

Amended Minutes of the June 22, 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. A. Mavourneen Thompson; Hon. Andrew Ketterer, Hon. Vinton E. Cassidy (by telephone for Agenda Item #4 only); Staff: Executive Director Jonathan Wayne; Phyllis Gardiner, Counsel.

At 9:05 A.M., Chair Ginn Marvin convened the meeting. The Commission considered the following items:

Agenda Item #1 – Ratification of minutes of the April 28 and June 12, 2006 meetings

Mr. Ketterer moved, and Ms. Thompson seconded, that the Commission adopt the minutes of the April 28 and June 12 meetings.

Ms. Gardiner recommended that page 3 of the April 28 minutes be amended to replace “allow” with “grant” in the Commission’s motion. Ms. Gardiner recommended that page 5 of the June 12 minutes be amended to replace “defer a penalty” with “defer any decision regarding a penalty.”

Mr. Ketterer amended his motion, and the Commission voted unanimously (3-0) to adopt the minutes of the April 28 and June 12 meetings with the changes suggested by Ms. Gardiner.

The Commission decided to take up Item 3 out of order.

Agenda Item #3 – Use of Endorsement Without Authorization/Michael D. Mowles

Mr. Wayne said that the Commission staff received a complaint from Jennifer Duddy, a candidate for House District 121 in the Republican primary. Mr. Wayne said that Ms. Duddy

objected to a flyer put out by her primary opponent, Michael Mowles, which she considered misleading because it used endorsements from Senators Snowe and Collins in the 2004 general election. Mr. Wayne said that three Commission members (Ms. Ginn Marvin, Mr. Ketterer, and Mr. Cassidy) met by telephone on June 12, and the Commission found that Mr. Mowles violated 21-A M.R.S.A. §1014(A) by using unauthorized endorsements from Senators Snowe and Collins. Mr. Wayne said that Mr. Mowles did not participate in the telephone meeting as he was campaigning the day before the primary election, but he did submit a letter to the Commission. Mr. Wayne said that this letter requested a postponement of the meeting to give Mr. Mowles a chance to be represented by an attorney. Subsequent to the meeting on June 12th, Mr. Wayne said that the staff received a request from Mr. Mowles and his attorney, David Lourie, that the Commission reconsider its decision. Mr. Wayne said that the statute allows for a penalty of up to \$200 for the endorsement violation, but the staff recommended against any penalty against Mr. Mowles. Mr. Wayne said that there were no guidelines on what circumstances should result in a reconsideration by the Commission.

David Lourie said that Mr. Mowles wanted to participate in the June 12 meeting, but was unable primarily due to business reasons.

Mr. Mowles said that business and family obligations prevented him from participating in the meeting by telephone. Mr. Mowles clarified that he was involved with two loan closings during the time of the June 12 telephone meeting, not campaigning.

Mr. Lourie said that Mr. Mowles' flyer was not in violation of the statute. Mr. Lourie said that Ms. Duddy served as Mr. Mowles' campaign manager and knew in advance that he planned to reuse the 2004 endorsements in the 2006 primary campaign.

Mr. Wayne apologized for misrepresenting the reason for Mr. Mowles' non-participation in the June 12 meeting.

Ms. Ginn Marvin asked why the Commission should reconsider its decision. Mr. Lourie said that the quotations from Senators Snowe and Collins were in the public arena, allowing Mr.

Mowles to use them after the 2004 election. Mr. Lourie said that the flyer included language stating that the quotations were from 2004. Mr. Lourie said that the quotations cannot be considered to be endorsements. Mr. Lourie said that contrary to Ms. Duddy's concern, Mr. Mowles had no intention to mislead. Mr. Lourie said that a past endorsement is not subject to regulation and such regulation was not the intent of the Legislature in the elections law. Mr. Lourie said that regulations on using past endorsements would also be an unconstitutional restriction of speech. Mr. Lourie said that Ms. Duddy donated \$100 of seed money to Mr. Mowles and knew that he planned on using the 2004 endorsements at the end of his campaign. Mr. Lourie said that various people had accused Mr. Mowles of being unethical and called him a criminal. Mr. Lourie said that the June 12 meeting did not afford Mr. Mowles due process, and Ms. Duddy knew that he would not have time to prepare a defense.

