Agenda Item #1

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

Minutes of the April 28, 2008, 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. Francis C. Marsano; Hon. Edward M. Youngblood; Hon. Mavourneen Thompson. Staff: Executive Director Jonathan Wayne; Phyllis Gardiner, Counsel.

At 9:01 A.M., Chair Michael Friedman convened the meeting.

The Commission considered the following items:

Agenda Item #1. Ratification of Minutes of the March 31, 2008, Meeting

The Commission Chair called the meeting to order and noted that the staff had provided the Commission with proposed changes to the draft minutes. The Commission's director noted that the staff was proposing changes to pages 3, 4, and 10 of the draft minutes that were shaded in a handout being circulated. In addition, Mr. Wayne apologized that on page 15 of the draft minutes the staff had made a mistake regarding the vote taken on Ms. Thompson's motion that the Commission establish a public comment period at the beginning of each Commission meeting. Mr. Marsano had telephoned the Commission staff on April 25, 2008 to correct the mistake. The draft minutes incorrectly stated that Mr. Marsano and Ms. Thompson had voted in favor of the motion. In fact, Mr. Marsano had voted against the motion along with Mr. Friedman and Mr. Youngblood. Voting in favor of the motion were Mr. Shiah and Ms. Thompson. Mr. Youngblood moved to accept the minutes as amended. The motion was seconded by Mr. Marsano. The motion passed (4-0).

Agenda Item #2. Request for Waiver of Late-Filing Penalty, Cape Elizabeth Republican Committee

Mr. Wayne explained Agenda Items #2 and #3 had a similar theme: the turnover of the party committees' officers and treasurers sometimes presents a problem with regard to filing the reports. Mr. Wayne said when a county or town party committee raises or spends more than $1,500 in a calendar year, it is required

to file a campaign finance report. The Cape Elizabeth Republican Committee had reached that threshold in calendar 2007 and filed a report on time in July. It was also required to file a campaign finance report on January 15, 2008, disclosing its contributions and expenditures for the second half of 2007, but the report was filed 16 days late on January 31. The preliminary amount of the late-filing penalty is $120. The current committee treasurer, William H. Gross III, and the former treasurer requested a waiver of the penalty because he did not understand that the report was due. The Commission's records indicate that a reminder memo was sent to the former treasurer. Mr. Wayne reviewed past practice of the Commission in these instances when there has been a turnover of the treasurer, which resulted in a late-filed report. Mr. Wayne said the staff recommends assessing a penalty of $120.

Mr. Youngblood asked if the staff's practice of sending a letter ten days prior to the reporting deadline had been done and whether the former treasurer was still an active member of the committee.

Mr. Wayne confirmed a letter had been sent; however, it was sent to the previous treasurer and whether that was forwarded to the current treasurer was in question.

Mr. Marsano asked a procedural question regarding whether Item 2 and Item 3, although similar issues, were being discussed separately.

Mr. Wayne confirmed that Item 3 would be discussed separately.

Mr. William Gross addressed the Commission. He explained that he was responsible for sending in the report. He said that the committee had not been required to file reports before the one filed in July. He said when they went over the $1,500 they did file, but did not raise funds in the second half of the year so thought they would not need to file. He said the previous treasurer, who is the current secretary, does not remember receiving a letter. He said she brought the matter to his attention when she received a phone call from the Commission staff after the deadline. He said they were unfamiliar with the rules due to the turnover of the officers of the committee during this time. He said their ignorance of the filing requirements was the reason for missing the report, not because they were hiding anything. Mr. Gross likened the filing of the report to a business transaction and said that he did not believe that there was an ethical violation. He said that he thought it would be better practice for the Commission to have multiple

steps in the notification process before assessing a fine, similar to the notices a business would get if it did not pay its invoices on time.

Ms. Thompson asked if the penalty assessed would be paid by the committee. Mr. Gross said he believed the fine would come out of the committee's account.

