



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

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**November 27<sup>th</sup>, 2002**

Minutes of the November 27<sup>th</sup>, 2002, 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: Acting Chair: Hon. Andrew Ketterer, Esq.; Members: Hon. James Donnelly, Hon. David Ott, Esq., and Hon. Alan Harding, Esq. (telephonically); Director William C. Hain, III, Esq.; Counsel Phyllis Gardiner, Esq.; and Commission Assistant Kendra Danforth.

Absent: Dr. Terrence J. MacTaggart

At 9:17 a.m., Acting Chair Ketterer convened the meeting, announcing consideration of items on the published agenda as follows:

**Agenda Items #1A-1D: Ratification of Minutes**

Mr. Donnelly moved, Mr. Ott seconded, and Members voted unanimously to ratify the minutes of the October 2<sup>nd</sup>, 2002 meeting; the October 10<sup>th</sup>, 2002 special telephonic meeting; the October 18<sup>th</sup>, 2002 special meeting; and the October 24<sup>th</sup>, 2002 special meeting as submitted.

**Agenda Item #2: Candidates Determined Eligible to Receive Matching Funds Pursuant to Collins vs. Commission**

Mr. Hain summarized the staff's review of the expenditure reports of nonparticipating opponents of Maine Clean Election Act (MCEA) candidates as a result of Collins v. Commission. That review was necessary to determine whether any matching fund payments should be made to additional candidates as a result of expenditures made by nonparticipating candidates before the primary election for the purpose of influencing the general election. After communicating the process the staff intended to follow to all candidates and reviewing all applicable reports, the staff authorized payment of matching funds to the following candidates in the amounts indicated: Francis McDermott (\$4,257), Richard Barter (\$1,732), Laurie Levine (\$1,602), and Joyce Packard (\$797).

Members also were provided with the general requests for review that had been made by Representative Joe Bruno on behalf of House Republican MCEA candidates, Mr. Richard Pelletier on behalf of House Democratic MCEA candidates, and Senator Mary Small on behalf of Senate Republican MCEA candidates.

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Finally, the Commission examined individual requests for review and responses thereto from opponents (as indicated parenthetically hereafter) that had been submitted by Senator Sharon Treat (F. Douglas Newman), Mr. Tom Mooney (Senator W. Tom Sawyer, Jr.), Ms. Leila Jane Percy (C. Matthew Rich, Esq.), Mr. Joshua Dolby (Mr. Edward J. Suslovic), Ms. Marilyn Baker (Mr. H. Sawin Millett, Jr.), and Representative Glenn Cummings (Mr. Thomas B. Wheatley).

**Agenda Item #3: Report of Status of Non-Filers, Late Filers, and Referrals to the Attorney General**

Counsel Gardiner requested that the status report of referrals to the Attorney General be tabled until the next meeting due to her involvement in extensive litigation and election tabulation issues that have prevented her from completing a report for this meeting. Members agreed to the submission of a written report from the Attorney General by December 16<sup>th</sup>, 2002. Mr. Hain expressed concern about the increased number of candidates who have either failed to file required reports or have submitted late reports after repeated attempts by the staff to notify candidates of reporting requirements and deadlines.

**Agenda Item #8: Complaint by Representative John L. Patrick Regarding Mr. Robert A. Cameron**

By letter dated October 30<sup>th</sup>, 2002, Rep. Patrick complained of a “gross violation of election standards” by the payment by Mr. Cameron’s campaign for the privilege of placing campaign signs on private property. Representative Patrick appeared before the Commission and expressed concern about the practice of paying a landowner for permission to place signs on private property and the use of Maine Clean Election Act funds for that purpose. After discussion, Members directed Mr. Hain to remind Mr. Cameron of the requirement to fully report all campaign-related expenditures on his campaign finance report for the applicable period.

**Agenda Item #4: Complaint by Martha Frink, Campaign Manager, Fossil for Senate**

By letter dated October 8<sup>th</sup>, 2002, Ms. Frink asserted possible violations by Representative Chris Hall of the requirements of 21-A M.R.S.A. §1014-A regarding endorsements of a political candidate. Mr. Harding expressed his opinion that, by a strict reading of the statute, the press releases in question do not meet the definition of the use of endorsements because they are not republicable. After brief discussion, Mr. Donnelly moved, Mr. Ott seconded, and Members voted unanimously to take no further action.

