January 31st, 1997

Minutes of the January 31st, 1997 meeting of the Commission held in the lounge of St. Paul's Center, 136 State Street, Augusta.

Present: Commission Chair G. Calvin Mackenzie; Members Daniel J. Bernier, Trish A. Riley, Robert E. Tierney, Richard E. Trafton, Paul A. Violette, Peter B. Webster; Counsel Cab Howard; Director Marilyn Canavan.

Absent: Members John D. Devine, Nathan L. Grass.

Chairman Mackenzie called the meeting to order at 9:35 a.m.

On motion of Mr. Violette, seconded by Mr. Trafton, the minutes of the October 9th, 1996 meeting were approved as written.

First, Ms. Riley inquired as to the status of the Commission's study, whereupon Ms. Canavan responded that a draft would be distributed to members the following week.

Next, out of order, the Commission considered Mr. Arthur LeDuc's letter of complaint. Mr. LeDuc alleged that Mr. Verdi Tripp had violated 21-A M.R.S.A. Section 1014 by failing to indicate on his campaign signs who authorized and paid for them. Mr. LeDuc was present and reiterated his claims; whereupon Mr. Tripp rose to address the Commission. He said that he erected two of the signs in question on November 2; that after noticing they were deficient, he immediately typeset the required statements of attribution and affixed them to the signs. On the basis of Mr. Tripp's statement, the Commission concluded that he had made a good faith effort to correct the violations and it was thus moved, seconded, and voted to assess no penalty.

The next matter considered was the letter of complaint of John Cleveland in which it was alleged that candidate Susan Stricker had circulated a campaign flyer in violation of 21-A M.R.S.A. Section 1014. Mr. Cleveland was present and addressed the Commission. He alleged that the flyer in question focused on his voting record showing it in a negative light; and pointed out that the statement of attribution displayed in the flyer was incomplete and worded in such a way as to suggest that he himself had paid for it. He said the Communication was circulated the week before the election, giving him little chance to counter its effects. At the conclusion of Mr.
Cleveland's remarks, the Commission reviewed Ms. Stricker's letter dated 1/10/97 in which she ascribed blame for the deficiency to the newspaper circulating the flyer and stated that a correction was printed at her request. On completing its review, the Commission concluded that the flyer was in violation of 21-A M.R.S.A. Section 1014; that although Ms. Stricker had taken steps to correct the error, she had failed in her obligation to check the proofs before they went to press, and that she must therefore be held responsible for the error. On those conclusions, Mr. Webster moved, and Ms. Riley seconded, to penalize Ms. Stricker $200.

The Commission then considered the letter of complaint of Ms. Marie Ryder. Ms. Ryder alleged that candidate Thomas Gieringer and his campaign committee circulated a news article and campaign flyer in violation of 21-A M.R.S.A. Section 1014; that distribution of the news story constituted a breach of the Fair Campaign Practices Code. Mr. Thomas LaPrade appeared on behalf of Mr. Gieringer. He claimed that the communications in question were distributed by Mr. Lawrence Finkelman, without Mr. Gieringer's knowledge; and pointed out that both Mr. Gieringer and Mr. Finkelman had submitted signed affidavits stating as much. He then argued that the relevant statute, 21-A M.R.S.A. Section 1014(l), regulates only those communications that are "authorized by a candidate"; that since Mr. Gieringer did not authorize distribution of the flyer, he was innocent of any wrongdoing. Asked about the relationship between Mr. Finkelman and the candidate, Mr. LaPrade replied that he was a volunteer and supporter of Mr. Gieringer.

Mr. Gieringer then addressed the Commission, claiming that he had conducted a clean campaign and had advised all of his campaign workers to do likewise.

On completing its review, members concluded that the flyer was in violation of 21-A M.R.S.A. Section 1014(l), and that Mr. Gieringer should be held responsible for the violation, the rationale being that:
1) candidates have an obligation to inform campaign workers of the requirements governing political campaigns, and
2) Mr. Gieringer failed to demonstrate that he had met that obligation responsibly. A motion was thus made and seconded to penalize Mr. Gieringer $100. The motion carried 5-2, Messrs. Webster and Violette opposing.

The Commission then undertook a review of candidate Rod Carr's campaign advertisements, submitted to the Commission anonymously. The ads failed to state who authorized and paid for them. Mr. Carr was present and represented himself. He owned that the ads were deficient, said the error would not be repeated, and asked for leniency. Thereupon, Mr. Trafton moved, and Mr. Webster seconded, to penalize Mr. Carr $100 for a violation of 21-A M.R.S.A. Section 1014. The motion was voted.