Mr. Ketterer said that he was still looking for a reason to reconsider the Commission's decision. Mr. Ketterer said that Mr. Mowles sent a letter prior to the June 12 meeting, but did not mention Ms. Duddy's involvement in his campaign or knowledge of the flyers. Mr. Ketterer said that the Commission would consider e-mail correspondence and other evidence that a court would not.

Mr. Lourie said that he was not aware of Ms. Duddy's involvement with the campaign until the morning of the hearing. Mr. Lourie said that it did not immediately occur to Mr. Mowles that Ms. Duddy's complaint was strategically planned. Mr. Lourie said that Mr. Mowles did not have enough time to draft a thorough letter of defense before the June 12 meeting.

Ms. Thompson asked about the proper process for reconsideration. Ms. Gardiner said that this Commission does not have a rule that creates a formal process for requesting a reconsideration but that every agency has the inherent authority to reconsider a decision in each case before it becomes final and appealable. Ms. Gardiner said that the Commission was well within that period. Ms. Gardiner said that the short notice of the June 12 meeting could be a reason for reconsideration, as well as anything that could result in the Commission's decision being made in error. Ms. Gardiner said that process involved two steps. First, the Commission could decide, based on Mr. Mowles' reason for not being able to attend the June 12th meeting, to open up the record to allow him to give his full presentation and to allow Ms. Duddy to respond. Then, the

Commission could determine whether it thought that its decision was correct or whether it should be reconsidered.

Ms. Thompson asked if it was appropriate to have a reconsideration hearing at the current meeting, given that neither side was prepared for such a hearing. Ms. Gardiner said that the Commission could consult with those involved. She said that the Commission could allow for more information to be presented at the meeting in order to decide whether to reconsider the decision made on June 12th.

Mr. Ketterer asked if granting a motion to reconsider would vacate the Commission's original finding or simply open the record to take additional information. Ms. Gardiner said that the Commission could initially open the record to take additional information. Mr. Ketterer commented that by vacating the original decision, the Commission would have to conduct a de novo hearing in which case the parties would have to re-introduce any evidence presented on June 12th and present any new or additional information. Whereas by reopening the record to take additional information, the evidence presented at the June 12th meeting would not be erased. Ms. Gardiner said that she thought that the latter was the appropriate procedure in this case. Mr. Ketterer asked what was actually being requested of the Commission, whether to vacate its earlier decision and finding which would put the Commission in a different position than reopening the record to take additional testimony. Ms. Gardiner said that it appeared Mr. Lourie was asking the Commission to vacate its previous decision, but that the Commission could preliminarily agree to reopen the proceeding to take additional testimony before getting to the issue of whether to vacate or reconsider.

Mr. Lourie said that a reconsideration undoes the previous decision under Robert's Rules but does not undo the record. Ms. Duddy would go forward again as the moving party and Mr. Mowles would respond. He said that he thought the proper procedure would be for the Commission consider a motion to reconsider to look at the complaint again because enough has been brought forward that establishes that a full hearing on the merits might result in a different decision. This would provide Mr. Mowles an opportunity to present his testimony in a hearing on the original complaint. However, Mr. Lourie said that he does not object to the Commission

merely reopening the proceeding to allow Mr. Mowles to present additional evidence with the understanding that, at the end, the Commission will be deciding whether to reconsider the decision.

Chair Ginn Marvin invited Ms. Duddy to comment on the issue of the process for the Commission to undertake for reconsideration.