The Commission recessed briefly at 10:10 in order to telefax several documents to Mr. Harding.

**Agenda Items #5A-5D: Complaints Against Maine Unlimited PAC**

The Commission considered separate complaints that had been submitted by Mr. Leslie T. Fossil, Ms. Lori Dombek, Mr. Harold Booth, and Mr. Robert Stallworth regarding various



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telephone and mail political communications that apparently had been paid for by Maine Unlimited PAC. Also considered was a general reply regarding those complaints that had been submitted by Mr. Daniel Billings, Treasurer, Maine Unlimited PAC that included a previously issued public statement by Senate President Richard Bennett regarding the PAC's activities. After brief discussion, Mr. Ott moved, Mr. Donnelly seconded, and Member voted unanimously to take no further action due to the lack of Commission jurisdiction and First Amendment considerations.

**Agenda Item #6: Request for Matching Funds; Representative Stan Gerzofsky**

By letter dated October 28<sup>th</sup>, 2002, Representative Gerzofsky had requested an authorization of matching funds be granted to him based upon independent expenditure reports filed by the Maine League of Conservation Voters (MLCV) for expenditures made in support of him in Wards in District #50 that he does not represent and after he had requested the MLCV not to send any further mailings in support of his candidacy. Mr. Hain informed the Commission that he had discussed this matter with Representative Gerzofsky and had informed him that matching funds had been calculated in accordance with the Commission's rules based upon the reports that the MLCV had filed, and no additional matching funds would be available. After brief discussion, Mr. Harding moved, Mr. Donnelly seconded, and Members voted unanimously to ratify the action of the staff regarding the determination of matching fund eligibility and to take no further action.

**Agenda Item #7: Notification by Friends to Elect Gene Boothby**

By letter dated October 29<sup>th</sup>, 2002, Mary Sue Weeks, Fiscal Agent, Friends to Elect Gene Boothby, notified the Commission of the inadvertent omission of a required disclosure statement from Mr. Boothby's campaign brochure. Mr. Harding stated his appreciation that the Boothby campaign had self-reported the violation, but noted that the campaign had used the literature in question after knowing of the omitted attribution statement. Mr. Harding moved and Mr. Ketterer seconded to find that a violation had occurred, to assess a penalty of \$100, but to suspend all but \$25 of that penalty. After brief discussion, that motion was withdrawn. Mr. Harding then moved, Mr. Ketterer seconded, and Members voted unanimously to find a violation. Thereafter, Mr. Donnelly moved, Mr. Ott seconded, and Members voted 3-1 (Mr. Harding opposed) to assess no forfeiture. Mr. Donnelly cited the fact that the committee had self-reported the omission and the absence of any public complaint as the bases for his motion.

**Agenda Item #9: Complaint of Failure to Register and Report; Paul Volle, The Christian Coalition of Maine**

By letter dated October 30<sup>th</sup>, 2002, Brenda Broder, Westbrook Citizens for Equal Rights, filed a formal complaint regarding Paul Volle's and/or The Christian Coalition of Maine's failure to register and report financial activities based upon various advertisements (e.g., The American Journal) and signs. Mr. Hain reported that he had not received a response to his letter dated November 1<sup>st</sup>, 2002, to Mr. Volle and would send him a reminder requesting a response before



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the next Commission meeting. Consequently, Mr. Donnelly moved, Mr. Ott seconded, and Members voted unanimously to table further consideration of the matter until the next meeting.

**Agenda Item #10: Complaint Against Leadership for a Sensible House PAC**

By note received November 5<sup>th</sup>, 2002, Representative Elaine Fuller requested the Commission to take appropriate action regarding the failure to include a complete and/or accurate attribution statement (i.e., "disclaimer") on a campaign communication produced by the Leadership for a Sensible House PAC. After brief discussion of the correspondence, Mr. Harding moved, Mr. Ott seconded, and Members voted unanimously to find that a violation had occurred. Thereafter, Mr. Harding moved, Mr. Donnelly seconded, and Members voted unanimously to assess a \$100.00 forfeiture for the violation.

