

Agenda

Item #3



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

To: Commissioners

From: Jonathan Wayne, Executive Director

Date: August 17, 2010

Re: Contributions by Robert C.S. Monks to Eliot Cutler

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This memo describes an apparent violation of the \$750 limitation that applies to contributors to gubernatorial candidates in Maine.

**Maine's Earmarking Statute**

Individuals, businesses, associations, and other organizations may give up to \$750 per election to candidates for governor and \$350 per election to legislative and county candidates. (21-A M.R.S.A. §§ 1015(1) and (2), attached)

Maine law contains an "earmarking" statute that is similar to the federal law (2 U.S.C. § 441a(a)(8)) and the laws in many states. Earmarking contributions is not illegal in itself. If a donor gives money to a candidate through an intermediary, under certain circumstances *the original donor* is considered to be the contributor to the candidate for purposes of the candidate's contribution limit, *not the intermediary*:

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 candidate. The intermediary or conduit shall report the original source and the intended recipient of the contribution to the commission and to the intended recipient.

(21-A M.R.S.A. § 1015(4)) The issue of earmarked contributions is discussed on page 22 of the guidebook for traditionally financed candidates for governor (attached).

## **Robert C.S. Monks' Contributions to Eliot Cutler**

Until July 9, 2010, Robert C.S. Monks was the treasurer and finance chair for the Cutler 2010 campaign committee. As such, he presumably was aware of the \$750 contribution limit. On October 15, 2009, he made a contribution of \$750 to the Cutler campaign. (I have attached a copy of a campaign finance report by Eliot Cutler listing the contribution.)

Robert Monks is also the treasurer, principal officer, and primary decision-maker of The Citizenship Fund political action committee (referred to below as "the PAC"). According to its most recent campaign finance report, on June 18, 2010, the PAC *both* received a \$750 contribution from Mr. Monks *and* made a \$750 contribution to Eliot Cutler. I have attached the 2010 registration statement for the PAC, and the PAC's most recent campaign finance report. The two transactions dated June 18 are shown on Schedule A (contributions) and Schedule B (expenditures) of the report.

The circumstances of the contributions suggest that Mr. Monks gave \$750 to the PAC and directed the PAC to donate the money to Eliot Cutler. If that in fact occurred, under the earmarking statute, the \$750 Mr. Monks provided to the PAC would be a contribution *from Mr. Monks* to the candidate. Thus, Mr. Monks' total contribution to Eliot Cutler for the 2010 general election would be \$1,500, which exceeds the contribution limit in 21-A M.R.S.A. § 1015(1) by \$750.

On July 28, 2010, I telephoned the Cutler campaign and notified it that the June 18 contribution from the PAC could be viewed as a contribution from Robert C.S. Monks, which would violate the contribution limit. The campaign manager, Ted O'Meara, and deputy treasurer, Justin Schair, informed me that the campaign would immediately return the contribution to the PAC. Copies of the return check and cover letter dated July 28 are attached.

On July 29, 2010, I spoke to Jonathan Crasnick, who is an associate of Mr. Monks and sometimes telephones the Commission staff with questions on campaign finance compliance. Mr. Crasnick explained that he and Mr. Monks were simply unaware of the earmarking statute, and believed the June 18 contributions to be permissible. The Commission staff finds this explanation credible. Jonathan Crasnick in fact called a Commission employee, PAC Registrar Cindy Sullivan, concerning how to report the PAC's contribution to Eliot Cutler. We therefore believe that if Mr. Crasnick or Mr. Monks knew that the PAC's contribution was attributable to Mr. Monks, the PAC would not have contributed to Eliot Cutler. (During the course of that conversation, Cindy was not told that the PAC's contribution was financed by Mr. Monks.)

On July 30, 2010, I notified Mr. Monks by letter (attached) that the staff was intending to recommend a finding that he violated 21-A M.R.S.A. § 1015(1).

### **Response by Robert C.S. Monks**

Mr. Monks responded to the staff recommendation by letter dated August 12, 2010 (attached). He stated that he has tried hard to comply with Maine's campaign finance laws, but he was unaware of the earmarking statute. Mr. Monks asks that the Commission view the error in context. He intends to be present at your August 26 meeting with Jonathan Crasnick to respond in person.

### **Recommendation by Commission Staff**

The Commission staff recommends that at your August 26, 2010 meeting you find that Mr. Monks violated 21-A M.R.S.A. § 1015(1) by contributing more than \$750 to the campaign of Eliot Cutler. We recommend a finding of violation because we believe that a violation likely occurred and to underscore to the political community that individuals in treasurer and officer positions in candidate campaigns should be aware of the earmarking statute. The Commission staff believes that candidate campaigns should make a reasonable effort to identify earmarked contributions that would exceed the contribution limit.

If you determine that Mr. Monks violated the contribution limit in 21-A M.R.S.A. § 1015(1), you have the discretion under 21-A M.R.S.A. § 1004-A(2) (attached) to assess a civil penalty against Mr. Monks of up to \$750. The Commission staff does not recommend assessing a monetary penalty against Mr. Monks for making an over-the-limit contribution. We expect that Mr. Monks and Mr. Crasnick thought the PAC contribution was permissible.

The Commission staff also recommends taking no action against the Cutler campaign under 21-A M.R.S.A. § 1004-A(2) for *accepting* an over-the-limit contribution.

Thank you for your consideration of this memorandum.

## 21-A MRSA § 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 \$750 in any election for a gubernatorial candidate or more than \$350 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.

[ 2009, c. 286, §2 (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 \$750 in any election for a gubernatorial candidate or more than \$350 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.

[ 2009, c. 286, §3 (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.

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 candidate. The intermediary or conduit shall report the original source and the intended recipient of the contribution to the commission and to the intended recipient.

[ 2007, c. 443, Pt. A, §13 (AMD) .]

**5. Other contributions and expenditures.** Any expenditure made by any person in cooperation, consultation or concert with, or at the request or suggestion of, a candidate, a candidate's political committee or their agents is considered to be a contribution to that candidate.

