



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

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October 24th, 2002

Minutes of the October 24th, 2002, special 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: Hon. Alan Harding, Esq.; Members: Hon. Andrew Ketterer, Esq., Hon. James Donnelly, and Hon. David Ott, Esq.; Director William C. Hain, III, Esq.; Acting Counsel William Laubenstein, Esq.; and Commission Assistant Kendra Danforth.

At 1:12 p.m., Chair Harding called the special meeting of the Commission to order, announcing consideration of items on the published agenda as follows:

Agenda Item #1: William C. Collins v. Commission on Governmental Ethics and Election Practices

By Order on Motion for Preliminary Injunction, Superior Court Justice Roland Cole ordered the Commission to convene within 24 hours of October 23rd, 2002, for the purpose of obtaining evidence and determining Mr. Collins' eligibility for matching funds under the Maine Clean Election Act. The Commission was required to conduct an investigation, make findings of fact, apply the law, and determine whether Mr. Collins was eligible for matching funds pursuant to the Court's Order.

Mr. Ketterer moved to go into executive session to receive the advice of counsel. Chair Harding ruled the motion out of order inasmuch as the Commission would not be receiving the advice of counsel, but rather the report of Acting Counsel Laubenstein regarding the status of Mr. Collins' lawsuit that has resulted in the need to hold this special meeting. Therefore, an executive session was not required.

Acting Counsel Laubenstein then reported to Commission Members regarding the events that had transpired since the Commission's meeting on October 18th, 2002, at which the Commission declined to grant Mr. Collins' request for reconsideration of the Commission's action on October 2nd, 2002. Counsel Laubenstein summarized the Court proceedings of October 23rd, 2002, after which Justice Cole issued his order for the Commission to conduct the instant proceedings.

Thomas Bradley, Esq., Staff Attorney for the Maine Citizen Leadership Fund, addressed the Commission on behalf of Mr. William Collins, who was also present. Mr. Bradley presented a letter from David Flood, Publisher/Owner of Mainely Newspapers, Inc.; background information entitled "Retail Advertising Rates & Information (effective September 1st, 2001) from the

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Portland Press Herald/Maine Sunday Telegram; the entire issue of the Portland Press Herald for June 11th, 2002; and a photocopy of an article entitled "Panel refuses Collins' appeal" from the October 19th, 2002, edition of the Portland Press Herald. Mr. Bradley stated that each of those items supported Mr. Collins' position that the expenditures Rep. Glynn made immediately before the primary election were, in fact, for the purpose of influencing the general election, not for the purpose of the primary election, even though that was the reporting period in which the expenditures had been made. Consequently, those expenditures should be counted in computing matching fund eligibility for Mr. Collins in the general election. Mr. Bradley requested the Commission to find as a fact that the expenditures were for the purpose of influencing the general election and to order the payment of matching funds in accordance with the formula in the Commission's rules.

Matthew Gildart, Esq., appeared on behalf of Representative Kevin Glynn, who also was present. Attorney Gildart presented to the Commission an Affidavit of Kevin Glynn dated October 24th, 2002, and informed the Commission that Rep. Glynn's affidavit would be his exclusive statement on the subject of the expenditures he made on June 10th and 11th, 2002. In response to efforts by several Commission Members to clarify paragraphs 6 and 7 of Rep. Glynn's affidavit, Attorney Gildart responded that Rep. Glynn would have no additional response, but that the information in the affidavit and the campaign finance reports provided all the information the Commission needed to make the finding of facts required by the Court. Acting Counsel Laubenstein reminded the Commission that, while Rep. Glynn was not present pursuant to the issuance of a subpoena, nevertheless the Commission did have the authority to compel testimony, to which Attorney Gildart responded that Rep. Glynn was not available for testimony. Chair Harding noted Rep. Glynn's presence at the meeting, offered Attorney Gildart and Rep. Glynn time to confer if needed, and stated that if they insisted upon a subpoena to compel testimony, one would be issued.

