

Amended Minutes of the June 12, 2006 Meeting of the
Commission on Governmental Ethics and Election Practices
Held via conference call.

Present: Chair Jean Ginn Marvin; Hon. Vinton E. Cassidy; Hon. Andrew Ketterer;
Staff: Executive Director Jonathan Wayne, Paul Lavin, Martha Demeritt;
Commission Counsel: Phyllis Gardiner;
Complainant: Jennifer Duddy; For the Complainant: Jane Amero.

At 2:20P.M., Chair Ginn Marvin convened the meeting. The Commission considered one item:

Request for Consideration of Mike Mowles for Legislature Campaign Flyer

Chair Ginn-Marvin opened the hearing by introducing the complaint by Jennifer Duddy, Republican candidate for House District 121, who believes a campaign flyer recently mailed by her primary opponent Michael Mowles is misleading. She also pointed out that Mr. Mowles has indicated to staff that this hearing was happening too soon, he would not be able to participate in the hearing, and that he needed time to appoint legal counsel. Chair Ginn-Marvin then asked Executive Director Wayne to summarize the complaint and discuss how the Commission should proceed.

Executive Director Wayne summarized the complainant's request for Commission review. A mailer was sent out recently by the Mike Mowles campaign in House District 121 which includes language of endorsement by United States Senators Olympia Snowe and Susan Collins. This endorsement language was made when Mowles ran for the Maine House of Representatives in the 2004 general election against a Democrat, not in this primary and may appear to be misleading. Section 1014-A of Title 21-A states, "A candidate may not use an endorsement unless the endorser has expressly authorized its use." There is no suggestion that these quotations were made for 2006 use.

Counsel Gardiner asked if we had obtained any statements from Senators Snowe or Collins.

Ms. Demeritt described her conversation with Steve Abbott, chief of staff for Senator Collins. Mr. Abbott orally indicated to Ms. Demeritt that Senator Collins has not endorsed any state races in Maine whatsoever in 2006. Ms. Demeritt also read an e-mail she received from Senator Snowe's campaign manager, Lucas Caron, indicating that Senator Snowe did not endorse any candidates for office in Maine during the primary.

Ms. Duddy indicated that this flyer came to her attention on June 11, 2006 when a campaign volunteer making Get Out The Vote (GOTV) calls informed her that a voter told the volunteer that Senators Snowe and Collins had endorsed Mowles. She proceeded to get several copies of this mailer from a couple of her neighbors and proceeded to advise her GOTV volunteers about it. She subsequently discovered that indeed others who had received the flyer had been misled into thinking that Maine's Senators had endorsed Mowles.

Ms. Duddy believes the critical statement is: *See what people are saying about...Mike Mowles.* This statement, she believes, is effectively perceived to be nothing short of an endorsement for his campaign. She said this flyer has compromised the entire election and should not be misconstrued. Based on Mr. Mowles' letter to the Commission staff responding to her complaint, his comments are disingenuous. Ms. Duddy believes that this was an unauthorized endorsement. She thinks the Commission should make a finding of violation of endorsement, levy a penalty and issue a press release.

Ms. Amero, a campaign volunteer for the Duddy campaign, made GOTV calls to voters she personally knew in HD 121, not cold calls. Prior to making the calls on the afternoon of June 11th she was told by Ms. Duddy about the flyer. Ms. Amero made calls to those known to her and stated "I am supporting Jennifer Duddy on June 13th and hope you would do the same." If the voters response to that statement was less than warm, she proceeded to describe the mailer and explain that the statements from Maine's Senators were not made for the 2006 primary, but instead for the 2004 general election which she personally confirmed by calling the chiefs of staff for Senators Snowe and Collins on June 11th.

Counsel Gardiner asked Ms. Amero if any of those who received the flyer had interpreted it not as an endorsement. Ms. Amero responded that her politically astute neighbor understood that it was not an endorsement for the 2006 primary, but other people who were less familiar with campaigns, even though they saw the October 2004 date may not realize it was an endorsement for that campaign only.

Counsel Gardiner asked how many voters Ms. Amero contacted thought it was an endorsement. Ms. Amero responded “at least 10, maybe a few more.”

Chair Ginn-Marvin pointed out that the font for the date of the endorsements (October 2004) on the flyer appears to be substantially smaller than the rest of the text on the document.