The financing by any person of the dissemination, distribution or republication, in whole or in part,

of any broadcast or any written or other campaign materials prepared by the candidate, the candidate's political committee or committees or their authorized agents is considered to be a contribution to that candidate.

[ 1989, c. 504, §§7, 31 (AMD) .]

**6. Prohibited expenditures.** A candidate, a treasurer, a political committee, a party or party committee, a person required to file a report under this subchapter or their authorized agents may not make any expenditures for liquor to be distributed to or consumed by voters while the polls are open on election day.

[ 1991, c. 839, §11 (AMD); 1991, c. 839, §34 (AFF) .]

**7. Voluntary limitations on political expenditures.** A candidate may voluntarily agree to limit the total expenditures made on behalf of that candidate's campaign as specified in section 1013-A, subsection 1, paragraph C and subsections 8 and 9.

[ 1995, c. 384, §2 (NEW) .]

**8. Political expenditure limitation amounts.** Total expenditures in any election for legislative office by a candidate who voluntarily agrees to limit campaign expenditures as provided in subsection 7 are as follows:

A. For State Senator, \$25,000; and [2007, c. 443, Pt. A, §14 (AMD).]

B. For State Representative, \$5,000. [2007, c. 443, Pt. A, §14 (AMD).]

C. [2007, c. 443, Pt. A, §14 (RP).]

Expenditure limits are per election and may not be carried forward from one election to another. For calculation and reporting purposes, the reporting periods established in section 1017 apply.

[ 2007, c. 443, Pt. A, §14 (AMD) .]

**9. Publication of list.** The commission shall publish a list of the candidates for State Representative and State Senator who have agreed to voluntarily limit total expenditures for their campaigns as provided in section 1013-A, subsection 1, paragraph C.

For the purposes of subsections 7 and 8 and this subsection, "total expenditures" means the sum of all expenditures made to influence a single election that are made by a candidate or made on the candidate's behalf by the candidate's political committee or committees, the candidate's party or the candidate's immediate family.

[ 1995, c. 384, §2 (NEW) .]

## 21-A MRSA §1004-A. PENALTIES

The commission may assess the following penalties in addition to the other monetary sanctions authorized in this chapter.

**1. Late campaign finance report.** A person that files a late campaign finance report containing no contributions or expenditures may be assessed a penalty of no more than \$100.

[ 2003, c. 628, Pt. A, §1 (NEW) .]

**2. Contribution in excess of limitations.** A person that accepts or makes a contribution that exceeds the limitations set out in section 1015, subsections 1 and 2 may be assessed a penalty of no more than the amount by which the contribution exceeded the limitation.

[ 2003, c. 628, Pt. A, §1 (NEW) .]

**3. Contribution in name of another person.** A person that makes a contribution in the name of another person, or that knowingly accepts a contribution made by one person in the name of another person, may be assessed a penalty not to exceed \$5,000.

[ 2003, c. 628, Pt. A, §1 (NEW) .]

**4. Substantial misreporting.** A person that files a campaign finance report that substantially misreports contributions, expenditures or other campaign activity may be assessed a penalty not to exceed \$5,000.

[ 2003, c. 628, Pt. A, §1 (NEW) .]

**5. Material false statements.** A person that makes a material false statement or that makes a statement that includes a material misrepresentation in a document that is required to be submitted to the commission, or that is submitted in response to a request by the commission, may be assessed a penalty not to exceed \$5,000.

[ 2005, c. 301, §6 (AMD) .]

When the commission has reason to believe that a violation has occurred, the commission shall provide written notice to the candidate, party committee, political action committee, committee treasurer or other respondent and shall afford them an opportunity to appear before the commission before assessing any penalty. In determining any penalty under subsections 3, 4 and 5, the commission shall consider, among other things, the level of intent to mislead, the penalty necessary to deter similar misconduct in the future and the harm suffered by the public from the incorrect disclosure. A final determination by the commission may be appealed to the Superior Court in accordance with Title 5, chapter 375, subchapter 7 and the Maine Rules of Civil Procedure Rule 80C. [2009, c. 302, §1 (AMD).]

Penalties assessed pursuant to this section that have not been paid in full within 30 days after issuance of a notice of the final determination may be enforced in accordance with section 1004-B. [2009, c. 302, §2 (NEW).]

