

**COMMISSION TO STUDY THE FEASIBILITY OF PUBLIC FUNDING OF
STATE ELECTION CAMPAIGNS—Chapter 55, Laws of 2008**

**Minutes of Commission Session
September 19, 2008**

1. Minutes – Commissioner Honigberg moved to adopt September 5 Commission session, Commissioner Rauh seconded; unanimously approved

2. Website – Commissioners considered the Commission website created by Cmr. Comstock-Gay and Rubens. Commission approved going live with the site, with two suggested additions: the reports produced by New Hampshire Citizens Alliance on New Hampshire campaign finance. NH Coalition for Public Funding of Elections (NHCPFE or Coalition) coordinator Cathy Silber agreed to send Commissioner Comstock-Gay the links to these two reports. Commissioner Abrash Walton suggested that Commissioners review the two reports to further enhance and provide context for the Commission's discussion of feasibility of public funding of elections in New Hampshire.

Commissioner Comstock-Gay will review any new proposed website content for libel/slander, then post, as advisable.

Commission agreed to publicize the new website through a media release that Commission Chair Cook will draft and circulate, via the House Speaker's office.

Commissioner Honigberg suggested that the Commission make a request to the Governor that he direct the state's webmaster to create a link from the state's website to the Commission's new website. All Commissioners agreed.

3. Review of Data

The Commission heard input from NHCPFE coordinator Cathy Silber regarding her coalition's research covering NH campaign expenditure data. NHCPFE is compiling data from the May 2007 filings for the 2006 electoral cycle and will present this to the Commission. She noted that there are two additional campaign finance categories, beyond simply the amount of funds raised by each candidate, that would be helpful to the Commission's analysis: actual campaign-related expenditures & surpluses (transfers to other candidates' campaigns, charitable organizations, etc.). She noted, too, that while the data for the 2006 cycle is available online, the 2004 data is available only via hard copies of reports filed with the Secretary of State's office. It will be several weeks until NHCPFE can present this data to the Commission.

Ms. Silber further noted the distinction between an actual and perceptual threshold of funding that a prospective candidate might view as necessary in order to run a competitive campaign and stated that NHCPFE's research into actual expenditures might

be helpful in defining a reasonable threshold. In order to define this distinction further, she informed the Commission that NHCPFE would also be conducting outreach to senatorial candidates to survey them about their campaign finance needs for the 2008 electoral cycle. Ms. Silber noted that the survey presented challenges with maintaining the anonymity/confidentiality of the data received, while still yielding useful analysis for understanding the thresholds applicable to particular districts around the state. She noted, too, that part of what contributed to the success of the Clean Elections system in Maine was the significant engagement, during the development process, of those who would be using and administering the system. The NHCPFE survey initiative is meant to serve that purpose as well.

Ms. Silber also informed the Commission that in view of recent legal challenges and the demonstrated success of significant netroots fundraising by presidential campaigns, national discussions are underway regarding development of a new “clean elections” model. She recommend that the Commission invite national experts to provide input: Arn Pearson (Common Cause), Jonathan Wayne (Maine Commission on Ethics), and Nick Nyhart (Public Campaign). Ms. Silber offered the Coalition’s assistance in coordinating the logistics of those visits; NHCPFE intends to include presentations for state legislators as part of these experts’ visits.

Commissioner Rauh suggested that those familiar with NH’s campaign finance numbers over the years could easily come up with a ballpark figure for the 30 races under consideration by the Commission. His own estimate, plus or minus 25%, is a \$20 million range for the gubernatorial race and a \$10 million range for the other 29 races (i.e., Executive Council and state Senate). These estimates suggest a \$25-\$35 million range per two-year electoral cycle, and a \$15 million range per year. Commissioner Rauh stated that if the Commission is not prepared to recommend funding at this level, then receiving the data forthcoming from the Coalition becomes academic.

Chair Cook posed this question: What does the data tell us elections cost? He noted that if the Commission were to propose that a public funding system differentiate available public funds, on a district-by-district basis for the same type of race, this presumably would be unacceptable to most legislators. He stated that the Commission still needs the NHCPFE data to reality check Commissioner Rauh’s soft estimate.

