



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

Special Commission Meeting 06/14/2016

Agenda Item #1

To: Commissioners  
From: Jonathan Wayne, Executive Director  
Date: June 13, 2016  
Re: Materials for Agenda Item #1 – Request by Michael Hiltz to Investigate Email  
List of Diane Russell

---

I have attached for your consideration the request by Michael Hiltz to investigate whether Diane Russell's use of an email list to raise funds for her State Senate campaign constitutes a contribution to her campaign from her political action committee.

Email list. The Commission just received a preliminary response from Diane Russell. She argues that the email list used by her State Senate campaign belongs to her personally (not her political action committee) and – as such – should not be viewed as a contribution to her Senate campaign.

Employment information. After further consideration, the Commission staff believes that the occupation and employer information in Diane Russell's 6/3/2016 campaign finance report is sufficient. (The full report is 43 pages long. Due to its large size, it is being emailed to you as a separate file.)

State Election Law requires candidates for state office to itemize contributions aggregating more than \$50 during a financial reporting period, including the contributor's occupation and employer. (21-A MRSA § 1017(5)) The Commission's Rules recognize that some contributors value their privacy and do not wish to release their employment information to be listed publicly in a candidate's campaign finance report. Accordingly, Chapter 1, Section 6(3) of the Commission's Rules requires candidates to make "a reasonable effort" to obtain the employment information from contributors giving over

\$50. The rule states that the candidate may satisfy the reasonable effort standard by giving donors the opportunity to enter the occupation and employment information in an online fundraising screen. (*see* Chapter 1, Section 6(3) at the end of the attached materials)

I have attached the ActBlue fundraising page used by Rep. Russell, which requires contributors to enter the occupation and employer or to indicate that the contributor is “retired or not employed.” That appears to meet the standard of the Commission’s rule.

Attachments:

Request for investigation by Michael Hiltz (3 pages)

Commission staff’s correspondence to Diane Russell – contains definition of “contribution” and “in-kind contribution,” and statutory duty to itemize contributions over \$50, including with employer and occupation information) (3 pages)

Response from Diane Russell (through attorney Kate R. Knox) (4 pages)

ActBlue Fundraising Page of Diane Russell (1 page)

21-A MRSA 1015 (\$375 contribution limit for legislative candidates) (1 page)

Commission Rules, Chapter 1, Section 6 (interpreting duty of candidates to obtain contributor information) (1 page)

June 10, 2016  
Jonathan Wayne  
Maine Ethics Commission

Dear Mr. Wayne,

Please consider this a formal request for an investigation into, and sanction of, a violation committed by Diane Russell's campaign for the District 27 State Senate primary.

The specific questions and activities I would like to see addressed as part of this investigation are bolded and highlighted throughout this document:

**- What is the value of the email list used by the Diane Russell campaign to raise in excess of \$87,000 for this primary?**

Diane Russell has publicly stated that her email list is about 200,000 names long, with emails throughout Maine, the United States and even abroad.

According to email marketing company Inbox Interactive, the value of an email list can be calculated as follows:

“For consumer email lists, prices run about \$100 to \$150 CPM (that’s “cost per mille,” which is fancy-talk for “cost per thousand”). So, that’s 10 to 15 cents apiece for a one-time rental of the email address. And if you have very specific “selects,” then the price can go up quickly.”

At the lower figure of 10 cents per name, Diane Russell’s email list is worth approximately \$20,000 for a one-time use. However, Diane Russell uses her email list repeatedly, often several times each week.

In the above example, the term “selects” refers to targeting of the email addresses. Diane’s list is highly targeted to individuals who support the legalization of marijuana, support the candidacy of Bernie Sanders, or support other liberal causes.

This suggests that the value of the targeted list is even higher than estimated here.

**- Where did the email list come from?**

In Diane Russell’s campaign finance reports, among copious listings of individual contributions, there is no contribution of an email list to be found anywhere.

There is no indication that the list was donated as an in-kind contribution from a third party. In any case, the limit for in-kind contributions is \$375, and the email list is worth far more than that amount.