09/30/2009	BENJAMIN STEWART 77 WEST 24 STREET NEW YORK, NY 10010	PRODUCT MANAGER OPPENHEIMERFUNDS, INC.	2	General	\$150.00
09/30/2009	TOM DIEHL 560 WISCONSIN DELLS PARKWAY WISCONSIN DELLS, WI 53965	TOURISM TOOMY BARTLETT INC	2	General	\$200.00
10/02/2009	STEVE KHO 319 11TH ST. WASHINGTON, DC 20003	INFORMATION REQUESTED AKIN GUMP STRAUSS HAUER &	2	General	\$100.00
10/02/2009	SUSAN LEMKIN 5326 CONNECTICUT AVE, NW WASHINGTON, DC 20015	CERTIFIED PUBLIC ACCOUNTANT SQUIRE, LEMKIN & COMPANY LLP	2	General	\$250.00
10/05/2009	SUSIE DUBIN 52 WEST BROTHER DRIVE GREENWICH, CT 6830	SELF - EMPLOYED SELF	2	General	\$750.00
10/07/2009	MARK ISAACSON 67 WILD APPLE LANE CUMBERLAND CENTER, ME 4021	INFORMATION REQUESTED INFORMATION REQUESTED	2	General	\$750.00
10/12/2009	SAMUEL ZAITLIN 24 MADDOX ROAD BIDDEFORD, ME 4005	INFORMATION REQUESTED INFORMATION REQUESTED	2	General	\$750.00
10/15/2009	ROBERT C.S. MONKS MONKS O'NEIL DEVELOPMENT PORTLAND, ME 4101	PRINCIPAL MONKS-O'NEIL DEVELOPMENT	2	General	\$750.00
10/15/2009	MAX P MONKS 3 BACCHUS PLACE CAPE ELIZABETH, ME 4107	INFORMATION REQUESTED INFORMATION REQUESTED	2	General	\$750.00
10/18/2009	KATHERINE POPE 19 STURDIVANT RD. CUMBERLAND FORESIDE, ME 4110	PHYSICIAN SPECTRUM MEDICAL GROUP	2	General	\$750.00
10/19/2009	FRANCES ZILKHA P.O. BOX 3083 SCARBOROUGH, ME 4070	VOLUNTEER. SELF	2	General	\$750.00
10/19/2009	DANIEL ZILKHA P.O. BOX 134 SOUTH CASCO, ME 4077	CEO SABRE YACHTS	2	General	\$750.00
10/21/2009	MILLICENT MONKS 24 MONASTERY ROAD CAPE ELIZABETH, ME 4107	RETIRED RETIRED	2	General	\$750.00
10/21/2009	ROBERT A.G. MONKS 100 MONASTERY LANE CAPE ELIZABETH, ME 4107	ATTORNEY RETIRED	2	General	\$750.00
10/21/2009	STEVEN ELMENDORF 2301 CONNECTICUT AVE., NW WASHINGTON, DC 20008	PRESIDENT ELMENDORF STRATEGIES	2	General	\$750.00
10/21/2009	PHILIP DEUTCH 3500 MACOMB ST NW WASHINGTON, DC 20016	PE INVESTORS IN ENERGY NGP ENERGY TECHNOLOGY	2	General	\$750.00
10/21/2009	TED LEVY 3773 SUNRIDGE DRIVE PARK CITY, UT 84098	VICE PRESIDENT STILLWATER INVESTMENT, INC.	2	General	\$750.00



COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES  
Mail: 135 State House Station, Augusta, Maine 04333  
Office: 45 Memorial Circle, Augusta, Maine  
Website: [www.maine.gov/ethics](http://www.maine.gov/ethics)  
Phone: 207-287-4179  
Fax: 207-287-6775

## 2010 REGISTRATION: POLITICAL COMMITTEES

<b>COMMITTEE INFORMATION</b>	
THE CITIZENSHIP FUND C/O JONATHAN CRASNICK, MONKS O'NEIL PORTLAND, ME 04101	TEL: (207)523-8919 FAX: EMAIL: <a href="mailto:jcrasnick@eaglepointco.com">jcrasnick@eaglepointco.com</a>
<b>TREASURER INFORMATION</b>	
ROBERT C. MONKS C/O JONATHAN CRASNICK, MONK'S O'NEIL PORTLAND, ME 04101	TEL: (207)523-8919 FAX: EMAIL: <a href="mailto:jcrasnick@eaglepointco.com">jcrasnick@eaglepointco.com</a>
<b>PRINCIPAL OFFICER INFORMATION</b>	
MONKS, ROBERT C PRESIDENT MONKS-O'NEIL DEVELOPMENT, ONE CITY CENTER, 2ND FLOOR PORTLAND, ME 04101 (207)523-8919	PORTA, BONNIE SECRETARY MONKS-O'NEIL DEVELOPMENT, ONE CITY CENTER, 2ND FLOOR PORTLAND, ME 04101 (207)523-8919
<b>PRIMARY FUNDRAISERS AND DECISION MAKERS</b>	
MONKS, ROBERT C	CRASNICK, JONATHAN
<b>FORM OF ORGANIZATION</b>	
Form of organization CORPORATION	Date of origin/incorporation 10/22/2004
<b>STATEMENT OF SUPPORT OR OPPOSITION</b>	
<b>CERTIFICATION</b>	
I, ROBERT C MONKS, CERTIFY THAT THE INFORMATION IN THIS REGISTRATION IS TRUE, ACCURATE AND COMPLETE.	
SIGNATURE ON FILE	DATE: 1/12/2010



COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES  
Mail: 135 State House Station, Augusta, Maine 04333  
Office: 45 Memorial Circle, Augusta, Maine

Website: [www.maine.gov/ethics](http://www.maine.gov/ethics)  
Phone: 207-287-4179  
Fax: 207-287-6775

## 2010 CAMPAIGN FINANCE REPORT FOR POLITICAL ACTION COMMITTEES

COMMITTEE INFORMATION		
THE CITIZENSHIP FUND C/O JONATHAN CRASNICK, MONKS O'NEIL PORTLAND, ME 04101		TEL: (207)523-8919 FAX: EMAIL: <a href="mailto:jcrasnick@eaglepointco.com">jcrasnick@eaglepointco.com</a>
TREASURER		
ROBERT C. MONKS C/O JONATHAN CRASNICK, MONK'S O'NEIL PORTLAND, ME 04101		TEL: (207)523-8919 EMAIL: <a href="mailto:jcrasnick@eaglepointco.com">jcrasnick@eaglepointco.com</a>
TYPE OF REPORT	DUE DATE	REPORTING PERIOD
42-DAY POST-PRIMARY	7/20/2010	5/26/2010 - 7/13/2010
NO FINANCIAL ACTIVITY IN THIS REPORTING PERIOD FOR SCHEDULES A1, B1, C, D		
CERTIFICATION		
I, ROBERT C MONKS, CERTIFY THAT THE INFORMATION CONTAINED IN THIS REPORT IS TRUE, ACCURATE AND COMPLETE TO THE BEST OF MY KNOWLEDGE.  REPORT FILED BY: ROBERT C MONKS ON BEHALF OF ROBERT MONKS, TREASURER REPORT FILED ON: July 19, 2010  IF THIS REPORT IS FILED BY AN AUTHORIZED AGENT OF THE COMMITTEE, THE TREASURER AND AGENT ARE LIABLE FOR ANY VIOLATIONS OF MAINE CAMPAIGN FINANCE LAW (21-A M.R.S.A. CHAPTER 13) AND THE COMMISSION'S RULES THAT MAY RESULT FROM THE FILING OF A FALSE OR INACCURATE REPORT.		