At 1:35 p.m., Mr. Ketterer moved, Mr. Ott seconded, and Members voted unanimously to go into executive session pursuant to 1 M.R.S.A. §405(6)(E) to receive the advice of counsel on the pending litigation. At 1:45 p.m., Mr. Donnelly moved, Mr. Ketterer seconded, and Members voted unanimously to adjourn from executive session and return to regular public session. No action was taken in executive session that required ratification.

Attorney Gildart informed the Commission that Rep. Glynn would be willing to testify voluntarily. Rep. Glynn then addressed the Commission, stating that paragraphs 6 and 7 of his affidavit should be read together. Mr. Ott responded that he was confused by Rep. Glynn's intent behind having the Commission read paragraphs 6 and 7 together, to which Rep. Glynn responded that the items purchased on June 10th and 11th were intended to show his ability as a candidate to mount an effective campaign.

In response to Chair Harding's offer, Attorney Bradley referred the Commission to Rep. Glynn's campaign finance reports showing loans to himself as additional evidence that the purpose of Rep. Glynn's expenditures on June 10th and 11th was to influence the general election. He also directed the Commission's attention to the October 19th newspaper article in which Rep. Glynn



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acknowledged that the intent of the June 10th and 11th expenditures was to influence the general election.

In response to the Chair's inquiry regarding the need for any additional fact-finding, Mr. Ott moved, Mr. Ketterer seconded, and Members voted unanimously (4-0) to find as a fact that the expenditures that Rep. Glynn reported having made on June 10th and 11th, 2002, were for the purpose of influencing the general election.

Mr. Ott inquired about the application of the law based upon the Commission's finding of fact. Acting Counsel Laubenstein responded that the Court's view of the statute was that if the Commission found as a fact that the expenditures of June 10th and 11th were made to influence the general election, the Commission should issue matching funds as computed pursuant to the Commission's rules. The Court expressly left open the opportunity for either party to request further action on October 25th, 2002, if any issue required further consideration from the Court.

In response to Chair Harding's invitation, Mr. Ketterer moved, Mr. Donnelly seconded, and Members voted unanimously (4-0) to declare William Collins eligible for matching funds under the Maine Clean Election Act based upon the expenditures made by his opponent, Rep. Kevin Glynn, on June 10th and 11th, 2002, for the purpose of influencing the general election.

The Commission recessed at 2:40 p.m. in order to issue Mr. Collins a check for his matching funds, and reconvened at 2:50 p.m. to resume consideration of items on the agenda as follows:

Agenda Item #2: Other Cases Regarding Eligibility for Matching Funds

By separate requests, Mr. Francis McDermott and Senator Sharon Treat had requested determinations of their eligibility for matching funds on bases similar to that of Mr. Collins. Those requests were administratively denied by the Director but, based upon the Commission's action in the Collins matter, were ripe for reconsideration. Additionally, a request was received by e-mail on October 23rd, 2002, from Representative Glenn Cummings for a review of his eligibility for matching funds. On October 24th, 2002, House Minority Leader Joe Bruno submitted a request for a review of all expenditures made before the date of the primary election by all nonparticipating candidate opponents of 19 certified Maine Clean Election Act candidates he had named. The purpose of the review was to determine whether any expenditures were "for the purpose of influencing the general election" and to authorize payment of matching funds for all eligible expenditures. Finally, Mr. Richard Pelletier, House Caucus Director for the Democratic Party, requested the opportunity to address the Commission. He presented a report of 16 candidates whose expenditures before the primary election may have been for the purpose of influencing their general election, and requested the Commission to direct the payment of matching funds to the MCEA opponents of those candidates if that was determined to have been the case.

