



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

Minutes of the October 30, 2007 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: Michael Friedman, Esq., Chair; Hon. Mavourneen Thompson; Hon. David Shiah; Hon. Francis C. Marsano; Hon. Edward M. Youngblood. Staff: Executive Director Jonathan Wayne; Phyllis Gardiner, Counsel.

At 9:04 A.M., Chair Michael Friedman convened the meeting.

The Commission considered the following items:

Agenda Item #1 Ratification of Minutes: September 21, 2007 Meeting

Mr. Shiah moved, Mr. Marsano seconded, that the Commission ratify the minutes of the September 21 meeting as printed. The motion passed by a vote of 5-0.

Agenda Item #2 Audit of 2006 Candidate Pat LaMarche

Staff Auditor Vincent Dinan explained that this was the last gubernatorial audit from the 2006 election. He reported the audit found that the campaign was compliant overall, but did not obtain and keep records for some purchases from the campaign's media vendor, Message Strategy Group (MSG). Mr. Dinan noted that the media expenditures were audited very heavily on all campaigns, due to the amount of money paid to these vendors. He said the campaign received \$1,076,000, of which \$476,000 was matching funds. Mr. Dinan said that the campaign spent 61% of its funds on services provided by MSG. The audit resulted in three findings. He stated the first finding has two sections: one questioned a cost of \$28,735 to the media vendor due to lack of documentation of an invoice from the vendor, and the other was a missing invoice for the services provided by the campaign's communication director who was an employee of MSG. That amount was over \$58,000. Mr. Dinan said that Finding #2 concerned irregularities in billings from MSG: duplicate billings in

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the amount of \$770, a credit received by MSG from a media vendor but that was not passed on to the campaign, and a small discrepancy in the amount paid to media vendors and the amount supported by documentation. The staff recommended that the campaign return \$1,717.75 to the Clean Election Fund. Finding #3 concerned a small unreported expenditure amount during the qualifying period which would have had an impact on the amount initially distributed to the candidate. Mr. Dinan said that the Commission may want to consider a policy on food expenditures for candidates. The LaMarche campaign spent more and had many more expenditures for food than the other gubernatorial candidates had. The audit found no problems with the documentation of those expenditures. Mr. Dinan concluded by saying that Mrs. Savage, the campaign's treasurer, did an excellent job in maintaining the records of the campaign.

Mr. Friedman asked what the food expenditures in comparison with other gubernatorial candidates looked like.

Mr. Dinan said that all MCEA gubernatorial candidates had food expenditures but that, in comparison, the others had far fewer than the LaMarche campaign.

Ms. LaMarche passed out a prepared written statement for the Commission. She stated her support for the Clean Election Act and complimented the staff at the Commission on their helpfulness and professionalism. Ms. LaMarche said she was not aware of the requirement of producing an "ultimate invoice" from campaign consultants. She said that her understanding was that the campaign would have to support the expenditures it made for consulting services but not the expenditures that the consultants made. She said that since media ads need to be paid up front, the campaign found it difficult if not impossible to receive an invoice after the fact. The statutes do not mention this particular requirement of "ultimate invoice" documentation. Ms. LaMarche pointed to several other consultants hired by the campaign but for which the campaign was not asked to document how those consultants spent the funds the campaign paid them. She further recommended that the Ethics Commission submit legislation that would require media consultants and vendors to comply with audit procedures or face a penalty. Another option she suggested was to have the media outlets bill the State directly through the Clean Election Fund.

Ms. LaMarche also spoke to the issue of food expenditures. She said that she believed that the food expenditures were legitimate for the candidate and for campaign volunteers. Ms. LaMarche spoke of her hands on approach to her campaign and her attention to detail. She stated she was not aware of the requirement to have the “ultimate invoice” from media vendors. She further stated it should be required for all expenditures and not just media because large amounts of MCEA funds are spent in other areas besides the media.

Mr. Friedman asked Ms. LaMarche for her response to each individual audit finding.

