

**Minutes of the May 10, 2005 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 James Donnelly; Hon. Andrew Ketterer; Hon. Jean Ginn Marvin; Hon. Michael Bigos. Staff: Executive Director Jonathan Wayne; Counsel Phyllis Gardiner.

At 9:00 A.M, Chair Donnelly convened the meeting. The Commission considered the following items:

Agenda Item #1 – Ratification of Minutes of November 4, 2004 and December 10, 2004 meetings

Mr. Ketterer moved, Ms. Ginn Marvin seconded, and the Commission voted unanimously (3-0, one abstention) to ratify the minutes.

Agenda Item #2 - Late Filing Penalty/Brunswick Democratic Town Committee

The director said that there were some local treasurers who didn't understand all of the filing requirements, and that the staff would be spending more time and effort to make sure that everyone had a better understanding of what the filing requirements were. The director said that Lars Rydell, the treasurer for the Brunswick Democratic Town Committee, had gone to the hospital right before the election for hip surgery. The BDTC had received an unexpected contribution from the House Democratic Campaign Committee, and the acting treasurer didn't realize that there was required filing of a 24 hour report. When Mr. Rydell returned to his duties, he realized the omission and filed the report in January. The report was due on November 28th. The statutory penalty was \$780, but the staff recommendation was to reduce the penalty by 50% to \$390, which would be consistent with a policy that the Commission has previously supported, which is that when a PAC or party committee has a first time offense, there is a 50% reduction.

Mr. Ketterer asked about the penalty calculation with regards to the penalty max of \$500. The director explained that the staff took 50% of what would be the full amount if the max limit did not exist. Mr. Bigos asked about other town or political committee penalty caps that the Commission should be aware of. Ms. Gardiner said that there is a limit of \$5,000 for state party committee reports but that there are no other caps dealing with municipal committees. Mr. Bigos asked if the cap would still apply if the contribution that was supposed to have been reported on time was a large one, for example \$15,000. The director replied the penalty cap would still apply. Mr. Bigos said that he would like to have the flexibility to apply 50% penalty on the full amount, because he felt that 50% of statutory cap would be too light of a penalty. Ms. Ginn Marvin said she was not supportive of the 50% policy. She said that in the beginning various entities may not have been familiar with the law, but that the law had been in effect for a long time, and

town committees should be up to speed and that when you adopt a 50% policy you can get into trouble, as is the case here. Ms. Ginn Marvin said that to avoid confusion the Commission should not allow a 50% reduction as a general policy, and that she would like to see the Commission do away with the 50% general policy for the future. Ms. Gardiner said that there were mitigating circumstances in statute, such as a valid personal emergency, that could be considered by the Commission. This allowed flexibility, although there was nothing expressly allowing a general 50% reduction. Ms. Ginn Marvin asked for a reading of the statute. Ms. Gardiner read the relevant statute. Ms. Ginn Marvin felt that this case did not meet the mitigating circumstances listed in the statute, and that Mr. Rydell had an obligation to take care of the situation before he left for surgery. Mr. Ketterer expressed concerns that the Commission would be going against the past practice by eliminating the 50% reduction. Ms. Ginn Marvin replied that if this became the standard practice, it would make the job of the Commission much easier. Mr. Ketterer said that he also had issues with a flat 50% reduction for a first time penalty, because someone could have multiple first time offenses due to multiple election cycles. Ms. Ginn Marvin reiterated her opinion that eliminating the 50% reduction would make the Commission's job much easier going forward.

Ms. Ginn Marvin moved to assess the maximum late filing penalty of \$500. Mr. Donnelly seconded the motion for the purposes of discussion. Mr. Bigos asked about changing the days late of the report due to exactly when Mr. Rydell got out of the hospital due to a possible determination that Mr. Rydell's hip injury meets statutory mitigating circumstances. After a brief discussion, Mr. Bigos felt that his suggestion would not be applicable in this case. Mr. Ketterer reiterated his concerns over assessing the 50% reduction as a general policy. Mr. Donnelly said that one of the main purposes of the special reporting was to prevent people from spending or raising money without informing the public, which could harm MCEA candidates, which would potentially cause public harm. Mr. Donnelly felt that the dates of receiving the contribution and expenditures made with that money didn't support a reduction of the penalty. Ms. Ginn Marvin said that she couldn't help but think about the previous meeting, where a candidate had been seriously affected by late reporting, and that she had huge concerns over the consequences of late filing.

The Commission voted unanimously (4-0) to adopt the motion and assess a penalty of \$500 for the late filing. Mr. Bigos asked if the Commission had just eliminated the general policy of assessing a flat 50% reduction for first time filers. The Commission agreed that they had just voted to eliminate giving a 50% reduction for penalties in which the reasons for the late filing were not supported by statute.

