine Clean Election certification requirements regarding seed money restrictions. After summarization by Mr. Hain and brief discussion, Mr. Ketterer moved, Mr. Donnelly seconded, and Members voted unanimously to adopt the Staff recommendation to grant the requested waiver based upon Mr. Holt’s *bona fide* attempt to comply with the requirements as a first-time MCEA candidate and the corrective action he has taken.

**Agenda Item #6: Other; Maine Clean Election Act Case-by-Case Exception Request; Mr. Galen Larrabee**

By letter dated April 30<sup>th</sup>, 2002, Mr. Larrabee requested an exception to the Maine Clean Election certification requirements regarding seed money restrictions. After summarization by Mr. Hain and brief discussion, Mr. Donnelly moved, Mr. Ketterer seconded, and Members voted unanimously to adopt the Staff recommendation to grant the requested waiver based upon Mr. Larrabee’s *bona fide* attempt to comply with the requirements as a first-time MCEA candidate and the corrective action he has taken.

Members set Wednesday, May 15<sup>th</sup>, 2002, at 10:30 a.m. as the next scheduled Commission meeting in accordance with the statutory requirement to meet every two weeks during the period 60 days prior to an election.



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There being no further business, on motion and unanimous vote, the Commission adjourned at 3:00 p.m.

Respectfully submitted,

William C. Hain, III  
Director