Ms. LaMarche said that Finding #1A had to do with a transactions with media outlets which required payment in advance (“time order buy”). There was no way of knowing in advance what the actual amount charged would be. The campaign paid on MSG’s invoice, not the media outlet’s invoice which could only be produced after the fact. The salary for the consultant was included in the amount because she was not aware it had to be separated out. She could not get the requested documentation from several of the media vendors after months of trying to do so.

Ms. LaMarche said Finding #1B was salary for the press secretary who was an employee of MSG. Ms. LaMarche said that she was not aware that the press secretary’s income would have to be broken out from and documented separately from the invoice for MSG’s services.

Ms. LaMarche said the duplicate billing in Finding #2A occurred because of an error the media vendor made. She also stated that she considered that amount to be income that MSG received and not something that needed to be returned to the Fund. She considered Finding #2B and #2C to be similar situations and should be considered income received by MSG.

Ms. LaMarche said Finding #3 was a percentage paid for online processing fee, the amount of which they did not know at the time of reporting and she believes Mrs. Savage, her treasurer, estimated the amount but the March statement was not available when she made out the April report. Ms. Savage does recall her first report being off by approximately \$2. Ms. Savage has an email from Sandy Thompson regarding this error and the checkbook did not balance. Mrs. Savage could not say for sure how the discrepancy occurred.

Ms. Thompson asked if Ms. LaMarche's comments and recommendations are from her own perspective or from speaking with the other candidates. Ms. LaMarche said these were her own opinions and ideas.

Mr. Friedman stated that the Commission recognizes that the LaMarche campaign was compliant with the process and commended her for that.

Mr. Friedman asked if there was confusion within the statute regarding media buys. Ms. Gardiner said the statutes do not get into that level of detail.

Mr. Wayne read the statute regarding vendor invoice requirements. Mr. Wayne said that traditional audit standards require the invoices from the vendor who provided the service, which would be the TV station. Mr. Wayne stated that he agrees with Ms. LaMarche regarding providing communication about reporting requirements in advance. He also noted that the Commission plans to have a complete audit standard document for gubernatorial candidates in 2010 as well as a meeting with all gubernatorial candidates seeking MCEA funds to provide direction on exactly what accounting and reporting systems they will need to set up in advance of their campaigns. He also recognized that all the gubernatorial candidates have had problems in this area, trying to get documentation from media vendors for TV ads that were run during their campaigns.

Ms. Thompson asked if there currently is an audit process. Mr. Wayne stated that the Commission has been very clear with what it requires and what the law states for record keeping.

Mr. Dinan stated that the law is very clear, it states exactly what the candidate has to provide in support of spending tax payers' money. He said when public money is disbursed, the candidate has the responsibility of accounting for that money with documentation. He further stated the Commission has been very consistent and clear from the beginning about what documentation was needed. He said the Commission is following the current law.

Ms. LaMarche informed the Commission that her campaign did have documentation that it believed was sufficient, a time order buy which was a prediction of the amount. These were not used by the Commission; however she thought these would be sufficient.

Mr. Dinan said time order buys do not stand in the place of a vendor's invoice which gives the exact amount that was expended because the time order buys do not provide the final, ultimate billed amount.

Mr. Friedman asked if it was up to the candidate to go to the media outlet and get better documentation. Mr. Dinan said it was up to the vendor who is billing the candidate and the invoice is obtainable after the service is provided. Mr. Dinan did confirm it is difficult to get; however, it can be obtained.

Ms. Thompson asked how to reconcile the candidate's statement that she could not obtain the documentation and the auditor's statement that they could be. Mr. Dinan said that he did in fact have invoices from the TV stations that the candidate herself provided. Ms. Thompson asked whether the concept of "ultimate invoice" was a widely accepted auditing concept. Mr. Dinan told her that it was. He also confirmed that all media outlets have audited financial statements and accounting systems.

Mr. Youngblood asked how the previous campaign discrepancies were handled.

