



STATE OF MAINE  
COMMISSION ON GOVERNMENTAL ETHICS  
AND ELECTION PRACTICES  
135 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0135

Commission Meeting: March 6, 2019  
Agenda Item #7

To: Commissioners  
From: Jonathan Wayne, Executive Director  
Date: January 21, 2019  
Re: Recommended Findings of Violation and Penalty / John R. Clark

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John R. Clark is a resident of Hartland, Maine who ran for the Maine House of Representatives, District 105, as a Maine Clean Election Act (MCEA). During June – August 2018, he received four contributions totaling \$105, even though he had already qualified for MCEA funding. This was a violation of the MCEA program requirements because, after qualifying for public campaign financing, MCEA candidates are not allowed to accept any contributions. Mr. Clark explains that he misunderstood the requirements and believed that he could continue to collect seed money even after receiving public funding. Because of the small amounts of the four contributions (\$10, \$20, \$25 and \$50), the apparent unwitting nature of the violation, and the lack of any intention to conceal the contributions, the Commission staff recommends assessing a penalty of \$400.

### **Applicable Law – Maine Clean Election Act Program**

Seed money contributions. Candidates may collect seed money contributions (donations of up to \$100 from individuals) to pay for campaign expenses prior to qualifying for MCEA funding. (21-A M.R.S.A. §§ 1122(9) & 1125(2-A)) The seed money statute explicitly forbids candidates from collecting seed money “after certification”:

A participating candidate may not solicit, accept or collect seed money contributions after certification as a Maine Clean Election Act candidate.

(21-A M.R.S.A. § 1125(2-A), second sentence)

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Limits on receiving contributions. One of the basic trade-offs of accepting public campaign financing is that the candidate may not accept any cash or in-kind contributions after qualifying for MCEA funding:

After certification, a candidate must limit the candidate's campaign expenditures and obligations, including outstanding obligations, to the revenues distributed to the candidate from the fund and may not accept any contributions unless specifically authorized by the commission.

(21-A M.R.S.A. § 1125(6)) (underlining added for emphasis).

Civil penalties for violations. If a candidate violates the MCEA, the Commission may assess a penalty of up to \$10,000. (21-A M.R.S.A. § 1127(1))

## **Facts**

John R. Clark is a resident of Hartland, Maine who ran for the Maine House of Representatives, District 105, in 2018 as a MCEA candidate. The district is in the southern end of Somerset County and includes Cambridge, Canaan, Hartland, Palmyra, Ripley and St. Albans. His wife, Beth Clark, was his campaign treasurer. Mr. Clark has not run for state office previously. He spent roughly \$7,338 to promote his candidacy.

Mr. Clark registered as a candidate on March 6, 2018. He qualified for public campaign financing (*i.e.*, was certified) on April 23, 2018. His campaign receipts can be summarized as follows:

<b>Cash Received</b>	<b>Date or Range</b>	<b>Amount</b>
Seed money (before certification)	Mar-Apr 2018	\$600.00
Initial payment for primary election	4/23/18	\$500.00
Seed money (after certification)	Jun-Aug 2018	\$105.00
Initial payment for general election	6/19/18	\$5,075.00
Supplemental payment	8/22/18	\$1,275.00
Return of unspent funds	12/10/18	-\$216.83
<b>Total received and spent</b>		<b>\$7,338.17</b>

During June - August 2018, Mr. Clark received four small contributions from individuals supporting his candidacy:

<b>Date</b>	<b>Contributor</b>	<b>Amount</b>
6/6/2018	Lisa Joyce	\$50.00
7/13/2018	Jeris Sinclair	\$10.00
7/18/2018	Brenda Stevens	\$20.00
8/24/2108	Richard Gagnon	\$25.00
	<b>Total</b>	<b>\$105.00</b>

Mr. Clark entered these amounts as itemized contributions when he filed campaign finance reports in July and September. The Commission staff did not notice these initially because our forms and procedures are based on the premise that MCEA candidates are *not* going to collect campaign contributions after certification. (Mr. Clark's contributions did not appear as itemized contributions on Schedule A of his July and September campaign finance reports, because the report PDF is designed to show only receipts of MCEA funds. The cash contributions were included in the row for cash receipts in those reports' Financial Activity Summary, but the amounts were inconspicuous and did not attract attention during the staff's review of those reports.)