Agenda Item #3 – Late Filing Penalty/Kennebunkport Democratic Party Committee

The director explained the filing process for town committees, and said that the KDTC had been 13 days late in filing a report due January 18, 2005. The director explained that the KDTC had apparently asked at an earlier date if they needed to file any additional reports after they had filed one in December. The director said that the staff had no record of ever receiving that request for information.

Mr. Bigos asked when the reminder notice for filing reports was sent out. The director replied that the KDTC had switched treasurers halfway through the year, which might have added to the confusion on this matter, and that the staff had mailed the notice on December 6th, 2004 to the treasurer that the staff knew about instead of to Richard Van Bergen, the current treasurer for the KDTC. Apparently the previous treasurer did not forward to Mr. Van Bergen the requirement for filing a report in January.

Mr. Bigos moved and Mr. Ketterer seconded to assess the full statutory penalty of \$384.54 for the late filing of the report. The Commission voted unanimously to adopt the motion.

Agenda Item #4 – Late Filing Penalty/Franklin Country Democratic Committee

The director explained that the FCDC was required to file a 6-day pre-general election report on October 27, 2004 because it had expenditures in excess of \$1,500 for the calendar year.

Karen Schuler, the treasurer for the FCDC, took the floor. She said that she found out in November from other sources that the report was due. She said that she had received no notice or reminders regarding the filing. Ms. Schuler said that the FCDC had never raised or spent enough money before to trigger the filing of the report. She said that when she took over the job, things were very disorganized, and they didn't file the report because they simply didn't know they had to. She said that she was supportive of future training and work to inform county and town committees of their filing requirements. She said that she felt a mitigating circumstance would be the failure to receive notice of the requirement to file. Mr. Bigos asked if she understood the reasons why the report needed to be filed. Ms. Schuler said that she did.

Ms. Ginn Marvin moved and Mr. Bigos seconded a motion to assess the statutory maximum penalty of \$500 for the late filing of the report. The Commission voted unanimously to adopt the motion.

Agenda Item #5 – Late Filing Penalty/Arlan R. Jodrey

Agenda Item #6 – Late Filing Penalty/Brian M. Duprey

The director explained that Mr. Jodrey and Mr. Duprey should have filed separate 101% reports on November 1, 2004. However, neither of their opponents was eligible to receive matching funds because of independent expenditures made to support them. The director said that regardless of that fact, he felt that a penalty was still in order for both candidates, and that the staff recommendation was a \$50 penalty for the late filings.

Mr. Ketterer moved and Ms. Ginn Marvin seconded to assess separate \$50 penalties for the late filings. Mr. Bigos said that he was concerned about late reports having an impact on matching funds. The director said that he would be comfortable with a change in the amount of the penalties, because even though there was no serious harm done in this case, the late filings were a serious matter and there were other people who would take

note of the penalties. The Commission voted 3-1 (Ms. Ginn Marvin dissenting) to adopt the motion and assess separate \$50 penalties for the late filings.

Agenda Item #7 – Over-the-Limit Contributions Given by Affiliated Companies to Rep. Joseph Bruno

The director said that any single contributor can only give \$250 per election per candidate. He said that while the Commission had the ability to assess civil penalties for over-the-limit contributions, they could only do so for violations that occurred after July 30th, 2004. In the case of Mr. Bruno, on July 21, 2004, Kevin Mattson and six real estate companies associated with him each donated \$250 to Joseph Bruno's campaign for State Senate. The Commission staff made a preliminary determination that four of the companies should be considered two contributors, each giving \$500, because of common ownership and directors. Both Mr. Mattson and Rep. Bruno had been very cooperative with the staff. The director said that the staff recommendation was a finding of violation but no civil penalty, because the violation occurred before July 30th, which meant no civil penalty could be assessed.

Mr. Donnelly recused himself from the vote on this matter due to past business dealings with some of the individuals involved.

Mr. Bigos moved, Mr. Ketterer seconded, and the Commission voted unanimously (3-0, Mr. Donnelly abstaining) to find Mr. Bruno in violation but to not assess a civil penalty.

Agenda Item #8 – Over-the-limit Contribution received by Thomas White

The director explained that Thomas White was a candidate for Sheriff of Franklin County in the 2004 elections. He had accepted contributions of \$300 on August 13th and \$500 on October 8th from the Wilton Town Republican Committee. The two contributions totaled \$800 from the committee for the general election. The director explained that under the law, Mr. White was only allowed to accept only \$250 from the committee for the general election. The director explained that this would be the first time the Commission has assessed a penalty for something of this nature.

