



Minutes of the February 28, 2024 Meeting of the
Commission on Governmental Ethics and Election Practices
45 Memorial Circle, Augusta, Maine

Present: William Schneider, Esq., Chair; Dennis Marble; Sarah LeClaire, Esq.; Stacey Neumann, Esq.; and David Hastings, Esq. (by Zoom)

Staff: Jonathan Wayne, Executive Director; and Jonathan R. Bolton, Assistant Attorney General
Commissioner Schneider convened the meeting at 9:00 a.m.

1. Ratification of the Minutes of the January 31, 2024 Meeting

Ms. Neumann moved to ratify the January 31, 2024 minutes as presented. Mr. Marble seconded the motion. The motion passed 5-0.

2. Public Hearing for Rulemaking – Election Spending by Foreign Governments

The Commission held a public hearing to receive comments on proposed amendments to the Ethics Commission Rules to implement a law approved by Maine voters to prohibit foreign governments from making contributions or expenditures to influence Maine elections. The Commission approved the rulemaking at its January meeting. At the hearing, the Commission received testimony from three witnesses. Their written testimony has been posted to the Commission's website at www.maine.gov/ethics.

Mr. Tim Moore, President and CEO of the Maine Association of Broadcasters (MAB) was present and explained their association joined the Maine Press Association in seeking a permanent injunction against the implementation of the law, arguing it was unconstitutional, a violation of the First Amendment, and was both vague and unreasonably burdensome to media outlets. The new law tasked broadcasters with the responsibility of investigating and documenting the specific source of funding for all entities wishing to place legitimate political speech on their outlets. He stated such a requirement would be close to impossible for Maine's broadcast stations, many of which are small family-owned operations.

Mr. Moore said if this law had been in effect before the last election cycle, it would have been illegal for Maine broadcast stations to air political ads against one of the citizen initiatives, resulting in a one-sided policy discussion.

Ms. LeClaire asked whether the MAB would provide guidance to its broadcasters about compliance if the law went into effect. Mr. Moore replied they don't act as legal counsel for the broadcasters. He said advertisements are usually sold through an agency and there is no way for them to know who the source of the funding is.

Mr. Hastings asked if the MAB was willing to comment on the safe harbor provisions in the proposed rules. Mr. Moore said had not reviewed them enough to comment.

Mr. Aaron McKean, legal counsel for Campaign Legal Center (CLC), said his organization strongly supported the rulemaking and reiterated several points in his written testimony. The CLC is concerned that a list of entities posted to the Commission's website that were found to be foreign government-influenced entities might not stay up to date. He suggested the Commission consider a broader approach of posting guidance and advisory opinions to its website. He said the proposed definitions should cover advertisements on television streaming services, like Hulu and Netflix.

Ms. Kaitlin LaCasse, campaign manager for Protect Maine Elections appreciated the opportunity to express support for the amendments as drafted. She said 86% of Mainers voted for the law, which is more important than ever.

Mr. Schneider shared the Commission's appreciation for those who participated in the public hearing or submitted written comments. He confirmed written comments would be accepted until March 11, 2024.

3. Late Notices by Our Power to Two Major Contributors

In August and October 2023, the Our Power ballot question committee was required to send written notices to two of its contributors - 128 Collective Initiatives and the Institute for Local Self-Reliance - advising they were required to file major contributor reports with the Commission. The notices were required because the organizations had made contributions that in the aggregate exceeded \$100,000 to Our Power to support Question 3 on the November 2023 ballot. Our Power was late in sending notices to the two contributors. The preliminary penalties against Our Power for the late notices totaled \$28,155.08.

Mr. Gary Friedmann, treasurer of Our Power, spoke in support of its request for a waiver of the penalties. He said the committee was a scrappy grassroots organization with two full-time employees working for eight months each, and a small number of short term and part-time employees, essentially volunteering. They never intended to hide or obscure any information. Our Power asked for leniency as there was no harm to the public.

Mr. Schneider said he disagreed that Our Power was a small operation as they spent \$1.2 million between 2020 and 2023. The late notices harmed the public because the information in the major contributor reports was not disclosed until after the election.

Mr. John Brautigam, Our Power's principal officer, said he did not contest the violations but asked for consideration of certain facts when deciding on the waiver request. As a modest grassroots campaign with a tight budget, they raised most of their funds from individual contributors. They did not receive a single contribution over \$100,000 but did receive contributions from the Institute for Local Self Reliance and 128 Collective that added up to more than \$100,000. There was no intention to avoid disclosure. The violations resulted from a flaw in the committee's tracking of contributions. Once aware of the violation, Our Power quickly sent notices to the major contributors, who filed the reports with the Commission. He said there was no harm because the information in the major contributor reports was already available to the public and asked the Commission to consider the two violations as one mistake. He suggested the penalty should be determined by the size of the contributions, not a standard baseline. He said the Commission should not increase penalties against the committee based on the expertise of its officers and asked the Commission to avert inequity in their case by waiving or reducing the penalty.