Jennifer Duddy identified herself for the record. Ms. Duddy said that her letter to the Commission on June 20, 2006 outlined her position on Mr. Mowles' request for reconsideration. Ms. Duddy said that her previous involvement with Mr. Mowles' campaign was not relevant. Ms. Duddy said that she assisted Mr. Mowles for four weeks and was not his campaign manager. Ms. Duddy said that at the time, Mr. Mowles had no opponent running against him in the primary election. Ms. Duddy said that Mr. Mowles showed her flyers he used in the 2004 election, telling her that he planned to use the same endorsements again in November of 2006. Ms. Duddy said that she did not expect Mr. Mowles to use the endorsements before the primary election. Ms. Duddy said that since Mr. Mowles had time to type a lengthy letter to the Commission, he should have had time for a 45-minute telephonic Commission meeting. Ms. Duddy said that her June 20 letter to the Commission expressed her wishes in regard to a possible reconsideration.

Mr. Ketterer asked Ms. Duddy for her thoughts on the argument raised by Mr. Mowles' counsel that the determination by the Commission of unethical behavior will stay with him in future campaigns and may affect his trade or business.

Ms Duddy said that it will stick with him, but that candidates must be held accountable. Ms. Duddy said that the Commission should treat the matter as a serious one if it involves an attempt to mislead voters. She said that his actions were a serious violation of the law and should be treated seriously.

Mr. Lourie said that he did not base his request for the reconsideration on Ms. Duddy's prior knowledge but on grounds of unconstitutionality. Mr. Lourie said that a court in California

threw out a charge of misleading use of an endorsement, deciding that “misleading use” is not an appropriate standard. He read the case citation into the record.

Ms. Thompson asked if it would be appropriate for her to move for reconsideration given that she did not participate in the June 12 meeting. Ms. Gardiner advised Ms. Thompson a Commission member who was present at the meeting and who voted in the majority should make the motion.

Mr. Ketterer made a motion to grant reconsideration. Ms. Ginn Marvin seconded for the purpose of discussion.

Ms. Thompson said that Mr. Lourie presented new information on whether the flyer constituted an endorsement. Ms. Thompson said that there should be a new hearing on the matter but that it would not be appropriate to have a full hearing during the current meeting, since it was not an item on the public agenda.

Ms. Ginn Marvin said that there was no need for reconsideration. Ms. Ginn Marvin said that participating in the June 12 meeting should have been a priority for Mr. Mowles. Ms. Ginn Marvin said that the Commission was bound by statute to respond to the complaint on the matter before the primary election.

Ms. Thompson said that while the June 12 meeting was warranted, the Commission has been presented with new information on the use of past endorsements. This information raised concerns for her about whether information in the public domain, such as the previous endorsements, can or cannot be used in the current election.

Mr. Ketterer said that while the Commission could benefit from hearing Mr. Lourie’s presentation, he questioned whether there were adequate grounds to support a request for reconsideration. Mr. Ketterer said that he understood the difficulty Mr. Mowles had in participating in the June 12 meeting, but that he and the other Commission members had to put aside business matters to attend the meeting. Mr. Ketterer said that he had a difficult time

thinking of circumstances under which the respondent could not similarly rearrange his schedule to attend the meeting as the Commission members did. Mr. Ketterer said that there was an opportunity to be heard and did manage to get information to the Commission which was fully considered at the meeting. Mr. Ketterer said that Mr. Mowles' letter presented substantive explanations about the issues regarding the flyers. Mr. Ketterer said that found it difficult to see the need for reconsideration in this case.

Mr. Mowles said that there was no way he could have participated in the June 12 meeting. He explained that he thought that his presence on behalf of his clients at business appointments scheduled at the time of the Commission's meeting was critical and he apologized for not being able to attend the meeting. Mr. Mowles said that he has the greatest regard for the Commission and that, in the past, he had requested approval from the Commission staff on his flyers. He said that throughout the campaign he has tried to comply with all the Commission's laws and rules.

On the motion to grant Mr. Mowles' request for reconsideration of the Commission's June 12 decision, the Commission voted 1-2. Ms. Thompson voted for the motion; Mr. Ketterer and Ms. Ginn Marvin voted against it. The motion failed.