There is no expenditure indicating that the list was purchased or rented from a third party.

There is also no expenditure indicating that individuals were paid to build the list. In any event, building a list of the size described would be nearly impossible for a campaign with limited resources and time.

- **Does the email list constitute an illegal contribution to the campaign?**

I contend that the email list was built by Diane Russell herself, over the past few years, as part of the activities of her so-called “Working Families PAC.”

Working Families PAC has paid Diane Russell \$7,747 for “online organizing,” which in all likelihood was email list building.

As described in an earlier complaint of mine, the Working Families PAC operates under a misleading (and possibly fraudulent) “mission statement,” which is to help elect Democrats win seats in the Maine State House. Meanwhile, Diane uses the PAC to pay herself and personal expenses like food, entertainment and travel.

If it did come from the Working Families PAC, there is no filing from either Working Families PAC, or the Diane Russell campaign, to indicate this.

Regardless of where the list came from, it clearly came from somewhere. However, there is no indication anywhere in her campaign filings to suggest the source of this very valuable list. This suggests the contribution of something of very high value to the campaign, with no acknowledgment of its source.

It is important to note that the campaign could not operate at its current level without the funds raised from the aforementioned email list.

- **If failing to report the value of the email list is a violation, I ask that you find Diane Russell in violation, and assess the proper penalty.**

**- Does misrepresenting the employment status of individual contributors constitute a false or fraudulent filing?**

In the 11-day pre-primary report from Diane Russell's campaign, \$14,711 of the identified donations (ones for more than \$50 each) came from individuals listed as "not currently employed."

Since unemployed people tend not to spend money unnecessarily, this seems like a suspiciously large amount of money.

Indeed, a cursory Google search of names and addresses quickly finds that at least some of these individuals are in fact employed. If so, why are they listed as unemployed?

I request that the Maine Ethics Commission investigate and resolve these questions, and any other relevant questions that may arise from them, before the primary election takes place on Tuesday, June 14th.

Thank you.

Sincerely,

A handwritten signature in black ink, appearing to be 'MH' with a stylized flourish.

Michael Hiltz  
45 Pleasant Avenue  
Portland, ME 04103  
(207) 615-7351



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

June 10, 2016

**By Email**

Katherine R. Knox, Esq.  
Bernstein Shur  
PO Box 9729  
Portland, ME 04104-5029

Dear Ms. Knox:

As you are aware, the Ethics Commission received the enclosed request from Michael Hiltz that the Commission investigate whether Representative Diane Russell's campaign for State Senate received and failed to report a contribution of an email list used by the campaign to solicit campaign contributions, and whether the campaign also failed to accurately report the occupation and employment information for multiple contributors in its 11-Day Pre-Primary Report filed on June 3, 2016.

**Relevant Law**

*Definition of contribution applicable to candidates.* For candidates, the term "contribution" is defined as:

- (1) A gift, subscription, loan, advance or deposit of money or anything of value made for the purpose of influencing the nomination or election of any person to state...office...
  
- (4) The payment by any person other than a candidate or a political committee, of compensation for the personal services of other persons that are provided to the candidate or political committee without charge for any such purpose;

(21-A M.R.S.A. § 1012(2)(A)(1) & (4))

*Definition of in-kind contribution.* Commission rules define the term "in-kind contribution" as:

Unless specifically exempted under Title 21-A M.R.S.A. §§ 1012 and 1052 or this section, the provision of any goods or services without charge or at a charge that

OFFICE LOCATED AT: 45 MEMORIAL CIRCLE, AUGUSTA, MAINE  
WEBSITE: [WWW.MAINE.GOV/ETHICS](http://WWW.MAINE.GOV/ETHICS)

PHONE: (207) 287-4179

FAX: (207) 287-6775

is less than the usual and customary charge for such goods or services is an in-kind contribution. Examples of such goods and services include, but are not limited to: equipment, facilities, supplies, personnel, advertising, and campaign literature. If goods or services are provided at less than the usual and customary charge, the amount of the in-kind contribution is the difference between the usual and customary charge and the amount charged the candidate or political committee.