Mr. Marsano asked whether Mr. Gross would see this matter as similar to the situation in which a bank sent a credit card statement to his wife for which they were both responsible. If Mr. Gross did not pay it and an automatic late fee was charged, it would not be imposed as a matter of attempt to defraud the bank. Mr. Marsano said that he did not think that there was ethical question with regard to this matter. He said the Commission was fulfilling its statutory responsibility to administer the campaign finance laws for the public. He said that the committee received the statutory notices, as required, that a report was due and also received the follow-up mailing. He said that he sympathizes with Mr. Gross' predicament but he did not see a reason to waive the entire amount.

Mr. Friedman said that he also did not see the issue as an ethical violation but as an issue similar to the late fee analogy. The Commission is charged with overseeing the proper reporting of campaign finances by those involved in the political process. The statute gives the Commission deadlines to follow. Those who are involved in the political process are responsible for understanding what the campaign finance laws require of them. He stated that the parties should do better training of the different county, city and town committees. His view is that there is not enough training going on.

Mr. Gross said that the imposition of penalties in situations such as this would have a negative effect on the willingness of individuals to volunteer for party committees. He said that it would be better for the state of Maine if more people were encouraged to participate in the political process. Mr. Gross said that he thought the Commission should try to encourage participation rather than discourage it by imposing fines. He said the logic behind his example of business invoices and statements was strong as was the logic behind Mr. Marsano's analogy to a bank late fee, but the overall negative impact of the automatic penalty on political volunteerism should be taken into consideration in deciding whether to impose a penalty.

Mr. Youngblood said everyone is a procrastinator to some degree. He asked Mr. Gross what, other than a late fee, would be acceptable to encourage people to file on time. He said that if there was no late fee or

penalty, people would never file on time and reports would simply trickle into the Commission all year long.

Mr. Gross said three reminder notices would be helpful and accomplish the same end as the fine.

Mr. Marsano said he agreed with Mr. Gross; however, he believes Mr. Gross is before the wrong body to argue for changes to the law. Rather, he should make these arguments to the Legislature to change the law. Mr. Marsano said that the fee was part of the Commission's administrative cost in overseeing the system and that Mr. Gross' suggestion of sending out three notices would simply increase the delay in filing reports and the administrative costs to ensure that people comply with the law. Mr. Marsano said that while he found Mr. Gross' presentation eloquent and understood Mr. Gross' concerns, he did not think that the entire penalty should be waived.

Ms. Thompson said that the question of whether the disclosure of campaign finances should be mandatory or voluntary has been debated many times over the years at the federal and state level. The public, speaking through the Legislature, has decided that it should be required. The Commission has been assigned the job of overseeing the process of campaign finance disclosure.

Ms. Thompson moved that the Commission accept the staff recommendation and assess a penalty of $120. Mr. Youngblood seconded the motion.

Mr. Marsano moved to amend the motion to have the fine set at $100. Mr. Youngblood seconded the amendment to the motion.

Ms. Thompson said she would vote against the amendment. The Commission has heard similar arguments against the imposition of penalties for late-filed reports; arguments based on the miscommunication within the committee. She said the responsibility to inform the town committees lies with the state party committees.

The motion to amend the original motion failed by a vote of 1 to 3 (Mr. Marsano in favor and Ms. Thompson, Mr. Friedman, and Mr. Youngblood opposed).

The original motion to assess the staff recommendation of $120 passed unanimously.

Agenda Item #3. Request for Waiver of Late-Filing, Cumberland County Republican Committee
Mr. Wayne explained that the committee got a new treasurer, Brian Bicknell, in March 2007. The committee did not go over the $1,500 threshold in the first half of 2007 but did raise $3,818 during a fundraiser in August 2007. Because of that, the committee was required to file a campaign finance report on January 15, 2008, disclosing the committee's contributions and expenditures for 2007. The previous leadership of the committee did not inform Mr. Bicknell of the reporting requirement. Mr. Bicknell did contact the staff in March, 2008, to find out what the reporting requirements were and realized that the committee should have filed a report in January but did not. The report was filed on April 8, 2008, after the committee treasurer realized the report was overdue. Mr. Wayne said the maximum late-filing penalty that may be assessed against a county party committee is $500. He said a notice was sent to previous treasurer and chair of the committee back in February, 2007, which stated the filing schedule for committees that go over the $1,500 threshold. Mr. Wayne said the committee had been filing their reports regularly since 2002 and clearly had an understanding of the reporting requirements over that period. He said someone should have informed Mr. Bicknell of the requirements. Mr. Bicknell has been very cooperative and has shown good faith in coming forward. Had he not, the Commission would not even know whether the committee was required to file a report. The staff recommended assessing a penalty of $500.