Mr. Ketterer moved, and Ms. Thompson seconded, that the Commission assess no financial sanction against Mr. Mowles. Mr. Lourie requested an opportunity to comment. Mr. Ketterer withdrew the motion.

Mr. Lourie said that Mr. Mowles had no intention of paying any fine. Mr. Lourie said that the Commission's ruling was unconstitutional and that Mr. Mowles would appeal. Mr. Lourie said that Mr. Mowles had already been punished for his actions. Mr. Lourie requested that the Commission impose the maximum penalty so that Mr. Mowles could appeal in court.

Ms. Gardiner said that even if the Commission decides not to penalize Mr. Mowles, he could still appeal the ruling.

Mr. Ketterer said that an appeal does not rely on the issuance of a penalty.

Ms. Thompson asked why the Commission should not assess a penalty. Mr. Wayne said that since Mr. Mowles' reputation suffered from press coverage of the flyers, the Commission could decide that he has already been sufficiently punished.

Ms. Thompson asked if Mr. Mowles could appeal without having been penalized. Mr. Wayne said that was the case, and the Commission should only assess a penalty if it was justified, without taking the appeal into consideration.

Mr. Ketterer suggested a \$1 penalty.

Ms. Thompson moved, Mr. Ketterer seconded, and the Commission voted unanimously (3-0) to assess a penalty of \$1 against Mr. Mowles.

Agenda Item #2 – Mailings by Rep. Kevin J. Glynn

Mr. Cassidy joined the meeting by telephone.

Ms. Thompson recused herself from the agenda item due to a potential conflict of interest. Ms. Thompson explained that her policy research group did research for Kevin Glynn's opponent.

Mr. Wayne said that Representative Lawrence Bliss filed a complaint against Representative Kevin Glynn for mailing constituent newsletters outside of Rep. Glynn's House district but within the Senate district for which he is currently running. Mr. Wayne said that Rep. Bliss argued that these newsletters should be considered campaign expenditures, since it is unfair to Rep. Glynn's Clean Election opponents who are limited in how much they can spend. Mr. Wayne said that Rep. Glynn began receiving seed money on February 8, though he did not register as a candidate until mid-March. Mr. Wayne said that the seed money contributions indicated that Rep. Glynn was a candidate under the law, and his legislative newsletter was mailed after February 8. Mr. Wayne said that the statute was not clear in distinguishing between legislative and campaign mailings. Mr. Wayne said that Dan Billings, who represented Rep.

Glynn, argued that only the content of the newsletters should matter in making this determination. Mr. Wayne said that the Commission should also consider past practice and who received the mailings.

Mr. Wayne said that Rep. Glynn came to the Commission office on April 10 asking for advice on the newsletter mailing. Mr. Wayne said that the Commission staff was rushed in giving him advice due to an upcoming certification deadline. Mr. Wayne said that Rep. Glynn spoke with a candidate registrar and the assistant director, who told Rep. Glynn that the newsletter was not a campaign expenditure. Mr. Wayne said that the staff may not have known the extent to which Rep. Glynn planned on mailing the newsletter outside his House district.

Dan Billings said that Rep. Glynn sent a letter summarizing his discussion with the Commission staff on the newsletter issue, in which he wrote of his plans to mail the newsletter outside his House district. Mr. Billings said that Rep. Glynn previously sent out inserts in newspapers and mailed flyers to people outside his district. Mr. Billings said there was little guidance in the statute or Commission rules on what constitutes a campaign expenditure. Mr. Billings said that it was difficult to determine whether the intent of the communication was to influence the election, and the same mailing that is determined to be a campaign expenditure may not be an expenditure under different circumstances. Mr. Billings said that an expenditure may be campaign related depending on whether a candidate is an incumbent or challenger, presenting a vague standard. Mr. Billings said that there was a history of legislators sending communications outside their districts. Mr. Billings cited a 2004 memo from Phil Merrill, who served as legal counsel to the Senate President. Mr. Billings said that the memo indicated that an appropriate standard for campaign communications would be any express advocacy for a candidate. Mr. Billings asked that the Commission not take action on the complaint against Rep. Glynn, but should clarify its rules to prevent similar issues in the future. Mr. Billings said that Rep. Glynn sent letters to honor roll students for schools within his district. Mr. Billings said that Rep. Glynn could not obtain the addresses for those students due to privacy restrictions, so he gave the letters to the schools to mail themselves. Mr. Billings said that Rep. Glynn had no way of determining which parents resided outside his district in doing this mailing. Mr. Billings said

that Rep. Hutton sent out letters in June, paid for with tax money, and there was no prohibition against it.