**Agenda Item #11: Representative Boyd Marley Request for Commission Opinion**

By letter received November 13<sup>th</sup>, 2002, Representative Marley requested the Commission's advice regarding the propriety of accepting an offer of travel, accommodations, and possible payment of other expenses by the nonprofit organization Hawaii Clean Elections for Representative Marley to visit Hawaii and share his experiences as a Maine Clean Election candidate. After brief discussion, Mr. Ott moved, Mr. Harding seconded, and Members voted unanimously to direct the staff to follow its past practice by notifying Representative Marley of the Commission's gift guidelines and the statutory reporting requirements.

**Agenda Item #12: Town of Standish Adoption of Order to Subject Political Action Committees to Registration and Reporting Requirements**

By letter dated October 2<sup>nd</sup>, 2002, Kenneth M. Cole III, Esq., on behalf of the Town of Standish, informed the Commission of the Standish Town Council's action on August 13<sup>th</sup>, 2002, to make activities of political action committees involved in municipal referenda subject to the terms of 21-A M.R.S.A. Chapter 13. Subsequent correspondence between Mr. Cole; Aaron D. Julien, Esq., on behalf of a political action committee; and Mr. Hain clarified the Town's intent. Since the correspondence was presented for Commission Member information only, no further action was required.

**Agenda Item #13: Candidate 2002 Report of Non-Fileers**

Mr. Hain reiterated his concern regarding the increased number of candidates who have not filed required reports with the Commission. After brief discussion, Members suggested inviting State Party Committee leaders to attend a future Commission meeting to discuss this problem and to consider including a proposal to the Legislature to involve the Party Committees in the filing of candidate campaign finance reports.



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**Agenda Item #14A: Candidate Unpaid Penalties; John Merrithew**

Mr. Merrithew's 6-Day Pre-Primary Campaign Finance Report was filed 76 days late, resulting in a preliminary assessment of a penalty of \$38.00 in accordance with the statutory formula. After brief discussion, Mr. Donnelly moved, Mr. Ott seconded, and Members voted unanimously to assess a penalty of \$38.00 for the late filing of Mr. Merrithew's report.

**Agenda Item #14B: Candidate Unpaid Penalties; Kim Fletcher**

Ms. Fletcher's 42-Day Post-Primary Campaign Finance Report was filed 6 days late, resulting in a preliminary assessment of a penalty of \$15.60 in accordance with the statutory formula. After brief discussion, Mr. Harding moved, Mr. Donnelly seconded, and Members voted unanimously to assess a penalty of \$15.60 for the late filing of Ms. Fletcher's report.

**Agenda Item #15A: Commission Penalty Determinations; Senator Michael McAlevey**

Due to the size of any potential penalty and the short period of time provided to Senator McAlevey to respond, Mr. Ott moved, Mr. Donnelly seconded, and Members voted unanimously to table consideration of this matter until the next Commission meeting.

**Agenda Item #15B: Commission Penalty Determinations; Richard Pelletier, Treasurer, People for a Strong Maine Economy**

Due to the size of any potential penalty and at the request of Mr. Pelletier for additional time to prepare a complete response for the Commission's consideration, Mr. Donnelly moved, Mr. Ott seconded, and Members voted unanimously to table consideration of this matter until the next Commission meeting.

**Agenda Item #16: Inquiry by Mr. Jonathan Carter Regarding Earned Bank Account Interest**

Mr. Carter had requested direction from the Commission regarding the accounting of interest paid to his Maine Clean Election Fund account and whether that earned interest would be available to him or must be paid back to the Maine Clean Election Fund. After brief discussion, Mr. Donnelly moved, Mr. Ott seconded, and Members voted unanimously that earned interest in accounts funded by Maine Clean Election Fund revenues must be accounted for and refunded to the Maine Clean Election Fund. The basis for that conclusion was the restriction on expenditures for certified candidates in 21A M.R.S.A. §1125(6) that requires a candidate to limit campaign expenditures and obligations to the revenues distributed to the candidate from the Maine Clean Election Fund.



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### **Agenda Item #17: Informational Items**

Members acknowledged six (6) informational correspondence items in the published agenda regarding issues that had arisen during the administration of the Maine Clean Election Act during the 2002 general election period.