UNSWORN FALSIFICATION IS A CLASS D CRIME (17-A M.R.S.A. § 453).

THE CITIZENSHIP FUND

SCHEDULE A ONLY

**SCHEDULE A  
CASH CONTRIBUTIONS**

- For contributors who gave more than \$50, the names, address, occupation, and employer must be reported. If "information requested" is listed instead of occupation and employer, the candidate is waiting to receive that information.
- Cash contributions of \$50 or less can be added together and reported as a lump sum.
- Contributor Types
 

1 = Individuals	4 = Party Committees
2 = Commercial Sources	5 = Candidate Committees
3 = Political Action Committees	6 = Unitemized Contributions

DATE RECEIVED	CONTRIBUTOR	OCCUPATION AND EMPLOYER	TYPE	AMOUNT
06/18/2010	ROBERT CS MONKS 3 BACCHUS PLACE CAPE ELIZABETH ME 04107	REAL ESTATE DEVELOPER SELF	1	\$750.00
<b>TOTAL CASH CONTRIBUTIONS ⇒</b>				<b>\$750.00</b>

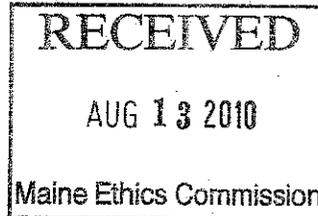
**SCHEDULE B  
EXPENDITURES TO SUPPORT OR OPPOSE**

EXPENDITURE TYPES	
CNS Campaign consultants	POL Polling and survey research
CON Contribution to other candidate, party, committee	POS Postage for U.S. Mail and mail box fees
EQP Equipment (office machines, furniture, cell phones, etc.)	PRO Other professional services
FND Fundraising events	PRT Print media ads only (newspapers, magazines, etc.)
FOD Food for campaign events, volunteers	RAD Radio ads, production costs
LIT Print and graphics (flyers, signs, palmcards, t-shirts, etc.)	SAL Campaign workers' salaries and personnel costs
MHS Mail house (all services purchased)	TRV Travel (fuel, mileage, lodging, etc.)
OFF Office rent, utilities, phone and internet services, supplies	TVN TV or cable ads, production costs
OTH Other	WEB Website design, registration, hosting, maintenance, etc.
PHO Phone banks, automated telephone calls	
<i>Only these expenditure types require a remark: CNS, OTH, PRO.</i>	

DATE OF EXPENDITURE	PAYEE	REMARK	TYPE	AMOUNT
06/18/2010	ELIOT R. CUTLER		CON	\$750.00
	CONTRIBUTION: ELIOT R. CUTLER, GOVERNOR, DISTRICT: -NONE-			
<b>TOTAL EXPENDITURES</b> ⇨				\$750.00

**SCHEDULE F  
SUMMARY SCHEDULE**

<b>CASH ACTIVITY</b>		
<b>RECEIPTS</b>	<b>TOTAL FOR THIS PERIOD</b>	<b>TOTAL FOR YEAR</b>
1. CASH CONTRIBUTIONS (Schedule A)	\$750.00	\$750.00
2. OTHER CASH RECEIPTS (interest, etc.)	\$0.00	\$0.00
3. LOANS (Schedule C, new loans and additional amounts loaned)	\$0.00	\$0.00
4. TOTAL RECEIPTS (lines 1+2+3)	\$750.00	\$750.00
<b>EXPENDITURES</b>		
5. EXPENDITURES TO SUPPORT OR OPPOSE (Schedule B)	\$750.00	\$750.00
6. OPERATING EXPENDITURES (Schedule B-1)	\$0.00	\$0.00
7. LOAN REPAYMENTS (Schedule C)	\$0.00	\$0.00
8. TOTAL PAYMENTS (lines 5+6+7)	\$750.00	\$750.00
<b>CASH SUMMARY</b>		
9. CASH BALANCE AT BEGINNING OF PERIOD (from last report)	\$971.89	
10. PLUS TOTAL RECEIPTS THIS PERIOD (line 4 above)	\$750.00	
11. MINUS TOTAL PAYMENTS THIS PERIOD (line 8 above)	\$750.00	
12. CASH BALANCE AT END OF PERIOD	\$971.89	
<b>OTHER ACTIVITY</b>		
	<b>TOTAL FOR THIS PERIOD</b>	<b>TOTAL FOR YEAR</b>
13. IN-KIND CONTRIBUTIONS (Schedule A-1)	\$0.00	\$0.00
14. TOTAL LOAN BALANCE AT END OF PERIOD (Schedule C)	\$0.00	
15. TOTAL UNPAID DEBTS AT END OF PERIOD (Schedule D)	\$0.00	



August 12, 2010

Robert C.S. Monks  
One City Center, Second Floor  
Portland, ME 04101

**By Email and First Class Mail**

Jonathan Wayne, Executive Director  
Maine Commission on Governmental Ethics and Election Practices  
135 State House Station  
Augusta, ME 04333-0135

Re: The Citizenship Fund's June 18, 2010 Donation to the Cutler Campaign

Dear Mr. Wayne:

I write in response to your July 30, 2010 letter concerning The Citizenship Fund. I appreciate your letter and the guidance it provides, as I have tried hard over the last year to abide by Maine's campaign finance laws. Unfortunately, I was unaware of the particular "earmarking" statute you cite. I realize now that my office and I erred. That said, I hope you and the Commission will view the error in context:

The Citizenship Fund was formed back in 2004. It is a political action committee devoted to supporting compelling legislative candidates. I realize now that this particular PAC's donation could appear to be an additional contribution by me, and count toward my *personal* cap under the statute you cite. This was an unintentional error, brought to the Commission's attention by the PAC's own public report (which was filed pursuant to a call the PAC had proactively made to your office, seeking advice), the money has been returned, and I apologize.

If your goal in recommending a formal Commission finding is "to underscore to the political community that individuals . . . should be aware of the earmarking statute," you have accomplished that goal already. The Portland Press Herald ran an extensive story on the error, which surely educated individuals and organizations about the statute. I hope you will consider whether your letter, on its own, has already done enough.