Rep. Glynn said that he mailed out a resource guide the first year he was elected. Rep. Glynn said he frequently received phone calls from outside his district, since he was the only Republican Representative in the area. Rep. Glynn said that on June 5 he received a \$495 check from the legislature to provide constituent services. Rep. Glynn said that since he served in a statewide office, his constituents could be considered to include people outside of his home district. Rep. Glynn said that communication about the legislature's activities was an important part of his job as a legislator.

Kathleen Brogan introduced herself as an attorney representing Senator Lynn Bromley. Ms. Brogan said that the Commission should consider whether Rep. Glynn had the intent of influencing the election in his newsletters. Ms. Brogan said that of the House districts neighboring his, Rep. Glynn only mailed newsletters to people within his potential Senate district. Ms. Brogan said that mass mailings outside of a legislator's home district were not appropriate.

Ms. Ginn Marvin asked about the size of the area in which Rep. Glynn typically sends mailings. Rep. Glynn replied that he asked for advice on the subject from the Commission staff. Rep. Glynn said that the mail is restricted to his geographic area, typically Portland, South Portland, and Scarborough. Rep. Glynn said that there is not a set group of people that receives his mailings, since the size of the mailing depends on available funds. Rep. Glynn said that many people in his area who live outside his House district lack access to balanced information.

Mr. Ketterer said that Rep. Glynn was acting in good faith by consulting with the Commission staff on two occasions.

Ms. Brogan said that the Commission staff did not have enough information from Rep. Glynn and did not know he intended to mail the newsletters exclusively to people within his potential Senate district.

Ms. Ginn Marvin asked Ms. Brogan if the Commission staff had the responsibility of asking clarifying questions before giving advice to Rep. Glynn. Ms. Brogan replied that it was an issue for the April mailing but not the February mailing, when Rep. Glynn had not yet registered as a candidate. Ms. Brogan said that the February mailing was a campaign expenditure that could affect the Clean Election campaigns of Rep. Glynn and his opponents.

Alison Smith, after introducing herself as a member of the public, said that the public had a right to know who paid for the communications from Rep. Glynn, which was not clear in the newsletters. Ms. Ginn Marvin said that there was a statement on the newsletters indicating that they were paid for with personal funds. Ms. Smith said that even if personal funds were used, they should be considered as campaign expenditures.

Mr. Billings said that the statute only requires a disclaimer on campaign communications, not on constituent mailings. Mr. Billings said that Rep. Glynn did not receive funds from any third parties to pay for the mailings.

Mr. Ketterer asked Ms. Smith if she was a concerned citizen or if anyone had asked her to speak at the Commission meeting. Ms. Smith replied that no one asked her to speak and that she was an advocate for clean elections. Ms. Smith said that it was a concern if Clean Election candidates were donating more than the limit of \$100 in seed money to their campaigns from their personal funds.

Mr. Cassidy asked if there was any policy about sending constituent mailings when the legislature was not in session. Mr. Ketterer replied that there was currently no such policy, though past sessions of the legislature may have had restrictions on the timing of mailings.

Mr. Cassidy said that he received a newsletter from an incumbent legislator that included a picture of the legislator with a U.S. Congressman. Mr. Cassidy said that there was a need for better policies in the future.

Mr. Wayne said that he interpreted Phil Merrill's 2004 memo differently from Mr. Billings. Mr. Wayne said that the memo urges caution for legislators sending out constituent mailings outside their districts. Mr. Wayne said that the memo advised against sending bulk mailings outside of a legislator's home district, but communications with specific individuals was acceptable.