(Comm. Rules Ch., 1, Section 6(4))

*Requirement to report all contributions received and the occupation and employer of contributors.* State Election Law requires candidate campaign finance reports to include the following information about certain contributions received:

- (5) **Content.** A report required under this section must contain the itemized accounts of contributions received during that report filing period, including the date a contribution was received, and the name, address, occupation, principal place of business, if any, and the amount of the contribution of each person who has made a contribution or contributions aggregating in excess of \$50. [ . . ]

(21-A M.R.S.A. § 1017(5))

Commission rules further require that candidates “must make a reasonable effort to obtain the employment information of the contributor when required by statute. The reasonable effort must include requesting the employment information and providing a convenient means for the donor to provide the information, such as a paper form to be submitted with a contribution or text fields to enter the information on an online fundraising screen. If a candidate or committee is unable to obtain the information from the contributor in response to a candidate’s or committee’s request, the candidate or committee shall indicate ‘information requested’ in the occupation and employer sections of the campaign finance report.”

(Comm. Rules, Ch. 1, Section 6(3))

*Contribution limits on candidates.* State Election Law sets a limit on contributions a candidate may receive from any source in an election. This contribution limit does not apply to contributions from the candidate and the candidate’s spouse or domestic partner, who may give unlimited amounts. The limit is adjusted for inflation every two years. For 2016, the contribution limit to legislative candidates is \$375 in each election.

Ms. Katherine R. Knox, Esq.  
Page 3  
June 10, 2016

(21-A M.R.S.A. § 1015(1) & (2))

**Request for Response**

Pursuant to 21-A M.R.S.A. § 1002(1), I am scheduling initial consideration of Mr. Hiltz's complaint by the Commissioners at a special meeting to be held on June 13 or 14, 2016 at the Commission's office at 45 Memorial Circle in Augusta, Maine. I will be in touch soon concerning the final scheduling. At that meeting, the Commissioners may decide whether or not to conduct further investigation or to request a further response from Rep. Russell.

Please submit a preliminary response on behalf of Rep. Russell to Mr. Hiltz's request. (I will indicate a requested deadline once the scheduling is final.) The Commission staff suggests including the following responses, which we believe would be helpful for the Commissioners:

- Please describe the email list used by Rep. Russell to solicit funds for her State Senate campaign, including an explanation of who owns the list.
- To the extent that the information is available, has Rep. Russell or Working Families PAC incurred expenses to develop the email list?
- A description of the efforts the campaign made to collect employer/occupation data from contributors.

We appreciate that responding to the request in such a short time period presents challenges for Rep. Russell and you. Thank you for your cooperation. Please let me know if you have any questions.

Sincerely,



Jonathan Wayne  
Executive Director



cc: Michael Hiltz (by email only)



**Bernstein, Shur,  
Sawyer & Nelson, P.A.**  
100 Middle Street  
PO Box 9729  
Portland, ME 04104-5029

T (207) 774 - 1200  
F (207) 774 - 1127

Katherine R. Knox  
(207) 228-7229 direct  
kknox@bernsteinshur.com

June 13, 2016

Jonathan Wayne  
Executive Director  
Maine Commission on Governmental Ethics and Election Practices  
135 State House Station  
Augusta, Maine

RE: Preliminary Response from Diane Russell for State Senate – Hiltz Complaint #2

Dear Mr. Wayne:

On behalf of my client, Diane Russell, I write to provide a preliminary response to the questions posed in your letter dated June 10, 2016.

- 1. Please describe the email list used by Rep. Russell to solicit funds for her State Senate campaign, including an explanation of who owns the list.***

Sometime in 2011, Ms. Russell created an online petition using the digital organizing platform MoveOn.org (“MoveOn”). MoveOn describes itself as a do it yourself organizing platform to create petitions and campaigns to drive social change. Individuals can create petitions expressing support or opposition for issues, organizations or individuals can invite other MoveOn members to sign the petition – at no cost or obligation to any of those involved.