Sincerely,

A handwritten signature in black ink, appearing to read "RC Monks".

Robert C.S. Monks

Cc: James T. Kilbreth, Esq.



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

July 30, 2010

Mr. Robert C.S. Monks  
Monks O'Neil  
One City Center, Second Floor  
Portland, ME 04101

**Re: Notice of Proposed Finding of Violation**

Dear Mr. Monks:

Thank you for your responsiveness in providing information to the Ethics Commission staff concerning contributions to the Eliot Cutler campaign. The staff of the Maine Ethics Commission appreciated the opportunity to speak to Jonathan Crasnick yesterday on behalf of The Citizenship Fund political action committee (the "PAC"). He explained that "we were unaware of the earmarking law" (21-A M.R.S.A. § 1015(4)) and had no intention of violating campaign finance law.

**Maine's Earmarking Statute**

Individuals, businesses, associations, and other organizations may give up to \$750 per election to candidates for governor and \$350 per election to legislative and county candidates. (21-A M.R.S.A. §§ 1015(1) and (2), attached)

Maine law contains an "earmarking" statute that is similar to the federal law (2 U.S.C. § 441a(a)(8)) and the laws in many states. Earmarking contributions is not illegal in itself. It simply means that if a donor gives money to a candidate through an intermediary, under certain circumstances *the original donor* is considered to be the contributor to the candidate for purposes of the candidate's contribution limits, *not the intermediary*:

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 candidate. The intermediary or conduit shall report the original source and the intended recipient of the contribution to the commission and to the intended recipient.

OFFICE LOCATED AT: 45 MEMORIAL CIRCLE, AUGUSTA, MAINE  
WEBSITE: WWW.MAINE.GOV/ETHICS

PHONE: (207) 287-4179

FAX: (207) 287-6775

(21-A M.R.S.A. § 1015(4)) The issue of earmarked contributions is discussed on page 22 of the guidebook for traditionally financed candidates for governor.

### **Your Contributions to Eliot Cutler**

On October 15, 2009, you personally made a contribution of \$750 to the gubernatorial campaign of Eliot Cutler. Under 21-A M.R.S.A. § 1015(1), that is the maximum amount which an individual may give to a gubernatorial candidate for an election. Until recently, you served as the treasurer and finance chair for the Cutler 2010 campaign committee.

You are also listed as the treasurer, principal officer, and primary decision-maker of The Citizenship Fund PAC. According to its most recent campaign finance report, on June 18, 2010, the PAC *both* received a \$750 contribution from you *and* made a \$750 contribution to Eliot Cutler.

The circumstances of the contributions (the in-and-out nature of the transactions, the inactivity of the PAC,<sup>1</sup> and your control over the PAC) could easily give rise to the conclusion that on June 18, 2010 you gave \$750 to the PAC and directed the PAC to donate the money to Eliot Cutler. If that in fact occurred, under the earmarking statute, the \$750 you provided to the PAC would be a contribution *from you* to Mr. Cutler. Thus, your total contribution to Eliot Cutler for the 2010 general election would be \$1,500, which exceeds the contribution limit in 21-A M.R.S.A. § 1015(1) by \$750.

### **Recommendation by Commission Staff**

At this time, it is difficult to see why the Commission staff should not view the June 18, 2010 transaction as an earmarked contribution from you to Eliot Cutler. Therefore, the Commission staff presently intends to recommend to the members of the Maine Ethics Commission at their August 26 meeting that they find that you violated 21-A M.R.S.A. § 1015(1) by making two contributions of \$750.

In our telephone call yesterday, Mr. Crasnick stated that the PAC was unaware of the earmarking statute, and it was "100% a mistake." In recommending a finding of violation to the Commission, the staff makes no value judgment concerning fault or motives. We recommend a finding of violation because we believe that a violation likely occurred and to underscore to the political community that individuals in treasurer and officer positions in candidate campaigns should be aware of the earmarking statute. They should understand that the Commission will expect them to make a reasonable effort to identify earmarked contributions that would exceed the contribution limit.

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<sup>1</sup>The PAC has been relatively inactive. Before the two transactions on June 18, 2010, the PAC had *no* financial activity for more than two years, except for paying two bills in May 2009.

Mr. Robert C.S. Monks  
Page 3  
July 30, 2010

If the Commission determines that you violated the contribution limit in 21-A M.R.S.A. § 1015(1), the Commission could assess a civil penalty of up to \$750 under 21-A M.R.S.A. § 1004-A(2) (attached). At this time, the Commission staff is not inclined to recommend a monetary penalty for the violation, but the Commissioners could assess one at the August 26 meeting.

**Your Opportunity to Respond or Comment**

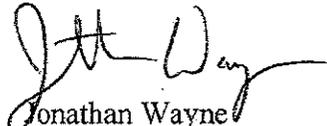
The Commissioners will consider this matter at their meeting on Thursday, August 26, 2010 at 9:00 a.m., at the Commission's office at 45 Memorial Circle in Augusta. If you would like to respond in writing to the staff recommendation or to provide any other written comment to the Commissioners, *please submit it to me by Thursday, August 12*. The Commission staff is willing to reconsider its recommendation based on information you provide. You are also welcome to provide comments directly to the Commissioners at the August 26 meeting in person or through a representative.

**Opportunity of Cutler Campaign to Respond or Comment**

At the August 26 meeting, the Commissioners could also find that the Cutler 2010 committee violated 21-A M.R.S.A. § 1004-A(2) by *accepting* a contribution that exceeded the \$750 limit. At this time, the staff does not plan to recommend a finding of violation against the Cutler campaign, because the managers and officers of the campaign (other than you) may not have known that the PAC's June 18 contribution was completely financed by you. Nevertheless, because the Commissioners could find the Cutler 2010 committee in violation of 21-A M.R.S.A. § 1004-A(2) and could assess a penalty against the Cutler 2010 committee, the campaign is welcome to submit any written comments it would like regarding whether it should be found in violation. The campaign may wish to have a representative present at the August 26 meeting.

