

Minutes of the February 23, 2006 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 Jean Ginn Marvin; Hon. Michael T. Bigos; Hon. Vinton E. Cassidy; Hon. Andrew Ketterer. Staff: Executive Director Jonathan Wayne; Christopher Taub, Counsel.

At 9:06 A.M., Chair Ginn Marvin convened the meeting. The Commission considered the following items:

Agenda Item #1 – Ratification of Minutes of the January 5, 2006 Meeting

Mr. Ketterer moved, Mr. Bigos seconded, and the Commission voted unanimously (4-0) to ratify the minutes of the January 5th meeting. Mr. Ketterer commented that the staff did an excellent job on the minutes, and that he felt that anyone who was not present at the last meeting would know exactly what happened and what the reasoning was behind the decisions made at that meeting.

The Commission decided to take up Items 3, 4 and 5 out of order and then return to Item 2.

Agenda Item #3 – Request for Waiver of Penalty/Annual Monthly Lobbyist Report

The director explained that Michael Stoddard, a lobbyist for Environment Northeast, was required to file an annual lobbyist report by December 30, 2005. Mr. Stoddard filed the report late and requested a waiver of the penalty. The staff recommendation was to assess the statutory penalty of \$200.

Mr. Cassidy moved, Mr. Ketterer seconded, and the Commission voted unanimously (4-0) to adopt the staff recommendation and to assess the statutory penalty of \$200.

Agenda Item #4 – Request for Waiver of Penalty/PAC Campaign Finance Report

The director explained that the Maine Economic Growth Coalition was required to file a PAC report on January 17, 2006. He explained that the preliminary penalty was \$260.24. The PAC requested a waiver of the penalty due to an absence by the person normally responsible for filing these reports. The staff recommendation was to assess the statutory penalty in full.

Mr. Bigos moved, Mr. Cassidy seconded, and the Commission voted unanimously (4-0) to adopt the staff recommendation and to assess the statutory penalty of \$260.24.

Agenda Item #5 – Request for Waiver of Penalty/PAC 24-Hour Report

The director explained that a PAC, The Campaign to Save Working Waterfront Jobs, filed a PAC 24-Hour Report on December 14, 2005, more than one month late. The director explained that PACs are required to file 24-Hour Reports of expenditures of \$500 or more and that were made in the last 11 days before the election. The director said that this requirement is very well published. However, Jennifer Litteral, the treasurer for the PAC, was new in her position and was not aware of the filing requirement. The director explained that based on the formula in the statute, the statutory penalty was \$10,695.67. The staff recommendation was for a reduction of the penalty because the statutory maximum penalty was disproportionate to the level of violation.

Ms. Litteral took the floor and explained that the Campaign to Save Working Waterfront Jobs was a new PAC. She said that she was not informed of the filing requirement until December, and once she was informed the reports were filed immediately. She said that there was no opposition from other public groups or PACs, but that she understood the importance of these reports and was asking for a substantial reduction of the proposed penalty.

Mr. Bigos asked what the total expenditures were for the campaign, to which Ms. Litteral replied that there was a total of \$8,000 in expenditures. Mr. Ketterer asked how much money the PAC had left. Ms. Litteral replied that the PAC had \$4,000 left. Mr. Ketterer asked what Ms. Litteral

felt would be a reasonable penalty. Ms. Litteral said that she thought that anything under \$4,000 would be reasonable.

The director said that the staff recommendation was for a 75% reduction of the penalty, which amounted to a penalty of \$2,673.92. Mr. Cassidy said that a key point in his consideration was that there were no competing PACs in this case. He said that it was important for the public to have information about campaign expenditures and that campaign finance disclosure was important to keep an even playing field for those participating in the political process.

Mr. Cassidy moved to adopt the staff recommendation. Mr. Bigos seconded. Mr. Ketterer said that he was impressed that Ms. Litteral showed up and spoke on her PAC's behalf, and said that he felt the likelihood of this happening again while Ms. Litteral was in charge was very small. Mr. Ketterer said that there was a clear distinction between strategic planning of late filings of these reports and this particular situation, and reiterated his support for the motion. The Commission voted unanimously to adopt the staff recommendation and to assess a penalty of \$2,673.92.

