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

Minutes of the October 28, 2011, 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.; Michael T. Healy; Margaret E. Matheson, Esq.; Hon. Jane A. Amero. Staff: Executive Director Jonathan Wayne; Phyllis Gardiner, Counsel.

At 9:05 a.m., Chair Walter McKee convened the meeting and welcomed Ms. Jane Amero to the Commission.

The Commission considered the following items:

Agenda Item #1. Ratification of Minutes of August 18 and September 19, 2011 Meetings
Ms. Matheson moved to accept the minutes as drafted. Mr. Duchette seconded.

Motion passed (4-0-1) with Ms. Amero abstaining.

Agenda Item #2. Proposed Changes to Maine Clean Election Act Expenditure Guidelines
The Commission staff recommended changing the expenditure guidelines for Maine Clean Election Act candidates to include guidance on mentioning ballot questions in communications paid for with MCEA funds and to simplify existing guidance on other topics. Mr. Wayne explained that the only substantive change was with regard to communications which mention support or defeat of a referendum or citizen initiative. He said the current guidelines address, in a general way, the use of public funds to make expenditures regarding ballot questions. The proposed recommendation is more specific and restricts the use of public funds for a paid communication that primarily supports or opposes a ballot question.

Mr. Healy said the guideline is only a guide and not a rule so the Commission could make a determination on a case-by-case basis whether the expenditure was for campaign purposes.

Ms. Gardiner said the guidelines are not rules but are a statement by the Commission with regard to its position.

Mr. McKee recalled the Commission did not want to give any advisory opinion on these issues in the past and left it up to the candidate to decide whether the use of public funding was appropriate. He said it is a grey area.

Mr. Healy expressed concern over the second sentence in the proposal, "*Candidates may not use MCEA funds for a paid communication that primarily supports or opposes a referendum or citizen initiative.*" He said if this were a rule it could cause First Amendment problems.

Mr. Duchette said the guideline is qualified by the word "primarily."

Mr. McKee said he would support the language since it basically is clarification on the issue in his view.

Mr. Wayne agreed but noted it also clearly places a restriction on how candidates can use their public funds. Mr. Wayne explained that with regard to the First Amendment concern, the MCEA is a voluntary program with certain restrictions that are known upfront and therefore candidates should not opt into it if they do not want to be held to the restrictions.

Mr. Healy said he would support the proposed changes to the guidelines as drafted.

Ms. Matheson said she supports the change because the bottom line is the expenditure has to be related to the candidate's own campaign.

On another matter, Mr. Healy made a suggestion, with regard to the requirements for reimbursement for campaign related travel, that the travel log required under the rule be kept contemporaneously as the travel

occurs and that when the log is submitted to the Commission, the candidate represents that the log was made contemporaneously with the travel.

Mr. McKee moved to accept the staff recommendation for updating the guidelines as proposed. Ms. Matheson seconded.

Motion passed unanimously (5-0).

In consideration of the Commission's practice to address agenda items out of order to accommodate the attendance of public participants regarding particular items, the following agenda item was taken out of order:

Other Business

Complaint Concerning Office of Representative Linda Valentino

Mr. Wayne explained that a dispute has come to the staff's attention with regard to two current Representatives running for the Democratic nomination for Senate District 5. He said Representative Linda Valentino (House District 134) and Representative Donald Pilon (House District 133) both represent parts of the Saco area. Rep. Valentino has opened an office in downtown Saco within the last few days which is outside of her current district and inside Rep. Pilon's district. Rep. Pilon objects to her doing so and has filed a complaint questioning, among other things, how Rep. Valentino is paying for the office and whether the office is entirely campaign related.

Mr. Wayne said Rep. Valentino told him the office will be used for several purposes such as communicating with constituents, campaigning, and work pertaining to her daughter and other personal matters. However, she stated that she did not believe that any of the activities at the office currently are campaign-related. Rep. Pilon claims in his complaint that this is campaigning and requests the Commission do an investigation.