Next, the Commission considered the letter of complaint of Mr. Bill Sneed against Maine Voters for Clean Elections PAC (MVCE) in which it was alleged that MVCE had violated 21-A M.R.S.A. Section 1055 by failing to indicate on its campaign signs who authorized and paid for them. Mr. David Bright was present and represented Mr. Sneed. He said that he had personally observed MVCE signs in various locations and that, contrary to MVCE claims, there were never any disclaimers on the signs and never any storm to wash off the disclaimers. He did concede,
however, that bumper stickers were affixed to some of the signs after his complaint was lodged. At the conclusion of his remarks, Mr. Webster moved, and Mr. Tierney seconded, to penalize MVCE $100. The motion carried.

The next matter considered was the letter of complaint of Stanley Howe in which he alleged that the pre-election report of Mr. Brian Sessions was deficient and therefore in violation of reporting laws. Ms. Canavan said she had audited the report in question and found it contained some errors but that most were technical in nature and corrected in an amendment filed by Mr. Sessions the previous week. Mr. Sessions was present and represented himself. He explained that his treasurer had worked hard to comply with requirements, having called the Commission office for assistance several times. He then acknowledged that some technical errors were made but said they were later corrected. Whereupon, Mr. Trafton moved, and Mr. Webster seconded, to dismiss the complaint. The motion carried.

Next, Mr. Kevin Nelson's letter of complaint underwent review. The complaint alleged that a group known as Augusta Citizens for Dental Health (ACDH) had failed to comply with requirements governing municipal political action committees (PAC), having registered and reported several weeks late. Mr. John LaCasse, ACDH treasurer, was present and represented the group. He acknowledged that the PAC had filed late; explaining that ACDH officials were initially unaware of PAC requirements; but that on learning of those requirements, the group promptly registered and filed a campaign finance report with the City Clerk of Augusta. Following his remarks, Mr. Webster moved, and Mr. Trafton seconded, to waive all late penalties incurred by ACDH. The motion carried 6-1, Mr. Violette opposing.

Next the Commission considered the letter of complaint of Vernon and Mary Thompson against candidate Richard Simoneau. The complainants alleged that Mr. Simoneau had used campaign funds to support a ballot issue, a usage not intended by donors; that in advocating for the issue; Mr. Simoneau used his official legislative letterhead, including the State seal. Mr. Simoneau was present and represented himself. He said that prior to using the letterhead, he had checked with the Clerk of the House of Representatives as to the legality of such usage, and was assured it would not violate any laws. He said he circulated the materials in question entirely on his own, consulting with neither proponents nor opponents of the ballot issue; and that he believed his use of campaign funds to support the issue was entirely within the law. Mr. Webster moved, and Mr. Violette seconded, to dismiss the matter – no reason having been found to show that a violation had occurred. The motion carried.

The Commission then discussed the contents of a letter that Senator R. Leo Kieffer had submitted for review. The letter in question, from R. Gordon Manuel to Senator Kieffer, urged a "vote for 2B," and included a campaign contribution. Mr. Matt Manahan was present and represented both Mr. Manuel and Mr. Manuel's employer, Great Northern Paper Company. He said that the postscript was written in jest, and pointed out that Mr. Manuel later apologized to Senator Kieffer for the misunderstanding "his note had created. On completing its review, Commission members expressed appreciation for Senator Kieffer's concern at the connotation, however unintended, in Mr. Manuel's note; but seeing no legal remedy, voted to dismiss the matter.
The next items to undergo review were the appeals of lobbyists from penalty fees. First, the Commission heard the appeal of Ms. Susan McKay, lobbyist for the Maine Association of Life Underwriters. Staff findings showed that Ms. McKay incurred a penalty of $200, having filed her annual report late. Ms. McKay was present and represented herself. She acknowledged having filed late, explaining that she waited until December 31st to file because she mistakenly believed the completion date for annual reports was December 30th. Mr. Webster moved, and it was seconded, to reduce Ms. McKay's penalty to $100, the violation being Ms. McKay's first. The motion was voted 7-0-1, Mr. Bernier abstaining due to a conflict of interest.

The next appeal to be heard was that of Richard Grotton, lobbyist for the Maine Restaurant Association. Mr. Grotton's penalty of $100 was incurred for his late special session report. Mr. Grotton was present and represented himself. He explained that special session requirements were new to him, and in consideration thereof, asked that his penalty be waived. At the conclusion of his remarks, Mr. Webster moved, and Mr. Violette seconded, that Mr. Grotton's penalty be reduced to $50. The motion was voted. Mr. Bernier abstaining.

