Agenda Item #2

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

To: Commission Members

From: Jonathan Wayne

Date: March 29, 2007

Re: Request for Recommendation from Appropriations Committee

At an Appropriations Committee meeting on March 16, 2007, State Senator Karl Turner inquired whether the Ethics Commission would make a recommendation regarding whether the Maine Clean Election Act (MCEA) should continue to fund candidates for Governor. This request apparently was prompted by concerns about the cost of the gubernatorial portion of the MCEA, a potentially large shortfall in 2010, and an interest (I believe) in using some of the revenues to the Maine Clean Election Fund for other governmental purposes.

History and Rationale of Maine Clean Election Act

The Maine Clean Election Act was enacted by Maine voters in 1996. It provided a voluntary program of full public financing for candidates for the Legislature and for Governor. One purpose of the program is to preserve or increase public confidence in the executive branch.

The state has held two elections for Governor in which MCEA funding has been available. In the 2002 gubernatorial elections, two candidates received MCEA funding:

- Jonathan Carter
- Hon. James Libby (primary election only)

In 2006, four candidates for Governor qualified for public funding under the Maine Clean Election Act:

- Hon. Chandler E. Woodcock
- Hon. S. Peter Mills (primary election only);
- Pat LaMarche; and
- Hon. Barbara E. Merrill

The staff's overall assessment of the MCEA in the 2006 gubernatorial election is that it succeeded as a viable public funding alternative for four candidates. The MCEA provided sufficient funding for a two-term Republican State Senator, Chandler Woodcock, to challenge an incumbent Democratic Governor in the general election, and for another Legislator, Peter Mills, to compete in the Republican primary election. The program also provided financing to two non-major party candidates who captured a total of 31.1% of the general election vote and who likely could not have run comparable campaigns through private fundraising. All four candidates qualified fairly for the public financing, and the Commission has found no serious misuse of the MCEA funds to date.

Transfers from the Maine Clean Election Fund

In 2002 and 2003, the Legislature transferred from the Maine Clean Election Fund large amounts to use for other purposes. At that time, the understanding was that the money would be returned if necessary to pay for the MCEA. While some of those funds were returned in 2005 and 2006, about $3.1 million has not been returned:

2002 and 2003 transfers from the Fund	$6,725,000
Amounts returned in 2005 and 2006	$3,600,000
Total unreturned	$3,125,000

Thus, a good portion of the potential shortfall in 2010 discussed below is because of the Legislature's transfers in 2002 and 2003.

Potential Shortfall in 2010

In figures that I provided to Rep. Sawin Millett of the Appropriations Committee which he shared with Sen. Turner, I suggested the shortfall for 2010 could be as much as $5.96 million. Those projections were intended to be very preliminary, and the shortfall could be significantly less. In my opinion, it is premature to project what the shortfall in the Maine Clean Election Fund will be for the 2010 elections. Any shortfall in 2010 would be dependent on developments that will unfold this year and in 2008:

- At this time, we do not know how much in total will be paid to 2008 candidates and how much will be left for the 2010 elections.
- Later this session, it is quite possible that the Legislature will make it harder for legislative or gubernatorial candidates to qualify for MCEA funding. In 2010, this could result in more funds being available and a smaller demand by candidates.
- In 2007, the Commission has a decision to make about whether to increase the amounts of the initial payments to legislative candidates in 2008, as it did in 2006. That decision is discretionary for the Commission. To keep costs down, the Commission staff is inclined to keep payments the same in 2008, which would result in savings for 2010.

Potential Strategy for Shifting Funds from Legislative to Gubernatorial Candidates in 2010

The Commission's past practice is that when a candidate first qualifies for matching funds for the general election, the Commission does not just pay the amount that the candidate is authorized to spend. Rather, the Commission pays the maximum amount of matching funds which the candidate could possibly qualify for. In 2006, the Commission advanced more than $2,000,000 in matching funds to candidates which they were not authorized to spend and which were returned after the election. One way to direct more funds to the gubernatorial program is to advance fewer funds to legislative candidates which they are not authorized to spend.

Legislative Proposals for 2007

At least six bills have been introduced to make it more difficult for candidates for Governor to qualify for MCEA funding. No bills have been submitted to eliminate the gubernatorial program. Because the Maine Clean Election Act was enacted directly by Maine voters, in my opinion funding for candidates for Governor should only be repealed after an opportunity for comment in committee from legislative and other proponents of the system and from the public generally. To repeal the gubernatorial portion of the MCEA through the budget bill or as an amendment on the floor of the Legislature would not allow the public with an opportunity to comment on the value of this voter-initiated law. Opponents of publicly funding 2010 candidates for Governor will have an opportunity to introduce an after-deadline bill in the 2008 session or to wait until the 2009 legislative session when more information will be known.

Staff Analysis and Recommendation

To respond to Sen. Turner's request, the staff believes you have three options:

(1) *Support gubernatorial funding.* Recommend that Maine Clean Election Act funding for candidates for Governor should continue in 2010, and reassure the Appropriations Committee that the Commission will make recommendations in 2009 about funding for the program. For example, the Commission could advance fewer matching funds to legislative candidates, or request the unreturned $3.1 million that was transferred from the Fund.

(2) *Neutral position.* Express that because the Maine Clean Election Act was enacted by Maine voters, any repeal of public funding for candidates for Governor on the basis of cost is a decision for the Legislature to make.

(3) *Oppose gubernatorial funding.* Recommend that the gubernatorial program be suspended for the 2010 elections, or terminated.

My recommendation is that you adopt option #1, or possibly #2. Maine voters directly approved public funding for candidates for the Governor and the Legislature, and entrusted the program to the Commission. The Legislature is better positioned than the Commission to make a judgment that the state cannot afford the gubernatorial part of the MCEA. It is possible that the 2010 shortfall could mostly be resolved through transferring back the remaining $3.1 million to the Maine Clean Election Fund and decreasing the amount of matching funds advanced to legislative candidates which they are not authorized to spend.