Mr. Wayne said that the fact Rep. Glynn mailed to his potential Senate district could be relevant to the Commission's decision. Mr. Billings said that the communication was either a campaign expenditure or wasn't, regardless of the mailing area.

Ms. Brogan said that the April newsletter was mailed at the expense of the legislature for those sent within Rep. Glynn's district, while personal expenses were used to mail newsletters outside his district. Ms. Brogan said that the February mailing was mailed entirely with Rep. Glynn's personal funds.

Mr. Wayne said that Rep. Glynn had not sent a constituent mailing outside of South Portland until 2005. Mr. Billings replied that Rep. Glynn had sent newspaper inserts outside of South Portland prior to 2005.

Mr. Billings said that using the area of mailings to decide whether a communication was a campaign contribution would be a subjective standard and is based on whether someone is an incumbent. Ms. Gardiner asked whether geographic area would be an objective standard. Mr. Billings replied that it would be subjective because sending mailings to only a few people outside the district was acceptable.

Mr. Wayne said that the Commission had the options of taking no action, requiring Rep. Glynn to use Clean Election funds to reimburse himself for the newsletter costs, or considering the mailings to be a contribution to his campaign and thus a violation of the Clean Election Act. Mr. Wayne advised against the last option, since Rep. Glynn consulted with the Commission staff prior to the mailing.

Mr. Ketterer moved, and Mr. Cassidy seconded, that the Commission take no action regarding Rep. Glynn. Mr. Ketterer said that Rep. Glynn made a good faith effort to seek advice from the Commission staff. Mr. Ketterer said there was a question of who a legislator represents, since legislators serve as state officials voting on issues that do not affect their districts alone. Mr. Ketterer said that the Commission's response to a specific letter would be different from its response to a mass mailing. Mr. Ketterer said that was difficult to determine from mailing addresses who actually resided within Rep. Glynn's district. Mr. Ketterer said that there should be some clarification of the rules since action by the Commission requires an intent to influence the election, which is difficult to prove.

Mr. Cassidy said that he agreed with the motion but the Commission should clarify ambiguities in the law.

Ms. Ginn Marvin said that she supported the motion. Ms. Ginn Marvin said that the Commission should consider issues such as the timing of letters, where they are sent, and whether they constitute direct advocacy, though no action was appropriate in the case of Rep. Glynn.

Mr. Ketterer suggested that the Commission discuss constituent mailings at a later meeting, taking testimony from interested parties. Mr. Ketterer said that the Commission might discover related issues. Mr. Ketterer said that people should feel that they are treated fairly by the state government. Mr. Wayne agreed with the suggestion, saying that the issue affects many incumbents. Mr. Ketterer said that people should have advanced notice that the topic would be on the agenda. Ms. Ginn Marvin recommended that the topic be placed on the agenda of the next meeting and notification be sent to candidates and party leaders. Ms. Gardiner said that the meeting should be open to public comment but would not be a formal rulemaking hearing.

The Commission voted unanimously (3-0) to take no action regarding Rep. Glynn.

Tom Watson, State Representative from Bath, said that the Commission could consult with the Presiding Officers' Advisory Committee on Legislative Ethics. Ms. Gardiner said that the Committee cannot address campaign finance issues.

Mr. Cassidy left the meeting at the close of this agenda item.

Agenda Item #4 – Recruitment of Opponents by Maine Clean Election Act Candidates

Ms Thompson rejoined the meeting for the remaining agenda items.

Mr. Wayne said there were cases in 2004 and 2006 where Clean Election candidates may have assisted people to run as their opponents in order to gain additional public financing for a contested primary election. Mr. Wayne said that while no laws were broken in these cases, recruiting opponents could be used in the future as a way of manipulating the Clean Election Act to get more funds. Mr. Wayne said that the staff could recommend changes to the Clean Election Act after the November election. Mr. Wayne presented the Commission with proposed language for a statutory amendment.