Next, the Commission considered the appeal of the firm of Doyle and Nelson from a $200 penalty incurred in September 1996 for late submission of the reports of Home Care Alliance of Maine (HCA) and Maine Ambulatory Care Coalition (MACC). Findings showed the firm had been charged with at least one prior violation. Mr. Daniel Riley appeared on behalf of Doyle and Nelson. He pointed out that the firm conducted no lobbying on behalf of either HCA or MACC during the month covered by the report, asking that that be considered in determining the penalty. He said that he himself would be assuming responsibility for filing the reports, and promised that subsequent reports would be filed on time. At the conclusion of Mr. Riley's remarks, a question was raised as to how many prior reports the firm had filed late. The full record being unavailable, Ms. Riley suggested that the matter be tabled until it could be checked. Thereupon, Mr. Violette moved, and it was seconded and voted, to table the appeal until the next meeting.

Mr. Violette then moved, and it was seconded and voted, to penalize the following lobbyists for the amounts shown below: (Relief was denied where records show a prior violation.)

<table>
<thead>
<tr>
<th>Lobbyist name/Employer</th>
<th>Date report due</th>
<th>Date filed</th>
<th>Penalty voted</th>
</tr>
</thead>
<tbody>
<tr>
<td>Michael Heath/ Christian Civic League</td>
<td>10/15/96</td>
<td>10/23/96</td>
<td>$100</td>
</tr>
<tr>
<td>Ralph Barnes/ Christian Sci. Comm. on Publication</td>
<td>9/16/96</td>
<td>9/24/96</td>
<td>$50</td>
</tr>
<tr>
<td>Daniel Billings/ ME Campground Owners Assoc.</td>
<td>10/15/96</td>
<td>10/16/96</td>
<td>$50</td>
</tr>
</tbody>
</table>
Ellen Baum  
ME Voters for Clean Elections  
12/30/96  
Not filed to date  
$100

Edward Johnston  
ME Aggregate Assoc.  
ME Council of Self Insurers  
Town of Wells  
12/30/96  
1/8/97 & 1/14/97  
$400

Carol (Allen) Martel-Riess  
American Naturopathic Med. Assoc.  
12/30/96  
12/31/96  
$200

The Commission then considered the appeal of the Kennebec County Women's Republican Club PAC from a penalty of $173.30. Staff findings showed the penalty was incurred for a late quarterly report. Ms. Georgia Buxton was present on behalf of the PAC. She said the group had few resources, that it had raised very little money during the election year, and that it could little afford to part with the amount being assessed. Thereupon, Mr. Violette moved, and Ms. Riley seconded, to accept the staff recommendation calling for a lesser penalty of $50. The motion carried.

The next item considered was the complaint of Dianne Mitchell against candidates Donna Trundy and John Baker. Ms. Mitchell alleged that Ms. Trundy and Mr. Baker had misrepresented themselves as State Representatives in campaign literature. Representative Rob Cameron was present on behalf of Ms. Mitchell. He said that he had no desire to see a penalty imposed, but simply wished to know whether such misrepresentation constituted wrongdoing under the campaign finance law. Whereupon, Counsel Howard advised that he knew of no law regulating the content of campaign materials and added that such regulation may be unconstitutional given the protections that political speech enjoys under the first amendment. On that advice, it was moved, seconded and voted, to dismiss the matter.

Next, the Commission voted to remove from the table the reports of Concerned Maine Families (CMF), an item tabled at the September 18th, 1996 meeting pending receipt of 1) confirmation by Attorney Bruce Fein that he received no third party reimbursement for forbearance granted CMF, and 2) receipt of an amended CMF report showing Mr. Fein's gift as an in-kind contribution. Following a review of CMF's communication dated December 13th, 1996 and the staff's response thereto, Mr. Webster moved, and it was seconded and voted, to take no action until the next Commission meeting.

Mr. Webster then moved, and it was seconded and voted, to enter into executive session pursuant to the provisions of 1 M.R.S.A. 1005 and 1 M.R.S.A. Section 1013(3), to review two requests for advisory opinions, to consider one complaint, and to hear the report of Counsel Howard on the status of National Right to Life Commission PAC State Fund v. Commission members.
At the conclusion of the session, Mr. Tierney moved, and Ms. Riley seconded, to authorize the staff to communicate to a Legislator who had sought the Commission's guidance, that no conflict of interest would exist in his representing a business or citizen before a state agency since his services would be provided in his capacity as a professional. The motion was voted.

With respect to a second request for an advisory opinion, a motion was made, seconded, and voted to table the request until the next meeting so that more time could be devoted to examining the issues raised therein. The motion was voted.

