

Commission Minutes

Oct 3, 2008

All commissioners present

Meeting comes to order about 10:35 am.

Moved/Seconded Commissioners Walton/Rauh to approve last meeting minutes, unanimously adopted.

Presentation and responses to Commissioner questions by Arn Pearson, Vice President for Programs, Common Cause, 207-236-4218 (Maine)

- Maine most successful of the state public financing systems. He has worked on public financing since 1996. Has worked on Maine system for 9 years. Went to Common Cause 3 years ago. Worked on Connecticut and proposed federal systems.
- 24 states how considering or working on public financing systems
- Zogby poll, 82% favor ban on contributions from financial, energy, and defense interests to candidate – large surge in such support. 74% support public financing in general.
- Iowa survey of 1,500 campaign donors: 73% favor public elections financing: 75% D and 70% R.
- Small donor linked to public financing a new frontier, enabled by web.
- Supreme Court Davis v FEC decision a cloud over current efforts to construct public financing systems. Cloud over “triggered additional grant” under public system (allowing public funds whole or partial match of high spending privately-financed candidates).
- Much more difficult now to regulate traditional private financing under current Sup Court doctrines. Makes public financing even more the better route to reform.
- Public financing,
 - Goals: remove link between large contributions and elected officials, encourage more candidates to run for office, increase competition, create constitutionally solid spending limits.
 - 2 models:
 - Traditional: qualifying contributions, seed contributions, eligibility triggers public funds grant to candidate, optional triggered additional grant.
 - Newer model:
 1. merge qualifying and seed contributions (ie allow amounts from \$5-\$100, from in-district registered voters)
 2. candidate may not contribute to his/her own campaign in amount greater than small donor limit (ie \$100).
 3. candidate hits threshold number of such contributions and become eligible for fixed grant
 4. option that grant is a match of raised amount, ie 4:1 or 5:1 for example.
 5. Option that candidate may continue raising funds in amounts up to \$100 (for example) per donor – but without public funds matched on these additional private funds raised.
 6. option for triggered additional grant.

- Commissioner Cook raised concern about ability of organizations to bundle small contributions to gain extra influence under the public system: ie unions, corporations, affiliations.
- No consensus among legal experts on triggered additional grant issue.
- Arn is working on a public financing “structure” decision grid that we will have within a week.
- The \$100 limit (for example) could vary by office.
- Match systems are used in New York City, Presidential. Neither limit candidates to small contributions. Insufficient real world test to date.
- Participation rates in state programs:
 - CT: 78% in first year! Highest number of women candidates ever. 93% of women using system.
 - AZ: lower participation rates than ME. GOP in state does not embrace. 61% of primary and 58% of general election candidates using. For 2006: ten of eleven statewide officeholders used public financing, including governor.
 - NC: 2006, 5/6 elected judges used public financing.
 - VT: lesson learned: if amounts very low, candidates will not use.
 - NM: year one judicial system: no candidates using: amounts too low.
 - ME Gov: amounts too low, legislature has increased amount for governor. Increasing use by GOP
- Federal public elections financing bill research looked at variations in Congressional spending among the states. Amounts vary. Created formula. Also looked at spending in NH gov races. Applying that formula (with heavy caveats) to NH:
 - 2,500 qualifying/seed contributions of \$82,500. Grant of \$600K primary; 900K general.
 - Match amounts for high spending opponents, 2x these amounts. Thus total possible with match: \$1.8 million primary; \$2.7 million general.
- Tough economic times. Maine poll: 65-70% of public wants candidates for governor to use public system.
- Suggests looking at spending levels in competitive as distinguished from non-competitive races. Look at number of outliers.
- Must have restrictions on what publicly financed candidates can spend public funds on. Law provides that spending can be for “campaign-related purposes.” Commission sets rules on defining this.
- 1.5 FTE auditor position on commission. Some fraud, but rates low.

Presentation and responses to Commissioner questions by Jonathan Wayne, Executive Director, Maine Commission on Governmental Ethics and Election Practices, (207) 287-4179, Jonathan.Wayne@maine.gov. Website: <http://www.state.me.us/ethics/index.htm>.

- Jonathan is former staff attorney for NYC campaign finance board.
- In present position for past five years.
- Commission has staff of 5 during peak 9 months prior to elections, 3 people during other times during election cycle.