Ms. Amero stated that she only mentioned the flyer to voters if they did not note their commitment to candidate Duddy. She also stated that to construe Senator Snowe’s last sentence “I urge you to elect Mike Mowles to the Maine House of Representatives” to be anything but an endorsement is disingenuous, the endorsement is very clear. The use of a small font for the date of the quotation does not negate the endorsement.

Mr. Cassidy asked whether or not there is any precedent for this kind of complaint. Both Counsel Gardiner and Executive Director Wayne indicated that there was not to the best of their recollection.

Mr. Cassidy also asked what the penalty would be and how the law addresses this particular matter. Counsel Gardiner responded stating that §1014-A states that there could be a civil forfeiture of no more than \$200.

Mr. Ketterer asked if the respondent received notice of today’s hearing. Mr. Lavin indicated that Commission staff had received a statement from Mr. Mowles, who was notified of the today’s meeting as soon as he determined that there would be three Commission Member’s available to hear the complaint.

Executive Director Wayne summarized the letter received from Mr. Mowles which requests that the Commission take up this matter at a later date because:

- (1) He was not supplied with a written copy of the complaint.
- (2) He was not told when the complaint was made and in what fashion.
- (3) Ample notice had not been given so that he could be properly represented before the Commission.
- (4) He wished to be represented by an attorney for this matter.
- (5) His attorney will need proper time to prepare for the hearing.

Mr. Mowles also stated in his letter that the dates of the quotations included on the flyer are clearly marked as October 2004. He believes that for these statements to be construed as an endorsement of the June 2006 primary is inaccurate. Furthermore, he states it is important to show primary voters that he has earned the trust and support of the two U.S. Senators in the past is highly relevant to this primary and the selection of a viable nominee for 2006.

Executive Director Wayne, at the urging of the chair, gave the staff interpretation of the facts. First, it is procedurally permissible to make a decision at this meeting, although it is an odd situation that the respondent has declined to be heard except for his submitted letter. Second, based on his own reading of the flyer, that although the quotes parenthetically mention October 2004, when you read the other side, with the names of other supporters on it, a sophisticated recipient will understand that these quotes were not meant for this year, but others may be misled.

While Mr. Wayne sympathizes with Ms. Duddy, he does not recommend the Commissioners send out a press release, as that would be a major departure from the Commission's previous practices. He went on to state that the members should be concerned about the appearance of a rushed decision.

Chair Ginn-Marvin said that the timing of this meeting is germane to the primary election to be held tomorrow (June 13th) and that it is the role of the Commission to take swift action for all complaints filed before an election. While a \$200 finding of violation does not change things, she believes that the Commission's duty is to act expeditiously.

Counsel Gardiner suggested that the Commission could make a preliminary or final finding on whether the flyer constitutes an endorsement and defer any decision regarding a penalty to the next regularly scheduled meeting of the Commission so that Mr. Mowles can be heard.

Mr. Ketterer stated that based on the presentation, the person who did this mailing did so recently and did it in a calculated manner so that the opposing candidate would not have the time to respond. He feels that this flyer was intended to be an endorsement. The intent was to show that the Senators were not endorsing a Republican woman. He believes that it warrants a finding of violation on the points that Executive Director Wayne mentioned. He also did not believe a press release from the Commission was necessary. If he so chooses, Mr. Mowles could file a motion to reconsider, as others have done in the past. However, Mr. Ketterer does not give great weight to Mr. Mowles' inability to appear at this hearing.

Mr. Ketterer discussed making a motion to find the endorsement in violation of §1014-A and defer the penalty until a later date.

Mr. Cassidy agreed that a flyer sent at the 11th hour was intended to mislead the voters. He also would like to deal with the penalty at a later meeting.

Mr. Ketterer made a motion that a finding of violation of §1014-A be made based on the definition of endorsement in §1014-A, that the quotations constituted endorsements, and that they were not authorized by the endorsers, and that any penalty be discussed at a later date.

The Commission voted (3-0) to find the Mowles campaign in violation of §1014-A and consider any penalties at the next meeting of the Commission on June 22nd.

Mr. Ketterer asked that the record reflect he worked with the complainant at the Attorney General's (AG) office where she was an employee and that he may have hired her. He was not willing to recuse himself because the nature of their relationship was strictly professional, that he has not been at the AG office for six years, and that he may have hired her eight or nine years ago.

Chair Ginn-Marvin also stated that she knew both the complainant and the respondent and lives in the district, but can be unbiased in this case because she does not know either of them particularly well.

The meeting adjourned at 3:05 p.m.

Respectfully submitted,

Jonathan Wayne
Executive Director