



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

Minutes of the December 12, 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: Hon. Andrew Ketterer, Chair; Hon. Jean Ginn Marvin; Hon. Mavourneen Thompson;  
Michael Fridman, Staff: Executive Director Jonathan Wayne; Phyllis Gardiner, Counsel.

At 9:06 A.M., Andrew Ketterer convened the meeting and noted that Jean Ginn Marvin had a conflict with regard to Agenda Item #8 and would not be included in the discussion on this agenda item. Item #7 has been withdrawn. The following agenda items were discussed:

Agenda Items #1 and #2 were taken out of order and discussed later.

**Agenda Item #3 – Finding of Violation for Commingling MCEA Funds – Rep. Joan Bryant-Deschenes**

As a result of the staff audit of Rep. Joan Bryant Deschenes' campaign, the staff determined that Rep. Bryant-Deschenes had commingled campaign and personal funds. At the last meeting, the Commission found Rep. Bryant-Deschenes in violation of the prohibition of commingling campaign finance funds with her personal funds but postponed the consideration of a penalty. Mr. Wayne informed the members that Rep. Bryant-Deschenes was an outgoing member of legislature and had submitted a letter to the Commission asking for reconsideration of its action at the previous commission meeting. The staff recommendation is not to impose a penalty.

Rep. Bryant-Deschenes addressed the Commission. She explained that she misunderstood the statute, which she said was clear. However, the Candidate Guidebook says that candidates are "strongly encouraged" to open separate account and does not "require" separate accounts.

Commission on Governmental Ethics and Election Practices  
December 12, 2006 Meeting Minutes

Mr. Friedman asked what her practice was in past sessions when she ran for the legislature. Rep Bryant Deschenes indicated she did have a separate account during her first run, but because she seldom wrote checks decided she did not need to open a separate account. She further indicated that the Guidebook indicated that it was not mandatory to have separate accounts. She also advised that the Guidebook could be written more clearly so candidates know exactly what is required. The statute indicates one thing and the Guidebook indicates another, therefore, she was unsure which route to take.

Mr. Ketterer asked whether the statute had been changed recently. Mr. Wayne responded that the requirement had existed in statute for a long time but an amendment was made to explicitly require Maine Clean Election Act candidates to have separate campaign accounts.

Mr. Friedman asked Mr. Wayne what the language in the Guidebook was. After a brief discussion, it was agreed that the language should be changed from "strongly encouraged" to "required" if that is what the intent is.

Ms. Ginn Marvin made a motion to assess penalty of \$100, which Mr. Friedman seconded.

Mr. Friedman expressed concern over two things: the perception by public of wrongdoing by commingling funds and the statute requiring it. However, since the Guidebook does not require two separate accounts and statute says it is, the need exists to be sure it is clear what the Commission's intent is with regard to accounting requirements.

Ms. Thompson stated that since the problem was discovered through an audit procedure, we can assume that there are similar problems with other candidates. Because there is a contradiction between what the Guidebook says and what the statute requires, it is more on a mistake on the part of the Commission and the staff than of the candidate. Ms. Thompson said that she would vote against assessing a penalty.

Ms. Ginn Marvin said that the statute was very clear about this.

Commission on Governmental Ethics and Election Practices  
December 12, 2006 Meeting Minutes

The Commission voted 3-1 to impose a \$100 penalty. Ms. Thompson voted against imposing a penalty.

**Agenda Item #4 – Finding of Violation for Commingling MCEA Funds – Donald Marean**

Mr. Wayne explained that Rep. Marean commingled his legislative compensation check and MCEA funds. Rep. Marean assumed they were related monies and could put them together.

Rep. Marean addressed the Commission. In past runs (2004) he had separate accounts, he started using the account for his legislative pay because it was already set up with automatic direct deposit. When the 2006 MCEA funds started coming in, he had them electronically deposited into this same account without realizing it would be a violation. When the Commission staff advised that he should have separate accounts, he did so the same day.

Ms. Thompson made a motion to assess a \$100 penalty, Mr. Friedman seconded this motion, and the Commission voted 3-1 in favor of the \$100 penalty on Rep. Marean. Ms. Thompson voted against the motion.