Mr. McKee questioned the need to deal with this matter immediately and suggested putting if off for another meeting.

Mr. Wayne said the only issue before the Commission today would be whether to authorize the staff to investigate further and then the matter could be resolved by mid December.

Mr. McKee said he did not want to make a rush decision on whether there should be further investigation in this matter.

Mr. Wayne said Rep. Valentino was considering having an event at the office today but there was no need for a rush decision.

Mr. Healy asked if the issue was spending Maine Clean Election funds on the cost of the office.

Mr. Wayne explained that Rep. Valentino initially called to ask how she should pay for the office expense since the office would have several purposes. She explained that later on, closer to the election, she would use Clean Election Act funds to finance the rent but would be willing to pay in whatever way the Commission advised.

Mr. Duchette said his only concern about postponing this matter was whether Rep. Valentino could get into more trouble; however, this didn't seem likely. He said he views the major question to be how to pay for the rental expense, with personal funds or public funds.

Mr. Wayne stated his personal view was he saw no reason for her not to be able to proceed with the office rental.

The consensus was reached to place the matter on the next meeting of the Commission for further discussion.

The Commission resumed the scheduled order of agenda items at this point.

Agenda Item #3. Proposed Change to Policy on Paying Campaign Funds to Family Members

Mr. Wayne explained that in 2009 the Commission issued its first advice to candidates with regard to the use of Clean Election funds to pay family members who provide services for their campaigns. He said the statute currently states MCEA funds cannot be used to pay family members unless the member normally provides those services in their occupation and it is a campaign-related service. He said since this adoption, barely any candidates have tried to use public funds for family service payments.

Mr. Wayne said after the 2010 election, the staff has decided it is necessary to be more specific about what types of payments are acceptable. He said this circumstance does come before the Commission on a regular basis and this would help candidates know the limits. He said the proposed change would clarify that occasional or sporadic employment was not sufficient to meet the "normal course of occupation or business" standard in the statute.

Ms. Matheson said this issue is a slippery slope because a campaign organizer is sporadic by nature occurring every two years and it could be considered an occupation for some.

Mr. Duchette suggested for clarification omitting the word "generally" from the last sentence in the paragraph regarding permitted payments to the candidate and household members.

Ms. Ann Luther, co-chair of Maine Citizens for Clean Elections, offered her view that the Legislature intended the exception for paying family members to be very narrow and this change simply clarifies how narrow the policy is. She said truly professional campaign organizers are people who are actually engaged in working on campaigns and are paid and work full time as well as doing other politically-related functions during a non-election year. She said someone who works on a campaign a couple months every two years, in her view, would not be considered a professional organizer since it would not be considered their profession or career.

Mr. Healy asked, hypothetically, if a candidate paid a family member to put out signs and then pick them up after the election would that be proper.

Ms. Luther said in her view that would not be proper since that would not be their career.

Mr. Duchette moved to adopt the Commission staff proposal with one amendment to remove the word "generally" on page 2 of the policy. Ms. Amero seconded.

Motion passed unanimously (5-0).

Agenda Item #4. Audit of Rep. Jeffrey L. Timberlake

Vincent Dinan, the Commission auditor, reviewed the completed audit of the 2010 Maine Clean Election Act campaign for State Rep. Jeffrey L. Timberlake and said there were two findings. The first was a seed money expenditure reporting error because he made a disbursement after the seed money period. As a result, he returned $10 to the Maine Clean Election Fund during the audit process. The second was an obligation that was reported as $225 but the expenditure was less than what was reported.

Mr. Healy moved to accept the staff recommendation and find that Rep. Timberlake was in violation of 21-A M.R.S.A. § 1125(12) because he did not accurately disclose his campaign expenditures, with no financial penalty for the violation. Ms. Matheson Seconded.

Motion passed unanimously (5-0).

