



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

Minutes of the May 26, 2004 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: Andrew Ketterer (resigned as Chair during meeting); Hon. James O. Donnelly (elected Chair during meeting); Hon. Terrence MacTaggart. Staff: Executive Director Jonathan Wayne; Counsel Phyllis Gardiner; Lobbyist Registrar Diana True.

At 10:08 a.m., Chair Ketterer convened the meeting. The Commission considered the following items:

Agenda Item #1 – Ratification of Draft Minutes of May 12, 2004 Meeting

Mr. Donnelly moved, Dr. MacTaggart seconded, and the members voted unanimously to adopt the draft minutes of the May 12, 2004 meeting.

Agenda Item #2 – Appeal by Rep. Sean Faircloth Regarding His Request for Certification

On April 28, the Commission staff had denied Rep. Sean Faircloth's request to be certified as a Maine Clean Election Act (MCEA) candidate because he began collecting qualifying contributions before submitting the Declaration of Intent form. The Commission held a hearing on Rep. Faircloth's appeal of the staff denial.

Rep. Faircloth stated that more than fifty citizens gave him qualifying contributions, and that they have a direct interest in his certification as a MCEA candidate. He noted that in the case of three other 2004 candidates (Glenn Dowey, Ed Needham, Kenneth Gagnon), the Commission staff accepted the Statement Concerning Voluntary Spending Limits in place of a Declaration of Intent, so precedents exist for accepting other papers in lieu of the Declaration of Intent. He said that it was reasonable for him to rely on the March 7-8 e-mail exchange with the Commission director as the Commission's approval that he could begin soliciting \$5 qualifying contributions. He also argued that if the Commission denied him the opportunity to participate in the MCEA, he would suffer a significant sanction. He stated that the policy underlying the MCEA argued in favor of permitting his candidacy to move forward with public financing.

Chair Ketterer asked Rep. Faircloth whether the Commission had the authority to grant the requested relief because the MCEA does not include any provision allowing the

Commission to waive the Declaration of Intent requirement. Rep. Faircloth responded that if the Commission determined that his March 7 e-mail constituted a Declaration of Intent, there would be no need to waive the requirement.

The Commission director explained the cases of 2004 candidates Glenn Dowey, Kenneth Gagnon, and Ed Needham. Before they began to collect qualifying contributions, they submitted the spending limits form but not the Declaration of Intent. He said that in the 2002 election the Commission members accepted the spending limits form filed by David Tobin as a Declaration of Intent, because the spending limits form contained a signed statement that the candidate was running as a Maine Clean Election Act candidate. He stated that following the Commission's decision in the Tobin matter, the practice of the former director, William Hain, in the 2002 elections was to accept the spending limits form in lieu of the Declaration of Intent. The Commission staff followed that procedure in 2004 with respect to Glenn Dowey, Ed Needham, and Kenneth Gagnon.

In response to a question from Mr. Donnelly, the Commission director stated that Rep. Faircloth had not submitted any form prior to beginning to collect qualifying contributions. In response to a question from Dr. MacTaggart, the Commission director stated that – other than Dowey, Needham, and Gagnon – there were no other 2004 cases in which the Commission staff had exercised some leniency or discretion in accepting other communications in lieu of the Declaration of Intent form.

Mr. Donnelly moved that the Commission decline to grant Rep. Faircloth's appeal, and Chair Ketterer seconded the motion for the purposes of discussion. Mr. Donnelly stated that the appellant has the burden of showing that the Commission staff's decision was improper, and that he had heard no evidence that the decision was improper. He noted that the MCEA requires that a candidate must declare an intent to run as a MCEA candidate using a form developed by the Commission, and that the statute does not grant the Commission the authority to grant exceptions to this requirement. Mr. Donnelly also observed that Rep. Faircloth was informed on March 23 that the qualifying contributions received before that date would not be counted, and he had 23 days in which to remedy the situation.

Dr. MacTaggart said that it was complex case because of the issues of fairness and the question of the discretion of the Commission to grant Rep. Faircloth's appeal. He stated that he found the candidate's communications to the Commission to be just sufficient to substantiate his intention to participate in the MCEA, and that the legislative intent was satisfied by the e-mail.

Chair Ketterer stated that he was troubled by the fact that the candidate had an opportunity to return the original checks to the contributors and ask them to contribute a second time after the Declaration of Intent was filed on March 23. He said that it may have been inconvenient and burdensome, but Rep. Faircloth could have attempted it. He said, on the other hand, he was troubled that the staff had made exceptions in the case of other candidates that had similar – although not identical – circumstances.

Mr. Donnelly stated that he believed the Commission did not have the latitude to certify Rep. Faircloth. He stated that it was difficult for him to accept the March 7 e-mail as a Declaration of Intent, because it did not explicitly say that he was running as a MCEA candidate and because it didn't use the form created by the Commission. He stated that he voted against certifying 2002 candidate Raymond Pineau whose circumstances were similar to Rep. Faircloth.