**Agenda Item #2 – Request for Waiver of Late Filing Penalty – Eagle Lake Democratic Committee**

Mr. Wayne outlined the late filing of the Eagle Lake Democratic Committee's report. This report was due by the town party committee by July 15. Mr. Wayne did note that there was a problem getting the reminder notice to the committee treasurer due to a postal issue. The standard formula used for determining late filing penalties would mean a \$500 penalty. Mr. Wayne also noted that even after the Eagle Lake Democratic Committee learned of the late filing deadline in August, they still did not file their report until October.

Mr. Wayne pointed out that not all local party committees reach the \$1,500 annual threshold every year and so filing reports may not be a regular obligation for many local committees. Mr. Ketterer also pointed out the difficulty of getting volunteer treasurers for these small party committees and how frequently these officers change.

Commission on Governmental Ethics and Election Practices  
December 12, 2006 Meeting Minutes

Ms. Thompson inquired as to what past practice has been in this situation. Mr. Wayne indicated that within the past few years, the Commission has been stricter in regard to late filing penalties of party committees. This issue may be a little different since the late notice mailer was not received by the party treasurer.

Senator Martin addressed the Commission via telephone. He expressed concern that the state party committees are not held accountable in some way for neglecting to notify the town party committees of these reporting deadlines. After speaking to the treasurer himself, Senator Martin was told that the treasurer would file the report for the next filing deadline since activity was so minimal. The treasurer was under the impression that this would be acceptable.

Mr. Friedman asked Senator Martin what happened during the last election cycle in 2004 and was told there was never enough activity in their accountings to file.

There being no further comments, Ms. Ginn Marvin moved that the Commission adopt the staff recommendation to impose a penalty of \$500 against the Eagle Lake Democratic Committee. The motion was seconded by Mr. Friedman.

Ms. Ginn Marvin said that the Commission should be consistent with its previous decisions in similar cases.

Mr. Friedman asked Mr. Wayne if the Commission would accept a penalty payment from the state party committee. Mr. Wayne said that it could. Mr. Friedman said that since it was the state party's responsibility to notify the town party committee of this filing report deadline, then it ought to do that. The Commission is not required to notify the committees of these reporting deadlines, but the state parties are.

Senator Martin asked who is responsible for paying the penalty. Mr. Ketterer explained that it was the local party committee's responsibility.

Commission on Governmental Ethics and Election Practices  
December 12, 2006 Meeting Minutes

The Commission voted in favor of the \$500 penalty by vote of 4-0.

The Commission returned to Agenda Item #1.

**Agenda Item # 1 – Public Workshop on Leadership PACs and MCEA Qualifying Requirements**

Mr. Ketterer informed the group that the purpose of the workshop was to inform and recommend to the Legislature on public policy issues regarding leadership PACs.

Don Bernard from South Portland said that he retired here from Texas and appreciates the openness of Maine government because of the Maine Clean Election Act. Leadership PACs are interfering with this process and undermining the Clean Election process. Running as publicly funded candidate should mean accepting only public funds, no special interest money.

Ms. Thompson asked Mr. Bernard how his opinion affects the right of free speech. Mr. Bernard explained he did not agree that they should be related because then it would be a case where people with the most money would have the most free speech.

Norman Ferguson, former Maine Senator now living in Hanover, addressed the Commission. Mr. Ferguson feels PACs should be eliminated in legislative races because the amount of money raised by legislative leaders in both Democratic and Republican parties, which was over one million and a half dollars in the last election, according to a Lewiston Sun article. Senator Ferguson feels this special interest money creates a sham of the Clean Election process. Too much money is collected by special interests (PACs) and contributed to legislative leaders to enhance their own agendas.