The Commission agreed that other questions remain: What revenue sources exist? What revenues would those sources provide? Based on that, does the Commission recommend pilot races? Does the Commission report that while public funding is a good idea, the funds are not available to establish such a system in NH? In order to complete its mandate, the Commission still needs to begin with step A: how much money is needed for a public funding system to work?

Commissioner Rubens suggested that the Commission can pursue these tracks in parallel (i.e., reviewing the data re: what constitutes an adequate threshold and also examining feasible sources of funding). He suggested that the Commission not wait for another month to pursue the line of inquiry concerning potential funding sources.

Commissioner Honigberg suggested that the Commission might consider the option of recommending a pilot or test for public funding. He suggested that the Commission's task becomes more manageable if the gubernatorial race is removed from current consideration. He also wondered if there are examples of other public funding models that have a different financing structure; one that is "less public" and therefore reduces the public contribution portion.

Commissioner Rauh stated that a match system does not make a major change in figures required.

He stated that if you are going to publicly fund, you better err on the high side, thereby making sure that there is enough money to really be able to communicate with the voters and that voters get the information they need.

Ms. Silber offered that because of the Davis decision and advances in small-dollar contributions, a new model for public funding might continue the stream of small public dollars up to a \$100 contribution throughout the race (i.e., beyond the seed money phase). With a 4 to 1 or 3 to 1 match, the public contribution portion potentially would be reduced by a fifth. She stated that she was unaware of current modeling options beyond the capped, progressive matching model just outlined. She noted that experts were working on putting together a new model and convening on October 16 in Washington, D.C., to do so. She stated that, post-Davis, there was an excess of caution emerging causing state initiatives to retrench more than they need to. She solicited input from the Commission in terms of making recommendations regarding what counts as a campaign expense (e.g., tickets to the Inaugural Ball).

Commissioner Rauh clarified that the Davis decision found that it is unconstitutional to trigger additional public funds if a private candidate spends more. He stated that there are two proposals for public funding reform at the federal level: 1) a 4 to 1 match; and 2) an 8 to 1 match; allowing candidates to continue to raise small contributions beyond that level.

Commissioner Comstock-Gay outlined three tracks of inquiry for framing the Commission's workplan:

- 1) serious discussion about where the money is to sustain a public funding system;
- 2) pursuing the data re: the dollars required (i.e., how much does a NH public funding system cost?); and
- 3) determine which model to base recommendations on

He noted that the actual dollar amount needed to run a public funding system in NH is important, but will still be large in this environment regardless of whether it is 7 or 15 million dollars. He emphasized that getting accurate data is really important.

Commissioner Rubens offered a ballpark estimate of \$10-15 million/year. He agreed that it makes sense to continue to look at actual/perceptual cost and to focus on sources of funding simultaneously. He also agreed that it was prudent to consider a pilot race/s for

the system. He stated that he has compiled a list of ideas regarding potential funding sources and passed out the list to other Commissioners.

Chair Cook noted that the central data necessary to determine a viable threshold is what is a reasonable cost to get known by the voters.

Commissioner Honigberg recommended that the Coalition explain the categories it chooses in analyzing/compiling the data gathered.

Commissioner Rubens added the suggestion that the Coalition specify what it considers to be suspect in terms of campaign expenditures.

Ms. Silber noted that there is a need to consider what the cost of doing business is and what that means for political support for public funding.

Commissioner Rauh cautioned that if the Commission does find a viable source of funding for a public funding system, then it could be used by elected leaders to fund education, etc. He stressed the need to move forward with establishing public funding in NH.

Commissioner Comstock-Gay responded that it is still necessary for the Commission recommend a list of prospects for funding sources. He suggested that the Commission might come up with a bifurcated package: option 1 (pilot), option 2 (fully funded system).

Commissioner Hilton wondered if Commissioner Rauh was suggesting that it would be better for the Commission to recommend that it's not possible to establish a public funding system in NH without using the general fund.

Commissioner Rauh responded that he thought that the Commission needs to have the option of a test on the table to move the concept forward. Even with a test, the same challenge might remain of safeguarding – for the purposes of testing the public funding system through a pilot – a viable funding source identified by the Commission.

