



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

Additional Material #1
Agenda Item #1

To: Commissioners
From: Jonathan Wayne, Executive Director
Date: June 14, 2016
Re: Comments by Commission Staff on Diane Russell Email List

The complaint by Mr. Hiltz focuses on an unusual factual circumstance in which a Maine Legislator

- began creating an email list five years ago (prior to the formation of her leadership PAC)
- has used the list for a variety of communication purposes with like-minded people nationwide to promote causes the Legislator believes in
- began turning to the PAC a few years ago to pick up some of the expenses of the list
- in 2015 or 2016, apparently began using the list for the first time to raise funds her own election (she previously ran as a Maine Clean Election Act candidate).

From the standpoint of conserving scarce resources of the Commission during an election year, an investigation teasing out whether the list should be viewed as an asset of the candidate or an asset of the PAC (or some combination) may not ultimately result in much clarity. This case presents circumstances that are unlikely to re-occur. It is not a situation in which a PAC recently paid a vendor for valuable services or equipment and then transferred those services or equipment to a candidate to promote the candidate's election. This is an asset that has grown over time, jointly financed by a Legislator and her PAC, and used for many purposes.

Nevertheless, this memo is to provide a framework for why – as a general matter – it can be a concern that a leadership PAC could impermissibly be relied upon by a Legislator to pay for services to promote the Legislator's re-election:

- Most PACs are unincorporated associations of people and groups that care about issues, causes or political parties and that decide to raise and spend money to influence candidate or ballot question elections. Some PACs are alter egos of pre-existing advocacy organizations or trade associations.
- A “leadership PAC” (an undefined term) is a political fund that is formed by a Legislator to finance the political and legislative activities of the Legislator – other than the candidate’s re-election. Sometimes, those political activities include running for leadership.
- PACs may accept unlimited contributions from a donor. Thus, it is easier to amass funds for a PAC compared to a candidate’s campaign.
- Under the Election Law, the candidate may form one political committee (not a PAC) to promote the candidate’s election. That campaign committee is subject to contribution limits (\$375 per election for legislative candidates).
- If a Legislator running for re-election has a leadership PAC, it is well understood that the PAC generally should not be used to promote the candidate’s election. That is because the PAC is considered to be *separate* from the candidate and the candidate’s campaign committee.
- If the PAC spends money to promote the candidate’s election, that is considered to be a contribution to the candidate by the PAC.
- If a Legislator’s leadership PAC were to spend money on an informational asset (such as polling) and give that information to the candidate for use in crafting re-election messages, that valuable information would be viewed as a contribution.

If the Commission would like to move forward with an investigation, there are transactions in the PAC’s reports that *might* support a finding that the email list – at least partially – should be viewed as an asset of the PAC:

- In October 2015, Diane Russell sold the list to – or exchanged the list with – an organization named Democrats.com. In that transaction, the PAC received \$7,441 on 10/17/2015, which the PAC reported as a contribution. Since the PAC received the proceeds from the sale, it might be correct to view the email list as an asset of the PAC, rather than the candidate.

- In the past few years, the PAC has paid Diane Russell thousands of dollars for “online organizing.” In a March 2016 news article, Rep. Russell is quoted as saying these payments were for building the email list. If the PAC is paying someone (Diane Russell) for building the list, it may be correct to view the list as belonging to the PAC.
- Between March 2013 and February 2014, the PAC did make some large payments totaling around \$14,000 to Nation Builder and other vendors for services which *may* be related to the email list.

Thank you for considering these points.