Representative Linda Valentino addressed the Commission. She stated that she formerly served on the Legal and Veterans Affairs Committee during last session and that she has already put in several bills regarding this issue. Rep. Valentino spoke about past bills which did not pass or even come out of committee. After listening to testimony on both sides, she feels strongly that leadership PACs should be funded by the MCEA. She said that her bill would place limits on

Commission on Governmental Ethics and Election Practices  
December 12, 2006 Meeting Minutes

expenditures, which would be on a tier depending upon which leadership office the Legislator is running for, and would place restrictions on how the funds could be used. Specifically, the funds could not be used to support the other candidates for political office. In addition, if a Legislator was running for leadership, that individual would not be able to be involved in another PAC. She feels there needs to be an equal playing field for the leadership PACs. She also thinks that there should be a minimum amount of seed money that Legislators should raise to be eligible.

Ms. Thompson asked what the arguments were against past bills discussed by the LVA. Rep. Valentino responded that mostly the bills were too restrictive according to the committee members. She strongly feels the money amount needs to be something the leadership candidates can work with, if it is too low, the bills will not pass.

Daniel Billings, Esq., addressed the Commission saying that he has been involved in several leadership PACs in the past but that he was expressing his personal opinions. He said that what concerns him are proposals that would appear to make a change, but have no substance in them, e.g., making it illegal for MCEA candidates to participate in fund raising for a PAC, but those same candidates could raise funds for party committees. The result in eliminating leadership PACs is that fundraising is pushed over to party committees, which would also be less transparent than it is currently. Mr. Billings said that by focusing solely on MCEA candidates misses the problem of the involvement of traditionally financed candidates in leadership PACs. Maine has low contribution limits for traditionally funded candidates in order to reduce the influence of contributors. However, those same candidates can accept contributions without any limitation for their leadership PACs. Caucus PACs seem like a good idea for reform. Mr. Billings recommended that the Commission look at whole system, not just leadership PACs. He also recommended that the Commission considered this issue separately from the other proposals dealing with the Maine Clean Election Act.

Mr. Friedman asked what Mr. Billings would change in the system. Mr. Billings responded that he would ban MCEA candidates from raising private money including PACs, party committees, or any political organization. He said that he is concerned that certain changes may actually result in less transparency than there is now. Caucus PACs have less personal control by

Commission on Governmental Ethics and Election Practices  
December 12, 2006 Meeting Minutes

individual candidates and represents group as a whole. Caucus PACs could also be on-going organizations, which could be clearly identified. Currently, leadership PACs come and go and sometimes have names that do not clearly indicate what purpose they serve.

John Bartholomew from Common Cause Maine addressed the Commission. This is not a solely a Clean Elections problem. Mr. Bartholomew pointed out that there have been incremental changes to the campaign finance system that have lessened the influence of money on politics and public policy but the influence has not been eliminated. Yet rather than criticize changes that have been implemented, we should look at the possibilities for new incremental steps to take. Maine is one of the few states without PAC contribution limits. Many other states also limit the types of entities that can contribute to PACs, e.g., some states prohibit corporations or labor unions from contributing to PACs.

Alison Smith, co-chair of Maine Citizens for Clean Elections (MCCE), addressed the Commission. MCCE does not have a position on leaderships PACs but does view PAC reform as the next step in campaign finance reform. The MCEA was successful in removing most of the influence of big money out of candidate campaigns. The contribution limits for privately financed candidates are also successful in limiting the influence of money in candidate campaigns. If change (reform) is necessary, then we need to look at the big picture, not just focus on MCEA candidates. PAC reform needs to be looked at separately. PACs do provide disclosures now, and we should look at solutions that increase accountability.

Mr. Friedman asked Ms. Smith if her group would rather see the focus on larger PAC issue than the leadership PAC issue. Ms. Smith responded that in her opinion the leadership PAC has been framed as a clean election problem. She does not agree. PACs provide an avenue for donations for privately financed candidates as well MCEA candidates. The current system does provide disclosure but does not limit influence.

Mr. Ketterer also noted that a number of e-mails were received from citizens and former candidates on this issue as well.

Commission on Governmental Ethics and Election Practices  
December 12, 2006 Meeting Minutes

Ms. Thompson requested comments from staff.