Mr. Bicknell said that his case is similar to the last item; however he felt it was slightly different because he was not aware of the schedule since the committee's files were in his house when the house caught on fire. He was living in a motel for three months, and all his files were in storage. He was preoccupied with the destruction caused by the fire and this filing responsibility was not on the top of his list of priorities. He said he was not aware of the reporting requirement. When money was raised through the golf tournament, he would have contacted the Commission and filed a report if he had known it was required. He said he kept detailed reports for the committee but was not aware of the requirement to file a report with the Commission. He has not seen the previous treasurer and he checked with the committee's chair who did not know about any filing requirements with the Commission.

Mr. Friedman asked if the committee had filed routinely in previous years. Mr. Bicknell said there was very little money involved prior to his taking over as treasurer and no fundraising took place until last August, so filing was not an issue. He said he knew he had to file with someone when a profit was made

from fundraising, but was not sure who he should file the report with. Since past records were removed from his cellar because of the fire damage, he did not have access to the documentation to which to refer.

Mr. Friedman asked for clarification as to when the fire took place. Mr. Bicknell confirmed the fundraiser golf tournament was in August, and the fire happened in October. He was trying to get his home reconstructed during the fall months. He thought the filing requirement was an annual report.

Ms. Thompson asked for clarification of the timeline. She reviewed the sequence of events: in March, 2007, Mr. Bicknell became the treasurer; the fundraiser was in August, 2007; then the fire happened in October, 2007.

Mr. Bicknell, in closing, said he feels there was no attempt on his part not to follow the laws and rules of the State, it was simply a lack of knowledge of what was required. He said he understands the notification process but feels the fine is excessive because there was no attempt to do anything illegal on the part of his committee. He said unfortunately, he feels personally responsible because it is his responsibility to file reports on time. He said he would pay the fine out of his own pocket and then resign as treasurer because he cannot afford this kind of liability. He further stated that given the circumstances, he feels this penalty is excessive.

Ms. Thompson asked whether the law expected a higher level of compliance from county committees than from town committees and what the rational was for a $500 penalty as opposed to a lower penalty.

Mr. Wayne explained that the law did not make a distinction between town and county committees and that the penalty is based on the number of days past the deadline the report is filed and the amount of committee's contributions or expenditure for the reporting period, whichever is greater. He said the report was three months late. Based on the formula in the statute, the amount of the penalty would be much larger than $500, but the law limits the amount of the penalty to $500. He said the staff was aware that this is a large penalty and the Commission may feel that it is disproportionate to the level of the offense. He said the Commission could take mitigating circumstances, such as the experience level of the treasurer, into account if it feels that is warranted. He said there was a similar situation involving another committee in Cumberland County for the Democratic Party, which had an inexperienced treasurer. He said the staff at that time recommended a penalty of $250 for each of the two late-filed reports rather than $500 for each

report. The Commission at the time decided to assess the full two $500 penalties in that case, reinforcing the need for committees to file their reports on time; however, this Commission does not have to follow that decision as precedent.

Ms. Thompson asked if there was a process in place for making penalty payments on an extended basis. Mr. Wayne said that the staff does accept partial payments and a payment plan and has done that in the past.

Mr. Youngblood said a lack of knowledge of the statute is not an adequate reason for changing the penalty; however, mitigating circumstances are a reason for penalty reduction. He asked if the other party committee that was fined had any mitigating circumstances or was it just the lack of knowledge passed on.

Mr. Wayne said it was more a lack of experience.