Acting Counsel Laubenstein offered the Commission a draft entitled "Procedure on Requests of Matching Funds" dated October 24th, 2002, as a possible guide to how the Commission may want to address requests such as these and others that may be received. Thomas Bradley, Esq.,



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Staff Attorney for the Maine Citizen Leadership Fund, generally supported Counsel Laubenstein's procedures, but suggested that the Commission was in a better position than the challenging candidates to obtain the necessary documentary evidence from an opponent to determine the purpose of a questioned expenditure. Mr. Bradley suggested that the review procedure should be (1) complaint driven and required to state a reasonable basis for the complaint; (2) the Commission should employ a standard response letter to a nonparticipating candidate that questions the purpose of any challenged pre-primary expenditure; and (3) if the nonparticipating candidate refuses to explain the purpose of a questioned pre-primary expenditure, that refusal should operate against the presumption that the expenditure was for the purpose of influencing the primary election of that candidate.

Mr. Hain suggested that the staff review all election contests involving a Maine Clean Election Act candidate opposed by a nonparticipating candidate, determine whether any of those nonparticipating candidates had been unopposed in the primary election and, if so, review that candidate's pre-primary expenditures to determine if any of them may have been made for the purpose of influencing the general election. If so, he suggested a form letter be sent to each of those candidates requesting them to support the conclusion that any questioned expenditure had been for the purpose of influencing the primary election, or to acknowledge that the purpose was to influence the general election.

Mr. Ketterer moved, Mr. Ott seconded, and Members voted unanimously for Mr. Hain to proceed as he suggested, adding that he should provide a 48-hour response time for any challenged or questioned expenditures in order to expedite the time to determine matching fund eligibility.

Agenda Item #3: Corporate Contributions; Cianchette for Governor Committee

The Portland Press Herald published an account of what appeared to be possible violations of 21A M.R.S.A. §1015-A, regarding the limitations on campaign contributions by corporations based upon the so-called "single entity" rule. Upon inquiry to the Cianchette Campaign Committee, the Committee reviewed their campaign contribution records to ensure full compliance and returned contributions determined to have been in excess of the contribution limits to identified "interlocking companies." Since this was the first violation of this type for the Cianchette Committee and they took appropriate action in a timely manner to return contributions in excess of the limits, Mr. Ketterer moved, Mr. Ott seconded, and Members voted 3-0 (Mr. Donnelly recused himself) to take no further action in keeping with the Commission's past practices in such cases.

Agenda Item #5A: Attribution Violation; Hon. Joseph E. Brooks

By letter dated October 7th, 2002, Mr. David A. Parkman informed the Commission of an alleged violation of the attribution requirements of 21-A M.R.S.A. §1014 regarding the authorization and funding source for political communications that expressly advocate the election or defeat of a clearly identified candidate. Representative Brooks was notified but, before receipt of that notification, informed the Commission of a "printer's error" in omitting the required disclosure



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statement and the steps he had taken to correct the omission. In light of the fact that Rep. Brooks took corrective action within 10 days of notification and the violation occurred more than 10 days before the election, Mr. Ketterer moved, Mr. Donnelly seconded, and Members voted unanimously to take no further action.

Agenda Item #5B: Attribution Violation; Hon. Joe Bruno

By letter dated October 10th, 2002, Representative Bruno informed the Commission of the omission of the required disclosure statement on a political postcard from his campaign due to an oversight at the print shop. Representative Bruno was informed of the applicable statutory provisions. However, because Rep. Bruno he had not indicated what actions he had taken to correct the omission, he was informed that the Commission does not have the authority to waive the statutory disclosure requirements. Representative Bruno orally requested the Commission's direction regarding what action he should take. Mr. Donnelly moved, Mr. Ketterer seconded, and Members voted unanimously to issue a warning to Mr. Bruno against future violations.