Thank you for your consideration of this letter. Please call me at 287-4179 if you have any questions.

Sincerely,

  
Jonathan Wayne  
Executive Director

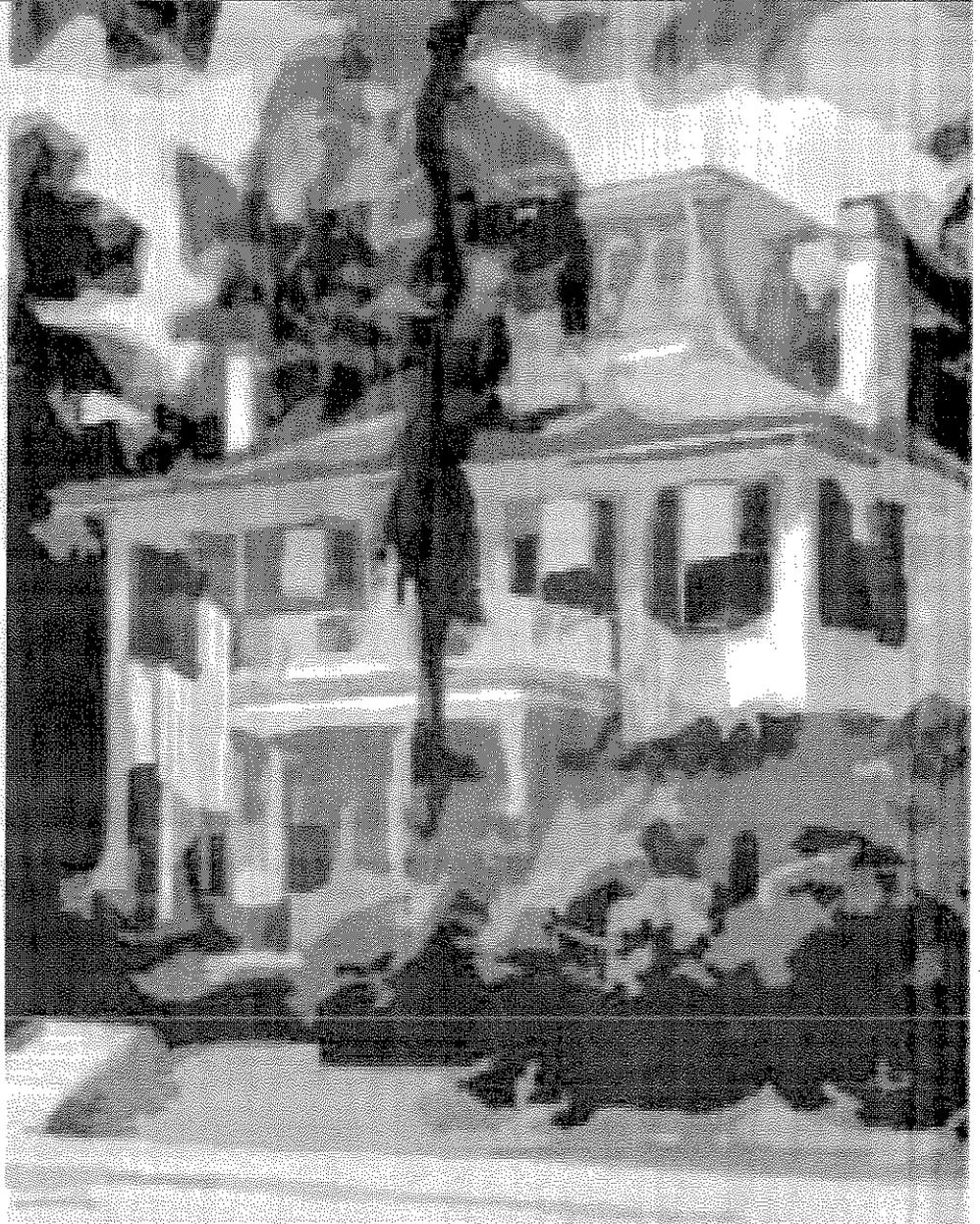
cc: Jonathan Crasnick (by e-mail)  
Edward S. O'Meara, campaign manager of the Cutler 2010 committee

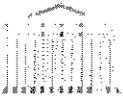
COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES  
135 STATE HOUSE STATION  
AUGUSTA, ME 04333

# Guidebook for 2010 Gubernatorial Candidates

*Running for Office in Maine*

FINANCED





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nanced, maintained or controlled by a corporation are considered to be made by that corporation, political committee or political action committee.” (21-A M.R.S.A. § 1015-A)



### **Earmarked Contributions**

If a contributor gives an amount of money to an intermediary such as a political action committee or a party committee and directs that the money be contributed to a specific candidate, the original source of the funds is considered the contributor to the candidate. The intermediary is required to notify the candidate of the original source of the funds, so that the candidate may report the original source as the contributor of the earmarked funds. Examples of earmarked contributions would include:

- an employer giving \$250 to an employee and directing the employee to contribute the money to a candidate,
- an organization giving \$500 to a party committee, and asking the party committee to donate it to a candidate, and
- a parent giving \$100 to a teenage child and directing the child to donate the money to a candidate.

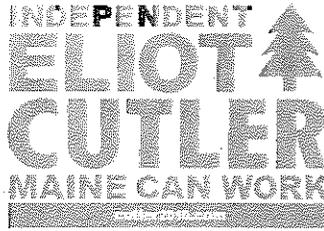
### **Loans**

Under the Election Law, non-commercial loans are considered contributions to the candidate. So, they are subject to the maximum amounts that a contributor may provide to a candidate per election. For candidates for Governor, the contribution limit is \$500 per election through September 11, 2009. Beginning on September 12, 2009, that limit increases to \$750 per election. These limitations do not apply to loans from the candidate and the candidate’s spouse or partner, who can lend an unlimited amount to the campaign. Loans to a candidate made by a financial institution in Maine made in the ordinary course of business are not considered to be contributions and are not subject to the contribution limits.

