



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

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October 2nd, 2002

Minutes of the October 2nd, 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: Acting Chair: Hon. Andrew Ketterer, Esq.; Members: Hon. James Donnelly, Hon. David Ott, Esq., and Hon. Alan Harding, Esq. (telephonically); Director William C. Hain, III, Esq.; Counsel Phyllis Gardiner, Esq.; and Commission Assistant Kendra Danforth.

At 10:15 a.m., Acting Chair Ketterer convened the meeting, announcing consideration of items on the published agenda as follows:

Agenda Item #5A: Late Political Action Committee Campaign Finance Reports; Dirigo Alliance PAC, George A. Christie, Treasurer

Mr. Hain informed Members of a letter dated October 1st, 2002, that the Commission received by telefax that date from George A. Christie, Treasurer, Dirigo Alliance PAC, announcing that the PAC did not contest the late filing penalties for the April Quarterly and 6-Day Pre-Primary campaign finance reports and expressing the PAC's intent to pay the penalties totaling \$1,195.00. Mr. Hain recommended the item's withdrawal from the agenda based upon Mr. Christie's representation that he intended to follow up his letter to discuss a payment method. Consequently, the item was withdrawn from the agenda.

Agenda Item #5B: Late Political Action Committee Campaign Finance Report; Libertarian Party of Maine, Jeff Sherman, Treasurer

Mr. Fred Staples appeared in support of letters dated June 27th and July 24th, 2002, from Mr. Jeff Sherman, Treasurer, Libertarian Party of Maine, explaining the reason for the late filing of the Party's 6-Day Pre-Primary campaign finance report. Following Mr. Staples' explanation of the Party's change of Treasurer and request to waive all penalties based upon those extenuating circumstances, Mr. Donnelly moved, Mr. Harding seconded, and Members voted 3-1 (Mr. Ott opposed) to accept the staff recommendation and mitigate the penalty by 50%, assessing a penalty in the amount of \$932.10.

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Agenda Item #4: Notice of Repeal of 21A M.R.S.A. §1020-A(4) and (5)

Based upon the Commission's action on August 14th, 2002, a draft letter was prepared to notify the legislative leadership of the repeal effective August 1st, 2002, of the Commission's penalty authority regarding candidate campaign finance reports and to request appropriate action by the Legislature to rectify that situation. Thomas Bradley, Esq., and Arn Pearson, Esq., appeared on behalf of the Maine Citizen Leadership Fund (MCLF) and presented written and oral testimony to the Commission advancing the proposition that the repeal of 21-A M.R.S.A. §1020-A(4) and (5) did not remove the Ethics' Commission's authority to impose penalties and stating the MCLF's belief that the Commission may safely assert the right to impose penalties to fulfill its legislatively assigned duties and obligations and may freely choose to continue using the repealed provisions for guidance. Following brief discussion and response to the MCLF presentation by Counsel Gardiner, Mr. Donnelly moved, Mr. Ott seconded, and Members voted unanimously to send a letter over Chair Harding's signature to the legislative leadership informing the Legislature of the ramifications of the repealed penalty authority.

Agenda Item #6: William C. Collins, House District 27 Candidate, Request for Matching Funds

By letter dated September 22nd, 2002, Mr. Collins requested the release of matching funds based upon his opponent's (Rep. Kevin Glynn) reported expenditures in the general election. Based upon the application of the matching fund formula in the Commission's Rules implementing the Maine Clean Election Act, Mr. Hain notified Mr. Collins by letter dated September 27th, 2002, that he was not eligible to receive matching funds. Mr. Collins was informed that the matter would be included on the agenda for the October 2nd meeting, but that since the Commission already had addressed the issue at its previous meeting, Mr. Hain could not assure Mr. Collins that the Commission would take any further action. Mr. Collins did not attend the meeting, nor did he send a representative or designate anyone to speak on his behalf.

Mr. Harding reiterated his concerns, stated at the previous Commission meeting on the subject, about an interpretation of the statutory provisions that would give an unfair result based upon the apparent intent of the matching fund process. Thomas Bradley, Esq., and Arn Pearson, Esq., of the Maine Citizen Leadership Fund, who had spoken on Mr. Collins' behalf at the previous Commission meeting on the subject and were present at this meeting, responded to a Commission inquiry that they did not represent Mr. Collins at this meeting. Rep. Kevin Glynn, Mr. Collins' general election opponent, informed the Commission of his presence in the event the Commission required any information from him. Mr. Pearson requested the Commission to make findings of fact regarding Mr. Collins' request, but Acting Chair Ketterer responded that the Commission was not able to do that. Thereafter, Mr. Ott moved, Mr. Donnelly seconded, and Members voted unanimously to ratify Mr. Hain's letter dated September 27th, 2002 to Mr. Collins regarding matching funds eligibility.