Chair Cook stressed that the Commission has not done its job if it does not recommend:

- 1) a model
- 2) an amount for how much the system would cost
- 3) sources for funding that amount

He confirmed that the Commission would like to take the Coalition up on its offer to bring in experts: Jonathan Wayne, Arn Pearson or Nick Nyhart. He noted that the Commission would welcome their participation at a Commission session within the coming two-three weeks, preferably all on the same day, if possible.

Commissioner Rauh noted that Mr. Pearson has given great consideration to the prospect of basing the amounts provided for specific races on media market formulas. For example, the Commission might consider:

- 1) which state Senate districts really require television advertising for voters to gain adequate information about candidates
- 2) which media market is crucial (Boston v. NH)

Chair Cook observed that some candidates use channel 9, but on a very limited basis. He noted that no state Senate or Executive Council candidates seem to use Boston television, and stressed that the Commission wait to hear from the party officials testifying to the Commission in the afternoon regarding what is required.

Commissioner Rubens requested that, in its review of expenditures, the Coalition please identify media payments, if possible.

Ms. Silber confirmed that the Coalition will include questions in its survey to senators re: media, direct mail, etc.; and will focus first on the 2006 expenditure data, then media data, then 2004 expenditures.

Mr. Rob Werner of Americans for Campaign Finance Reform offered the Commission documentation regarding the experience in other states with respect to competitiveness (i.e., the extent to which those public funding systems appear to have encouraged new candidates to run and have increased electoral competition over time). The documentation he provided covered information regarding the Maine, Arizona and Connecticut “clean elections” systems.

He noted that the data from Arizona is not as well organized as the data from Maine is. He stated that this is not because there is not data available for Arizona, but rather that – due to limited funding – personnel have not been able to generate reports.

The Commission noted these facts from the material presented:

In Arizona, 47 of 101 state offices are held by clean elections candidates; and the average number of candidates has increased by 23% in the 10 years of the clean elections system.

For Maine, Arizona and Connecticut, there are many candidates who are running under the clean elections system who would not otherwise (Commissioner Abrash Walton referenced the Maine report re: gender, etc.)

These public funding programs increase competition.

In Connecticut, there is a 78% participation rate in the public funding system; could increase to beyond 80% participation by October 10; this high rate of participation suggests that the Connecticut system provides amounts perceived by candidates as adequate.

Commissioners wondered if, in Arizona, the clean elections system has served as an “incumbent protection act.” Mr. Werner responded that it appears that having a clean elections system does not mean that incumbent re-election rate is affected. He noted that the current electoral cycle in Connecticut may be a good test, because those races are well-financed through the public funding system.

Commissioner Rauh noted that a weakness of the Arizona and Maine systems is that they have no mechanism for keeping public funding figures up to date to make the clean elections option for newcomer candidates competitive.

Commissioner Rubens wondered if the increase in the average number of candidates was low because of underfunding of the system.

Commissioner Abrash Walton asked about re-election rates in Maine. She wondered about what level of compensation is provided for elected offices in Arizona, Connecticut and Maine and if that has bearing on the decision of new candidates to run. For example, is the fact that service in the NH state Senate offers compensation of \$100/year an impediment to attracting new qualified candidates to run, regardless of whether there is a system of public funding, simply because qualified individuals may not opt to run based on their need to earn a livelihood. She also asked about how each of those states’ clean elections system is funded.

Mr. Werner noted that the Arizona system is funded through civil penalties (parking tickets, etc.) and that the Connecticut system is funded through a tax on abandoned property.

Commissioners wondered why Maine’s gubernatorial race has been so much less expensive than NH’s gubernatorial race.

Commissioner Abrash Walton asked for research assistance from the Coalition in determining whether or not Maine allows corporate contributions to individual campaigns or state parties.

The Commission also asked for research assistance regarding how many state senate seats exist in Maine, and noted that the cost of running for those offices has not increased during the past 16 years. What accounts for this relative stasis?

Turning to a different area of inquiry, NH state Rep. Jim Splaine informed the Commission that he had forwarded, via email, a comprehensive summary book regarding all past legislative initiatives to establish a system of public funding in NH. He stated that he would send it to Commissioners again as many noted that they had not yet received it.