Chair Ketterer and Dr. MacTaggart voted against Mr. Donnelly's motion, and Mr. Donnelly voted in favor of the motion. Dr. MacTaggart moved to certify Rep. Faircloth as a MCEA candidate. Chair Ketterer and Dr. MacTaggart voted in favor of the motion, and Mr. Donnelly voted against it.

Agenda Item #3 – Appeal by Rep. Rosaire Paradis Regarding His Request for Certification

The Commission staff denied Rep. Paradis' request to be certified as a Maine Clean Election Act candidate, because he had not submitted the Request for Certification and the seed money report. Rep. Paradis had submitted to the Commission members a letter dated May 3, 2004, which set forth the grounds for his appeal. The Commission held a hearing on the appeal.

Rep. Paradis stated that at one point he had lost the packet of forms sent to him by the Commission, and he tried to "wing it." He stated that when he submitted the qualifying contributions at the Commission office, he asked whether everything was in order and he was told that nothing was missing except for the alphabetical list of contributors. When he subsequently submitted the list of contributors, he believed he had filed the complete forms.

The Commission director stated that the Request for Certification and seed money report are forms that are required by the Commission Rules, not the Election Law. He said that other candidates who did not collect seed money contributions did not understand that the seed money report nevertheless was required. He said that the Commission members had voted on May 12 to certify three first-time candidates even though they had not submitted the Request for Certification and/or the seed money report. Mr. Donnelly noted that in all of the May 12 cases except one, the candidates did not have any seed money to report so that the public had not suffered harm.

The Commission director stated that he had not previously heard about the conversation between Rep. Paradis and the Commission staff, so he had not had an opportunity to ask his colleagues about it and could not comment on it.

Dr. MacTaggart moved to grant the appeal for the sake of discussion, and Mr. Donnelly seconded the motion for the purposes of discussion. Mr. Donnelly said that the issue he believed needed the most discussion was the issue of the Request for Certification which is required by Commission Rules rather than by statute. He stated that Rep. Paradis' failure to submit the seed money report was similar to the cases at the May 12 meeting in that they did not collect seed money. Chair Ketterer stated that after filing so many forms and

materials in order to become certified as a MCEA candidate, candidates may not understand the need to file an additional form that states they are requesting certification.

The Commission members voted three to zero in favor of the motion to grant Rep. Paradis' appeal.

#### Agenda Item #4 – Sale of Equipment and Property

The Commission director reported that some candidates participating in the MCEA use the funds to purchase equipment or property. The Commission Rules require that equipment that can be converted to personal use after the campaign (*e.g.*, computers, fax machines, and copiers) must be sold after the election and the proceeds must be used to reimburse the Maine Clean Election Fund. He stated that in a few cases, 2002 candidates may have sold equipment and property before the election and used the revenues for other campaign purposes. Rep. Donnelly asked that the staff mail a letter to MCEA candidates clarifying that when goods and services are sold, the revenues must be returned to the Maine Clean Election Fund and that the revenues cannot be used to purchase other goods and services for the campaign. The Commission Counsel suggested that this could be included in the Commission Guidelines, and Chair Ketterer endorsed the suggestion.

#### Agenda Item #4 – Appointment of Replacement for David Ott

The Commission members requested that the Commission director send a letter to the Governor with copies to the Legislative Leaders expressing the Commission's concern that David Ott's position on the Commission remains vacant during an election year and that Terrence J. MacTaggart is a holdover member.

#### Other Item (Not on Agenda) – Election of New Chair of Commission

Mr. Ketterer stated that his first term as a Commission member had expired, and that he wished to resign from his position as Commission Chair. He noted that both he and the previous Chair Alan Harding were Democrats, and it would be appropriate for the position of Chair to rotate to James Donnelly, a Republican. He stated that although the Commission members did not make decisions based on partisan politics, he believed that there was a public perception that partisanship played a role in the Commission's deliberations.

Mr. Ketterer moved that James Donnelly be elected to the Chair of the Commission. He stated that Mr. Donnelly would bring a wealth of experience and knowledge to the position, including political and professional experience, and that he was a former four-term member of the Legislature who rose to the rank of Republican Leader. He stated that Mr. Donnelly had been an honest and forthright member of the Commission, and a pleasure to work with. Dr. MacTaggart seconded the motion and said that Mr. Donnelly would have some big shoes to fill, and that Mr. Ketterer had been a very effective chair of the Commission, especially in making complex legal issues more transparent to the lay person. He stated that he agreed with Mr. Ketterer whole-heartedly, and that Jim Donnelly would be a wonderful chair of the Commission. Mr. Donnelly thanked the other members for their kind words.

The members voted unanimously in favor of the motion. Mr. Donnelly assumed the duties of Chair.

Agenda Item #5 – Personnel Matter

Mr. Ketterer moved, Dr. MacTaggart seconded, and the members voted unanimously to go into Executive Session to discuss a personnel matter.

Following the Executive Session matter, there being no further business, the Commission adjourned.

Dated: June \_\_\_\_, 2004

Respectfully submitted,

Jonathan Wayne  
Executive Director