Mr. Wayne noted two related problems: leadership PACs and caucus PACs. Leadership PACs are smaller and controlled by a single Legislator used to become a leader or remain a leader. Money involved is not as large as the caucus PACs. Proposals for reform could be made regarding leadership PACs and MCEA candidates since there is an inconsistency between MCEA candidates who do not take private money for their campaigns but do have personal PACs raising money on the side. However, there are some costs associated with running for a leadership position and the reforms should be sensitive to that. Speaker Cummings' bill in last legislature allowed candidates to accept limited amounts of money from individuals who are not lobbyists to cover travel and other expenditures that leadership candidates do encounter. So some progress could be made in that area and prohibiting MCEA candidates from having their own leadership PAC could be a precondition for MCEA funds.

Mr. Wayne said that caucus PACs present a larger issue. There are PACs that almost function as caucus PACs: the House Democratic Campaign Committee, the House Republican Fund, Senate Democratic Campaign Committee, and the Maine Senate Republican Victory Fund. There is a great deal of money, contributions, flowing into these PACs from people who have interests before the Legislature. Some of the editorial criticisms are valid. The influence of special interest money has been largely removed from candidate campaigns but it has only moved into leadership and caucus PACs. The Commission might want to think about contribution restrictions to all PACs or to caucus PACs. Under the First Amendment, it is difficult to limit amount PACs spend, but if you feel that the public's perception and confidence in the political process would be benefited, you could recommend contribution limits to restrict the flow of special interest into caucus PACs. The Commission may be in a unique position to make a bipartisan recommendation. The Legislators are accountable to their caucus and may feel constrained in this area.

Mr. Friedman recalled that today's hearing was to get input from the public; no decision by the Commission is required. Mr. Ketterer also reminded the members that any ideas for proposals to the Legislature need to be made within 90 days of the election.

Commission on Governmental Ethics and Election Practices  
December 12, 2006 Meeting Minutes

It was agreed to bring this item back to the table at the next meeting for more discussion after all members have had a chance to review today's public comments.

**Agenda Item #5 – Alleged Violation of the Code of Fair Campaign Practices – David**

**Miramant**

Mr. Wayne informed the Commission that David Metz of Rockport brought a complaint to the Commission regarding literature sent by the Miramant campaign. The question is whether the literature is misleading and whether that would be a violation of the Code of Fair Campaign Practices that Mr. Miramant signed. There is a jurisdictional issue since signing the Code is voluntary and since the statute does not authorize the Commission to perform any investigation or impose any fine in violation of the Code.

Mr. Metz addressed the Commission. He said that there were two issues: Does the Commission have the authority to hear the matter and the matter itself. Statement of Fact in the original Bill gives direction for Commission to proceed with investigation and forward findings to the Legislature. Mr. Metz believes the Commission does have jurisdiction with regard to this matter. Mr. Metz contends that the David Miramant flyer mailed out is misleading because of the nature of the roll call referred to in the flyer. The roll call account of Mr. Miramant's general election opponent, Rep. Steve Bowen was not accurate and misleading regarding Rep. Bowen's position on domestic violence and protecting children from lead poisoning. Mr. Metz contends that when candidates sign the Code, they are giving up certain amount of their First Amendment right of free speech and agree to control their speech within the parameters of the Code.

Representative Miramant from Rockland and his counsel, Dan Walker, Esq., addressed the Commission. Mr. Walker addressed the jurisdiction issue. Statute is clear that the Commission does not have jurisdiction on this issue. This is purely a voluntary option on the part of candidates. The complaint procedure that was in the original bill was pulled from the law that was enacted. The study group convened pursuant to the enacted law to study the options for enforcing the Code decided that there were not the resources to institute a complaint procedure and that there would be significant First Amendment issues. Mr. Walker contended that the statements in the mailer about Rep. Bowen's votes and positions were not false.

Commission on Governmental Ethics and Election Practices  
December 12, 2006 Meeting Minutes

Rep. Miramant reviewed the reasons and justification for the mailing along with the accuracy of the information. He received many positive comments as a result of the flyer.

Ms. Gardiner agreed that jurisdiction is the issue here and felt no action was warranted.

Mr. Ketterer expressed concern over the Ethics Commission getting involved in looking over literature printed by candidates. The opportunity to be heard is valid, however, having the Commission make any decisions on these issues is not appropriate.