A motion was then made, seconded and voted, to dismiss a complaint alleging a conflict of interest by a Legislator.

Next the Commission reviewed a staff report listing the names of those candidates who had still not filed election year reports. On concluding its review, Mr. Webster moved, and Mr. Tierney seconded, to refer the delinquent reports of Jeffrey Morse, Raymond Poulin, Corey Corbin, Gordon Gates, and Gary Seavey to the Attorney General, with a request that compliance procedures be implemented, pursuant to the provisions of 21-A M.R.S.A. Section 1003(4) and 1 M.R.S.A. Section 1006. The motion was voted.

The Commission then considered a staff inquiry as to whether the Commission wished to resubmit to the Attorney General its request for an opinion on the gift law. According to the staff, no response to the request was ever made. Mr. Trafton moved, and Mr. Tierney seconded, not to pursue the matter. The motion carried.

Next, the Commission considered the late semiannual report of former candidate Jack Libby, overlooked at the Commission's September meeting. According to the staff, the due date of the report was July 15th, 1996; the arrival date, July 24th, 1996; and the penalty incurred there from, $130.94. The Commission reviewed a written statement from Mr. Libby in which he explained that he mailed the report on July 9th, but that it became separated from the envelope in which it was sent and was subsequently returned to him by the town postmaster after the filing deadline. Also reviewed was a statement from the postmaster, corroborating Mr. Libby's claims. On those findings, Mr. Tierney moved, and Mr. Webster seconded, to waive Mr. Libby's penalty.

The Commission then turned to the letter of complaint of Mr. John Jalbert in which he alleged that several of Mr. Robert Berube's campaign advertisements were published in violation of 21-A M.R.S.A. Section 1014. Mr. Berube explained in a written statement to the Commission that when he spotted the deficient ads, he promptly called the publisher requesting a correction. Mr. Berube's statement was accompanied by copies of the corrected ads. On completing its review, the Commission found Mr. Berube's ads to be in violation of Section 1014, and on that basis, Mr. Webster moved, and Mr. Bernier seconded that he be penalized $25. The motion carried.

The Commission then considered the complaint of Mr. Robert MacDonald concerning a violation of 21-A M.R.S.A. Section 1014. Mr. MacDonald alleged that several of Mr. Raymond Levesque's campaign advertisements appeared in the New Gloucester News without any
attrition.  In a written explanation to the Commission, accompanied by documentation, Mr. Levesque acknowledged the oversight but said that once he was notified of the error, he immediately had published a corrected ad. On those findings, and pursuant to the provisions of 21-A M.R.S.A. 1014(4), which permits candidates a ten-day grace period to correct disclaimer violations if the correction is made more than 10 days before the election, Mr. Webster moved, and Mr. Tierney seconded, to assess no penalty. The motion was voted.

Next, the Commission considered the letters of complaint of Ms. Jeannie Hamrin. Ms. Hamrin alleged that candidates Kenneth Honey and John C. Harris each published campaign ads in violation of 21-A M.R.S.A. Section 1014. Accompanying the complaints were copies of the ads in question. The Commission also considered the written statements of Mr. Honey and Mr. Harris. Mr. Honey called the violation an "unintentional oversight" while Mr. Harris claimed the newspaper advised him no address was required in the statement of attribution. On concluding its review, Mr. Webster moved, and Mr. Tierney seconded, to penalize Mr. Honey $50 for violations of Section 1014, to penalize Mr. Honey an additional $10 for failing to register his campaign committee with the Commission, to penalize Mr. Harris $10 for a violation of Section 1014, and to take no action on Mr. Harris's second ad on the basis that the ad contained no express advocacy. The motion carried.

The Commission then reviewed a campaign newsletter, apparently circulated in violation of 21-A 7 M.R.S.A. Section 1014. The communication advocated the election of candidate Pat Finn. Mr. Trafton moved to dismiss the matter on the basis that the complainant could not be identified. The point was then made that the communication itself constituted evidence of a violation; and that for that reason, it could not be ignored regardless of the manner in which it was brought. At that, Mr. Trafton withdrew his motion. Mr. Webster then moved, and Mr. Tierney seconded, to penalize Ms. Finn $100. The motion carried.

The next agenda item was the letter of complaint of Citizens for Clean Government against candidate Jeffrey Morse in which it was alleged that Mr. Morse failed to fully account for campaign funds he had received in his primary election campaign. No action was taken, the matter having been referred to the Attorney General earlier in the meeting.