Ms. Ginn Marvin said that Jennifer Duddy ran against Michael Mowles in the primary election after having previously assisted his campaign. Mr. Wayne said that there may be some difficult cases where the intentions of the candidates are not clear. Ms. Gardiner said that neither Mr. Mowles nor Ms. Duddy assisted the other in first becoming a candidate.

Ms. Thompson asked how the Commission would determine whether someone is a candidate. Ms. Thompson asked what would happen if the assistance was given before officially becoming a candidate. Mr. Wayne said that the changes to the law would have to cover all possibilities.

Mr. Ketterer said that the Commission should decide if the changes belong in the packet of proposed amendments to the Clean Election Act, but it was not necessary to discuss the details of the changes at that time.

Ms. Gardiner said that no motion was needed.

Mr. Ketterer recommended discussing the issue at the end of the year, after the November election.

Agenda Item #5 – Referral to Attorney General for Collection of Civil Penalty/Paul Volle and PACs

Ms. Ginn Marvin said that the Commission would not be considering Item 5. The staff had withdrawn this item because Mr. Volle said that he would be paying the fines.

Agenda Item #6 – Discussion of Improved Audit Procedures

Mr. Wayne said that the staff had always reviewed all expenditures made by Clean Election candidates and has found that a majority of candidates comply with the requirements of the law. Mr. Wayne said that there were a limited number of problems uncovered. Mr. Wayne said that staff auditor Vincent Dinan would outline the staff's proposal for improved auditing procedures. Mr. Wayne said that the staff recommended further checks on finance reports to ensure the accuracy of reporting.

Mr. Dinan said that the staff was working to develop a formal audit program, which resulted in the audit memorandum included in the meeting materials. Mr. Dinan said that the audit program would result in a review of all reports. Mr. Dinan said that a random sample of reports would be selected for a more extensive audit, where the staff would request supporting documentation from the campaigns. Mr. Dinan said that select transactions in about 20% of reports would be audited in this manner. Mr. Dinan said that legislative and, to a lesser extent, county candidates would be included. Mr. Dinan said that all gubernatorial candidates would be fully audited. Mr. Dinan said that the auditing would result in a report made to the Commission, which would decide whether to take further action in each case, with the Commission staff outlining each option.

Mr. Ketterer said that despite the random sampling, candidates may complain if they are selected for an audit but not their opponents. Mr. Dinan responded that everyone would have an equal chance of being selected. Mr. Dinan said that the sampling technique should withstand scrutiny and should also accommodate audit requests for specific candidates.

Mr. Ketterer asked if it would be possible to select districts to audit rather than individual candidates. Mr. Dinan said that several selection options were possible, and there would not be a problem selecting by district.

Ms. Thompson asked if the random sampling would create hesitation among candidates deciding whether to be publicly financed. Mr. Wayne said that there was a record keeping requirement in the law. Mr. Wayne said that the Commission staff would send a letter requesting a few invoices to candidates chosen for an audit, and it would be done in a non-threatening way. Mr. Wayne said that the staff would also send informational letters after the audit to inform candidates of the results. Mr. Wayne said that candidates must keep receipts for all expenditures of over \$50. Mr. Wayne said that the positive result of the audits will be greater accountability in the use of public funds.

Ms. Gardiner said that the audits would serve as a deterrent against improper use of funds.

Ms. Thompson asked if a sample chosen by district would influence the randomness of the sample. Mr. Dinan said it would still be a random sample. Ms. Thompson asked if there would be a different procedure followed for gubernatorial candidates. Mr. Dinan replied that all gubernatorial candidates would be fully audited on-site.

Mr. Wayne said that the Commission could receive feedback from legislative leadership.