Agenda Item #2 – Request for Advisory Opinion on Legislative Ethics Issue

Ms. Ginn Marvin said that while it was the strong opinion of the Ethics Commission to always conduct its business in public, in this case it would consider this matter before the Commission in executive session as required by statute. The director said that it was his opinion and that of the Assistant Attorney General Christopher Taub that the Commission was required to go into executive session with regards to this matter.

Mr. Ketterer moved that, pursuant to Title 1 [of the Maine Revised Statutes Annotated] and the appropriate sections, the Commission go into executive session to discuss the matters relating to the conduct of Representative Saviello. Mr. Bigos seconded. Chair Ginn Marvin clarified that the statutory and regulatory authority for the Commission to go into executive session were Title 1, Section 405(4); Title 1, Section 405(6)(F); Title 1, Section 1013(2)(J); Title 1, Section 1013(3); and Chapter 1, Section 4(B)(2)(a) of the Commission's rules. Mr. Cassidy asked if the

statute allowed the Commission to make decisions with regard to this matter in public, and the director said that the law allowed that. The Commission voted unanimously (4-0) to go into executive session.

At this point, Ms. Ginn Marvin asked for the public, excluding Commission staff, Representative Saviello, and his attorney, to leave the meeting room.

After the Commission finished its discussion in executive session, the public session of the meeting resumed.

Mr. Ketterer moved, Mr. Bigos seconded, and the Commission voted unanimously (4-0) to end the executive session regarding Representative Saviello's request for an advisory opinion and return to public session.

Ms. Ginn Marvin thanked those attending the meeting for their patience while the Commission was in the executive session. Ms. Ginn Marvin explained that the Commission was limiting its deliberations during the meeting to the question of conflict of interest. Ms. Ginn Marvin invited comments from the public, asking them not to exceed three minutes in length and to speak only on the conflict of interest question. Ms. Ginn Marvin requested that Charles Harvey and Representative Saviello first explain to the public audience their position on the conflict of interest question.

Mr. Harvey introduced himself as Representative Saviello's attorney. Mr. Harvey explained that Representative Saviello requested an advisory opinion on whether his employment for International Paper presented a conflict of interest in light of his position on the Natural Resources Committee of the Legislature or as a Legislator. Mr. Harvey stated that the advisory opinion was sought to give guidance to Representative Saviello and other Legislators. Mr. Harvey said that Representative Saviello also requested the Commission to address the question of whether Representative Saviello made a deal with former Commissioner Gallagher of the Maine Department of Environmental Protection. Mr. Harvey said that Representative Saviello made the request to the Commission due to allegations in the press. Mr. Harvey stated that

Representative Saviello wished to have his name cleared quickly and did not want an extended hearing on the alleged deal. Mr. Harvey wished to limit his and Representative Saviello's request to the Commission to a single request for an advisory opinion on the conflict of interest question. Mr. Harvey said that in 1983, the Attorney General rendered an opinion on a legislative conflict of interest question, and that subsequent Legislators, including Representative Saviello, based their understanding of conflicts of interest on the Attorney General's opinion. Mr. Harvey referred the Center for Public Integrity's calculation that 13.5% of current Legislators sit on a committee that regulates a professional interest they hold. Mr. Harvey stated that he and Representative Saviello do not see a conflict of interest in the Representative's role on his committee.

Ms. Ginn Marvin thanked Mr. Harvey and asked if the Commission members had any questions for him. Ms. Ginn Marvin invited the public to comment.

Steven Hinchman introduced himself as staff attorney for the Conservation Law Foundation. He expressed his difficulty in commenting without knowing what the Commission decided during the executive session and asked the Commission to explain what happened.

Christopher Taub explained that Representative Saviello withdrew his request that the Commission investigate his role as a member of the Natural Resources Committee and specific allegations of his conduct. Mr. Taub said the Commission members also discussed a third party complaint about Representative Saviello's communications with the Maine Department of Environmental Protection, which the Commission decided not to act on. Mr. Taub said that public comments were invited on the subject of whether Representative Saviello's employment with International Paper precludes him serving on the Natural Resources Committee, but not on any specific allegations of misconduct.

