

Minutes of the October 13, 2006
Special Meeting of the
Commission on Governmental Ethics and Election Practices
Held via conference call.

Present: Chair Jean Ginn Marvin, Hon. Vinton Cassidy, Hon. A. Mavourneen Thompson, Hon. Michael Friedman, Hon. Andrew Ketterer.

Interested Parties: Matthew Reading and Rep. Herb Adams, candidates for House District 119.

Staff: Jonathan Wayne, Executive Director, Phyllis Gardiner, Counsel.

At 1:30 P.M., Chair Ginn Marvin convened the meeting. Jonathan Wayne introduced the two items considered by the Commission:

Issue #1: Effect of Seed Money in Matching Fund Calculations Matthew Reading is a Green-Independent replacement candidate for the House in District 119, registered on July 24 replacing Jason Rogers. Mr. Reading collected approximately \$495 in seed money during his qualifying period. Under the Commission's rules that seed money should be counted as general election funds, being money he received and or spent in order to influence general election and should be counted in calculating matching funds. When House Democrats Campaign Committee (HDCC) spent money on Rep Adams, our view was Mr. Reading was not entitled to any matching funds because the HDCC's independent expenditure did not exceed the \$495 seed money Mr. Reading collected. His first request is he believes the \$495 should be viewed as money used for the purpose of qualifying for public funds, not towards influencing the general election.

Issue #2: Eligibility for Matching Funds Representative Herb Adams made an expenditure of \$462 on June 9, 2006 for primary election for postage. If Representative Adams did spend this for the general election rather than primary election, Mr. Reading may be entitled to matching funds on this basis.

Chair Ginn-Marvin asking Mr. Reading if he wanted to speak on these issues.

Mr. Reading stated that he thought that Rep. Adams spent a lot on postage immediately before the election. However, he said that he was not going to question what Rep. Adams says he did with the postage. He had not heard from any Democrats that he knew that any mailing was done prior to the primary. He said that he asked Mr. Wayne for clarification of the rule and was told that postage was not covered. He contested that interpretation and stated that he believed that postage should be included under consulting services, design, printing, and distribution of literature.

Mr. Reading said that the more complicated matter is whether seed money counts during the general election period. He said that seed money is separate from general election and primary election funds due to the fact that it is raised in the qualification period. He stated that he had a significant disadvantage as a replacement candidate trying to qualify for public funds during the general election period. He said that having professionally designed literature was important in getting his name out to voters in order to qualify for public funds and that was what the seed money was used for.

Andrew Ketterer joined the group at 1:40 p.m.

Mr. Reading said that the purpose of his expenditures from seed money was to help him qualify for public funds. However, he had to purchase more printed material than he needed for the qualifying period because he could not purchase smaller quantities that would apply to only one month period of time. He did purchase signs and materials for a campaign kick off event for volunteers who were helping him by collecting a significant number of qualifying contributions. He said that it seemed strange to him that his opponent was able to raise and spend seed money before the primary without an impact on the public funds he received in the general election. As for him, he said it created a campaign deficit as he understood it based on Mr. Wayne's explanation. He stated that his original understanding of the qualifying period and seed money purpose was validated

by the fact that when he received his general election distribution, it was not reduced by the seed money raised, but rather offset by any remaining unspent seed money at the end of the qualification period. He said that indicated to him that the qualifying period was distinct from the general election period. He said that he was taken aback when he was told that the independent expenditure was made, but that it would not trigger any matching funds on his behalf. He stated that it seemed to him that there was an independent expenditure allowance due to the fact that he had raised seed money to qualify for clean election funds. He said that, to his understanding, there is still \$192 that can be made in independent expenditures on Rep. Adams' behalf before it triggers any matching funds for his campaign which puts him at a disadvantage. In referring to the memo that Mr. Wayne prepared, Mr. Reading stated that he believes that if there is immediate matching funds available to any candidate, as required by law, there should never be an imbalance between two MCEA candidates. However, by counting a replacement candidate's seed money in calculating matching funds in the general election, the Commission created an imbalance. Mr. Reading said that the clean election law should not be allowed to create any sort of campaign imbalance.

Chair Ginn-Marvin asked whether anyone had questions for Mr. Reading and seeing none, requested Rep. Adams to speak on this issue.

Rep. Adams stated that he did buy stamps for a mailing for the primary. He said that he had many cards left from previous campaigns that were unspecific but promoted him. He bought postage and in the last weekend mailed them. He said that he had three rolls of unused 24 cent stamps.

Mr. Wayne said that there was \$72 left according to what Rep. Adams said, out of the total original purchase of \$462. Under the Commission's rule, if more than 51% of the purchase was used for general election, the purchase would be considered as a general election. But in this case, most of the stamps were used for the primary election and no portion of that would be counted as a general election expenditure.

Regarding the seed money issue, Rep. Adams said that the issue was a little more obscure. He said that he did not think that a replacement candidate was under disadvantage. It was well known that the Green-Independent candidate nominated for the primary in District 119 was a stand-in. It was understood there would be a replacement. Rep. Adams said that Mr. Reading was recruited in Auburn and came to Portland and registered to vote on the 24th of July and was nominated on the 24th by his party. He was fully aware of the circumstances, including timing, and accepted all those circumstances. Therefore, given the fact that neither of his opponents raised or spent any seed money and that he was well aware of the circumstances when he was recruited to run, Rep. Adams stated that he did not think there was a disadvantage against Mr. Reading.