Mr. Dinan reviewed the other three campaigns stating they all had this problem with media buyers' documentation. Senator Woodcock was able to get documentation after much time and labor, as was Ms. LaMarche. Mr. Dinan said the media outlets seem to be reluctant to create this documentation; however, due to the large amount of money being spent, these invoices have to be specific regarding the campaign and the amount of money expended.

Mr. Friedman reviewed the staff recommendations for each of the findings as provided by the staff auditor.

Ms. Thompson moved to adopt the staff recommendations for Findings #1A and #1B; Findings #2A, #2B, and 2C; and Finding #3 as stated in the staff's memorandum.

Mr. Shiah asked for clarification of the total penalty amount and was told that the total was \$400.

The motion was seconded by Mr. Youngblood and passed unanimously (5-0).

Agenda Item #3 Audit of 2006 Candidate John W. Churchill

Mr. Dinan reported that Rep. John W. Churchill was a Maine Clean Election Act candidate for re-election to the Maine House of Representatives in the 2006 election and lost. He was randomly selected for an audit. Rep. Churchill told the staff that his records were destroyed by a tornado on his way to Florida. Mr. Dinan said most records could be reproduced and the findings were not very serious. Mr. Dinan said Finding #1 involved a violation of spending limit during the seed money qualifying period. Finding #2 involved two expenditures that were not adequately documented by the campaign. Finding #3 concerned another expenditure for campaign tee shirts which could not be documented. Mr. Dinan said the staff took Mr. Churchill at his word and accepted his explanation for not having complete documentation due to the tornado. Mr. Dinan said there was another matter of concern and may warrant policy consideration. He explained Mr. Churchill made expenditures from his personal account or credit card and then, keeping track of these expenditures, he reimbursed the total amount owed to himself from his campaign fund account. He provided a reconciliation of these transactions; however, the preferred practice is to disburse payments from the campaign account directly for independently verifiable documentation of campaign expenditures.

Mr. Youngblood moved to that the Commission accept the recommendation of the audit. Mr. Shiah seconded.

Ms. Thompson asked if these recommendations are consistent with other audits under these circumstances. Mr. Dinan said under mitigating circumstances, the enforcement of violations has been a little more lenient.

Mr. Youngblood stated his concern over candidates making expenditures on their personal credit cards, due the difficulty of tracking these expenditures by the Commission.

Mr. Dinan stated that using a debit card from the campaign account is a better, more acceptable practice. Mr. Dinan said he did reconcile the reports to Mr. Churchill's campaign bank statements and felt satisfied that the campaign expenditures were reported. It is not usual practice to require a candidate to submit personal bank or credit card records.

Mr. Youngblood stated his concern that a candidate could defer using MCEA funds until the end of the campaign and use his or her personal funds or credit cards for campaign expenditures instead. That way a candidate could spend more than the MCEA distribution and reimburse himself or herself less than the actual amount, if that was to the candidate's advantage.

Ms. Thompson stated spending more than the law allows is putting a candidate at a definite advantage. She wondered if there should be limits as to how expenditures are made, such that no expenditures should be allowed to come from a personal account.

Mr. Dinan said that he would not suggest such a restriction and said the candidate has the burden of producing adequate documentation for expenditures made with personal funds or personal credit cards.

Mr. Marsano thought the problem could be addressed by adopting a timeline for reimbursements to candidates for expenditures that were made within a reporting period.

Mr. Dinan said that usually does happen. Mr. Churchill chose to let them accumulate and reimburse himself all at once at the end of his campaign.

Ms. Gardiner wondered why a candidate would have to do this since they have access to a debit card.

Mr. Dinan said they all have the ability to write a check or use a debit card, but some candidates still prefer using cash, which is an accounting nightmare.

Mr. Wayne stated that there will be an upcoming rulemaking and the Commission could propose a requirement that candidates make reimbursements within a certain period of time or with the same reporting period.