Mr. Wayne asked Mr. Taub if the public could comment on Representative Saviello's legislative activities that were brought up in the complaints against him filed by environmental organizations.

Mr. Taub replied that the Commission was only interested in testimony on whether Representative Saviello's position within International Paper created a conflict of interest in light of his position on the Natural Resources Committee.

Ms. Ginn Marvin said that the only issue the Commission was going to discuss during the meeting would be whether there was a conflict of interest that would prevent Representative Saviello from returning to the committee.

Mr. Hinchman asked if the Commission had deferred making a decision on the third party complaint or whether they had decided not to act on it at all in the future.

Mr. Taub replied that the Commission had decided that for now, it would not investigate the allegations against Representative Saviello. Mr. Taub said the Commission wanted to make a decision on the conflict of interest question while deferring the other issues.

Naomi Schalit, executive director of Maine Rivers, asked if the letters submitted to Jonathan Wayne and Phyllis Gardiner were seen and considered by the Commission, and whether they would substitute for comments from the public.

Mr. Wayne said the Commission members would like to hear any comments from the public in addition to the letters that were previously submitted. Ms. Schalit asked again if the Commission members had seen the letters. Mr. Wayne replied that they had.

Michael Herz, a board member of Maine Rivers, expressed concern that the decision not to respond to the complaint was made during an executive session. Mr. Ketterer said the Commission had not made a final decision on the third party complaint, but was limiting its discussion to the conflict of interest question. Mr. Ketterer said that Representative Saviello was free to withdraw his request to the Commission and that comments were being limited to three minutes so that a decision could be made by the end of the meeting. Mr. Herz expressed his concern about a lack of disclosure with respect to the executive session and the need for the Commission to represent both Legislators and the public.

Mr. Bigos said that the Commission did not actually make any decision in executive session but would like to rule on whether Representative Saviello could return to the Natural Resources Committee. Mr. Bigos said that Commission members were uncomfortable about going into executive session but were briefed on the statutes relating to executive sessions, complaints against sitting Legislators, and jurisdiction of the Commission over previous legislative sessions. Mr. Bigos moved, Mr. Ketterer seconded, and the Commission voted unanimously (4-0) to accept Representative Saviello's request that he redact or withdraw his own request for the investigation into the communications regarding whether he was offered or received or participated in a *quid pro quo* with the Department of Environmental Protection.

Mr. Bigos stated that, by statute, the Commission can only hear complaints brought by a sitting Legislator against another Legislator or a request from a Legislator for the Commission to investigate that Legislator's action. Mr. Bigos said that the request should be brought to the Speaker of the House or President of the Senate, and that Representative Saviello did that and was referred to the Commission by the Speaker of the House. Mr. Bigos said that the Commission discussed during executive session that it can also take up a complaint from the public that is not brought to them as a sworn statement by a sitting Legislator. Mr. Bigos said that complaints by the public do not have to be made under oath and therefore those making the complaint do not face criminal penalties for making false statements. Mr. Bigos stated that it is not clear whether the Commission has jurisdiction to investigate Legislators for acts that occurred in a previous Legislature. Mr. Bigos expressed concern that the third party complaint was not a sworn statement from another Legislator. Mr. Bigos said that the Commission staff has received comments from third party organizations and conducted investigative interviews that they take seriously. Mr. Bigos said he would feel more comfortable if another Legislator brought the complaint to the Commission. Mr. Bigos said that the Commission may not be the proper organization to clear Representative Saviello's name as he requested.

Mr. Bigos moved that the Commission not take action on the its own motion to investigate Representative Saviello's actions regarding an alleged *quid pro quo* deal with International Paper and the Department of Environmental Protection and that the Commission make all filings it has received public documents. Mr. Cassidy seconded. Mr. Taub asked if Representative Saviello

or his attorney could comment on whether the documents should be made public. Mr. Harvey stated that he and Representative Saviello had no problem with making all documents public. The Commission voted unanimously (4-0) to adopt the motion.