Mr. Friedman agreed with Mr. Ketterer and thought that the staff was correct in affording the complainant an opportunity to be heard.

Ms. Ginn Marvin moved that the Commission adopt the staff recommendation that there is no jurisdiction in this matter. The motion was seconded by Ms. Thompson and the Commission voted in favor by vote of 4-0.

**Agenda Item # 6 – Misreporting of Expenditures Dates – Geoffrey Heckman**

Mr. Wayne reviewed that an audit of Geoffrey Heckman's reports found dates that were inaccurate causing him to receive \$200 more in the distribution of MCEA funds for his primary election funds that he would not have received if the dates had been correct. Because he spent all his seed money, he received public money in excess of \$200. Mr. Heckman was a candidate for the House.

Mr. Heckman addressed the Commission. He confirmed that he believed he had to spend all his seed money, he did not read the Guidebook carefully and was relying on what other people told him.

On motion by Ms. Thompson and seconded by Ms. Ginn Marvin it was moved to accept the staff recommendation and impose a violation in the amount of \$200. (4-0)

Commission on Governmental Ethics and Election Practices  
December 12, 2006 Meeting Minutes

**(Agenda Item #7 withdrawn, Items 8 & 9 discussed later)**

**Agenda Item #10 – Ethics Code for Commission Employees**

Mr. Wayne advised the Commission members that the Commission, as well as other state agencies, has been urged by the Governor, to adopt a code of ethics and advised the members to adopt.

John Branson, Esq., raised the issue of conflict of interest with regard to the Ethics Commission establishing a code of ethics. Any code of ethics should include a provision to that effect.

Mr. Friedman moved to adopt the Code of Ethics proposed by Mr. Wayne. The motion was seconded by Ms. Thompson. The motion carried by 4-0 vote.

**Agenda Item #9 – Proposed Statutory Changes**

Mr. Wayne noted that the changes were drafted by the Assistant Director, Paul Lavin. He also informed the group that the changes are posted on the Ethics website. After discussion, it was decided to take testimony from people who have reviewed the changes prior to the meeting.

Senator Bill Diamond addressed the Commission. Senator Diamond feels that there should be more scrutiny of candidates seeking public funding than the law requires currently. He feels the number of qualifying signatures should be increased from 150 and should be restricted to the district the candidate is running in. Public funds should not be used for meals, car maintenance and fuel expenses. Taxpayers do not want their money spent on these kinds of items.

Independent contributions by supporters (for example, a mailing) which the candidate nor treasurer know nothing about are unfair, because the matching funds kick in without the candidate being able to control money spent on their behalf. This could create a loophole that people could take advantage of to get matching funds.

Ms. Thompson asked Senator Diamond for ideas regarding solving the independent contributions issue. Senator Diamond thought having the ability to somehow reject contributions would help this problem.

Commission on Governmental Ethics and Election Practices  
December 12, 2006 Meeting Minutes

Senator Peter Mills addressed the Commission and reviewed his experience as running as House and Senate candidate and a gubernatorial candidate. California and Connecticut have refined the Maine and Arizona Clean Election Law. The draft features a change that removes the \$5 qualifying contributions, which reduces the travel, organization and validating time. Road travel alone is staggering to collect qualifying contributions. Money orders need to be purchased and recorded on each sheet. Senator Mills proposes opening the donation process up to anyone for any amount from \$5 to \$40, so it would combine the seed money process and the qualifying process into one step. The candidate would still have a validation form, and be able to keep the money and work from that amount. He feels the cost of processing the \$5 contributions is disproportionate to the contribution.

Senator Mills believes privately financed candidates should be able to 'shield' themselves if they agree to limit their spending to a certain amount and if their opponent raises more or if there is an independent expenditure for their opponent, the candidate would receive matching funds from the Commission.

Mr. Friedman asked Sen. Mills what he thought about Sen. Diamond's idea that a candidate ought to be able to reject an independent expenditure on their behalf. Because independent expenditures crop up without the candidate knowing about it, the candidate has no control and therefore cannot really set a limit. The party committees are the most aggressive at this, and not always with a favorable result. If the candidate had a 'shield' to limit spending, it would protect the candidate and save money in the long run.

