

**Minutes of the June 8, 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 Jean Ginn Marvin; Hon. Michael Bigos; Hon. Vinton E. Cassidy. Staff: Executive Director Jonathan Wayne; Counsel Phyllis Gardiner.

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

Agenda Item #1 – Ratification of Minutes of the February 17, 2005 and March 9, 2005 meetings

This item was postponed to the next meeting to allow for enough people present at those meetings to vote.

Agenda Item #2 – Request for Reconsideration by Christopher M. McCarthy

The director explained that at its May 10, 2005 meeting, the Ethics Commission assessed civil penalties totaling \$8,967.85 against candidate Christopher M. McCarthy for filing the October 27, 2004 and December 14, 2004 campaign finance reports late, and for failing to return \$845.72 in unspent MCEA funds by December 14, 2004. Mr. McCarthy had requested that the Commission reconsider its May 10 determination. The director said that the rules concerning reconsideration were silent, so the Commission could reconsider the item, but didn't have to.

Mr. Bigos asked about the status of the payment plan for Mr. McCarthy. The director said a payment plan hadn't been reached yet, but that he had a proposed one ready for Mr. McCarthy to review. It would involve monthly payments, and that Mr. McCarthy would have to agree to the plan by June 14th.

Mr. McCarthy took the floor. He said that he couldn't deny that he had not done what he was supposed to do. He said that he had been going through some personal issues at the time, but didn't want to go into them because this issue had already made the front page of his local paper, and he didn't want private details to be in the news. He said that the payment plan would likely be unworkable without selling his home. He said that other people had told him that this fine was much larger than normal. He said that he had difficulty understanding his penalty when comparing it to others who had committed more serious crimes. Mr. McCarthy said that he was a bartender by trade, and dealt with cash on a regular basis, which is why he had the MCEA funds as cash as opposed to in his account. He said that he didn't wrongfully spend the MCEA funds as he felt Mr. Ketterer had suggested, and that if he had wanted to wrongfully spend the money, he could have. Instead, he said that it was a matter of tardiness and late clerical filing. Mr.

McCarthy said that he had been told that the only matter of recourse was to take this to the AG, so that his payment would be more reasonable, because \$900 a month was not feasible. He said that he was willing to dip into his 401k in order to pay the fine, and that he fully intended to pay the fine. He felt that he didn't deserve to be penalized with the degree of heavy handedness that he felt was present the last time. Mr. McCarthy also said that Mr. Ketterer seemed to have the most issues with what he had done, and Mr. McCarthy felt that Mr. Ketterer was making assumptions that were not true.

Mr. Cassidy asked if Mr. McCarthy had any new information that wasn't given the last meeting. Mr. McCarthy said that he was protesting the discretionary fine assessed to him, and that he thought Mr. Ketterer had made some wrongful assumptions which led to the \$5,000 fine.

Mr. Bigos moved to table this issue until the next Commission meeting so that Mr. Ketterer would be present. Ms. Gardiner said that postponing the motion would not overrule or vacate the previous decision made. Mr. Cassidy said that he felt Mr. Ketterer had played an important part in the previous decision, and that he would be comfortable with tabling this issue until Mr. Ketterer could be present. Mr. Cassidy seconded the motion. The Commission voted to adopt the motion (2-1, Ms. Ginn Marvin dissenting) and table this item until the next Commission meeting.

Agenda Item #3 – Request for Late Filing Penalty/ Kennebunk Democratic Committee

The director explained that at its May 10 meeting, the Ethics Commission assessed a civil penalty of \$384.54 against the KDC for filing its January 18, 2005 report 13 days late. The committee was requesting that the Commission reconsider its May 10 determination. The director said that the staff recommendation was to not reconsider this item.

Mr. Bigos moved to deny reconsideration. He said that the Commission was trying to assess penalties as set forth by statute, and he agreed with that practice. He understood that previously the Commission had taken a different course, but that he felt that denying reconsideration would be consistent with what the Commission had decided would be the future practice in their last meeting. Mr. Cassidy agreed. Ms. Ginn Marvin said that she had problems with reconsideration, because once the Commission reconsiders one issue, it would reconsider almost all of their decisions from here on out. Ms. Ginn Marvin seconded the motion. The Commission voted unanimously (3-0) to deny reconsideration.

Due to time considerations, Agenda Item #4 was moved to the end of the Agenda.

Agenda Item #5 – Request for waiver Late Filing Penalty/Candidate Ronald Drouin

The director said that Ronald Drouin was a candidate for the State Senate in the 2004 elections. He filed the 42-day post-general election campaign finance report six days late. The amount of the statutory penalty was \$606.40. Through his attorney, Keith R. Jacques, Mr. Drouin requested a waiver of the penalty because his campaign treasurer, Robert H. Begin, was out of the state for an unexpected family emergency.

Keith Jacques took the floor, and explained that he was there on behalf of Mr. Drouin to request a waiver of the penalty. He said that Mr. Drouin had retained a public accountant, Robert Begin, to handle the campaign's financial activity. Mr. Jacques explained that Mr. Begin had a family emergency, and that contributed to the delay in the report being filed. He said that Mr. Drouin had nothing to do with the late filing. He said that Mr. Drouin had reported on time previous to this report. Mr. Jacques said that Mr. Drouin felt that he shouldn't have a mark on his record because he was not responsible for what happened, and that he didn't want a mark on his reputation within the Saco community.