In mid-December, Candidate Registrar Erin Gordon became aware of the contributions when she was performing a task as an administrator in the Commission's efilng system. We were confused why Mr. Clark would report receiving cash contributions during the

summer. Erin sent him an email asking him to explain the circumstances of the contributions. His response is attached.

On December 19-21 (I did not record the date), I tried to reach the candidate by phone. He was not at home, but I spoke to his wife, who was the treasurer of the campaign. When I explained the problem, she responded in a spontaneous way (with little time for calculation) that she thought Mr. Clark believed he could collect seed money contributions through the election year. He called me the next day, and explained that he had failed to understand that seed money could only be received before certification. I told him that because he had violated a basic program requirement, the Commission staff would initiate an enforcement matter and a penalty might be assessed. He said that he understood, and that he would acknowledge misunderstanding the requirements of the program.

On December 21, 2018, I sent Mr. Clark a penalty notice which invited him to respond in writing to the proposed finding of violation and potential penalty. In his January 12, 2018 letter-response (attached), he writes:

I made an honest mistake and violated the restrictions on accepting contributions after I was certified under MCEA. I should have read the material provided to me more carefully. Had I done so, I would not have accepted the four contributions at issue. I accept full responsibility for this. I will be attending the January 30<sup>th</sup> meeting.

### **Staff Analysis**

The Commission staff recommends that you find that John Clark violated 21-A M.R.S.A. § 1125(6) by collecting four cash contributions totaling \$105 after he was certified as a MCEA candidate. We also recommend that you assess a civil penalty to underscore the importance of learning and following program requirements.

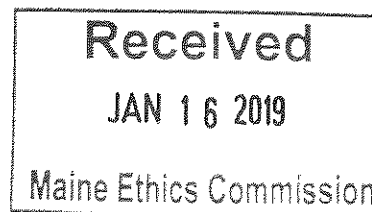
The Commission has broad authority to assess a penalty of up to \$10,000 for any violation of the MCEA program. This situation presents an unusual circumstance in which the category of violation is inherently serious, but compelling mitigating circumstances are present for this particular violation:

- Based on a preliminary phone conversation, it sounds plausible that the violation occurred because Mr. Clark did not understand that he had to stop collecting seed money contributions in April 2018, when he qualified for public funding and that the violation was unintentional.
- The Commission staff is not aware of any evidence indicating that the candidate intended to conceal the contributions. The candidate reported them in the Commission's efilng system in the same way that he reported seed money contributions received in March and April. This supports the candidate's claim that this was an unwitting violation. If he understood that the contributions were illegal, why would he report them so straightforwardly?
- The amounts of the contributions were small (\$10, \$20, \$25 and \$50) in the context of overall spending in District 105. Mr. Clark spent \$7,338 and his opponent, Joel Stetkis, spent \$7,692. The total amount of the illegal contributions (\$105) represents a little more than 1% of either candidate's spending.

Due to these mitigating factors, the Commission staff recommends the assessment of a penalty of \$400. We believe this penalty would be consistent with the seriousness of the type of violation, but appropriately takes into consideration the mitigating factors. The staff cannot remember any other case of a MCEA candidate collecting cash contributions after qualifying for MCEA funding.

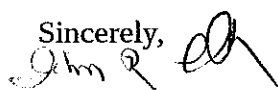
Thank you for your consideration of this memo.

January 12, 2016  
70 Pleasant Street  
Hartland, ME 04943



Dear Mr. Wayne and commission members,

I am writing in regards to the campaign violations noted in the letter and email sent to me on December 21<sup>st</sup>. I made an honest mistake and violated the restrictions on accepting contributions after I was certified under MCEA. I should have read the material provided to me more carefully. Had I done so, I would not have accepted the four contributions at issue. I accept full responsibility for this. I will be attending the January 30<sup>th</sup> meeting.