Mr. Marsano said that he thought that Mr. Bicknell's presentation up to his final comments was excellent and hoped that those comments do not reflect his reaction to the Commission. He thinks that the substantial fact in this case is the fire. He said that there should be a substantial mitigation of the penalty based solely on the fire and nothing else. He said that given all the evidence that he heard, there is a good probability that Mr. Bicknell would have properly filed the report but for the fire.

Mr. Marsano moved to assess a penalty of $100. Mr. Youngblood seconded the motion.

Mr. Friedman said he had concerns about a reduction of that magnitude. He said a fire is a significant event; however, in this case, there were two months between the fundraising event in August and the fire in October. Mr. Bicknell stated that he knew, at the time of the fundraiser, there would be some type of filing required. The fire happened in October, two months away from making the filing on time. Mr. Friedman said he felt there would be return to normalcy after the fire and that 83 days late by a county committee seems too much. He is not opposed to a reduction, but $400 is too large.

Mr. Marsano's motion to reduce the penalty to $100 failed on a vote of two in favor (Mr. Marsano and Mr. Youngblood) and two opposed (Ms. Thompson and Mr. Friedman).

Ms. Thompson moved to assess a penalty of $400. Mr. Friedman seconded the motion.

Mr. Youngblood said he would oppose this motion because the strong mitigating circumstances in this case warrant more than a $100 reduction. He said that the period of time that the report was late is a long time; however, there must be some amount between $100 and $400 that would be fair.

Ms. Thompson's motion to assess a penalty of $400 failed by a vote of two in favor (Ms. Thompson and Mr. Friedman) to two opposed (Mr. Marsano and Mr. Youngblood).

Mr. Friedman moved to reduce the penalty from $500 to $200. Ms. Thompson seconded the motion.

The motion passed unanimously (4-0).

Agenda Item #4. Request for Waiver of Late-Filing Penalty, Lobbyist Juliana L'Heureux

Mr. Wayne stated that Juliana L'Heureux was hired as the Executive Director of the Maine Association of Mental Health Providers on March 10, 2008, and registered as a lobbyist for the association on March 19. He explained since she has not worked previously as a lobbyist, she did not realize that she was required to file a report on April 15, 2008, covering her lobbying activity during the month of March. The report was filed three days late on April 18. The preliminary penalty amount is $100. Ms. L'Heureux requests a waiver because as a new lobbyist she misunderstood the requirements. The staff recommends assessing a reduced penalty of $50.

Ms. L'Heureux said she was new in this position and did not take over from a previous executive director. The organization had been without an administrator for a long time. She registered with the Commission because she wanted to be compliant but she did not realize that she was required to file a report when no lobbying activity had taken place in a month. She knew that her lobbying activity would start in April. When she received a penalty letter, she immediately took action and filed the March and April reports. She stated her appreciation for being allowed to be heard so quickly and for the recommendation to reduce the penalty amount.

Mr. Friedman asked if the Commission had sent her a package of information when she registered as a lobbyist. Ms. L'Heureux said nothing had been sent to her.

Mr. Wayne said that prior to Jeremy Brown's arrival, packages had not been sent out. He said that the previous lobbyist registrar had a standard presentation that she would give to new lobbyists in person or over the phone. The staff is looking at new procedures for the upcoming session in the fall.

Ms. Thompson asked whether the past practice of notification of the reporting requirements for lobbyists when they registered was inadequate.

Mr. Wayne said the lobbyist registrar position has been vacant for six months and other staff members have been trying to fill in while the hiring process took place; therefore, new registrations have not been followed up with on a regular basis.

Ms. L'Heureux stated that she did not receive any information and did not get the password information needed to file.

Mr. Wayne said the staff would support a full reduction in the penalty in this case. He said most lobbyists who register understand there is a monthly reporting requirement and they do come forward and ask the Commission for more information.

Ms. Thompson said she did not recall this type of situation arising before. She asked what the procedure is to inform lobbyists of their requirements under the statute.