Chair Ginn-Marvin asked Mr. Wayne how the Commission should proceed.

Mr. Wayne said that the staff recommendation was to treat Mr. Reading's seed money as a receipt for his general election based on the Commission's rules on when funds are received by a candidate. The staff's past practice is that, when there is a replacement candidate who collects seed money to qualify for clean election funds, it is presumed that all is being spent for the general election. Mr. Wayne suggested that it might be appropriate for Mr. Reading to comment on whether he gets no value in the general election for all that literature and postage that he bought during the qualifying period. However, the Commission staff has heard from other replacement candidates who also feel they are at a disadvantage because they are running against someone who qualified in April and was able to spend some money in the primary election period for some goods and services that are of value to them in the general. In short, some replacement candidates feel like the slate is not totally wiped clean on the day of the primary election. There are some primary campaign materials that primary candidates bring forward into the general election period. Mr. Wayne suggested that, if the Commission wanted to change the policy, it could be handled through rule making.

Ms. Thompson asked how would his seed money be treated if Mr. Reading was in the primary election and what would be his relationship financially to Rep. Adams and Mr. Lavoie.

Mr. Wayne responded that Mr. Reading could have raised up to \$500 in seed money. If Mr. Reading had been a primary candidate he would have received an additional \$512 in clean election act funds for the primary election. But the only amount that could be considered to be brought forward to the general would be any amount remaining unspent as of the day of the primary election.

Ms. Thompson asked what the other candidate who Mr. Reading replaced raised or spent.

Mr. Wayne said that the candidate's name was Jason Rogers and he raised and spent no money. If what Rep. Adams is saying is correct, he knew he wasn't going to raise or spend money.

Ms. Thompson asked whether the Commission had previously had a situation in which a candidate was not active early on, during the primary, and is then considered to have been disadvantaged because he or she had not been active early on in the primary. Mr. Wayne responded that he did not think this had been before the Commission before.

Ms. Thompson stated that when a candidate starts to run, the candidate is starting from ground zero and is not necessarily considered disadvantaged because he or she was not involved since the April date. Whereas other candidates would have been involved since April.

Mr. Wayne agreed and stated that what happens before the primary is off the books for consideration of the general election matching funds. Whatever money the candidates raise and spend prior to the primary election does not count, except as in Rep. Adams case, he had \$50 left over on the day of the primary so that counted as an amount toward the general election receipt.

Chair Ginn-Marvin asked whether there were any other questions or whether there was a motion.

Mr. Friedman stated that he was concerned that Rep. Adams did get \$512 prior to the primary election and had funds left over from that. With a replacement candidate coming in after primary, obviously they would not get credit for that previous payment. He said that he was troubled because there seems to be a bit of a disadvantage, although he would be more troubled if the Commission went against what the rule says on this point. He suggested that the Commission look at this issue in the future. Mr. Friedman made a motion that the Commission accept the staff recommendation that no further seed money is warranted. Mr. Ketterer seconded.

Ms. Gardiner asked for a clarification on whether Mr. Friedman meant to say “further matching funds” when he said “further seed money.” Mr. Friedman said that he meant to say matching funds.

Ms. Gardiner further inquired whether the motion applied to both issues postage and counting of seed money. Mr. Friedman said that it did.

Ms. Thompson asked whether the Commission should add or clarify that the motion is based on these particular requests. Ms. Gardiner said that it would be implicit in the motion to accept the staff recommendation.

Chair Ginn-Marvin asked whether there was any discussion on the motion.

Ms. Thompson questioned if the Maine Clean Election Act would consider making adjustments for a candidate who in fact comes into the campaign after the primary, or if the intention of the law is to make adjustments to create a level playing field for any candidate who comes into a campaign late. Ms. Thompson said that she thought the issue was whether the Act had to take a stand on creating a level playing field for someone

who comes in after others have already been actively campaigning either in primary or general election.

Mr. Ketterer said that the philosophical goal of the Act is to level the playing field, to the extent possible, amongst all candidates. However, the Act can only level the playing field from the time the person gets in the game and that timing is up to the candidates. This candidate, for whatever reason, entered late and so is not on the same footing as a candidate who ran in the primary.

Mr. Cassidy asked whether Rep. Adams had \$120 going into general election, based on \$50 left from his primary money and \$70 left in stamps and whether that would go towards the general election. Mr. Wayne said he can use the \$50 for the general election and use the \$72 in stamps for the general.

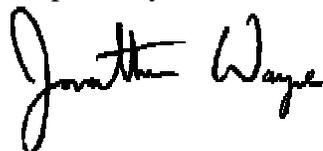
Mr. Cassidy went on to ask whether that would affect his opponent at all as far as matching funds he receives for the general.

Mr. Wayne said the \$50 would be taken into consideration, but the \$72 in stamps would not because under the Commission's rule it would be treated as a primary election expenditure.

Chair Ginn-Marvin asked whether there were any further comments. Seeing none, she called for a vote on the motion. The vote was unanimous to pass the motion and adopt the staff's recommendation.

The meeting was adjourned.

Respectfully submitted,

A handwritten signature in black ink that reads "Jonathan Wayne". The signature is written in a cursive, flowing style.

Jonathan Wayne
Executive Director