Sincerely,  
  
John R. Clark

**From:** John [<mailto:berek@tds.net>]  
**Sent:** Monday, December 17, 2018 12:16 PM  
**To:** Gordon, Erin <[Erin.Gordon@maine.gov](mailto:Erin.Gordon@maine.gov)>  
**Subject:** [EXTERNAL SENDER] Re: Contributions received after certification

Lisa Joyce is a reader of the Maine Crime Writers blog where I contribute regularly. She sent me funds after I wrote there about running for office

Jeris Sinclair is the former town clerk in Ripley. She was in a local writers group with me for many years and gave me money when I stopped in to talk to her about the election

Richard Gagnon and I worked together at the old Augusta Mental Health Institute and have remained friends, meeting for breakfast every so often. He sent me an unsolicited check after he learned I was running.

Brenda Stevens was the assistant librarian in Newport when I used to work at the Maine State Library as the Library Systems Specialist and did technical support for their software. She gave me money when I stopped at her home in Saint Albans while knocking on doors.

On 12/17/2018 12:03 PM, Gordon, Erin wrote:

Good afternoon,

As I was entering your return of surplus funds, I noticed four contributions from individuals reported after certification. Please explain the circumstances of these contributions from Lisa Joyce, Jeris Sinclair, Richard Gagnon, and Brenda Stevens.

Thank you,

*Erin Gordon*  
*Candidate Registrar*  
Maine Ethics Commission  
(207) 287-3651 | [www.maine.gov/ethics](http://www.maine.gov/ethics)  
135 State House Station, Augusta, ME 04333-0135  
45 Memorial Circle, Augusta, ME



STATE OF MAINE  
COMMISSION ON GOVERNMENTAL ETHICS  
AND ELECTION PRACTICES  
135 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0135

December 21, 2018

*By Email and Regular Mail*

John R. Clark  
70 Pleasant Street  
Hartland, ME, 04943

Dear Mr. Clark:

Thank you for speaking to me yesterday concerning four contributions totaling \$105 that you received during the summer of 2018 in support of your candidacy for the Maine House of Representatives. You explained that you believed you could accept up to \$1,000 in seed money through the election year.

Prohibition on Accepting Contributions.

Candidates seeking Maine Clean Election Act (MCEA) funding may accept limited seed money contributions *prior to* receiving certification from the Ethics Commission that they have met the qualifications to receive MCEA funding. (21-A M.R.S.A. § 1125(6)) After certification, an MCEA candidate may not accept any contributions:

After certification, a candidate must limit the candidate's campaign expenditures and obligations, including outstanding obligations, to the revenues distributed to the candidate from the fund and may not accept any contributions unless specifically authorized by the commission.

(21-A M.R.S.A. § 1125(6)) This is one of the basic trade-offs of the program. The prohibition on accepting contributions is explained in various educational materials prepared by the Commission, including the 2018 Quick Guide for MCEA candidates, the 2018 Candidate Guidebook, and the Commission's website. The Commission may assess a penalty of up to \$10,000 for a violation of the Maine Clean Election Act under 21-A M.R.S.A. § 1127(1)).

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Ethics Commission's Consideration of this Matter

Your acceptance of the four contributions appears to violate the prohibition on accepting contributions after receiving MCEA funds. The Commission staff is required to bring substantial violations of campaign finance law to the attention of the members of the Commission at a public meeting. We have scheduled the Commission to consider this matter at its next meeting on January 30, 2019, beginning at 9:00 a.m. at the Commission office, 45 Memorial Circle in Augusta, Maine.

Staff recommendation

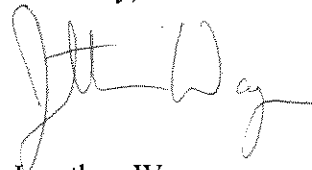
The Commission staff will recommend that the Commission find that you violated 21-A M.R.S.A. § 1125(6) by accepting the contributions. The staff will likely recommend the assessment of a monetary penalty in the range of \$150 - \$400. The proposed penalty is relatively low, due to the unknowing nature of the violation, your disclosure of the contributions in the Commission's e-filing system, and the small dollar amount of the contributions.

Your opportunity to respond

*The Commission staff recommends responding to the proposed finding of violation and penalty by mailing or emailing to the Commission a signed letter by January 16, 2018. In the letter, please tell the Commissioners anything you think they should know about the circumstances. Please feel free to argue against a finding of violation and/or penalty. We also recommend attending the January 30 meeting to explain the circumstances in person and to answer any questions of the Commissioners.*

Please email me at [Jonathan.Wayne@maine.gov](mailto:Jonathan.Wayne@maine.gov) or call me at 287-4179 if you have any questions.