Mr. Wayne said most lobbyists do lobbying for a living and therefore know what the requirements are. He said in this case, the lobbyist is brand new and has not lobbied before and should, therefore, receive a copy of the guidebook which explains reporting requirements. He said there is also the Commission's website the lobbyists can go to for information explaining reporting obligations and responsibilities. He said, also, the lobbyist can call the Commission. Mr. Wayne explained the steps a lobbyist has to take to register with the Commission and then the lobbyist has to file monthly reports until the end of the session.

Ms. Thompson asked if the registration form lists what other requirements are required after registration.

Mr. Wayne said that information could be added to the form. In the past, the staff has relied on face to face communication with the lobbyists.

Ms. Thompson asked Ms. L'Heureux if she knew about the requirements to file reports with the Commission.

Ms. L'Heureux said she understood there was a monthly filing requirement, but had not received any instructions about filing those reports. She heard by word of mouth about these requirements and she understood it was based on lobbying activity. She did not lobby in March and believed she did not need to file a report for that month. She also said she did not have a predecessor from whom to get accurate filing information. She firmly stated that she would not be late again now that she has a clearer picture of what the requirements are.

Mr. Friedman said when he first came on the Commission, he was sent copies of the pamphlets that the Commission staff had created and he also knew that the previous lobbyist registrar had done a good job in alerting new lobbyists about there responsibilities. He said due to the turnover of the registrar position, he believes a reduction in the penalty would be in order.

Mr. Marsano said he reviewed the lobbyist disclosure statute. He thought that there is a significant difference between Ms. L'Heureux and the prior speakers. He does not disagree with a minimal assessment; however, he feels that, given the information in the statute and leaving aside some minimal failures by the Commission, some sort of penalty is in order. He said that he would be opposed to a complete waiver of the penalty.

Ms. Thompson asked why the required amount of $100 was reduced to $50.

Mr. Wayne said the staff feels it is important to send a message to lobbyists that they are required to understand the statutes. However, since this case also coincides with the new registrar's first week, he said Ms. L'Heureux did not get the guidance she should have received when she registered as a new lobbyist so the staff felt that she should have a reduced penalty.

Ms. Thompson moved to assess the preliminary penalty amount of $100. Mr. Marsano seconded the motion.

The motion failed (2-2).

Mr. Youngblood moved to assess the staff recommendation of $50 penalty. Mr. Marsano seconded the motion. The motion passed unanimously (4-0).

Agenda Item #5. Referral of Civil Penalty to State Attorney General, Alvin Schulman

Mr. Wayne said Mr. Schulman was not present and would not be commenting on this matter. He explained that Alvin Schulman was a candidate for the Portland City Council in 2005. When Mr. Schulman did not file his post-election campaign finance report with the City Clerk of Portland, she referred the matter to the Ethics Commission. Mr. Shulman eventually filed the report about three months late. At its meeting on April 2006, the Commission assessed a $100 civil penalty for the late filing of the report. After many unsuccessful attempts to get Mr. Shulman to pay the fine, in 2007, the Commission staff told Mr. Shulman that it would be referring this case to the Attorney General's office. Mr. Schulman, who said that he was on public assistance, has repeatedly promised payment after he finds employment, but he has not made any payments to-date. The Commission staff took him at his word and gave him some time to pay the penalty. After several attempts by the staff to get him to pay, he has made no attempt to make a payment. The staff recommends that the Commission refer this matter to the Attorney General for collection, which is the formal procedure followed in the past. Another option would be to waive the penalty in light of Mr. Schulman's circumstances.

Mr. Marsano asked whether the staff was satisfied with Mr. Schulman's statement about his impecunious circumstances. He said if Mr. Schulman was running as an impecunious candidate, taking no action may be more economically efficient than having the Attorney General's office go forward with this matter. He said it will cost more than $100 to refer this case to the Attorney General, and in the interest of economy, another alternative may be appropriate.

Ms. Thompson asked if Portland city officials are allowed to mitigate this penalty rather than the Commission deciding this matter.

Mr. Wayne said it is solely within the Commission's jurisdiction.