Agenda Item #7 – Staff Update on Criminal Prosecution of Peter Throumoulos

Mr. Wayne said that Peter Throumoulos qualified for public financing in 2004. Mr. Wayne said that he also tried to become certified as a Clean Election candidate in 2006. Mr. Wayne said that

the Commission staff received a call from the Saco city clerk, who noticed that some of the signatures on Mr. Throumoulos' qualifying contribution receipt and acknowledgement forms did not match the voter registration cards on file. Mr. Wayne said that some of the allegedly forged signatures came from people who had died in 2004. Mr. Wayne said that Mr. Throumoulos was indicted by a grand jury on June 6.

Ms. Gardiner said that Mr. Throumoulos was denied certification in 2006 after a staff review of his submitted materials. Ms. Gardiner said that Mr. Throumoulos only submitted the required minimum of 150 qualifying contributions. Ms. Gardiner said that the indictment listed three counts of aggravated forgery on the forms and money orders, one count of theft by deception for receiving Clean Election funds in 2004, and one count of attempted theft by deception for his attempt to be qualified in 2006. Ms. Gardiner said that Mr. Throumoulos was representing himself and moved for a dismissal of the charges. Ms. Gardiner said that the trial would be in York County and could start in about six months. Ms. Gardiner said that Mr. Throumoulos was no longer a candidate in the 2006 election since he lost the primary. Ms. Gardiner said that Mr. Throumoulos would likely be asked to repay the public funds he received in 2004.

Agenda Item #8 – Selection Dates of Commission Meetings in July, August, and September

The Commission agreed on dates of Wednesday, July 19 and Wednesday, August 23 at 9 a.m., with the September date to be decided at a later meeting.

Other Business

Mr. Wayne said that Heather Mills, a candidate for State Representative, requested certification to receive Clean Election funds. Mr. Wayne said that the Commission staff denied Ms. Mills' certification request due to concerns that she did not meet the requirements governing seed money contributions and expenditures. Mr. Wayne said that Paul Lavin, the Assistant Director, would provide further details.

Mr. Lavin said that Ms. Mills was a candidate for House District 136 who originally registered as a privately financed candidate in March. Mr. Lavin said that Ms. Mills signed a Declaration of Intent to Seek Certification as a Maine Clean Election Act Candidate on May 11. Mr. Lavin said that it was not common for a privately financed candidate to later request Clean Election certification since Clean Election candidates face greater restrictions on raising and spending seed money. Mr. Lavin said that Ms. Mills requested certification on May 25. Mr. Lavin said that Ms. Mills' seed money report indicated that she had spent about \$1,800 in seed money without having collected any seed money contributions. Mr. Lavin said that Bob Mills, the committee treasurer for Heather Mills, submitted an amended seed money report that included seed money contributions. Mr. Lavin said that on the amended seed money report, the goods and services received by the campaign still exceeded the total amount of contributions. Mr. Lavin said that Mr. Mills was not appealing the denial of certification, but he wished to explain the circumstances leading to the seed money report errors and that the errors were unintentional.

Mr. Mills explained that he was a candidate for governor until March 13, but is now a candidate for York County Commissioner. Mr. Mills said that he was doing all the campaign finance reports for his gubernatorial campaign, his county commissioner campaign, and his wife's seed money report. Mr. Mills said that an attorney signed Ms. Mills' seed money report but did not review it. Mr. Mills said that he took responsibility for the errors in the report and will not appeal the denial of certification. Mr. Mills said that Ms. Mills will continue to run as a privately financed candidate. Mr. Mills said that he thought the seed money report only covered the time between when a candidate signs a Declaration of Intent form and the candidate's request for certification. Ms. Ginn Marvin thanked Mr. Mills for coming to the meeting and addressing the Commission. This agenda item did not require any action by the Commission.

Ms. Thompson moved, Mr. Ketterer seconded, and the Commission voted unanimously (3-0) to enter executive session to hear a complaint against a current legislator.

The Commission returned from executive session. Mr. Ketterer moved, Ms. Thompson seconded, and the Commission voted unanimously (3-0) to dismiss the complaint and take no further action.

There being no further business, Mr. Ketterer moved, Ms. Thompson seconded, and the Commission unanimously voted (3-0) to adjourn.

Respectfully submitted,
Jonathan Wayne
Executive Director