- Maine has 151 House seats, 35 Senate, 1 Gov. Candidates funded in 2006: 250 House, 65 Senate, did not get governor number. Average spending per candidate: House \$6K, Senate \$25K.
- Maine system has:
 - Decreased and slowed rate of increase in spending per candidate.
 - Enjoyed growing rates of participation.
 - Candidates are very happy with system
 - Participation rates leveled off at about 80% of officeholders.
 - No large growth in 3rd party activity, but system makes it easier for 3rd party candidates.
 - Maine legislature not greatly partisan.
 - Candidates can receive \$5 qualifying contributions on state website.
 - \$5 qualifying checks made out to Maine public elections financing fund.
 - Candidates may also raise and retain seed money from private individuals.
 - 5 commission members. 4 legislative leaders pick 3 names for each slot, governor picks one.
 - Senate candidate must get 150 \$5 qualifying contributions; Gov candidate must get 3,250 \$5 contributions.
 - Qualifying period: June 1 to June 15, longer for 3rd party and indy candidates as they have no primaries.
 - Most primaries contested.
 - Grant amounts set as average spending per seat over prior two elections.
 - Grant amounts do not vary across the state. There is no pressure for different grant amounts for more and less costly media districts.
- CT provides lower grants for districts with higher spread in voter registration by party, and in high-spread districts providing more of total per seat in primary, less for general.
- NYC 4:1 match of contributions up to \$250, allows large contributions.
- Pure (equal) grant for all qualifying candidates allows funding for too many non-competitive candidates, drives up cost.
- Maine allows partial triggered additional grant against high-spending privately-financed candidates.
- Davis decision cited on bad outlier precedent voiding Arizona match.
- Concord Coalition bullish that Davis won't survive another court review.
- Must have separate rules for uncontested candidates.
- Contested candidate defined as one whose opponent raises in excess of some minimum threshold.
- Must have public dollars to account for extra spending by independent organizations, otherwise candidates do not have confidence in the public funding system; nonetheless, there should be a ceiling on these additional match funds.
- Maine independent expenditure system features:
 - Provides for match funds in an amount up to base funding.
 - Provides that independent money spent on behalf of a public-funded candidate is deducted from the extra match funds. This has also worked well.
 - Maine commission has rules, staff, and monitoring process and is empowered to determine which independent spending is pro or con. Has worked well.

- Requires independent expenditure reporting with 24 hours. Response time for matching grants is 24 hours. Important: an expenditure is defined as the time of the contracted expenditure, rather than the potentially later date of invoice payment.
- Once a candidate first becomes eligible for additional match funds, candidate is granted all of the maximum match, entrusted to use it if needed, and return it to the state if not needed.
- This excess grant system has acted as a brake on excess private spending.
- Deemed to work well at curbing spending and leveling playing field among candidates.
- Out of state interest groups having a tougher time using money for leadership PACs,
- 20 percent of public financed candidates audited. Helps ensure compliance. Fraud rates very low.
- In response to query from Commissioner Rauh, is it not simpler and less expensive to administer a system providing for a large enough flat grant than the additional match apparatus? Answer: (a) match more attractive to candidates, and (b) may save money: in Arizona, 24% of primary and 46% of general election public-financed candidates receive additional match funds.
- Comments on Maine 2006 Gov race: state now in dire fiscal circumstance. Incumbent Governor Baldacci did not use public system, 3 competitors did. Baldacci got about 38% of vote. GOP nominee Chandler Wilcox (a social and economic conservative) got 31% of vote and loves the program; Green-Indy nominee got about 9% of vote, Barbara Merrill got 21%. Spending gap between incumbent and challengers reduced.
- Taxpayer check off (diversion from general fund) raised \$250K, not nearly enough.
- Uncertainly as to whether legislature has become more progressive, other than more progressive insurance legislation passed. Has not radically changed political landscape.
- Maine: more candidates running for office, parties have easier time recruiting candidates, candidates have more time to spend with voters.
- Maine: total public elections funding budget: \$2.25 million per year, less than 1/1000th of the state's total current annual budget of \$3.15 billion.
- To embed support among legislators, guess than 2-3 successful elections would be required.
- Commissioner Rubens suggested having past Maine candidates and current legislative leaders testify to this Commission.

Commission discussion:

- Commissioner Cook suggested this decision process going forward:
 - Structure
 - Cost
 - Funding (awaiting DRA data), consider general fund?
 - Break into 3 subgroups to fashion proposals on above three.
 - Discussion of Commissioner Cook's proposal followed.
- Commissioner Hilton suggested contemplating reliance on private grant(s) to jump start public financing in NH, presuming insufficient public dollars. General agreement.

- Final report may propose multiple options.
- Commissioner Rauh suggested use of feasibility test for revenue possibilities, with feasibility meaning likely to be accepted by legislature. Commissioner Comstock-Gay suggested that feasible should mean possible. Commissioner Rubens suggested that we are advocates of public financing, therefore should adopt an advocacy rather than an odds-maker role in our final recommendations.
- Kathy Silber: will have full NH spending report by next Commission meeting.
- Non-DRA sourced revenue estimation data by next meeting; uncertain about DRA revenue estimation data.
- Decision to break into two sub-groups:
 - Revenues: Rubens, Comstock-Gay, Honigberg, Hilton
 - Structure: Rauh, Walton, Cook
- Next meeting to start with discussion of structure, then funding and spending data
- Arn will provide us a decision tree on structure options prior to next meeting
- Commissioner Cook suggested presenting two structure options with costing, with one of the two recommended by the Commission. Include pilot. General agreement on this suggestion.
- Additional funding sources:
 - free campaign literature printing by prisoners
 - in kind services contribution (ie airtime, graphics, etc)
- Adjourn approx 1:15

Submitted by
Jim Rubens, acting Secretary