The motion passed 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

Katherine Smith, District 99 Special Election, Seed Money Contribution Issue

Mr. Wayne explained that Katherine Smith was running for the House seat in District 99 as a publicly financed candidate. He stated candidates can collect seed money contributions of no more than \$100 from individuals only. Ms. Smith accepted a contribution from Rep. Sean Faircloth's political action committee in the amount of \$100, not realizing that it was from his PAC account. Compounding the confusion in this case, the Legislature, when making a change in the statute last spring regarding seed money contributions, inadvertently deleted the 'individual contribution' language from the statute, so technically at this point, she is not in violation of the statute. Ms. Smith is requesting an exception to the seed money rule since this contribution was unintentionally made from the PAC and the check has been returned to Rep. Faircloth. Mr. Wayne stated that the LVA Committee is seeking to rectify this problem by introducing an emergency bill to re-insert the deleted language and have a retroactive effective date to September 20, 2007.

Mr. Friedman wondered if a vote needed to be taken today; Ms. Gardiner thought a vote would definitely secure any decision made today if there is a retroactive change in the statute.

Representative Janet Mills speaking on behalf Ms. Smith stated Ms. Smith is not here to rely on any inadvertent loophole in the statute. Ms. Smith wants to promote the process of the Clean Election Law. Rep. Mills suggested ratifying Ms. Smith's remedial effort of returning the PAC check, amending her seed money report, and accepting a personal check from Rep. Sean Faircloth.

Mr. Marsano stated he would support that and moved that the Commission ratify the actions taken by Ms. Smith and by Mr. Faircloth so as to obviate the problem under the law as it existed, or as it might exist, if a change is retroactive. Ms. Thompson seconded. The motion passed 5-0.

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

Agenda Item #4 Presentation of Audit Reports for Rep. Boyd Marley and Sheila Rollins

Mr. Dinan presented audit reports for two 2006 legislative candidates. Both audits recommend findings of minor violation for incomplete expenditure documentation and assessing no monetary penalties.

Mr. Shiah moved to accept the finding of violation for Rep. Boyd Marley with no penalty; the motion was seconded by Mr. Marsano. Motion passed by a vote of 5-0.

Mr. Shiah moved to accept the finding in violation for Sheila Rollins with no penalty; the motion was seconded by Mr. Marsano. Motion passed with a vote of 5-0.

Agenda Item #5 Guidance on Executive Branch Lobbying

Mr. Wayne explained a new requirement that lobbyists must report communications with the officials in the executive branch and constitutional officers made for the purpose of influencing legislation. The staff has drafted guidance for the lobbyists and circulated the draft advisory to all registered lobbyists. He said only one response was formally submitted. He also noted that there are two options outlined in the packet materials regarding research and analysis done by lobbyists. He explained that the issue is whether any research or analysis prepared by lobbyists for his or her own purposes and not submitted to any governmental officials should be considered as lobbying time. Mr. Wayne said if the research is submitted at a later time, the question is whether that the time spent on the research and analysis should be considered lobbying. Mr. Wayne further advised that Option A would not provide a clawback so research and analysis would not count as lobbying; Option B would provide a clawback so the time spent on research and analysis would be reported as time lobbying.

Ms. Thompson asked who generated the bill. Mr. Wayne said Marilyn Canavan proposed the bill regarding executive branch lobbying.

Ms. Thompson asked if anyone on staff was present during the committee hearings and discussions. Mr. Lavin, Assistant Director, was present during much of the deliberations. She wanted to know if staff had reviewed the legislative record during the debate.

Mr. Lavin said he did not recall any debate on the chamber floor regarding the bill.

Kristine Ossenfort, Esq., of the Maine State Chamber of Commerce, addressed the Commission. She is in support of Option A since she does a great deal of research on her own regarding health insurance across the country. She stated that she does keep track of actual lobbying time, but finds it would be difficult to keep track of the time she spends researching issues, especially when it is done several months or years before it may actually be used by a governmental official. She also expressed appreciation for the guidance information provided by the staff and said the document addresses many issues that lobbyists are likely to encounter.

Mr. Marsano stated he would like the record to show he has known Ms. Ossenfort for many years and she was an employee of his law office when she was a law student.