Mr. Friedman said there will always be someone who has an excuse for not paying a penalty. He said the Commission must enforce the rules and, in this case, a fine is appropriate. If the Attorney General decides it is not worthy of pursuit, at least the Commission has done its job in enforcing the rules. The Commission should not let this matter rest at this level; he believes the Attorney General's office should use their resources to determine whether it is worthy of pursuit.

Ms. Gardiner said she does not recall a case where the failure to pay a penalty was based on the claim of being unemployed and not having any money. In most cases, there is some willful resistance to paying the penalty and that is what leads to the referral. Ms. Gardiner said that she did not know of a referral of a case where the penalty was as low as $100. The Commission needs to decide whether to have the staff do further investigation, waive the penalty, or refer it to the Attorney General.

Mr. Marsano said that in the judicial system, there was the concept of actions which were de minimis and that this case seems to approach that level. The matter involves a municipal election. The candidate alleges that he has no money, no job, and no place to live. He said that he can understand that a candidate in those circumstances may want to run for office in order to deal with public housing issues and other matters. If they do not get elected, the idea that they could get punished for not following certain procedures, may be appropriate, but at some juncture it becomes de minimis. He would like to see the matter terminated in a respectful manner. He said he would be willing to make a motion on the basis that the matter is de minimis if that would be in order. He said he believes that if the matter is referred to the Attorney General, that office will most likely come to the same conclusion but at that point, it will have cost the state more money.

Ms. Thompson moved to refer the matter to the Attorney General for collection. Mr. Friedman seconded the motion.

The motion passed unanimously (4-0).

Agenda Item #6. Assessment of Civil Penalties, David Hughes

Mr. Wayne explained that David Hughes was a 2007 special election candidate for House District 72 (a part of Lewiston) after the incumbent resigned. He received $4,287 in MCEA funds for his campaign. He was required to file a post-election campaign finance report and to return unspent campaign funds of $509.17 by December 18, 2007. He did neither. Mr. Wayne explained that several attempts were made by staff to contact Mr. Hughes. After receiving no response from Mr. Hughes, Mr. Wayne put the matter on the Commission's agenda for its January, 2008, meeting. The day before the January meeting, Mr. Hughes filed the report and returned the money. Mr. Hughes appeared before the Commission at the January meeting. Nevertheless, due to the lateness of the report and the return of the funds, the staff was concerned that Mr. Hughes may have misused the funds. He said an audit was done of Mr. Hughes' campaign and all seemed to be in order, except for one reporting mistake. Mr. Wayne further explained that a reporting error in Mr. Hughes' pre-election report resulted in an overpayment of $200 and the staff recommended a penalty of $50. He said that staff also recommended a penalty of $200 for violating the MCEA by not returning unspent funds on time and an additional $200 for being a month late in filing the campaign finance report, for a total penalty of $450. Mr. Wayne said that Mr. Hughes experienced a personal tragedy at the time the report was due and this was taken into consideration when establishing his penalty amount.

Mr. Hughes stated that candidates have an obligation to maintain the public trust in the clean elections system. He said he did not do that and agrees that he should be penalized for that. He said he should have filed the report and returned the funds on time but did not because of what was going on in his life. However, he said that he is not appearing before the Commission to excuse his behavior or to avoid the penalty. He said the reporting error was an honest error because he did not understand how to report the obligation. He said he is not before the Commission to excuse himself. Rather, he is here to give any information and answer any questions the Commission may have.

Mr. Friedman said it was comforting to hear from someone who supports the process. He said the process is complicated but it must be followed and thanked Mr. Hughes for his candor.

Mr. Marsano moved to adopt the recommendation of the staff and assess a penalty of $450. The motion was seconded by Ms. Thompson.

The motion passed unanimously (4-0).

Agenda Item #7. Policy on Paying Campaign Funds to Family Members

Mr. Wayne explained the background of this issue. In the 2008 session, the Maine Legislature enacted two laws (Public Laws 2007, Chapters 567 and 571) relating to candidates who pay campaign funds to members of the candidate's family or household. The laws create the requirement that all candidates disclose on their campaign finance reports the payment they make to household members and, in the case of MCEA candidates, to family members. Chapter 571 imposes restrictions on when Maine Clean Election Act candidates can pay the candidate, the candidate's household members, or a business, non-profit, or corporation in which the candidate or a member of the candidate's household has a significant interest. The Commission is required to establish procedures for the candidate to submit evidence proving the expenditure is permissible. Mr. Wayne explained the staff's proposed policy and advice.

