



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

September 26, 2002

Minutes of the September 13, 2002, special 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: Chair: Alan Harding, Esq.; Members: Hon. Andrew Ketterer, Esq., Hon. David Ott, Esq., and Hon. James Donnelly (telephonically); Director William C. Hain, III, Esq.; Counsel Phyllis Gardiner, Esq.; and Lobbyist Registrar Diana True

At 10:45 a.m., Chair Harding convened the special meeting, announcing consideration of the published agenda as follows:

Mr. William C. Collins, Candidate, House District #27: By electronic mail and letter dated September 5, 2002, Mr. Collins requested the Commission to consider the Maine Clean Election Act's matching funds provisions. Section 6 of the Commission's rules governs the distribution of matching funds and the impact of the timing of expenditures by both certified Maine Clean Election Act candidates and their nonparticipating opponents. The Commission previously held that obligations incurred and reported as expenditures are to be computed toward matching funds based upon the date the expenditure is reported having been made, not when the benefit is received. Therefore, an obligation incurred (i.e., expenditure made) on a pre-primary election date is credited toward matching funds in the primary election, even though the candidate may not receive the benefit of that expenditure until some time during the general election period. However, since the expenditure arguably benefits the candidate in the general election, Mr. Collins proposes that matching funds should be computed for the general election rather than the primary election period during which the expenditure is reported having been made.

Thomas C. Bradley, Esq., and Arn Pearson, Esq., on behalf of the Maine Citizen Leadership Fund, submitted supporting correspondence dated September 9, 2002, and appeared before the Commission to address the subject. They reiterated the substance and arguments expounded in the September 9<sup>th</sup> letter and responded to Commission questions. Mr. Bradley argued that the language of the statute and rules largely drive Mr. Collins' conclusion regarding matching fund eligibility, and the spirit of the Maine Clean Election Act supports that conclusion. He proposed that the burden should be on individual candidates to come forward with a credible basis for requesting matching fund eligibility based upon the conduct of their opponents and the responsibility of the Commission staff to deal with the expenditure issues on a case-by-case basis.

Chair Harding inquired about the situation of mixed expenditures made before the primary, the benefit of which is received both before and after the primary election for the general election. Mr. Bradley and Mr. Pearson acknowledged the difficulty of such situations, but suggested they are not impossible to handle. Mr. Ott noted the distinction between the timing and the nature of an expenditure, suggesting that the challenge be based upon timing. Mr. Donnelly questioned how

## Minutes of Special Meeting on September 13, 2002

the requirements would be enforced if the administration of the law were based upon when a purchase is used rather than when it is made.

Following discussion, including a summarization by the Director of the present matching fund implementation process, Mr. Donnelly stated his opinion that the precedence set by previous Commission members and the guidance given by Commission staff on the subject is important and shouldn't be changed without an opportunity for public input through either the legislative or rulemaking process. Mr. Pearson responded that he saw no harm to candidates presently in the Commission clarifying its previous position on the subject.

Mr. Brian Whitney, Chief of Staff to Senate President Richard Bennett, addressed the Commission on behalf of Senator Bennett. He informed the Commission that Senator Bennett supports the Maine Clean Election Act, that the Act should be given an opportunity to work, that ways to perfect the Act should be sought, that guidance on this matter had been issued in writing to all general election candidates in June, and that candidates generally do not distinguish between staff guidance and guidance from the Commission. He encouraged the Commission to address this issue prospectively after the election, not presently during the election process, i.e. don't change the rules mid-stream.

Chair Harding asked Mr. Whitney to respond to the assertion that there would be "no harm" in changing the rule at this time. Mr. Whitney responded that candidates have been making expenditure based upon their understanding of the guidance that has been given them and that some of those candidates may be walking close to the line, but only in reliance on the Commission's guidance.

Mr. Richard Pelletier of the Maine Democratic Party addressed the Commission. He noted that Maine Clean Election Act candidates have an expectation that matching funds will be available for money that is spent by a nonparticipating opponent for the election in which the two candidates are opponents. In this and similar cases, the MCEA candidate is being penalized by the pre-primary spending of the nonparticipating opponent whose expenditure are reported and credited during the primary election period, but the benefit of which is actually received and used against a MCEA opponent in the general election.

Chair Harding noted the competing interests of the Commission in administering the Maine Clean Election Act and being fair, simultaneously. He noted the absence of counsel to help enlighten Members on the subject and of the fifth, nonpartisan member to participate in the discussion. He moved to table the matter until counsel and the fifth member can be present. Mr. Ott seconded the motion for discussion. Mr. Donnelly agreed with the competing interests identified by Chair Harding, but stated that he is not willing to change the current guidance less than 60 days before the general election, preferring public notice and participation through rulemaking or legislation, instead. He encouraged moving deliberatively and with purpose.

Minutes of Special Meeting on September 13, 2002

Mr. Ketterer stated that it is important to treat candidates fairly and noted that he sees Mr. Collins feels victimized. He stated that he would not be inclined to change the guidance that has been given, nor would he table the matter for future consideration this election cycle because he does not think the Commission should deal with issues like this mid-election.

Mr. Ott stated his understanding that the motion he seconded was to table future consideration indefinitely. Chair Harding responded that his intent was for the motion to allow for a meeting as soon after the fifth member's confirmation as possible. Thereafter, the motion to table was rejected, 1-3, Chair Harding voting in favor and Mr. Ketterer, Mr. Ott, and Mr. Donnelly opposed. There being nothing further to consider on the point, no further action was required.

Commission Nomination: The Commission noted that the Governor's Office had informed the Commission that on September 11, 2002, the Governor had nominated Mr. Terrence J. MacTaggart of Hampden to be a Member of the Commission. The nomination is subject to review by the Joint Standing Committee on Legal and Veterans' Affairs and confirmation by the Legislature. If confirmed, Mr. MacTaggart's term of service would expire in 2003.

Mr. Ketterer commented regarding the matter of referrals to the Attorney General's Office for possible prosecution and stated that he would like to see a list of the names of all pending referrals, the dates of those referrals, and the action taken regarding each referral.

Members discussed scheduling of the next meeting and agreed upon October 2, 2002, for the next regular meeting.

There being no further business, on motion and unanimous vote, the Commission adjourned at 12:22 p.m.

Respectfully submitted,



William C. Hain, III  
Director