Patricia Aho, Esq., of Pierce Atwood Consulting, LLC, addressed the Commission. She met with Mr. Wayne to seek guidance a few months ago and is very pleased with the document that has been drafted. The new law is very broad and definitions are slim or not existent, so this document drafted by the Commission is extremely beneficial to the lobbyists. As far as the options are concerned, she would support Option A, since she too does a great deal of research and analysis on different laws and provides information a year or two later on such research. She believes the clawback option would be very cumbersome.

Mr. Marsano moved that Option A be adopted. Mr. Youngblood seconded.

Ms. Thompson asked how the legislative committee viewed this clawback option. Mr. Lavin said the clawback has been in the law but the law is ambiguous and this did not come up in the committee discussions.

Mr. Wayne stated that the issue has not come up before the Commission nor has any advice been given regarding clawback.

Mr. Friedman said he supported Option A and he appreciates getting feedback from the lobbyists that were present today. He stated that he values their input since this is their area of specialty.

Mr. Marsano stated Option A supported a critical component of the relationship between the lobbyists and the legislative officials. He said there is a lot of intellectual sharing that goes on between these individuals that is beneficial to the process in state government and that Option B would place a negative tone on this relationship. He further stated he would be fearful this knowledge and research provided by the lobbyists would become less available if unnecessary reporting burdens are placed upon them. Mr. Marsano said Option A allows us to deal realistically in the world in which we live.

Ms. Thompson expressed concern over an issue where a well-financed organization or lobbyist has an advantage over a not so well financed lobbyist. She said she would prefer to advertise the item again to get more public input.

Ms. Aho stated the guidance is very important and if the Commission could decide on the other parts of the guidance other than the clawback options, it would be helpful for lobbyists who have to report this month.

Mr. Youngblood said he did not want to inhibit the flow of learned education between lobbyists and governmental officials.

Ms. Thompson moved to table the motion. There was no second and the motion failed.

Mr. Shiah would like the record to show that his wife works in the Governor's office and could be an executive branch official referred to today.

The motion passed by vote of 4-1 (Ms. Thompson opposed).

Mr. Friedman asked regarding the remainder of the lobbyist advisory. Mr. Wayne suggested the Commission approve the rest of the guidelines as well so that they can be provided to the lobbyists in time for reporting.

Mr. Shiah moved to accept the remainder of the advisory; the motion was seconded by Mr. Marsano.

Mr. Youngblood commended the staff for the great job done on this advisory.

The motion passed by vote of 4-1 (Ms. Thompson opposed).

Agenda Item #6 Request by Perry A. Lamb

Mr. Wayne reviewed the history of Mr. Lamb's issue with regard to local highway law and how the law is interpreted. Mr. Wayne and Commission counsel do not believe the Commission has jurisdiction over this matter and have informed Mr. Lamb of this. Mr. Wayne has copied the MMA on his correspondence to Mr. Lamb.

Mr. Lamb informed the Commission of the history of his issue with government agencies and the Law Court regarding his road and taking of property. He believes the ethics of all state agencies is the Ethics Commission's business; and if not, then perhaps the Commission could point him in the direction where he needs to go.

Mr. Marsano stated that the Commission should be addressing only the jurisdictional issue before hearing any more background information from Mr. Lamb.

Mr. Friedman informed Mr. Lamb that the Commission's jurisdiction is limited to complaints about legislative ethics, individual legislators, lobbyist and overseeing the Clean Election Act. The Ethics Commission has no jurisdiction over road abandonment laws. He advised Mr. Lamb to seek out an attorney to help, or to go to the Legislature directly to get a bill passed. Mr. Friedman said unfortunately the Commission does not have jurisdiction over this issue.

Mr. Lamb feels the issue is carelessness of the Legislature allowing this easement law to be interpreted.

Mr. Friedman restated the limit of the Commission's jurisdiction.

Agenda Item #7 Confidentiality of Legislative Ethics Complaints

Mr. Wayne stated that as part of a legislative review of exceptions to the Freedom of Access Law, the Right to Know Advisory Committee has asked the Ethics Commission whether it supports continuing

the statutory requirement that complaints about legislative ethics filed with the Commission be kept confidential. The Committee would like our advice by the end of October.