Mr. Marsano said the policy would need to be publicized quickly since the effective date of the statute is July 18. He said the timing is critical. He said the reasonable deadline would be May and the absolute deadline would be June.

Anne Luther, co-chair of Maine Citizens for Clean Elections, said that she had been following the bill through the Legislature. She said that there was widespread sentiment in the Legislature for an outright ban on the payment of public campaign funds to family members. She said that, in her group's view, this law represents a broad ban with a narrow exception. The exception is that if a family member provides the services in the normal course of their business – meaning that they have other customers to whom they are providing these services and who are being billed – and they are providing those services to the candidate at the same price they charge other customers, then the use of public campaign funds to pay that family member will be acceptable. She said this should be a very clear test. She also said provisional approval and the process for payments under $250 in the proposed policy may cause problems for the candidates and administrative problems for the Commission. She said that her group is definitely opposed to allowing payments to family members who "recently" provided the services as a part of their employment or business but who are no longer doing so. She said that she understands that the meaning of "normal course of business" is that the person has to have customers on the books and to be able to show current billings to other customers. She also said that if the test was so clear regarding the requirements for a permissible payment to a household or family member, it might even be possible to allow candidates to submit the evidence with their regularly filed campaign finance reports rather than requiring candidates to seek

approval before they engage the services of the household or family member, which could be very burdensome on the candidates.

Mr. Marsano said he is opposed to the provision in the guidance regarding expenditures of $250 or under because he did not see any basis for that in the statute. He asked Ms. Luther for her views on that part of the proposed guidance.

Ms. Luther said that she thought the function of that provision was not to indicate that amounts over $250 were not acceptable and amounts below $250 were acceptable. Rather, she thought it was intended to create a process for when candidates would have to get advance approval. She said that an amendment to the bill that would have allowed payments under $250 to family members did not even make it out of the committee. She said a process that allowed for provisional approval is very problematical.

Discussion took place about statutory construction and how to interpret the three-pronged test in 21-A M.R.S.A. § 1125(6-B).

Ms. Thompson said that, in considering proposed guidance, the Commission should develop guidance and procedures that ensures the public trust in the Clean Election funds.

Ms. Gardiner asked Ms. Luther whether she thought that a family member who did not meet the criteria because they were no longer providing services as a part of their employment or business could still volunteer services without making an in-kind contribution. Ms. Luther said the current law would most certainly support a volunteer status no matter who it is.

Mr. Marsano proposed language for the guidance policy stating that any provisional approval shall be submitted to the Commission at its next regular meeting. A candidate may rely on staff provisional approval but at his or her own risk.

Ms. Luther expressed concern that if a payment is made based on the staff's provisional approval but the Commission disagrees with the staff, it creates a situation where it is unclear what the candidate has to do regarding the payment that has been made. How would the money be retrieved from the candidate if it was later determined not to meet the criteria?

Mr. Marsano suggested a further provision that any contract for services with a business must contain a condition regarding Commission approval and repayment if approval is not granted.

Mr. Friedman agreed that the $250 minimum should not be included. He also is reluctant to endorse provisional approval since it leads to further confusion and possible litigation later on. He gave an example of provisional approvals by the Workers Compensation Board with regard to hiring independent contractors. He does not believe this process of provisional approval works. Mr. Friedman said that he thought it was important to hear from the public regarding this issue by the meeting in June.

Mr. Marsano said the directive from the Legislature needs to be addressed and Ms. Luther's input is very valuable in understanding and clarifying the statute.

Mr. Wayne asked if the opportunity to comment should come to the staff or directly to the Commission members.

Mr. Friedman said the comments should come to the staff directly in order to distill the information and provide an overall assessment.

Mr. Marsano said he would want to get the comments from the public quickly, not next month, in order to have the benefit of the comments while considering these issues prior to the meeting.