Ms. Ginn Marvin asked for comments from the public and asked speakers to limit their comments to three minutes or less in order for everyone to be heard.

Joseph Grenier introduced himself as a concerned citizen. Mr. Grenier mentioned an executive order from Governor McKernan on ethical conduct. Mr. Grenier pointed out that Representative Saviello's request to the Commission was dated March 15, 2005. Ms. Ginn Marvin told Mr. Grenier that the letter from Representative Saviello was dated incorrectly and was actually sent on January 9, 2006.

Mr. Hinchman said that he filed the complaint against Representative Saviello on behalf of the Conservation Law Foundation. Mr. Hinchman commented that his signature on the complaint made the complaint a sworn filing. While he was not a Legislator, his reputation as an attorney was still at stake in bringing the complaint against Representative Saviello. Mr. Hinchman said that there were additional complaints in the materials he submitted other than the allegations of a deal with the Department of Environmental Protection. He said that these other allegations were included to illustrate the serious and on-going nature of the conflict of interest. Mr. Hinchman said that if the Commission were to decide that Representative Saviello did have a conflict of interest and should not serve on the Natural Resources Committee, CLF would not see a need to investigate each of the allegations. However, if the Commission decided not to rule on the conflict of interest issue, then he requested that the Commission investigate the merits of each of the allegations in the complaint. Mr. Hinchman pointed out for the Commission the various statutory standards in determining whether a conflict of interest existed. Mr. Hinchman said he found it extremely difficult to present his opinion and respond to the statements of other parties without knowing exactly what happened during the executive session.

Ms. Ginn Marvin asked if anyone else wanted to speak before the Commission.

Naomi Schalit introduced herself as the executive director of Maine Rivers who came to the Commission as both an advocate and a former reporter interested in public access to political debate. Ms. Schalit said that the public was disadvantaged by Representative Saviello's actions and his dual roles as an advocate for International Paper and as a committee member on the Natural Resources Committee. Ms. Schalit stated that while she supports the idea of a citizen legislature, that system should not be abused. Ms. Schalit said that unlike other Legislators, Representative Saviello voted on issues benefiting his employer directly rather than his industry in general. She said that the situation in which a teacher voted on education bills was very different from the Representative Saviello's votes on bills that affected his employer. Ms. Schalit asked the Commission to consider an image that many people attending meetings of the Natural Resources Committee would see, that of Representative Saviello sitting at the committee table with his laptop computer, which had the words "property of International Paper" emblazoned on the cover. She said that image had the effect of destroying the public's confidence in the open-mindedness of a Legislator.

Ms. Ginn Marvin asked Ms. Schalit if she was claiming that Representative Saviello voted on issues specific to International Paper or to the paper industry in general. Ms. Schalit responded that Representative Saviello voted on issues relating to his mill and one other, but that the International Paper mill was the largest paper mill polluter on that section of the river, giving his legislation a disproportionate effect.

Ms. Ginn Marvin asked if anyone else wished to speak on the conflict of interest issue.

Peter Didisheim introduced himself as the advocacy director of the Natural Resources Council of Maine. Mr. Didisheim said he spent most of his political career observing the political process and had experience with conflict of interest questions. Mr. Didsheim said Representative Saviello's behavior was fundamentally different from common conflicts of interest in a citizen legislature, as he played an activist role on the Natural Resources Committee and made decisions that benefited him personally. Mr. Didisheim was aware of no other instance in the current Legislature where a Legislator was on the committee regulating the company for which he or she was also responsible for ensuring complied with state law. Mr. Didisheim said Representative

Saviello was a primary source of legislation in the Natural Resources Committee benefiting his employer while at the same time being paid by the people of Maine to represent the public interest. Mr. Didisheim said that since the average person on the street would look at the evidence and see a conflict of interest, it should be sufficient for the Commission to make a ruling. Mr. Didisheim referred to the legislative ethics statute, saying that Legislators should avoid the appearance of misconduct. Mr. Didisheim referenced a January 13, 2006 editorial in the Portland Press Herald that encouraged the Commission to take up the Saviello matter. Mr. Didisheim said that Representative Saviello saw his roles as Legislator and as an employee of International Paper as synonymous, presenting a clear conflict of interest.