Mr. Wayne explained that a legislative ethics complaint is required to be confidential. The Commission is required to notify the subject of the complaint and can decide whether to hold a public hearing. The staff can conduct preliminary fact gathering for the Commission. The Legislator has the opportunity to respond to the complaint. All of these steps and investigatory materials are confidential. If the Commission decides to hold a public hearing, the materials become public at that point. The staff's advice is to keep this process but clarify the law. There is a concern among some Legislators that some complaints will be filed with the Commission for political purposes or out of a grudge against the Legislator and that some people can be harmed by the airing of unfounded complaints. Mr. Wayne informed the members that in 2006 there was a legislative ethics issue that did not go to public hearing because the fifth slot for a board member was not filled, therefore a tie vote kept the issue from reaching public hearing stage. He said the news media found fault with the Ethics Commission for not doing its duty. He further stated that there are members of the public who would like the entire process to be open.

Mr. Youngblood asked for clarification on the changes to be made to 1 M.R.S.A. § 1013. Mr. Wayne stated that the drafting of the changes was done back in 2006 by a legislative advisory committee which he feels is a good suggestion for language.

Ms. Gardiner explained the difference between investigative records and findings of fact. She said when the complaint is filed with the Commission, it is investigated and treated confidentially at that stage. Then it is brought before the Commission for its decision whether to go further with the complaint, like a screening for probable cause. She further stated that findings of fact or recommendations on the complaint are not done unless the Commission decided at that initial stage to pursue the complaint. The confidential part would be the investigative stage up to point the Commission decided to pursue.

Mr. Youngblood said section 5(C) does not refer whether it was pursued by the Commission or not, and that it seems to refer to alleged conflicts, in his opinion. He thought the language sounded like it was referring to conflicts not pursued by the Commission. If it were alleged, it would not get to the

point of recommendation. Ms. Gardiner said that the phrase “complaints that the Commission has voted to pursue” may be better language.

Mr. Youngblood felt there may be things in the findings of fact that should not be made public.

Mr. Wayne stated he thought the drafter only intended to issue findings of facts to Legislature after the public hearing on the complaint. He said only those would be public. Mr. Wayne said the language can be clarified.

Ms. Gardiner said that section 4 clearly states that if the Commission votes not to pursue, then records remain confidential and are not public. She said there would not be any findings or recommendations if the Commission decided not to pursue. She further agreed that language in paragraph C could be clarified.

Mr. Marsano asked if putting in language, “after the hearing,” in paragraph C would resolve the confusion. He said the findings of fact after a public hearing would be public because there would be notice. He thought this would be more clear.

Ms. Gardiner stated that after the Commission votes to pursue and a public hearing is held, then everything, including findings of fact, would become public.

Mr. Wayne said the Commission is required to submit a report to the Legislature on how these legislative ethics complaints are handled. Mr. Wayne suggested that if the Commission wants to hold off on any recommendations to Right to Know Committee, we can hold off and use the report to the Legislature as the recommendations to this Committee which will allow more time. Mr. Wayne said the Committee would appreciate hearing from the Commission regarding its approval of the basic framework for confidentiality until there is a public hearing which is currently in statute.

Ms. Thompson made a motion for Mr. Wayne to advise the Right to Know Committee that the Commission approves and supports the current statute language for confidentiality until there is a public hearing. Mr. Marsano stressed the word ‘until’ be kept in the language and seconded this motion. Motion passed 5-0.

Agenda Item #8 Initiation of Rulemaking

Mr. Wayne stated the staff recommends the Commission conduct a public hearing on proposed rulemaking at the next meeting pursuant to the State Administrative Procedure Act to amend its rules. Mr. Wayne said Mr. Marsano's suggestion for changing the reimbursement to candidates be amended with a limited timeframe could be included.

Mr. Marsano further suggested making a debit card a requirement for payments by candidates for ease of accountability of expenditures.