Candidates who are enrolled in a political party have two separate limits for the primary and general elections. Contributions and loans to an independent candidate count toward a single limit for the general election.

### **Occupation and Employer of Contributors**

As noted in Chapter 3, candidates are required to report the occupation and employer of contributors who give more than \$50 to the candidate during a report period. Under the Commission’s Rules, the



**Justin Schair**  
Finance Director  
justin@cutler2010.com

July 28, 2010

Mr. Robert C.S. Monks  
The Citizenship Fund  
3 Bacchus Place  
Cape Elizabeth, Maine 04107

RE: The Citizenship Fund

Dear Mr. Monks:

It has come to our attention today that the contribution which we received from the Citizenship Fund on June 18, 2010 may have derived solely from funds which you contributed to the Political Action Committee.

In order to avoid any possibility that such funds might be deemed a contribution from you, we are refunding the \$750 out of an abundance of caution.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Schair", is written over the word "Sincerely,".

CUTLER 2010  
PO BOX 15277  
PORTLAND, ME 04112

1258

DATE 7/28/10

52-7445/2112  
38

PAY TO THE ORDER OF The Citizenship Fund

Seven hundred fifty and 00/100 \$ 750.00 DOLLARS

Security Features on Back



America's Most Convenient Bank

*[Signature]*

FOR Contribution Return

MP

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**MARDEN, DUBORD,  
BERNIER & STEVENS**

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ATTORNEYS AT LAW

**Daniel I. Billings, Esq.**  
[dbillings@mardendubord.com](mailto:dbillings@mardendubord.com)

44 ELM STREET  
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[www.mardendubord.com](http://www.mardendubord.com)

PHONE (207) 873-0186  
FAX (207) 873-2245

August 20, 2010

Walter F. McKee, Chair  
Maine Commission on Governmental Ethics & Election Practices  
135 State House Station  
Augusta, Maine 04333-0135

**RE: Contributions by Robert C.S. Monks to Eliot Cutler**

Dear Chairman McKee:

I was surprised to read that the Commission staff has recommended that no monetary penalty be imposed on Robert C.S. Monks for the illegal, earmarked contribution that he made through the Citizenship Fund, a political action committee ("PAC") he controls, to Eliot Cutler's campaign for Governor, at a time he was also serving as Treasurer for Mr. Cutler's campaign. I am writing to offer some additional facts about Mr. Monks which the Commission may wish to consider during its review of this matter.

Mr. Monks is an experienced political activist. Along with operating his PAC, Mr. Monks also headed a political organization called Democracy Maine, an organization which his associate Jonathan Crasnick was also involved. Mr. Crasnick appeared before the Commission on behalf of Democracy Maine in support of a complaint brought by Carl Lindermann against my client, the Maine Heritage Policy Center. Democracy Maine also initially participated in the court challenge to the Commission's decision in that matter, though the organization withdrew from the litigation early in the proceedings. Democracy Maine was also the subject of a complaint that the organization was a PAC and, though the organization disputed the charge, it voluntarily made the disclosures required of a PAC. Those disclosures indicated that Mr. Monks was the primary funder of the organization.

A search of the Commission's online contributor database shows that Mr. Monks has contributed over \$200,000 to Maine state candidates, committees, and PACs since 2002. A review of federal campaign finance data available through [www.opensecrets.org](http://www.opensecrets.org) shows that Mr. Monks has contributed nearly \$300,000 to federal candidates and committees during that same period. It is safe to say that Mr. Monks is one of the largest and most active political donors in the State of Maine. Based on that extensive experience, he should be familiar with limits on campaign contributions.

As has been previously noted, until July 9, 2010, Mr. Monks was Treasurer and finance chair for the Cutler 2010 campaign committee. As Treasurer of the campaign, it was

Mr. Monks' responsibility to become familiar with Maine's campaign finance regulations and to ensure that the Cutler campaign complied with such regulations. In carrying out that role, the Commission should expect that someone in Mr. Monks' position would read the educational materials produced by the Commission. On page 22 of the Commission's *Guidebook for 2010 Gubernatorial Candidates Running for Office in Maine*, there is a simple and easy to understand explanation of earmarked contributions. (A copy of the relevant pages is enclosed.) Anyone reading that short and clear explanation of earmarked contributions would understand that Mr. Monks' actions were contrary to law.

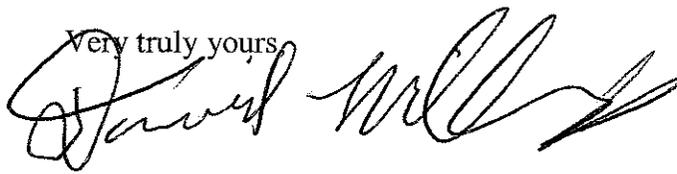
It is hard to believe that someone serving as Treasurer of a campaign for Governor would not take the time to gain a basic understanding of the laws with which he is required to comply. It is even more unbelievable that someone with Mr. Monks' considerable experience as a donor and activist would not understand the legal limitations on campaign contributions or take the steps necessary to gain such understanding before taking on the responsibility of serving as Treasurer for a gubernatorial campaign.

Even if the Commission ultimately believes that Mr. Monks thought his illegal contribution was permissible that should not excuse his actions. In other matters, the Commission has considered the fact that the person or entity responsible for a violation is an experienced and sophisticated political actor. That is certainly the case with Mr. Monks. Even if he did not know his contribution was illegal, he should have known and he could certainly have afforded counsel to advise him on such matters.

For these reasons, the Commission should impose a \$750.00 penalty on Mr. Monks, which is the maximum penalty allowed by 21-A M.R.S.A. §1004-A(2). If no penalty is imposed on Mr. Monks, it is hard to come up with a scenario under which a penalty would be imposed.

