



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

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

Alysia N. Melnick
(207) 228-7109 direct
amelnick@bernsteinshur.com

June 28, 2016

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

RE: Motion To Re-Open the Matter of a Mailing by Supporters of Representative Benjamin Chipman – COMMENTS BY THE SDCC

Dear Mr. Wayne,

On behalf of our client, the Senate Democratic Campaign Committee (“SDCC”), please accept the following comments in response to the pending “Motion To Re-Open the Matter of a Mailing by Supporters of Representative Benjamin Chipman” to be heard at the Commission on Governmental Ethics and Election Practice’s (“Commission”) June 29, 2016 meeting.

To begin, the SDCC strongly urges this Commission not to reconsider the prior request for investigation. Reconsideration motions are certainly appropriate in instances where new evidence is discovered which may have impacted a reviewing body’s prior finding. Those circumstances do not exist here – and we believe the most appropriate action at this stage is to refuse reconsideration and to initiate emergency rulemaking to address any ongoing statutory ambiguities.

Background

In the May 18, 2016 request for investigation, a question was posed to the Commission as to whether a mailing of invitations to a house party supporting Rep. Chipman complies with the restrictions on Maine Clean Election Act candidates - specifically, the portions of the law that relate to house parties, contributions and spending limits.

Mr. Chipman appeared at the Commission’s May 25th meeting, where there was extensive discussion about the facts surrounding the invitations at issue and the underlying law(s).

June 29, 2016

Page 2

As described to the Commission, Mr. Chipman relied on the provision in Maine law that permits volunteers rendering services to a Clean Elections candidate to pay for up to \$250 worth of expenses related to invitations, food and beverages - commonly known as the “house party exception”. 21-A M.R.S.A. §§ 1012(2)(b)(2) & 1012(3)(b)(4).

Mr. Chipman’s diligence and strong interest in ensuring that he was acting ethically and lawfully led him to email and speak with Ethics staff to obtain guidance about the invitation and payment structure. His actions were neither unlawful nor unparalleled – and he made every effort to comply with the Act while maximizing use of available tools and resources.

During the Commission’s May 25th meeting, statements were made by several participants, including Commissioners and staff about the ambiguity of the exemption for volunteers paying for invitations, food and beverages. In response to some of the other questions raised in the May 18th request and subsequent Commission discussion:

- Qualified volunteer activity includes activities other than providing concrete items such as food, beverages and a location in which to hold the party. It can include event promotion, design of the invitation, and other supportive services;
- Nothing in the law requires qualified volunteers to live within the district;
- Nothing in the law prohibits bundling of funding to pay for things like printing and mailing of invitations, food, beverages, etc. In fact, if the intent of the law, as described by Commission staff, is to encourage volunteerism and public participation in campaigns, the ability for multiple people to combine forces and funds to achieve results supports that goal by allowing those with limited resources to engage in meaningful ways in support of their chosen candidate;
- Payment for invitations, food and beverages by qualified volunteers is not a “contribution”. As explained at the May meeting by Jonathan Wayne, Ethics Commission Executive Director, qualified volunteers supporting Clean candidates by paying for invitations, food and beverages fall within the exception. Further, this exception is not limited to *hosts* of house parties, or even to house parties themselves.

As requested, Mr. Chipman provided information describing the activities that qualified his supporters as “volunteers” and secured written documentation from an independent third party vendor confirming that none of those volunteers paid more than \$250 towards the printing and mailing of the invitation in question, as required by law.

June 29, 2016

Page 3

Recommendation We request that you not reopen or pursue further investigation of this complaint against Mr. Chipman.

Mr. Chipman acted consistent with the law and he acted consistent with advice from Ethics staff based on their interpretation of the exemption. To re-open this matter and initiate an investigation of Mr. Chipman - who is still in the midst of a Senate campaign - based on ambiguities in the law as opposed to wrongdoing - would imply fault and unduly harm Mr. Chipman's reputation.

Rather than investigating or sanctioning Mr. Chipman for lawful actions of the past, the public and Mr. Chipman would be better served by this Commission's continued thoughtful review and assessment of the exemption and consideration and recommendation of changes to improve clarity and implementation.

Mr. Chipman went to great lengths to appropriately and accurately interpret and implement the law. For purposes of whether to pursue an investigation or sanction of Mr. Chipman, it is important to keep in mind that at the time of the mailing the sorts of limits being discussed by the Commission did not then, and still do not exist.

In light of the fact that Mr. Chipman acted within the parameters of Maine law and that he sought and followed guidance of Commission staff, the pathway to amending or clarifying this exemption should not include investigating or sanctioning Mr. Chipman.

We hope that you use your position and expertise to review the rule and determine what, if any, changes should be made, either by rulemaking or by statutory amendment, to provide clarity and ensure the exemption is used consistently and as intended.

Commissioner Healy made his request because it is an issue of first impression for the Commission and presents an important issue regarding the Maine Clean Election Act. Mr. Chipman does not disagree. He too believes a "duty is owed" to candidates, volunteers, supporters, lawmakers, and the public at large that governing laws be clear and in line with the spirit intended.

Fortunately, this duty can be fulfilled without risk of either official sanction or reputational harm to Mr. Chipman. We urge you to deny the request to reopen the investigation, and instead move forward with rulemaking or recommendations for a legislative amendment to the law.

Sincerely,

Alysia Melnick