Mr. Youngblood stated his concern over a MCEA candidate spending private funds without reporting these expenditures from personal funds.

Mr. Marsano noted his concern for the staff's protection over the language in section 5 of Chapter 1, which reads, "or other information." He feels the wording is too vague for the protection of the staff. He thought adding a phrase such as "documented or substantiated" covers the staff's pursuing any complaint. He is concerned that a complaint phoned in may come with no backup documentation.

Mr. Wayne suggested deleting the phrase, "other information." Ms. Gardiner cautioned that deleting the phrase limits what types of complaints the Commission can pursue. After further discussion, it was decided to delete the phrase.

Mr. Wayne noted that section 7 of Chapter 1 regarding expenditures for political action committees or party committees is an additional reporting requirement. He said this would require PACs and party committees to report which candidate they have made expenditures in support of.

Mr. Shiah made a motion to put the draft rulemaking changes as modified out for public comment; the motion was seconded by Mr. Marsano. The motion passed by a vote of 5-0.

Agenda Item #9 Selection of Meeting Date

Mr. Wayne suggested the Commission choose a date for the next meeting of the Commission after the Thanksgiving holiday so that the Commission can hold a public hearing on proposed rules amendments. Discussion took place regarding the statute requirements for meeting frequency. It was decided to meet on Friday, December 7 for the purpose of conducting a regular meeting and public hearing for rule amendments.

Other Business

Audit of Cultural Agencies by State Controller

Mr. Wayne said the Commissioner of Administrative and Financial Services, Rebecca Wyke, conducted an audit of the state cultural agencies (State Library, State Museum, State Commission on Historic Preservation, and State Arts Commission) due to a concern that the agencies hired private lobbyists – Mike Saxl (former Speaker of the House) and James Cohen of Verrill & Dana. Ms. Wyke's concern was the State had hired these private lobbyists using public funds. Mr. Wayne said the State Controller did not want to get into the definition of what is lobbying, so referred the matter to the Ethics Commission. No public funds were used for lobbying according to the lobbyists. The lobbyists claim these were consulting services. The audit concluded that the cultural agencies did use funds inappropriately. Mr. Wayne said if Mr. Saxl and Mr. Cohen were paid to promote legislation to the legislative branch, then they were lobbying. Mr. Wayne said more than \$100,000 was billed by these two lobbyists and that the outstanding obligation has been forgiven since the issue has been brought out. Mr. Wayne said if an individual spends and is compensated for more than eight hours within a month on influencing legislation, the individual is supposed to register as a lobbyist with the Ethics Commission. Mr. Saxl and Mr. Cohen have not done so. Mr. Wayne provided documentation to the Commission on research he has done that supports the view that they have been lobbying. Mr. Wayne requested the Commission allow him to follow up with these allegations and provide more information for the Commission at the December meeting.

Ms. Thompson said she felt it is imperative that more research be done to get to the bottom of this issue.

Mr. Wayne said if there were a violation and they should have registered, the penalties could be quite high.

Comments by Carl Lindemann on Proposed Rule Changes

It was noted that Mr. Lindemann's memo was not received by the Commission staff until approximately 4:30 p.m. the night before the meeting. Mr. Friedman said since the Commissioners have not had an opportunity review Mr. Lindemann's comments, it was requested that Mr. Wayne notify Mr. Lindemann that he may present his comments for them at the next meeting in December.

Mr. Wayne also advised the Commission that a member of the Legislature contacted the staff regarding the requirement of an annual disclosure statement for the Commission members which would identify any conflicts of interest.

Mr. Friedman stated that he did not feel a disclosure statement was necessary; however, in order to show leadership on this issue, he would be willing to look at such a disclosure statement for further consideration.

Mr. Youngblood thought the board members should be proactive and create their own disclosure statement instead of having the Legislature draft such a document.

Mr. Wayne will draft a proposed statement.

Meeting adjourned at 12:20 p.m.

Respectfully submitted,

Jonathan Wayne, Executive Director