Mr. Friedman asked Mr. Wayne how the staff usually solicits comment. Mr. Wayne said he would send requests for comments to leadership and leadership staff, political parties, good government groups, and occasionally to all candidates or members of the Legislature.

Mr. Friedman would support that list, except for members of the Legislature who have already had their opportunity for comment.

Ms. Thompson said there is no written record of what the LVA Committee deliberations were; but there is a written record of the House and Senate sessions which would be helpful to have in the decision making process. However, it was not known if there was any floor debate.

Mr. Wayne asked if the provisional approval and the $250 threshold should be taken out of the proposed guidance given the discussion among the Commission members.

Mr. Marsano said he would like to see the Commission vote on taking those elements out of the proposed guidance so that there is a public record that the Commission voted to amend the proposed policy to exclude those two items.

Mr. Marsano moved to have the Commission vote to exclude the minimum threshold amount and preliminary approval by the staff. Mr. Youngblood seconded the motion.

The motion passed unanimously (4-0).

Mr. Youngblood asked about penalty wording in the statute. Mr. Wayne said no penalty amounts were specified.

Ms. Gardiner said this is an amendment to the Clean Election Act, which has general penalty provisions in the amount of up to $10,000 per violation.

Mr. Wayne asked if the Commission wished to include a potential penalty provision as part of the policy statement.

Mr. Youngblood said, at some point, thought will need to be given to a penalty figure.

Discussion took place regarding the applicability of the general penalty for violations of the Act and the remedy of returning funds for payments that were found to be improperly made because they did not meet the statutory criteria. Mr. Wayne said if the staff finds that the penalty is not clear, the policy can be revisited in the fall along with statutory changes.

Mr. Friedman said he would be reluctant to accept any form of pre-approval. He said any controversy arising out of this new law should be ripe when it comes before the Commission, and that is when the

approval should take place. He thought that it would put the staff in an untenable position to be providing pre-approval that would not be binding and final.

Mr. Wayne said that he would rewrite the proposed policy and send it out for comment and keep the Commission members apprised in a timely fashion.

Mr. Marsano asked whether Mr. Wayne would also send the rewritten policy to the Commission members. Mr. Marsano also raised the issue of whether the Commission members could send comments to Mr. Wayne and send copies of their comments to other Commission members.

Ms. Gardiner said that they could send comments to the staff and to other Commission members. The caveat that she gave was that the e-mail communications should not turn into a conversation among the members outside of public view.

Mr. Friedman said that he had reservations about getting the comments from other Commission members outside of a meeting.

Ms. Gardiner said that the members could comment individually to the staff and Mr. Wayne could compile the comments and distribute them at the same time to all Commissioners.

Ms. Thompson said that the Commission members needed to have discussions on issues, not only those filtered through the staff. She wondered whether there were any options, other than more meetings, to do that.

Ms. Gardiner did not think that it would be improper for the Commission members to merely send courtesy copies of the comments they send to Mr. Wayne to the other Commission members. It is when those e-mail exchanges develop into a back-and-forth discussion of an issue among Commission members that it becomes a meeting outside of the public's view.

Mr. Friedman said that the Commission could hold a workshop open to the public outside of its formal meeting.

Discussion also took place regarding the attendance and quorum requirements for a workshop.

Mr. Friedman stated that a workshop could take place after the comments come in, if necessary.

Executive Session

A motion was made by Mr. Marsano to go into executive session in accordance with Section 405, subsection 6(E) of Title 1 for the purpose of discussing pending litigation with the Commission's counsel. The motion was seconded by Mr. Youngblood. The motion passed (4-0).

Mr. Youngblood moved that the Commission come out of executive session. Mr. Marsano seconded the motion. The motion passed (4-0).

Other Business

Mr. Wayne explained that he was required to have a performance review by the Commission members on a yearly basis. He said he would send a standard evaluation form to the Chair, who would then share it with other members.

There being no further business, the meeting was adjourned.

Respectfully submitted,

Jonathan Wayne, Executive Director