Rep. Splaine stated that the House Election Law subcommittee he chaired a year ago held 12 meetings: May – Oct 2007. The Subcommittee considered three fundamental components:

- 1) which offices to include in a public funding system
- 2) what amount of money to provide in the primary and general
- 3) how oversight would be established

4. Discussion of Funding Source Possibilities

The Commission considered Commissioner Rubens' list of proposed sources.

Commissioner Hilton recommended that the Commission review the list in detail. She also stated that she would compile an additional list of ideas for consideration at the Commission's next meeting.

Chair Cook noted that the Commission will need someone from the state Department of Revenue to report out to the Commission re: estimated revenues from the list of prospective sources.

Cmrs. Rubens and Comstock-Gay suggested that funding sources tightly conceptually linked with the intended use might have a better chance of gaining support from legislators.

Commissioner Comstock-Gay also suggested that the Commission consult with others re: revenue sources (for example, Doug Hall).

The Commission adjourned for lunch at 12:15pm and reconvened at 1pm.

Chair Cook re-stated that the Commission's task is to determine feasibility by addressing these questions:

- 1) What would a reasonable amount of money be to fund a NH public funding system (races for Governor, Executive Council, Senate)?
- 2) How much is required to fund a credible campaign, both in the primary and general elections?
- 3) How would we determine the differential by district?

Raymond Buckley, Chair of the NH Democratic State Party began his exchange with the Commission by noting that the legislature narrowly missed creating a public funding system by a few votes on the House floor in 2000 [and then by one vote in the Senate during the 2002 legislative session]. He said that he has spent a great deal of time on this initiative. From his perspective, the central questions are: How is it implemented and how do we pay for it?

Mr. Buckley continued, by presenting the Commission with a possible dirty tricks scenario under a public funding system:

A state party chair could identify one real candidate for office and also recruit four additional individuals to run in the same race as "dummy" candidates. The

four dummy candidates could then access public funding and use that money to run negative campaigns in the primary targeting the opponent.

This scenario invites the Commission to determine carefully the qualifying benchmarks that a prospective public funding candidate would need to meet in order to access funds.

Mr. Buckley presented other questions that he considers fundamental to the Commission's mandate:

- 1) Do you still give money during the primary if there are no competitors?
- 2) What's a candidate? What's their threshold?
- 3) How do you deal with independent candidates? (In another dirty tricks campaign scenario, a state party chair could recruit individuals to run as independents who would then access public funding to run negative ads towards that state party's opponent.)
- 4) If x number of dollars are spent attacking a publicly funded candidate, how do you ensure that candidate's ability to respond?

Mr. Buckley noted that, in the past, it was possible for "common folk" to become governor without having their own personal wealth. He cited Governors Mel Thompson and Hugh Gallen as examples.

Mr. Buckley proceeded to outline his best estimates for what threshold of funding would be necessary to adequately communicate a candidate's message to voters in races for Governor, Executive Council and state Senate.

For the gubernatorial race: general election -- \$750,000-1 million to do direct mail, advertising, hire staff, contribute to the party HQ, etc.

For the primary campaign (beginning with a filing deadline the first week of June through the balloting in early Sept.), expenses could be \$750,000-1 million as well – in a competitive race. He noted that expenses can be greater during the primary because that is the period during which a candidate hires staff, orders signs, designs and places ads, etc. He noted, too, that a campaign by a newcomer can be more difficult in a presidential election year, when it's more difficult to get one's name out.

For the Executive Council race: Mr. Buckley noted that 9 times out of 10, the incumbent is elected because the districts do not make geographic, economic or social sense. He noted, too, that the state does not have experience with running an Executive Council race without straight-ticket voting. He suggested that, particularly with straight-ticket voting, at least 50% of a candidate's results depends on how well his/her party is doing. Typically, candidates have received the same percentage as higher-ups on the ballot. This November ballot will be the first without straight-ticket voting. Mr. Buckley stated that it is difficult for a candidate to raise money for a Council race, unless s/he is an

incumbent (political appointees and state government contractees donate to incumbents). He noted that his own Council race cost \$80,000 or so (not including the amounts spent by the state party and other interest groups). In contrast, Councilor Deborah Pignatelli spends roughly \$30,000 each cycle. For District 1, \$30,000 would be wholly inadequate. In the toughest districts, Mr. Buckley estimated that \$125,000 would suffice for the general election, with another \$125,000 for the primary (though primary races are infrequent. (Mr. Buckley later increased his estimate to \$300,000-400,000 total).