Agenda Item #6: Interpretation and Application of the So-called "Slate Card" Exception to the Definition of an "Expenditure"

By letter dated October 22nd, 2002, Mr. Paul Billings, Oxford County Republican Committee Chair, questioned whether a radio broadcast of a political advertisement asking the public to vote for a number of candidates is excluded from the statutory definition of "expenditure" by the so-called "slate card" exception. That provision excludes from expenditures payments by party committees of the costs of preparation, display or mailing or other distribution incurred by the committee of a printed slate card or sample ballot, or other printed listing, of 3 or more candidates for any political office for which an election is held. He further requested an expedited Commission ruling as to whether the radio ad should trigger matching funds for the candidates running against the Democrats listed in the radio advertisement. Staff requested the Commission to interpret the slate card exception and determine its applicability to non-printed communications such as a radio broadcast.

Kurt Adams, Esq., on behalf of the Maine Democratic Party, by e-mail dated October 23rd, 2002, and through personal appearance before the Commission, stated the position that neither the statute nor Commission decisions limit or otherwise restrict the application of the statutory definition to only printed communications, noting that the fact that the slate card is printed in a radio script is insignificant. He noted that the key elements are not whether the communication is "printed," but rather that the communication was paid for by a political party committee, lists three (3) or more candidates, and involves some form of distribution or display of the information. He proposed that the Legislature created this exception to the definition of an "expenditure" to cover this type of activity (i.e., a radio broadcast) as well as traditionally printed media.

Acting Counsel Laubenstein stated that the Commission would have to ignore the words "printed" slate card, "sample" ballot, and other "printed" listing to determine that the exclusion applies to more than written materials.



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Mr. Ketterer moved, Mr. Ott seconded, and Members voted unanimously to deny the request for matching funds based upon an interpretation of the statutory language that the radio broadcast in this case was included within the so-called "slate card" exclusion from the definition of an "expenditure" and, therefore, was not eligible for payment of matching funds. The Commission expressed its belief that the Legislature intended to exclude from the definition of an "expenditure" communications by a political party committee that promote more than 3 candidates, not whether or not that communication was printed.

Agenda Item #4. Questionable Contribution to MCEA Candidate by The Benjamins PAC

A reported, impermissible expenditure/contribution to a Maine Clean Election Act candidate by The Benjamins PAC was questioned. Upon review, the PAC Treasurer determined that the expenditure had been made for a fundraiser for the PAC and should have been reported as an administrative cost. The MCEA candidate had not received any contributions from the event. The PAC filed an amended report. No further Commission action was required.

Agenda Item #7. PAC Registration and Reporting Requirements

By letter dated October 9th, 2002 (received October 15th, 2002), Peggy L. McGehee, Esq., on behalf of Citizens to Reduce Local Property Taxes Statewide, requested the Commission to clarify whether a political action committee is required to register and report financial activity before the drafting of the question and certification of the petition by the Secretary of State. By letter dated October 23rd, 2002, the Director had responded that registration and reporting are required when an organization solicits and spends more than \$1,500 to "initiate" a ballot question, and that the consistent guidance that the Staff has given to inquirers has been that the preliminary stages of "initiating" the ballot question process must be considered. Commission Staff requested confirmation of that interpretation. The Commission took no action contrary to that interpretation.

Agenda Item #8. Responses to Notification of Legislative Leadership of Penalty Repeal Authority

By letter dated October 8th, 2002, the Commission Chair informed all Legislative Leaders of the apparent repeal of the Commission's penalty authority in 21-A M.R.S.A. §1020-A(4) and (5). The Commission received responses from Senate President Pro Tempore Michael H. Michaud, dated October 16th, 2002, and Senate Democratic Leader Beverly C. Daggett, dated October 22, 2002. The Commission took no further action.

Agenda Item #9. Correspondence Regarding Naming of Pine Tree Racing Series and Promotion of Particular Candidate for Governor

Correspondence between Representative John L. Tuttle, Jr., House Chair, Legislative Committee on Legal & Veterans Affairs, and Commissioner Robert W. Spear, Department of Agriculture, was provided for Commission information. The Commission took no further action.



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There being no further business, by unanimous consent, the Commission adjourned at 4:20 p.m.

Respectfully submitted,

William C. Hain, III
Director