The petition created by Ms. Russell urged other MoveOn members to voice objection to the proposed sequestration cuts in the federal budget. That petition garnered approximately 375,000 “signatures” – which included not only a signer’s name but their mailing address and email as well (although Ms. Russell had no direct access to that personal information). Again, there is, and was, no cost to set up or maintain the petition or to sign on. As is typical with MoveOn, Ms. Russell could correspond with signers and send new petitions but she did not have access to identifying information and could not import that information to create her own list outside the platform.<sup>1</sup> That information was completely protected and maintained by MoveOn.

---

<sup>1</sup> To clarify, as Ms. Russell explained to Commission staff in her correspondence of January 21, 2016, there are technically two lists. The first list lives on and is controlled by MoveOn. Ms. Russell can

June 13, 2016

Page 2

In order to have more access to signers, Ms. Russell created her own landing page and invited any interested MoveOn signers of her petitions to sign up and share their information with her directly. For the next several years, Ms. Russell continued to create and circulate petitions on MoveOn which provided the option to be included in her personal list. That list, which eventually became quite large, was initially housed on Nation Builder – an online list management service. Nation Builder charged a variety of fees for hosting the list which eventually surpassed \$1,000 a month.

Nation Builder was responsible only for hosting and did not provide any enhancement services. The list was built completely by Ms. Russell by circulating petitions on issues of importance to her.

After approximately one year, Ms. Russell stopped using Nation Builder (and the list) because of its high hosting cost. For a period of time after that, the list sat inactive and unused. Eventually, Ms. Russell discovered Action Network – which provides list hosting services for a significantly reduced cost of \$10 per month. At that point, she loaded the list onto the Action Network site where it remains today.<sup>2</sup> Ms. Russell pays the \$10 monthly hosting fee out of her personal funds.

Again, the list clearly belongs to Ms. Russell personally. She developed it in order to highlight a federal issue of personal interest to her. She oversees and controls the list and who is added to it. She has complete control over how the list– which was created entirely by voluntary response to her email invitation – is used. The only nexus to the Working Families PAC was that PAC funds were used to reimburse her for the hosting cost for Nation Builder.

At its core, whether the list sits with Ms. Russell or in the Working Families PAC is a distinction without a difference. The Working Families PAC *is* Ms. Russell. It is not an incorporated entity – it is managed and run entirely by Ms. Russell. It is directly associated with Ms. Russell both in publically available filings and in the media. And Ms. Russell manages both the list and the PAC. As such, while the list may have lived on Nation Builder or Action Network, and received some maintenance support through PAC funds, the list belongs to Ms. Russell.

---

communicate with members of that list but cannot access the personal information of individuals on the list. The second list was created when MoveOn signers sent their information directly to Ms. Russell for inclusion into her personal list. It is the second list which is under consideration and review by the Commission.

<sup>2</sup> The names and emails on that list are in constant flux. People are regularly adding and removing themselves from the list as they become aware of and engaged in issues raised by Ms. Russell's petitions and calls to action.

June 13, 2016

Page 3

2. ***To the extent that the information is available, has Rep. Russell or Working Families PAC incurred expenses to develop the email list?***

No – neither Ms. Russell nor the Working Families PAC has incurred expenses to develop the email list. As stated above, Ms. Russell has only incurred expenses to maintain the list, and currently those costs are minimal and paid by Ms. Russell. There are certainly services which will conduct list enhancement – but Ms. Russell has not used them. She has incurred expenses for list scrubbing – removing old and inaccurate emails to reduce bounce backs and returns – but not for list development.

3. ***A description of the efforts the campaign made to collect employer/occupation data from contributors.***

As you know, Maine law requires campaign finance reports to include, among other things, the occupation of all contributors who have given more than \$50.00. (21-A M.R.S.A. § 1017(5)). In light of an understanding that this information may be difficult for candidates to obtain or confirm, Ethics Commission rules further clarify that candidates are responsible for making a “reasonable effort to obtain the employment information of the contributor(s)” which “must include requesting the employment information and providing a convenient means for the donor to provide the information” (such as provision of a specific “occupation” field on paper and online contribution forms).