Representative Linda Valentino spoke to the Commission. Rep. Valentino highlighted her concerns with the proposed changes regarding qualifying contribution requirements, seed money contributions, and the need to increase the number of signatures required.

Daniel Billings, Esq., representing the Woodcock for Governor campaign, said that he believed that some of the measures to tighten up the qualifying contributions for gubernatorial candidates would create new problems. Increasing the number of checks or having geographical

Commission on Governmental Ethics and Election Practices  
December 12, 2006 Meeting Minutes

requirements will force candidates to rely on a paid effort to collect the contributions. He said that he strongly disagreed with the requirement of a minimum number of contributions from every county. He also felt the qualifying form should not require the candidate's signature since it does not really signify anything. The candidate is not certifying anything; therefore, should not have to sign. Mr. Billings felt that more importantly, the person circulating the form should be making certain the check is from a personal account and the contributor is a registered voter, etc. He was supportive of the extension of the rebuttable presumption period to 60 days from 21 days.

Representative Gary Knight expressed his concern that there is a negative connotation drawn if a candidate is not running as a "clean" candidate. He suggested changing the name of publicly funded candidates to something other than "clean." Also, he believes non-profit corporations should have dollar restrictions the same as all other PACs and political parties.

Alison Smith of the Maine Citizens for Clean Elections and John Bartholomew of Common Cause Maine addressed the Commission. They endorsed the following ideas: extending rebuttable presumption period before the general election; the ability to revoke certification of a candidate; changing qualifying process by tightening up rules to shore up contributions as a measure of genuine support for the candidate, and with giving the staff more time for process certification requests. Ms. Smith did have reservations regarding the 20 hour rule per party, stating the language change could create a loophole. She also raised concerns over disclosure statements on expenditures.

Mr. Bartholomew cautioned the Commission to move carefully towards changes affecting minimum seed money and geographic distributions.

Mr. Ketterer informed the group that the Commission will be continuing discussion on this item further on January 19.

Discussion took place regarding what order to take up the Agenda Item #8 and an item for executive session. It was suggested that a separate meeting take place for discussion of Agenda

Commission on Governmental Ethics and Election Practices  
December 12, 2006 Meeting Minutes

Item #8, before the regularly scheduled January meeting. Much discussion followed regarding the urgency to get this issue resolved since the original complaint was filed back in October. John Branson, Esq., counsel for Carl Lindemann, requested that Commissioner Jean Ginn Marvin be removed from discussions regarding this agenda item, due to conflict of interest.

John Crasnick, Democracy Maine, also requested this discussion take place before the January 19 meeting due to the fact that if the Maine Heritage Policy Center is found to be required to file a report under §1056B, it must be done before the December 19 filing deadline, so any decision needs to be made prior to that date.

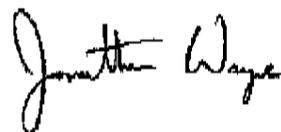
Mr. Wayne pointed out that the public would not be disadvantaged by the filing of a report from Maine Heritage Policy Center later than the December 19<sup>th</sup> deadline. Under the circumstances, it would be justified for this deadline to be extended.

The Commission decided to hold a special meeting will be held on December 20<sup>th</sup> for the purpose of discussing Agenda Item #8.

Mr. Friedman moved to go into Executive Session pursuant to Title 1, Section 405, §6 to determine whether to hear a complaint against a Legislator. The motion was seconded by Ms. Ginn Marvin and carried by a unanimous vote (4-0). Mr. Ketterer left the meeting at this point and Ms. Ginn Marvin assumed the chair.

The Commission came out of Executive Session. Mr. Friedman moved that the complaint that was the basis of the Executive Session be dismissed because the Commission lacks jurisdiction to consider the complaint and because, even if the Commission had jurisdiction, it would make a finding that there was no violation of 21-A M.R.S.A. § 1014. Ms. Thompson seconded. The motion carried (3-0).

Respectfully submitted,



Jonathan Wayne, Executive Director