Commissioner Rauh remarked that he thinks the threshold is much higher for the gubernatorial race (\$3 million, for example).

For the State Senate: Mr. Buckley noted, again, that – until this electoral cycle – there has not yet been a state senate race without straight-ticket voting. He stated that the 50-year trend is that the top of the ticket matters most in determining the outcome of state senate races. He noted that there clearly are different kinds of districts. For example, Sen. Betsey DeVries' district includes Manchester's five wards plus Litchfield, compared with Sen. Harold Janeway's district, which stretches from Cheshire to Hillsborough county, or Sen. Reynolds' district, which includes Meredith, Hanover/Lebanon and Littleton. Sen. Sylvia Larsen's district is concentrated in Concord and Pembroke, while Sen. Kathy Sgambatti's district includes four newspaper media markets. Sen. Martha Fuller-Clark's district is concentrated in Portsmouth, Hampton, Rye and Newcastle, and Sen. Iris Esterbrook's district covers a concentrated area: Durham, Dover and Epping. Some senate districts are compact, and some are all over the place and include great diversity. He recommended that the Commission look at the traditional ways of campaigning in each district. With respect to television, some candidates do use it for advertising (e.g., Senators Gatsas and Fuller-Clark advertise on cable television). He noted, too, that Democratic primary races are very infrequent for state senate races, while there are many Republican primaries.

Commissioner Abrash Walton asked Mr. Buckley to comment on why he believes the cost of state elections have escalated so steeply in the past decade.

Mr. Buckley stated that almost every NH senate seat is a swing district now, so the state is attracting national interest (and money). He noted that the state's demographics have changed considerably in recent years, making all seats competitive. The other major reason for the escalating costs is that campaigns are now run professionally rather than by volunteer staff. He contrasted the campaigns of the 1970s (when he first entered politics, when a candidate produced maybe one glossy hand card, did one mailing, and used basic lawn signs) with campaigns beginning in the late 1990s. He offered the example of Sen. King, who ran for an empty seat. In that race, each competitor spent \$60,000.

Mr. Buckley's general estimate for state senate races is \$75,000 (general) and \$75,000 (primary).

Mr. Buckley cautioned the Commission on depending too much on candidates' own expense reports because of the importance and impact of so much outside spending (e.g.,

organizations focusing on the right-to-work, organized labor groups, pro-choice and pro-life groups; groups promoting smokefree legislation). He noted that often candidates have no clue about real amounts spent on their own races because of the ban on communication/collaboration between a candidate's campaign and these other groups that spend money on advertising, etc., to influence the outcome of the election in favor of that candidate.

He cautioned the Commission, too, not to try to develop a district-differentiated funding system via formulas.

Commissioner Rubens asked about senate District 1? He wondered if giving a large amount (\$150,000) would not drive up spending in that race.

Mr. Buckley stated that nobody likes raising money, even PACs. He suggested that if the Commission gets to "the saturation level" of public funding, then some of the extra, external spending might dry up.

Mr. Buckley cautioned the Commission, too, that candidates will spend whatever you give them and that the Commission should not recommend amounts that are too high. In his capacity as state party chair, he is trying to change the culture: to get away from glossy brochures and do more grassroots organizing that creates a real base of support.

Lastly, Mr. Buckley stated that redistricting for state senate seats should be based on commonalities rather than simply on population numbers (example: Franklin v. Hanover/Lebanon; Franklin has more in common with Boscawen and Laconia than with Hanover/Lebanon).

He stated, too, that primaries are more about people than about money. The lesson is less time on television and more time organizing. He also stated that it was important to work to change the terms to four years and to stagger the races for Governor and Executive Council.

Chair Cook stated that – based on Mr. Buckley's estimates – the total amount required for a public funding electoral cycle would be \$8,850,000.

He confirmed that the Commission would pursue Commissioner Hilton's proposal that the Commission discuss and brainstorm possible funding mechanisms at its next meeting. The outline for that session, he stated, would include discussion about broad principles of a funding model and review of possible funding mechanisms for further research by the Department of Revenue.

The Commission adjourned at 2:13pm.

Minutes respectfully submitted by Commissioner Abrash Walton.