In this case, the majority of contributions to the campaign originated with ActBlue. For Maine Ethics Reporting, the campaign uses the address and employment information that the contributor inputs into the system on a standard form they fill out when they make their donation. Those forms, as required, have specific, designated fields to request and collect information provided by the contributor about their employment.

Below is an outline of the information requested of ActBlue contributors at the time they contribute to a campaign or candidate:

Contribution Info:  
Order Number:  
Refcode:  
Page:  
NAME:  
DATE and TIME:  
AMOUNT of CONTRIBUTION:  
Billing Address”  
Occupation/Employer:  
Contact Info:  
Contribution Info:

June 13, 2016

Page 4

While the law requires candidates to indicate “information requested” in their campaign finance report when they are *unable* to obtain employment information, in this case, Ms. Russell followed state law and Ethics rules and *was* able to obtain employment information of contributors. If any contributors erroneously self-reported being “not currently employed” when they, in fact, were, they did so without Ms. Russell’s knowledge. Further and most importantly, Ms. Russell is not responsible for investigating, confirming, or reporting such an error nor should she be held accountable for such.

We hope the information provided in this memo adequately answers any questions you have about Ms. Russell’s actions. Because there is no evidence to support the conclusion that Ms. Russell acted in violation of Maine law or rule, we urge the Commission to end the investigation today and deny pursuit of further action.

Sincerely,

A handwritten signature in black ink, appearing to read "Katherine R. Knox", with a large, stylized flourish at the end.

Katherine R. Knox

## Diane Russell for State Senate

For years, Diane Russell has worked to build an economy that works for everyone while building a track record of getting things done in Augusta.

*The Nation* magazine named her their Most Valuable State Representative in the country in their 2011, and now she's running for state senate. **Will you chip in today?**

\$15 [\[edit\]](#)

2 Personal Information

Email Address

Email Address is required.

First Name

Last Name

Number, Street, Apt.

Zip

City

State

United States

Phone Number

Campaign finance law requires us to collect your occupation and employer.

**Click here if you are retired or not employed**

Occupation

Employer

[« back](#)

Continue

### Contribution Rules

1. This contribution is made from my own funds, and funds are not being provided to me by another person or entity for the purpose of making this contribution.
2. I am at least eighteen years old.
3. I am a U.S. citizen or lawfully admitted permanent resident (i.e., green card holder).

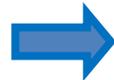
**Maine Revised Statutes**  
**Title 21-A: ELECTIONS**  
**Chapter 13: CAMPAIGN REPORTS AND FINANCES**

**§1015. LIMITATIONS ON CONTRIBUTIONS AND EXPENDITURES**



**1. Individuals.** An individual may not make contributions to a candidate in support of the candidacy of one person aggregating more than \$1,500 in any election for a gubernatorial candidate, more than \$350 for a legislative candidate, more than \$350 for a candidate for municipal office and beginning January 1, 2012 more than \$750 for a candidate for municipal office or more than \$750 in any election for any other candidate. This limitation does not apply to contributions in support of a candidate by that candidate or that candidate's spouse or domestic partner. Beginning December 1, 2010, contribution limits in accordance with this subsection are adjusted every 2 years based on the Consumer Price Index as reported by the United States Department of Labor, Bureau of Labor Statistics and rounded to the nearest amount divisible by \$25. The commission shall post the current contribution limit and the amount of the next adjustment and the date that it will become effective on its publicly accessible website and include this information with any publication to be used as a guide for candidates.

[ 2011, c. 382, §1 (AMD) .]