Ms. Ginn Marvin thanked Mr. Didisheim and asked if the Commission members had any questions for Mr. Didisheim. Ms. Ginn Marvin asked if anyone else wished to comment.

Michelle Grenier introduced herself as a concerned citizen. Ms. Grenier asked for the name of Representative Saviello's lawyer. Ms. Grenier said that it sounds like a conflict of interest for a Representative to vote on issues affecting his or her employer. Ms. Ginn Marvin thanked Ms. Grenier and asked if the Commission members had any questions for Ms. Grenier. Ms. Ginn Marvin told Ms. Grenier that Representative Saviello's attorney is Charles Harvey from Portland. Ms. Grenier asked if Representative Saviello could speak about his opinion on the conflict of interest issue.

Ms. Ginn Marvin asked if anyone else wished to speak on the issue. Ms. Ginn Marvin asked Representative Saviello if he wished to make any comments.

Representative Saviello said that five mills were affected by the legislation he voted on. Representative Saviello listed the towns in his district and said they were devastated by a loss of jobs in the area. Representative Saviello said that three hundred of his constituents work at the mills and that the forest products industry is the primary industry in his district.

Ms. Ginn Marvin asked if any Commission members had questions for Representative Saviello.

Mr. Bigos asked Representative Saviello how he was compensated. Representative Saviello stated that he was not compensated for being in the Legislature. Representative Saviello said he did not care what the opinion of International Paper might be and he voted against bills that International Paper lobbied for. Mr. Bigos asked Representative Saviello if he was a salaried employee. Representative Saviello replied that he was a salaried employee. Mr. Bigos asked if Representative Saviello received bonuses or incentives for any of his service in the Legislature. Representative Saviello replied that he did not. Mr. Bigos asked if Representative Saviello received bonuses or incentives for any of the accomplishments he has made in the Legislature. Representative Saviello replied that he did not. Mr. Bigos asked if Representative Saviello owned stock in International Paper. Representative Saviello replied that he did own stock in International Paper and a number of other companies.

Ms. Ginn Marvin asked if there were any other questions. There were no more questions.

Mr. Ketterer moved, Mr. Cassidy seconded, and the Commission voted unanimously (4-0) to table further inquiry into the third party complaint and deal only with the committee assignment issue. Ms. Ginn Marvin opened the discussion to comments.

Mr. Ketterer said that the fact a person works for an organization should not prohibit him or her from serving on a committee where he or she would be knowledgeable. Mr. Ketterer said that if this prohibition happened in a citizen legislature, it would end up with people serving on committees who did not have knowledge relevant to the subject of the committee's legislation. Mr. Ketterer said that Senate Presidents and Speakers of the House have taken a Legislator's background and expertise into account when making committee assignments. Mr. Ketterer said he was more concerned with the actual conduct of the lawmaker rather than making judgments based on where they are employed. Mr. Ketterer said that Legislators have a responsibility to represent those in their district who elected them, and the interests of the constituents may coincide with those of the Legislator's employer in the same district. Mr. Ketterer said this obligation can create conflicts with party leaders and other groups. Mr. Ketterer said that a Legislator should consider recusing himself or herself from a vote on a committee if it creates the appearance of a conflict of interest. Mr. Ketterer said that if a complaint comes to the

Commission in the form of a sworn letter from a sitting Legislator, the Commission would be required to investigate. Mr. Ketterer said that while Representative Saviello asked the Commission to clear his name, the Commission cannot help him since his problems are with the media. Mr. Ketterer said Representative Saviello was not required to remove himself from the committee, but did so voluntarily. Mr. Ketterer stated that he saw no evidence that should prevent Representative Saviello from serving on the committee.