The next item considered was the complaint of Michael Rutan against candidate Joe Perry. Mr. Rutan alleged that Mr. Perry had misrepresented himself as a Legislator in campaign literature. Mr. Trafton moved, and it was seconded and voted, that no action be taken on the basis that the issue raised was not within the scope of the Commission's jurisdiction.

The Commission then considered candidate John Taylor's request for relief from the penalty he incurred in filing his pre-election report late. Findings showed the penalty was $72.15. Ms. Canavan read Mr. Taylor's statement dated January 27th, 1997 in which he asked the Commission to set aside the penalty, saying, among other things, that he had familiarized himself with the necessary procedures and regulatory requirements, that he believed his campaign was in full compliance; and that all of his other reports were timely filed and complete. Thereupon, Mr. Trafton moved, and Mr. Webster seconded, to penalize Mr. Taylor $36; 50% of the amount incurred. The motion carried.
Next, the Commission considered Representative Michael Saxl's request for relief from the penalty he incurred in filing his pre-election report two hours late. Staff findings showed the amount owed was $363.63. On completing its review of Mr. Saxl's request, a motion was made to reduce his penalty to $50, the consensus being that the penalty incurred was disproportionate to the violation. The motion was seconded and voted, 7-0-1, Mr. Webster abstaining on the basis that Mr. Saxl coaches his son.

The Commission then reviewed the appeal of James Bower on behalf of the Knox County Democratic Committee (KCDC). Staff findings showed that the Committee filed its pre-election report three days late, thereby incurring a penalty of $500; that the Committee had filed late once before. As part of its review, the Commission considered Mr. Bower's letter of excuse dated November 19th, 1996 in which he claimed he had not been notified the report was due. On completing its review, the members concluded that a penalty was in order, this being KCDC's second violation. Hence, Mr. Webster moved, and Mr. Trafton seconded, to accept the staff recommendation that KCDC be penalized $250. The motion carried.

Chairman MacKenzie then reported on behalf of the Commission's personnel subcommittee. He said that the subcommittee's draft personnel policy was being reviewed by state officials; and that he hoped the review would be completed in time for the full Commission to discuss it at the next meeting. He said the Subcommittee had been greatly concerned about the transition from this Commission to the next; that Ms. Canavan had agreed to stay on at least until the new Commission is selected to ensure a seamless transition.

The staff then raised a question concerning the campaign finance laws, inquiring as to whether partnerships should be treated in the same way as corporations and associations for reporting purposes. A concern raised by the staff was the potential that exists for circumventing the reporting requirements where partnerships are permitted to contribute as an entity. Counsel Howard expressed the view that partnerships, corporations, and associations are governed alike for reporting purposes, and that contributions by partnerships pose no significant legal problems. On that advice, discussion ceased and no action was taken.

Next, the Commission reviewed several requests for advisory opinions. The first to undergo review was that of a lobbyist inquiring as to the permissibility of his inviting to dinner a personal friend who is also a Legislator -- where the purpose of the dinner is strictly social and where no legislation is discussed. Asked to respond, Counsel Howard advised members that the criminal code prohibits a public servant from receiving anything of value from a person who has an interest in a matter before the public servant.

After a brief discussion of the matter, Mr. Trafton moved, and Mr. Webster seconded, that the matter be tabled until the next meeting so that more thought could be devoted to the question. The motion was seconded and voted.

The next request considered was that of a Legislator inquiring as to how she should disclose sources of income derived from a "significant other" where the income constitutes partial
payment of household expenses. On reviewing the relevant statute, the Commission concluded that no disclosure need be made of income derived from a "significant other," there being no statutory provisions governing such.

Next, the Commission discussed yet another inquiry, this one submitted by a Legislator wanting to know whether, for disclosure purposes, a Legislator is considered "self-employed" or "employed by another" where the business of the Legislator is incorporated and where the Legislator is the sole officer of the corporation. The Commission ruled that a Legislator in such an employment situation is "employed by another" i.e., the corporation.

The next matter to undergo consideration was a staff recommendation that the names of the following delinquent filers be referred to the Attorney General:

Debbie Bolen-Morin
Marc Oliver
Stephen Olson
Raymond Poulin

Mr. Webster moved, and Mr. Trafton seconded to accept the staff recommendation. The motion carried.

Finally, the Commission took under consideration a staff recommendation that the political action committee known as "Citizens for Entertainment Choice" be referred to the Attorney General, the PAC having failed to file a 6-day pre-election report (1996), 42-day post-election report (1996), and January 1997 quarterly report. Mr. Webster moved, and Mr. Trafton seconded, to accept the staff recommendation. The meeting was adjourned at 1:20 p.m.,

Respectfully submitted,

Marilyn Canavan, Director