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

Minutes of the March 28, 2012, Meeting of the Commission on Governmental Ethics and Election Practices Held at the Commission Office, 45 Memorial Circle, Augusta, Maine

Present: Walter F. McKee, Esq., Chair; André G. Duchette, Esq.; Margaret E. Matheson, Esq.; Michael T. Healy, Esq. Staff: Executive Director Jonathan Wayne; Phyllis Gardiner, Counsel.
Absent: Hon. Jane A. Amero

At 9:05 a.m., Chair Walter McKee convened the meeting.

The Commission considered the following items:

Agenda Item #1. Ratification of Minutes of the February 29, 2012 Meeting

Ms. Matheson moved to accept the minutes as drafted. Mr. Duchette seconded. The motion passed unanimously (4-0).

Agenda Item #2. Rulemaking – Major Substantive Rules

Mr. Wayne explained that in January 2012, the Commission agreed to accept public comment on proposed changes to its rules. The rules in Chapter 3 which relate to the Maine Clean Election Act are designated by statute to be major substantive, which must be reviewed by the Legislature. The Commission held a public hearing at its February meeting to receive comments from the public and received written comments through March 12, 2012. The Commission received comments on the Chapter 3 rules from the Maine Citizens for Clean Elections (MCCE) and from Joseph and Michele Greenier. MCCE had some concerns regarding changes to the circulator affirmation on the receipt and acknowledgement form. In particular, they were concerned about removing the requirement that the circulators affirm that the contributor signed the form in the circulator's presence. He said that the staff will seek input from MCCE when the forms are revised. He said the Greeniers suggested that the Commission make its travel log form mandatory for candidates in order to get reimbursed. However, the staff feels candidates should have some flexibility about how they record their travel expenses. After considering the comments, the Commission staff recommends provisionally adopting the changes to the Chapter 3 rules, as originally proposed.

Mr. Healy suggested that the phrase "to the best of the circulator's knowledge and belief" be put back into the circulator's affirmation in Section 2(4)A)(5). As it is written in the proposed rule, the circulator is required to affirm something the circulator may not be able to conclusively confirm.

Mr. Wayne said that the phrase can be put back into the section on the circulator's affirmation.

Ms. Matheson moved that the Commission provisionally adopt the changes in the Chapter 3 Rules with the change to Section 2(4)(A)(5) suggested by Mr. Healy. Mr. Healy seconded.

Motion passed unanimously (4-0).

Agenda Item #3. Rulemaking – Routine Technical Rules

Mr. Wayne said that the Commission received written comments on routine technical rules in Chapter 1 from Maine Press Association (MPA), the Maine Citizens for Clean Elections (MCCE), the American Civil Liberties Union of Maine (ACLU of Maine), and Michele and Joseph Greenier. With respect to the proposed rule interpreting the press exemption (Chapter 1, Section 7(10)), the Commission received comments from the MPA, MCCE, and ACLU of Maine. After considering the comments, the staff proposes seeking additional public comment on a revised version of Section 7(10). The staff proposes seeking written comment only, because of insufficient time to comply with the notice procedures for a public hearing at the April 25 meeting. The staff proposes completing the Chapter 1 rule amendments at a later public meeting to include the new criteria for the press exemption. The revised rule on the press exemption would require the broadcasting station or publication make clear to the public who owns, controls or operates the broadcasting station or publication and that those entities could not be compensated or reimbursed by the candidate, committee or party unless the payment was in exchange for providing advertising. An additional change to the proposed rule is that in order to be considered a periodical publication, the publication must be disseminating news stories, editorials or commentary for at least 12 months or must have a record of disseminating news stories, editorials or commentaries on a variety of topics to the public that objectively indicates that the publication will continue to be published on a periodic basis beyond the election cycle. Mr. Wayne said that the intent behind this change is to address situations where a publication or website starts up close to the election and asserts the press exemption. If there is no objective basis to believe that the publication or website will continue to publish news stories, commentary

and editorials on a variety of topics beyond the election, this criterion would prevent someone from claiming to be covered by the press exemption.

Mr. Doucette said that this particular policy needs to be fleshed out. He thought that some of the comments, such as those from the ACLU of Maine, raised good points that should be addressed.

Mr. Healy raised the question as to whether the press exemption would be available to Maine Today Media now that U.S. Representative Chellie Pingree's husband, Donald Sussman, owned 75% of the company.

Mr. Healy said that the Cutler Files may or may not have been exempt depending upon whether it was a periodical publication.

Ms. Gardiner said the Commission decided that the Cutler Files did not have the indicia of a periodical publication based on the language of the statute.

Mr. Wayne said it would be difficult for the Cutler Files to say that it had a record of disseminating news materials on a variety of topics.

Mr. McKee raised the issue of whether the wording may be too restrictive for a news magazine or an internet magazine that was just starting up. He said comments from the public will likely address those concerns.

Mr. McKee moved that the Commission accept written comment only on the new Section 7(10). Mr. Duchette seconded. The motion passed unanimously (4-0).

Mr. Duchette moved to adjourn and Ms. Matheson seconded the motion, which passed unanimously. The meeting adjourned at 9:30 a.m.

Respectfully submitted,

Jonathan Wayne, Executive Director