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Agenda Item #7: Appeal by Rep. Richard Nass of Sen. Michael J. McAlevey's Certification as a Maine Clean Election Act Candidate

Rep. Richard A. Nass, Sen. McAlevey's opponent in the general election contest for Senate District 34, appealed Sen. McAlevey's certification as a Maine Clean Election Act candidate in the general election on September 27th, 2002. Rep. Nass appealed that certification under the authority and provisions of 21-A M.R.S.A. § 1125(14). Sen. McAlevey was an unsuccessful, nonparticipating candidate in the June Republican Primary Election. Thereafter, on August 29th, 2002, the Democratic Party nominated Sen. McAlevey to replace the primary election nominee who withdrew as the Democratic Party's general election nominee for health reasons. Sen. McAlevey filed a Declaration of Intent and Request for Certification to be a MCEA replacement candidate within the requisite 30-day qualifying period. Upon confirmation that he had met the qualifying requirements, the Director certified Sen. McAlevey on September 30th, 2002, pursuant to Chapter 3, Section 8 of the Commission's Rules implementing the Maine Clean Election Act.

Mr. Hain summarized the certification process for replacement candidates and addressed the specific objections raised by Rep. Nass in his letters of September 30 and October 1st, 2002, explaining why each of the bases cited therein either was factually incorrect or without merit based upon the application of the law and Commission Rules.

Mark LeDuc, Esq., appeared on behalf of Rep. Nass, who also was present, reiterated the objections to certification that Rep. Nass previously had cited in his letters to the Commission dated September 30th and October 1st, 2002, and presented argument on behalf of each salient point.

Michael Mahoney, Esq., appeared on behalf of Sen. McAlevey, who also was present, responded to the objections to certification that Mr. LeDuc raised, concluding that Sen. McAlevey had fulfilled the requirements for certification and should not be precluded from being certified because he had been a nonparticipating candidate in the primary election that he had lost. As a legitimate replacement candidate of a different party and in a different election who had fulfilled the requirements for certification, he argued that Sen. McAlevey should not be denied certification now based upon a reinterpretation of the requirements.

Following conclusion of questions to both attorneys by Commission Members, Acting Chair Ketterer invited an appropriate motion, whereupon Mr. Harding moved to affirm Mr. Hain's certification of Sen. McAlevey by letter dated September 30th, 2002. The motion failed for lack of a second. Thereafter, Mr. Ott moved and Mr. Donnelly seconded to revoke the certification by Mr. Hain and uphold the appeal by Rep. Nass. Following discussion, Members voted 1-3 (Mr. Ott in favor and Mr. Ketterer, Mr. Harding, and Mr. Donnelly opposed), and the motion failed. There being no further motion offered, the certification stood.



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Agenda Item #8: Report of Status of Non-Filers, Late Filers, and Referrals to the Attorney General

Mr. Ketterer had requested a report on the status of late and non-filed reports, and a report on the status of referrals to the Attorney General's Office for appropriate collection action. Members agreed to table receipt of the reports for consideration at a future meeting following the conclusion of Counsel's involvement in another representational matter.

Agenda Item #9: Informational Item

Matthew D. Manahan, Esq., by letter dated September 23rd, 2002, confirmed the substance of a conversation with Mr. Hain regarding the issue of campaign contributions in the form of the continuation of health and dental insurance coverage by a person who takes a leave of absence from employment to work temporarily on a political campaign. A copy of the confirmation letter was provided to Members for their information. No further Commission action was required.

Agenda Item #1: Ratification of Minutes of August 14, 2002 meeting

Mr. Ott moved, Mr. Donnelly seconded, and Members voted unanimously to adopt the minutes of the August 14th, 2002 meeting as submitted.

Agenda Item #2: Ratification of Minutes of September 13, 2002 special meeting

Mr. Donnelly moved, Mr. Ott seconded, and Members voted unanimously to ratify the minutes of the September 13th, 2002 special meeting.

Agenda Item #3: Political Party Committee Accounts

Based upon the Commission's action on August 14th, 2002, and in response to the Commission's request for information, the Maine Democratic Party and the Maine Republican Party responded with information regarding their various accounting entities. A copy of that correspondence was provided to Members for information. The Maine Green Independent Party did not respond. No further Commission action was required.

There being no further business, by unanimous consent, the Commission adjourned at 12:55 p.m.

Respectfully submitted,

William C. Hain, III
Director

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