### **Agenda Item #18: Recently Enacted Legislation**

Members acknowledged enactment of three (3) provisions that had been included in LD 2220 (An Act to Make Supplemental Appropriations and Allocations for the Expenditures of State Government and to Change Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Year Ending June 30<sup>th</sup>, 2003) during the November Special Session of the 120<sup>th</sup> Legislature. The provisions included reinstatement of the Commission's penalty authority for the late filing of campaign finance reports, a transfer of \$2.5 million from the Maine Clean Election Fund to the General Fund on June 30<sup>th</sup>, 2003, and a new provision regarding Maine Clean Election Funding administration to ensure sufficient funds are available for the 2006 elections.

Mr. Hain presented three (3) additional items for the Commission's consideration that had been received after publication and distribution of the agenda to Members, as follows:

**Sharon L. Forbis; Maine Clean Election Act Over-expenditure:** By letter dated November 18<sup>th</sup>, 2002, Ms. Sharon L. Forbis notified the Commission that she had neglected to account for the fees that covered the cost of printing checks for her campaign account. As a result, her campaign spent more than the amount distributed to her as a Maine Clean Election Act candidate. After discussion, Mr. Ott moved, Mr. Donnelly seconded, and Members voted unanimously to assess a civil penalty of \$25.00 under the authority of 21A M.R.S.A. §1127(1). The basis for that penalty was the restriction on expenditures by certified candidates in 21A M.R.S.A. §1125(6) that requires a candidate to limit campaign expenditures and obligations to the revenues distributed to the candidate from the Maine Clean Election Fund.

**George A. Christie, Treasurer, Dirigo Alliance; Request to Pay Penalty in Installments:** By letter dated November 21<sup>st</sup>, 2002, Mr. Christie notified the Commission of Dirigo Alliance PAC's offer to pay its \$1,100 outstanding penalty in installments of a minimum of \$100 per month beginning December 1<sup>st</sup>, 2002, with a goal to pay the full penalty amount by June 1<sup>st</sup>, 2002. Members discussed the Commission's practice of approving installment payments of penalties only upon a showing of good cause why the full penalty amount should not be paid in one payment within 30 days of being assessed. Mr. Christie's letter did not include any supporting justification for the Commission to approve installment payments at this time. Therefore, Mr. Donnelly moved, Mr. Ott seconded, and Members voted unanimously to table final consideration of this matter pending receipt of a statement from Dirigo Alliance containing sufficient bases to warrant the Commission's approval of the payment plan Mr. Christie proposed. Absent that showing of good cause why the full penalty amount should not be paid, the Commission expressed its inclination to require full payment.

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**Robert W. Rand; Request for Commission Assistance Regarding Source of Political**

**Telephone Call:** By letter dated November 20<sup>th</sup>, 2002, Mr. Rand filed a formal complaint with the Commission regarding a political “attack” voice message on his Verizon voice mail on November 4<sup>th</sup>, 2002, regarding Beth Edmonds. The letter detailed Mr. Rand’s efforts to identify the originator of the telephone message through Verizon Telephone, the telephone number source of the communication, the Maine Attorney General’s Office, the Federal Communications Commission, and the Town of Freeport Police Department.

The Commission determined that its jurisdiction is limited to ensuring that expenditures for such political communications are properly reported in accordance with the requirements of State law and concluded that it does not have jurisdiction over the content of such communications, which is protected by the First Amendment of the Constitution.

Regarding Mr. Rand’s complaint about the lack of an attribution statement in telephone calls to identify the caller or the source of the call, the Commission concluded that the requirements of 21A M.R.S.A. §1014 or §1055 (publication or distribution of political statements; copy enclosed) do not apply to such telephone calls. The Commission did not take any final action on the complaint. Mr. Donnelly moved, Mr. Ott seconded, and Member voted unanimously to table further consideration until the next meeting and directed that a copy of Mr. Rand’s letter be provided to the Maine Public Utilities Commission to determine whether that commission may be able to provide some form of assistance in this matter.

There being no further business, by unanimous consent, the Commission adjourned at 12:07 p.m.

Respectfully submitted,

William C. Hain, III  
Director