Mr. Cassidy said he served six years as a Legislator, including serving as Senate chair of the Agriculture and Forestry Committee. Mr. Cassidy said there were no instances of bills written to only affect a specific company. Mr. Cassidy said it is not easy for Legislators to balance economic and environmental concerns. Mr. Cassidy said that he hoped that Legislators acted in the best interests of their constituents. He expressed his concern for the operations of a citizen legislature if certain Legislators were prohibited from serving because of their jobs or professional interests. Mr. Cassidy said that the people can be relied on to vote a Legislator out of office if the Legislator is behaving incorrectly. Mr. Cassidy said that no one committee member has the power to force a bill through the House and Senate.

Mr. Bigos said that the Commission members must preserve the objectivity of the Commission. Mr. Bigos said they were not closing the door on the issue and that the Commission may take it up again in the future. Mr. Bigos said Legislators must investigate for themselves whether their actions may give the appearance of a conflict of interest. Mr. Bigos said the Legislature tells its members that the reputation of the institution is at stake when there are appearances of conflicts of interest. Mr. Bigos told Representative Saviello that he should consider the reputation of the institution in deciding whether or not to return to the committee. Mr. Bigos said that while he has not served on the Legislature, he knows that there are many instances of Legislators who vote on issues particular to their areas of employment. Mr. Bigos expressed his concern that whatever action the Commission took that it does not endanger the existence of a citizen legislature comprised of working people.

Ms. Ginn Marvin said the important points had been addressed and that the Speaker of the House must decide whether to allow Representative Saviello to return to the committee. Ms. Ginn

Marvin said it is the role of Legislators to represent the people and industries in their districts. Ms. Ginn Marvin said that she could not see of a reason why Representative Saviello should be prevented from serving on the committee.

Mr. Ketterer moved, Mr. Cassidy seconded, and the Commission voted unanimously (4-0) that insofar as it relates to Paragraph 2 of the letter of the lawmaker, dated January 9, 2006, that Representative Saviello not be prohibited from serving on the Natural Resources Committee.

Mr. Wayne asked the Commission if he should send a letter to the Speaker of the House containing the Commission's decision on Representative Saviello. Ms. Ginn Marvin replied that the letter should say that the Commission discussed the issue and length and decided Representative Saviello should not be prevented from serving on the Natural Resources Committee.

Mr. Cassidy said that he had concerns about apparent conflicts of interest and that the integrity of the Legislature was at stake. Mr. Wayne offered to send Mr. Cassidy a draft of the letter before sending it to the Speaker of the House. Mr. Cassidy said that he would like input from all the Commission members to be in the letter and that the letter should highlight the importance of a citizen legislature.

Ms. Ginn Marvin said that the matter should be resolved soon so that the Speaker of the House can decide whether to allow Representative Saviello to return to the committee. Mr. Bigos said that the Speaker of the House would likely be aware of the Commission's decision before receiving the letter. Mr. Wayne said he would call the office of the Speaker of the House to tell them what the Commission had determined.

Ms. Ginn Marvin asked if there were any other issues needing to be addressed.

Ms. Schalit asked how the Commission planned to proceed on the complaint against Representative Saviello. Ms. Ginn Marvin said the Commission already answered that question. Ms. Schalit said that justice had been denied and wanted to know the timeline for when the

Commission might consider the complaint. Ms. Ginn Marvin said that the Commission would need a member of the Legislature to file the complaint. Ms. Schalit asked if the only way to move forward on the complaint would be if it was filed by a member of the Legislature. Mr. Bigos replied that the Commission could decide to take up the issue on its own motion, but that the Commission members had decided not to. Mr. Bigos said that, for them to address the complaint, either a member of the Legislature would have to make a sworn statement or something would have to happen to make the Commission reconsider its decision. Ms. Schalit asked if it would be possible for the Commission to address the complaint after the end of the current legislative session. Mr. Bigos said that anyone at the next meeting could ask the Commission to reconsider its decision to table the complaint against Representative Saviello, but the Commission would be obliged to take up the complaint if it was brought by a sitting Legislator. Ms. Schalit said the Commission's decision will act against the effectiveness of complaints brought by the public, leaving the Legislature to police itself.

There being no further business, Mr. Cassidy moved, Mr. Bigos seconded, and the Commission unanimously voted (4-0) to adjourn.

Respectfully submitted,

Jonathan Wayne
Executive Director