**2. Committees; corporations; associations.** A political committee, political action committee, other committee, firm, partnership, corporation, association or organization may not make contributions to a candidate in support of the candidacy of one person aggregating more than \$1,500 in any election for a gubernatorial candidate, more than \$350 for a legislative candidate, more than \$350 for a candidate for municipal office and beginning January 1, 2012 more than \$750 for a candidate for municipal office or more than \$750 in any election for any other candidate. Beginning December 1, 2010, contribution limits in accordance with this subsection are adjusted every 2 years based on the Consumer Price Index as reported by the United States Department of Labor, Bureau of Labor Statistics and rounded to the nearest amount divisible by \$25. The commission shall post the current contribution limit and the amount of the next adjustment and the date that it will become effective on its publicly accessible website and include this information with any publication to be used as a guide for candidates.

[ 2011, c. 382, §2 (AMD) .]

**3. Aggregate contributions.** No individual may make contributions to candidates aggregating more than \$25,000 in any calendar year. This limitation does not apply to contributions in support of a candidate by that candidate or that candidate's spouse or domestic partner.

[ 2007, c. 443, Pt. A, §12 (AMD) .]

**4. Political committees; intermediaries.** For the purpose of the limitations imposed by this section, contributions made to any political committee authorized by a candidate to accept contributions on the candidate's behalf are considered to be contributions made to that candidate. If the campaign activities of a political action committee within a calendar year primarily promote or support the nomination or election of a single candidate, contributions to the committee that were solicited by the candidate are considered to be contributions made to the candidate for purposes of the limitations in this section. For purposes of this subsection, solicitation of contributions includes but is not limited to the candidate's appearing at a fundraising event organized by or on behalf of the political action committee or suggesting that a donor make a contribution to that committee.

For the purposes of the limitations imposed by this section, all contributions made by a person, either directly or indirectly, on behalf of a particular candidate, that are in any way earmarked or otherwise directed through an intermediary or conduit to the candidate are considered to be contributions from that person to the

**Chapter 1: PROCEDURES**

---

**SUMMARY:** This Chapter describes the nature and operation of the Commission, and establishes procedures by which the Commission's actions will be governed.

---

**SECTION 6. CONTRIBUTIONS AND OTHER RECEIPTS**

1. The date of a contribution is the date it is received by a candidate, an agent of the candidate, a candidate's committee, a party committee and its agents, or a political action committee and its agents.
2. A loan is a contribution at the time it is made unless the loan was made by a financial institution in the State of Maine in the ordinary course of business. Loans continue to be contributions until they are repaid. Loans are subject to the candidate contribution limitations, except for loans made by the candidate, the candidate's spouse, or a financial institution in the State of Maine in the ordinary course of business. The Commission may consider any reported loan to be a cash contribution if it remains unpaid four years after the election in which it was incurred.
-  3. Candidates and political action committees must report the name, address, occupation and employer of each individual contributor who gives, in the aggregate, more than \$50 for the reporting period. The reporting is required for private contributions raised by privately financed candidates and for seed money contributions to candidates participating in the *Maine Clean Election Act*. Candidates, political action committees, ballot question committees, and party committees must make a reasonable effort to obtain the employment information of the contributor when required by statute. The reasonable effort must include requesting the employment information and providing a convenient means for the donor to provide the information, such as a paper form to be submitted with a contribution or text fields to enter the information on an online fundraising screen. If a candidate or committee is unable to obtain the information from the contributor in response to a candidate's or committee's request, the candidate or committee shall indicate "information requested" in the occupation and employer sections of the campaign finance report. If the Commission staff believes that due to the amount of missing information further inquiry is warranted, the Commission staff shall verify whether the candidate or committee has made a reasonable effort to obtain the information.
4. Unless specifically exempted under Title 21-A M.R.S.A. §§ 1012 and 1052 or this section, the provision of any goods or services without charge or at a charge that is less than the usual and customary charge for such goods or services is an in-kind contribution. Examples of such goods and services include, but are not limited to: equipment, facilities, supplies, personnel, advertising, and campaign literature. If goods or services are provided at less than the usual and customary charge, the amount of the in-kind contribution is the difference between the usual and customary charge and the amount charged the candidate or political committee.