Agenda Item #5. Audit of Sen. Michael D. Thibodeau

Mr. Dinan reviewed the 2010 campaign of State Senator Michael D. Thibodeau and explained that his treasurer submitted a log of the Senator's campaign travel because the campaign reimbursed the candidate a total of $816.47 for his vehicle travel. He said the log did not include the destination or purpose of the campaign trips, as required by the Commission's rule therefore the reasonableness of the mileage reimbursement could not be determined. The audit disclosed no other violations. Mr. Dinan said the draft report was sent to Sen. Thibodeau with the $100 penalty noted and Sen. Thibodeau came to the Commission's office and remitted the fee with no other comments.

Mr. Healy noted that the mileage log submitted by Sen. Thibodeau's campaign was received by the Commission on July 18, 2011and asked when and who prepared the report.

Mr. Dinan said the spirit behind the rule is that the logs are supposed to be maintained on a contemporaneous basis; however, there is no way to verify whether the log was or who actually prepared it. He said usually the log sheets are not signed by anyone attesting to its validity and are submitted in this manner after a request has been made.

In response to a question from Mr. Healy, Mr. Dinan said the rules do not require a signature on the logs or a statement confirming their accuracy or that the logs be created contemporaneously with the travel. The rules describe what the travel should contain. The staff could not ascertain whether the log represented actual mileage that was incurred by the campaign and that was the basis for the finding.

Mr. Duchette said the reason for including the destination in the log is to assist the staff in assessing whether the travel was campaign-related. The information provided by this campaign was not sufficient to justify paying Sen. Thibodeau $816.47 for travel.

Mr. McKee said the information with regard to destination and purpose for travel was necessary for validating the request for reimbursement.

Mr. Dinan said there have been a number of these types of issues regarding travel reimbursement and although the candidates are encouraged to record odometer readings and other information, there is no rule that requires them to do so.

Mr. Duchette said the critical issue for him was having the purpose and the destination in order to verify the expense.

Mr. Healy asked Mr. Dinan if the candidate had orally stated these trips were campaign related.

Mr. Dinan said he did not have any oral representation from the candidate, the log was mailed to the Commission without any conversation from the candidate.

Ms. Amero suggested requiring the candidates to use the travel log form provided in the Guidebook.

Mr. Dinan agreed that having the candidate or person requesting reimbursement sign the form stating its accuracy would be helpful to provide more accurate documentation.
Mr. Healy also noted that the reimbursements were requested well after the election and asked whether this was the end of funds in his campaign account so the candidate decided to reimburse himself.

Mr. Dinan said it was a common practice by candidates to reimburse themselves for travel after all other expenditures have been paid. He said in this case, the Thibodeau campaign received a $223 refund from a media buyer so he took it for travel reimbursement.

Mr. McKee said there clearly was a violation but questioned whether the $100 penalty was appropriate.

Mr. Healy said unless the candidate can demonstrate under oath that this money was spent for campaign-related travel, he would not accept the $100 fine. He said it is up to the candidate to justify the expenses or be required to return the funds.

Mr. McKee asked Mr. Healy if he would accept an affidavit signed by Senator Thibodeau stating that the dates were factual, or would he feel more specific documentation was required.

Mr. Healy said an affidavit which included a statement that the log was kept contemporaneously with the travel and that the dates and purpose of the travel were accurate, verifiable and campaign related, he would accept that. He said he was not willing to accept the log that was submitted as documentation for these expenses.

Mr. McKee moved to table this issue for further review by the Commission staff. Ms. Matheson seconded.

Motion passed unanimously (5-0).

Agenda Item #6. Audits of Maine Clean Election Act Campaigns

In addition to agenda items 4 and 5, the Commission's auditor completed three audits of 2010 Maine Clean Election Act candidates since the last meeting of the Commission. No exceptions (violations) were found.

Mr. McKee moved to adjourn and Ms. Matheson seconded the motion, which passed unanimously.

Meeting adjourned at 10:00 a.m.

Respectfully submitted,

Jonathan Wayne, Executive Director