Sincerely,



Jonathan Wayne  
Executive Director

**Relevant Statutes – Violation of Contribution Prohibition**  
**(bold font added for emphasis)**

**21-A M.R.S.A. § 1125(2-A). Seed money restrictions.**

**To be eligible for certification**, a participating candidate may collect and spend only seed money contributions subsequent to becoming a candidate and prior to certification. **A participating candidate may not solicit, accept or collect seed money contributions after certification as a Maine Clean Election Act candidate.**

A. All goods and services received prior to certification must be paid for with seed money contributions, except for goods and services that are excluded from the definition of contribution in section 1012, subsection 2, paragraph B. It is a violation of this chapter for a participating candidate to use fund revenues received after certification to pay for goods and services received prior to certification.

B. Prior to certification, a participating candidate may obligate an amount greater than the seed money collected, but may only receive that portion of goods and services that has been paid for or will be paid for with seed money. A participating candidate who has accepted contributions or made expenditures that do not comply with the seed money restrictions under this chapter may petition the commission to remain eligible for certification as a Maine Clean Election Act candidate in accordance with rules of the commission, if the failure to comply was unintentional and does not constitute a significant infraction of these restrictions.

C. Upon requesting certification, a participating candidate shall file a report of all seed money contributions and expenditures. If the candidate is certified, any unspent seed money will be deducted from the amount distributed to the candidate as provided in subsection 8-F.

**21-A M.R.S.A. § 1125(6). Restrictions on contributions and expenditures for certified candidates.**

**After certification**, a candidate must limit the candidate's campaign expenditures and obligations, including outstanding obligations, to the revenues distributed to the candidate from the fund and **may not accept any contributions unless specifically authorized by the commission**. Candidates may also accept and spend interest earned on fund revenues in campaign bank accounts. All revenues distributed to a certified candidate from the fund must be used for campaign-related purposes. The candidate, the treasurer, the candidate's committee authorized pursuant to section 1013-A, subsection 1 or any agent of the candidate and committee may not use these revenues for any but campaign-related purposes. The

candidate, the treasurer, the candidate's committee authorized pursuant to section 1013-A, subsection 1 or any agent of the candidate and committee may not use these revenues for post-election parties. This section does not prohibit a candidate from using personal funds for post-election parties as governed by rules of the commission. The commission shall publish guidelines outlining permissible campaign-related expenditures.

## **21-A M.R.S.A. § 1127. Violations**

**1. Civil fine.** In addition to any other penalties that may be applicable, **a person who violates any provision of this chapter** or rules of the commission adopted pursuant to section 1126 is **subject to a fine not to exceed \$10,000 per violation** payable to the fund. In addition to any fine, for good cause shown, a candidate, treasurer, consultant or other agent of the candidate or the political committee authorized by the candidate pursuant to section 1013-A, subsection 1 found in violation of this chapter or rules of the commission may be required to return to the fund all amounts distributed to the candidate from the fund or any funds not used for campaign-related purposes. If the commission makes a determination that a violation of this chapter or rules of the commission has occurred, the commission shall assess a fine or transmit the finding to the Attorney General for prosecution. A final determination by the commission may be appealed to Superior Court in accordance with Title 5, chapter 375, subchapter 7 and the Maine Rules of Civil Procedure, Rule 80C. Fines assessed or orders for return of funds issued by the commission pursuant to this subsection that are not paid in full within 30 days after issuance of a notice of the final determination may be enforced in accordance with section 1004-B. Fines paid under this section must be deposited in the fund. In determining whether or not a candidate is in violation of the expenditure limits of this chapter, the commission may consider as a mitigating factor any circumstances out of the candidate's control.

**2. Class E crime.** A person who willfully or knowingly violates this chapter or rules of the commission or who willfully or knowingly makes a false statement in any report required by this chapter commits a Class E crime and, if certified as a Maine Clean Election Act candidate, must return to the fund all amounts distributed to the candidate.