Mr. Marble pointed out that Commission staff was recommending a reduction in the preliminary penalty of \$23,155.08. Mr. Wayne explained the Commission had previously used \$2,500, and later \$5,000, as a baseline penalty, but the Commission could adopt different procedures.

Ms. Neumann said she appreciated the thoroughness of Mr. Brautigam's presentation and found some of his comments persuasive. She suggested reducing the total penalty below \$15,000 recommended by staff. She moved to assess a penalty of \$3,000 for each violation for a total of \$6,000. The motion was seconded by Ms. LeClaire.

During deliberations, Mr. Schneider said spending \$1.2 million on a ballot question was a large endeavor, and Our Power should have had the expertise on hand to follow Maine's election

laws. The statements made by Mr. Friedmann and Mr. Brautigam of no harm to the public were not true. The major contributor reports, particularly in an intense campaign, are a red flag to the public that someone is trying to influence their vote. Filing these reports after the election denied the citizens of Maine that important information.

Mr. Schneider moved to amend the motion to assess a penalty of \$5,000 for each violation for a total of \$10,000. The motion was seconded by Mr. Hastings. Ms. LeClaire said Mr. Schneider's points were well taken but she favored a reduction due to the committee's level of prior compliance. Ms. Neumann said she would not be in favor of the motion to amend, acknowledging there was harm to the public but noting the committee had a record of compliance. The motion to amend failed 2-3.

The Commission returned to Ms. Neumann's motion for a total penalty of \$6,000, which passed 3-2. Mr. Schneider and Mr. Hastings opposed the motion.

4. Complaint about 2022 Flyer in House District 52

In October 2022, voters in Bowdoin, Bowdoinham, Richmond and surrounding communities received a flyer about House candidate Sarah Cluchey within a publication, The Maine Anchor, that was distributed by U.S. Mail. The flyer included a disclaimer that it was "Paid For by Concerned Parents of MSAD75," but did not identify the individuals who paid for it or their addresses, and did not state whether any candidate authorized the flyer. Ms. Jennifer Small filed a complaint with the Commission regarding the flyer. In October 2023, the Commission authorized staff to investigate.

Mr. Guy Lebida, owner and editor of The Maine Anchor, addressed the Commission and said he is a conservative Christian and he put out three editions of the publication in the past two years. He knew candidates had disclosure requirements but was unaware of the reporting requirements of a newspaper's owner/editor. Mr. Lebida explained that his upcoming publication would contain the flyer in question with a proper disclosure and correction. He believes the content of his newspaper should be protected by the First Amendment.

Ms. LeClaire asked how many newspapers were sent out with the flyer. Mr. Lebida said roughly 6,000 statewide, which would have cost about \$1,200 to mail.

Mr. Brian Roy participated in the meeting remotely and said that he occasionally writes articles in The Maine Anchor and contributed financially towards this flyer.

Mr. Schneider moved to find there was a violation of the disclaimer requirement. The motion was seconded by Mr. Marble. The motion passed 5-0. Mr. Schneider moved to assess a penalty of \$25. Mr. Hastings seconded the motion.

After further discussion, Ms. LeClaire moved to amend the motion to assess a penalty of \$200. Mr. Marble seconded the motion. The motion passed 5-0.

5. Balance Adjustment – Senate Democratic Campaign Committee

In early 2023, the staff requested that the 110 political action committees (PACs) registered with the Commission verify that the cash balance shown in their campaign finance reports accurately reflected their bank account balance as of December 31, 2022. Ms. Emma Burke, Political Committee & Lobbyist Registrar, explained the Senate Democratic Campaign Committee (SDCC) is one of oldest, high-spending PACs registered with the Commission. Initially, the discrepancy between the PAC's reported and actual cash balance was over \$100,000. After performing an internal audit, SDCC was able to identify and fix reporting errors, which reduced the discrepancy to \$19,840. Ms. Burke said she is comfortable with the request for an adjustment to the PAC's reported balance. The SDCC has new staff with systems in place to ensure these reporting mistakes will not happen again.

Commissioner Schneider moved to direct the staff to make a balance adjustment to correct the SDCC's balance. The motion was seconded by Commissioner Neumann. The motion passed 5-0.

Mr. Marble made a motion to adjourn. Ms. Neumann seconded. The motion passed 5-0. The meeting adjourned at 11:24 a.m.

Respectfully submitted,

Jonathan Wayne, Executive Director