Ms. Ginn moved, Mr. Ketterer seconded, and the Commission voted unanimously to assess a \$100 civil penalty for receiving an over-the-limit contribution.

Agenda Item #9 – Request for Waiver of Late Filing Penalty/Paul Madore

The director said that Mr. Madore was required to file a report on July 20th, 2004, and that the report was filed three days late. The director said that he had spoken to the candidate's wife, who said she attempted to file the report electronically on time but had difficulties. The staff was unable to confirm this with the e-filing vendor. The director said that Mr. Madore had been concerned about possible overspending, and that he had tried to get advice on the matter and that contributed to the delay, which the staff felt was not relevant in this case. The statutory penalty was \$116.34

Mr. Bigos moved, Ms. Ginn Marvin seconded, and the Commission voted unanimously (4-0) to assess the statutory penalty of \$116.34.

Agenda Item #10 – Request for Waiver of Penalty for Late Annual Lobbyist Report/Jill Duson

The director explained that Ms. Duson was supposed to file an annual report by December 30th, 2004. However, Ms. Duson was replaced by Christopher Quint as the Director of Public Affairs for Planned Parenthood for Northern New England. When Mr. Quint became aware that Ms. Duson had not filed the required annual report, he filed it on January 3, 2005, which was four days late. The statutory penalty for the late filing was \$200

Ms. Ginn Marvin moved, Mr. Ketterer seconded, and the Commission voted unanimously to assess the statutory penalty of \$200

Agenda Item #11 – Request for Waiver of Penalty for Late Annual Lobbyist Report/Betsy Smith

The director said that Betsy Smith, a first time lobbyist, was required to file an annual report by December 30th, 2004. Ms. Smith filed the report on January 4, 2005, which was five days late. The director said that Ms. Smith had told him that, as a first time lobbyist, she was unaware of the filing requirement.

Mr. Bigos moved, Ms. Ginn Marvin seconded, and the Commission voted unanimously to assess the statutory penalty of \$200.

Agenda Item #12 – Request by Michele and Joseph Greenier

The director said that Michele and Joseph Greenier had submitted a complaint against MCEA candidates in the 2004 election who had used their first initial when registering with the Commission rather than their full first name. They have requested an investigation, and that all MCEA candidates who used their first initial return the public funds received. The director said that despite the Greeniers' objections, the law allowed candidates to use their first initial and middle name on the ballot.

Joseph Harold Greenier, a concerned citizen, and Michele Greenier took the floor. They said that they were concerned about homeland security and safety and that people who run for office should run with their names as they appear on their birth certificates, especially when public money is concerned. They said that everyone should have to do this. They also said that under the law, the full name of the candidate should be on file. They said that there had been inconsistency on the forms and that information that should be at the Ethics Commission wasn't there and that there was little information about this matter on the voter registration forms. They said that this was a national matter and as a family of promoting ethical standards, this was very important. They said that the forms

didn't reflect what was in the statute. They said that the Bureau of Motor Vehicles said different things involving people's names. They said that people could change their name to a non-citizen's name and then giving them public funds and allowing them to become non-citizens. They said that they, as concerned citizens, had the right to know what the full names of the candidates were, and that information should be stored within the Ethics Commission's building. They mentioned S. Peter Mills as an example-while his name is S. Peter Mills on the forms, his full name is Sumner Peter Mills III. They expressed the need for consistency. They said that the Ten Commandments includes, "to honor thy mother and father", and one way to do that was to go by the proper name your parents gave you. They said that they just wanted see things be consistent.

Ms. Ginn Marvin asked if the Greeniers would be satisfied with a form that included the full birth name as well as the name they go by. The Greeniers said that the Commission should have that information already. They also said it's not fair to the candidates that are filing their forms correctly, and that those who file incorrectly should be fined. They said that perhaps a change could be made in statute to force candidates to put their full birth name.

After a brief discussion, the Commission agreed that this matter should be looked into in the future to prevent any possible confusion.

Agenda Item #13 – Christopher M. McCarthy/Referral to Attorney General

The director said that Mr. McCarthy was a MCEA candidate who had received \$4,031 in public funds. Mr. McCarthy had been required to file reports on October 27th and December 14th, and that Mr. McCarthy had not filed either of them. Mr. McCarthy received numerous notices, including the statutorily required 3-day notice, four more letters, emails, phone calls, and that there was no response to any of them. The director said that on January 12, the day that Mr. McCarthy was going to be referred to the AG's office as a non-filer, the staff received a fax copy of his reports. Mr. McCarthy became a late filer, and the statutory penalties were \$3,104.64 for the October report and \$863.21 for the December report, for a total of \$3,967.85. The director also said that Mr. McCarthy was supposed to return roughly \$840 in public funds, but had not done so until May 9th, the day before this meeting.