The director said that he felt that the Commission could find a violation, and that perhaps the penalty could be reduced, because this seemed to fall within the mitigating circumstances laid out in statute. Mr. Bigos said that he would find that the campaign and specifically Mr. Begin were the late filers. He said it was important to note the late filing because public funds were involved. Mr. Cassidy asked if candidates were allowed to fax in reports. The director said that a report could be faxed in, as long as the original was sent within five days and the report was signed by the treasurer. Mr. Bigos asked how much the statutory penalty would have been if the report had been faxed in on December 14th, which would have been the earliest time the report could have been faxed in. The director said the penalty would have been \$202.14.

Mr. Bigos moved to find in violation the campaign and Mr. Begin, and to assess a late filing penalty of \$202.14. Mr. Cassidy seconded. The Commission voted unanimously (3-0) to adopt the motion.

Agenda Item #6 – Request for Waiver of Late Filing Penalty/Lobbyist John F. Lambert, Jr.

The director explained that John F. Lambert, Jr. was registered as a lobbyist for two employers, Hannaford Bros. Co. and VFW Deering Memorial Post No. 6859. His April monthly reports were due on Monday, May 16th, and he filed them three days late on May 19th. The total statutory penalty amount for the two late reports was \$200. Mr. Lambert was requesting a waiver because he had the flu, and was out of the office on Friday May 13th and Monday, May 16th.

Mr. Bigos moved, Mr. Cassidy seconded, and the Commission voted unanimously (3-0) to assess the full statutory penalty of \$200.

Agenda Item #7 – Douglas W. Curtis/MCEA Violation – Contribution of \$22.85 in Personal Funds

The director explained that Mr. Curtis has already paid the staff recommended penalty, so there were no issues to consider.

Mr. Bigos moved, Mr. Cassidy seconded, and the Commission voted to assess the penalty of \$22.85 for the MCEA violation, which had been paid at the time of the meeting.

Agenda Item #8 – John H. Linscott/MCEA Violation – Contributions of \$35.72 in Personal Funds

The director explained that John Linscott was a MCEA candidate for the Maine House of Representatives in the 2004 elections. The Commission staff's review of his campaign suggested that he inadvertently spent \$35.72 of his personal funds in addition to the \$6,576.30 in MCEA funds and seed money that he was entitled to spend. Although the amount was small, Mr. Linscott's contribution of personal funds appeared to be a MCEA violation.

Mr. Cassidy moved, Mr. Bigos seconded, and the Commission voted unanimously (3-0) to assess a penalty of \$35.72 for the MCEA violation.

Agenda Item #4 – Audit of David Kubiak Campaign/Payments of MCEA Funds to Candidate's Non-Profit

The director said that David Kubiak was a candidate for State Senate in the 2004 election. The Commission staff had reviewed his expenditures due to the fact that Mr. Kubiak used \$2,000 of public funds to pay Mr. Kubiak's non-profit. The director said that he did not feel Mr. Kubiak had done anything wrong, but that the staff recommended amending the expenditure guidelines for the 2006 elections to prohibit a MCEA candidate from paying MCEA funds to the candidate or the candidate's business or non-profit for services personally provided by the candidate. The director said that Mr. Kubiak had been extremely cooperative with staff on this issue. The director said that the concern was whether Mr. Kubiak had used public funds to promote his activist activities, which were separate then his campaign for public office. However, after a further review, the director said that he didn't feel there had been any wrong doing. The director explained that Mr. Kubiak had wanted to put ads in Southern Maine, and asked for quotes for design and placement of ads in the local paper. When he got the quote, Mr. Kubiak felt it was too high, and thought he could do the job himself and pay a lot less to get the work done. Mr. Kubiak claimed to have spoken to a member of staff on this issue, and he said that he was told it was ok to spend the money for these services. The director said that it was important to make sure that candidates did not enrich themselves by having access to public funds. Therefore, the director was planning on proposing the prohibition on allowing MCEA candidates from paying the candidate or the candidate's business or non-profit with MCEA funds. The concern was whether a candidate was making a profit by having access to MCEA funds, and the prohibition would greatly help to prevent such a situation from occurring.

David Kubiak took the floor. He explained that he called the Ethics Commission for guidance on this issue, and they said that there was no particular policy, but that if goods and services were rendered then they could be compensated, but to be careful and reasonable. Mr. Kubiak talked to local papers about advertising and he thought the

quoted price for the advertising he wanted to do was too high. He said that he thought he could do the ad work and save a lot of money for the campaign and also for the MCEA fund. Mr. Kubiak said that he received a lot of matching funds at the end of his campaign, and that he decided to give the money back rather than spend it all on more ads, which Mr. Kubiak felt would have been a waste of resources. He said that the issue was that if a candidate can get services from within a campaign of similar or equal quality that an outside vendor could provide, is that allowed when you are a MCEA candidate.

The director said that he recommended that if the business of a candidate was going to be taking on real costs or providing real tangible goods and services, the business should be compensated. He also said that the Commission had plenty of time to consider this issue in greater depth. Ms. Ginn Marvin said that more detailed help explaining what counted as expenditures, contributions, in-kind contributions, etc. would be helpful. Mr. Bigos said that he was comfortable with a short list, but that as the Commission made decisions, the list could be updated. Mr. Cassidy pointed out that this particular situation did not happen very frequently. Mr. Kubiak expressed his concerns over the late matching funds he received. He said that he received the money so late that he wasn't really able to use them effectively.

The director said that he would present options to the Commission in written form at a later date.

There being no further business, the Commission adjourned.