The Commission should also consider whether it is appropriate to impose a penalty on the Cutler campaign because, at the time of the contribution, Mr. Monks was acting as the Treasurer of the campaign and, as the Treasurer and the contributor, Mr. Monks had knowledge of all the facts regarding the contribution. This is not a case where the campaign did not know the actual source of the contribution – the actual source making the illegal, earmarked contribution was the campaign's own Treasurer. The campaign Treasurer, and therefore the campaign, obviously knew of the Treasurer's actions. Under such circumstances, the campaign should be found to have violated Maine law by accepting an over-the-limit contribution.

Very truly yours,

A handwritten signature in black ink, appearing to read "Daniel I. Billings", written in a cursive style.

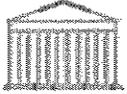
Daniel I. Billings

COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES  
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# Guidebook for 2010 Gubernatorial Candidates *Running for Office in Maine*

Traditionally Financed  
Candidates





## Chapter 4

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### Accepting Contributions

#### Definition of Contribution

The term “contribution” is defined in the Election Law to include:

*“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, county or municipal office or for the purpose of liquidating any campaign deficit of a candidate . . . .”* (21-A M.R.S.A. § 1012(2), copied in the Appendix)

For further explanation of what is a contribution, please refer to 21-A M.R.S.A. § 1012(2) (copied in the Appendix) and Chapter 1, Section 6 of the Commission’s Rules.

#### Contribution Limitations

Through September 11, 2009, a contributor may donate to a candidate for Governor no more than \$500 per election in the aggregate. Beginning on September 12, 2009, that limit will increase to \$750 per election. The Ethics Commission will adjust the limit for inflation in December 2011 based on the consumer price index.

The limit applies to all types of contributors, including:

- individuals;
- political action committees and party committees;
- businesses, corporations, firms and partnerships; and
- other associations and organizations.

The limits do not apply to contributions made by the candidate or by the candidate’s spouse or domestic partner, who can contribute an unlimited amount to the campaign. No individual may make contributions aggregating more than \$25,000 to all candidates for state office in any calendar year, except for contributions to a candidate made by the candidate or by the candidate’s spouse or domestic partner.



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Corporations and labor unions may contribute their general treasury funds to candidates for state office in Maine.

### **Attributing a Contribution Toward the Primary or General Election**

For candidates who are enrolled in a political party (Democratic, Green-Independent, or Republican), the primary and general elections are considered different elections. So, a gubernatorial candidate who is on the ballot for both elections may accept \$750 from a contributor for the primary election and \$750 from the contributor for the general election. All contributions received by unenrolled (independent) candidates are counted toward a single limit of \$750 for the general election.

*Collecting General Election Contributions Before the Primary Election.* In 2009, the Maine Legislature directed the Commission to amend its rules so that, before the primary election, a candidate may accept contributions from a single contributor for both the primary and for the general election at the same time, so long as:

- the candidate designates each contribution in campaign finance reports as having been received for the primary or the general election,
- all general election contributions received before the primary election are segregated from primary election campaign funds, and
- the candidate may not borrow general election contributions to promote the candidate's nomination in the primary election.

This law will take effect on September 12, 2009. Until that date, all contributions received by a 2010 candidate who is enrolled in a political party will be considered to be made for the primary election under the Commission's Rules as currently in effect. The Commission has initiated a rule-making to implement the statutory direction, and the proposed rule will be considered at a public hearing on July 30, 2009.

Under the Commission's Rules, any amount contributed to a candidate after the primary election is considered to be for the general election except for candidates who lost the primary election and are retiring debts for the primary election. No change is anticipated to this provision.

### **Other Restrictions on Contributions**

*Anonymous Contributions.* Anonymous contributions of more than \$10 may not be accepted.

*Contributions in the Name of Another.* No person may make a contribution in the name of another person, and no candidate may knowingly accept such a contribution. Candidates are expected to take rea-



sonable steps to identify the original source of funds and to report the actual contributor. Misreporting the source of contributions is a serious violation of the Election Law. Candidates who knowingly accept a contribution made by one person in the name of another person may be assessed a penalty of up to \$5,000. It is a crime to make a contribution in the name of another person or to knowingly accept a contribution made by one person in the name of another person.

The Commission staff has received questions from candidates concerning this prohibition mainly in connection with parents contributing for their children. If the candidate has a doubt as to whether a child gave a contribution, the Commission recommends that the candidate contact the contributor to confirm and to document that the child gave the contribution and that it was not given by the child's parents.

*Contributions from Lobbyists During the Legislative Session.* The Governor, a member of the Legislature, a constitutional officer, or the staff or agent of the Governor, a member of the Legislature or a constitutional officer may not solicit or accept a contribution from a lobbyist, lobbyist associate or client during any period of time in which the Legislature is in session (even with their personal funds) except for contributions to a Legislator's campaign for federal office.

### **Contributions from Corporations and Affiliated Entities**

In certain circumstances, the Election Law considers businesses, or non-profit or other organizations to be a single contributor if they have common owners or officers. If the entities are considered a single contributor, the combined total of their contributions to a gubernatorial candidate may not exceed \$750 per election. Candidates are expected to take reasonable actions to avoid accepting over-the-limit contributions from affiliated entities.

Over-the-limit contributions may result when a candidate has accepted contributions from multiple businesses or nonprofits which are considered to be a single contributor under the Election Law. If your campaign has accepted contributions from affiliated entities, please check 21-A M.R.S.A. § 1015-A and call the Commission staff if you have any questions.

A sole proprietorship and its owner are considered to be a single entity. In addition, two or more entities are considered a single contributor if they share the majority of the members of their boards of directors; share two or more officers; are owned or controlled by the same majority shareholder(s); or are in a parent-subsidary relationship.

The Election Law also states that "[c]ontributions made by a for-profit or a nonprofit corporation including a parent, subsidiary, branch, division, department or local unit of a corporation, and contributions made by a political committee or political action committee whose contribution or expenditure activities are fi-



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nanced, maintained or controlled by a corporation are considered to be made by that corporation, political committee or political action committee.” (21-A M.R.S.A. § 1015-A)

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