Mr. McCarthy took the floor. He said that he had no excuse for what had happened. He indicated that he had some personal issues, but that he did not have a valid reason for not filing. He said that the office had done a thorough job in trying to contact him, but that he was avoiding the issue. Mr. McCarthy also said that he wanted to try and take care of this issue.

Mr. Ketterer asked why he had not sent the public funds back. Mr. McCarthy replied that the money had been converted to cash had been sitting in an old check box in his house for months, and that he paid for things as the campaign went along. Mr. Ketterer asked when the public funds were converted to cash. Mr. McCarthy replied that the funds were

converted to cash within a couple of days of receiving the funds. Mr. Ketterer asked how the cash was converted to check form. Mr. McCarthy replied that he had brought the cash to the staff on May 9th, and instead of handing over the cash he wrote a check for that amount and deposited the cash into his personal account. Mr. Ketterer advised Mr. McCarthy that he may want a lawyer present to preserve his 5th amendment rights on this matter, because he thought that there could have been a criminal penalty involving misappropriation of public funds. Mr. McCarthy explained that he deposited the cash into his personal account only after he wrote the check to the Commission, and that he didn't think there was a misappropriation.

The director said that the staff had recommended an additional \$1000 penalty for failure to return the public funds, but now that Mr. McCarthy had returned the funds, he felt the Commission should determine if an additional penalty was warranted or not.

After a brief discussion, the Commission decided to vote separately on the late filing of the reports and the failure to return the public funds on time.

After a brief discussion, the Commission agreed that payment plans were a possibility, as long as the payee upheld his/her end of the agreement. Mr. Bigos asked what the viable range of penalty options the Commission had with regards to the late return of public funds. The director replied that the Commission could fine Mr. McCarthy anywhere from \$0-\$10,000.

Mr. Ketterer moved, Ms. Ginn Marvin seconded, and the Commission voted unanimously (4-0) to assess the statutory penalty of \$3,967.85 for the late filing of Mr. McCarthy's reports.

Mr. Ketterer moved to assess a penalty of \$5,000 for wrongful withholding of public funds. Mr. Bigos seconded for the purposes of discussion. Mr. Ketterer said that the Commission's job was to safeguard public funds, and to allow a candidate to withhold the money and reject every effort made to contact the candidate about this issue and then finally decide to return the money whenever the candidate felt like it would be very wrong. He said that other candidates returned the public money on time and that assessing a smaller penalty than \$5,000 would completely diminish the responsibility that the Commission had.

The Commission voted unanimously (4-0) to assess a \$5,000 penalty for wrongful withholding of public funds.

Agenda Item #14 – Request for Waiver of Late Filing Penalty/Arthur Keenan

The director explained that Arthur Keenan, a replacement candidate, did not file his 42-day post-general report. Because of a data entry error, the Commission staff mailed four follow-up letters to an incorrect address. The staff sent letters to 164 Morancy Road, where Mr. Keenan's address is 146 Morancy Road. The director said that Mary Anne Keenan, once contacted by the Commission staff, filed the report immediately, which

was on April 14, 2005. Ms. Keenan had said in a letter to the Commission that Mr. Keenan and her ability to pay the penalty would be limited, that they have a family of five and they rely on MaineCare and food stamps to get by, and they requested a waiver of the penalty. The director said that due to staff error, they never received the statutorily required 3-day letter. However, the due date for the reports was on a previously filed form.

Mr. Donnelly asked if any of the certified letters had been received. The director replied that the staff had received a few of the acceptance cards, which would suggest that perhaps they did receive them, although the Keenans insisted they did not. Mr. Bigos asked exactly what the data entry error was. The director replied that the mailing address was mis-entered into the Commission database. Mr. Donnelly said that although staff may have made an error, it was the candidate's responsibility to know all the requirements. He said that he would support a motion that would consider a smaller fine due to the staff error to send notice which is required by statute. Ms. Ginn Marvin said that she believed that the Keenans had received some of the letters sent out to them, but that the staff did have some responsibility in this case.

Mr. Ketterer moved, Ms. Ginn Marvin seconded, and the Commission voted unanimously (4-0) to assess a late filing penalty of \$500.

Other

The Commission thanked for Mr. Donnelly for his service to the Commission, as Mr. Donnelly's term on the Commission had ended. Mr. Ketterer moved, Mr. Bigos seconded, and the Commission voted unanimously (3-0, Ms. Ginn Marvin abstaining) to install Ms. Ginn Marvin as the new Chair of the Ethics Commission.