

# Agenda

## Item #1



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

Minutes of the May 14, 2007 Meeting of the  
Commission on Governmental Ethics and Election Practices  
Held in the Commission's Meeting Room,  
PUC Building, 242 State Street, Augusta, Maine

Present: Hon. Jean Ginn Marvin, Acting Chair; Hon. Vinton Cassidy, Hon. Mavourneen Thompson;  
Michael Friedman, Esq. Staff: Executive Director Jonathan Wayne; Phyllis Gardiner, Counsel.

At 9:06 A.M., Jean Ginn Marvin convened the meeting. The Commission considered the following items:

**Agenda Item #1 Ratification of Minutes: January 19, February 27, and April 6, 2007 Meetings**

Ms. Thompson moved, Mr. Friedman seconded, and the Commission voted unanimously (4-0) to ratify the minutes of the January 19, February 27, and April 6, 2007 meetings.

**Agenda Item #2 Audit Findings/Hon. Philip A. Cressey**

Mr. Wayne explained the auditing process and informed the Commission that the staff is now auditing approximately 20% of the legislative candidates participating in the MCEA. Two main documents that are requested from the candidates are: receipts and/or invoices for purchases and proof of the payment by cancelled check or bank statements. Representative Cressey, Mr. Wayne explained, wrote a check out to himself and used the cash for a payment to Staples for literature. Mr. Cressey does not have a receipt for this literature. The staff recommends finding a violation for not having a receipt, but not assessing a penalty.

The second audit finding was the purchase with MCEA funds of a flash drive for storing digital information. This would be considered campaign equipment that should be sold after the election and funds returned to the MCEA account. Representative Cressey has thrown out the flash drive. Mr.

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Wayne's recommendation is to find Rep. Cressey in violation, but not require him to pay for the flash drive since he did not understand that the flash drive could be used over again.

Representative Cressey, House District 99, addressed the Commission. He had a sample for the Commission of the literature he had printed at Staples. Rep. Cressey went on to explain that when he went to Staples to pay for the literature, he was told that he could not use a 'starter' check from his new checking account, so he went to the bank to cash a check and paid Staples with the cash. He also stated that his fax machine is very old and when he put the receipts into his fax machine to send to the Ethics Commission, he thought the copy had gone through. However, the receipt got caught inside his fax machine and he did not realize this. As for the flash drive, he thought it was like a CD and thought once it had been used, it had to be thrown out.

Mr. Friedman asked what makes this case different from other cases in the past where people have not been able to produce documentation for expenditures and the Commission has not waived the entire penalty.

Mr. Wayne explained this situation does not come before the Commission all that often. In a couple of cases from the 2004 election, the Commission required the return of funds from two candidates who could not produce back-up documentation to support the expenditures. In those cases, even though the candidates said that they used the funds for campaign-related purposes, the Commission found their explanations to lack credibility. Most candidates have been able to come up with the documentation given enough time. This case appears to be the first time a candidate simply cannot find a receipt but has a credible explanation for the expenditure.

Mr. Friedman questioned whether the fact that a candidate cannot find a receipt would be used as a defense.

Mr. Wayne said that the possibility exists. He said that this is a policy decision for the Commission to make: whether to disallow the expenditure and require the return of funds if a candidate cannot provide documentation or whether to allow the candidate to come before the Commission to explain the situation and provide any additional information and base a determination on the credibility of the explanation and the candidate.

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Ms. Thompson agreed with Mr. Friedman as far as setting precedent for future occurrences where documentation 'simply cannot be found.' She felt there does need to be some penalty even though she understands how this could happen. The Commission needs to be accountable for the public's money used by candidates and proof of purchases is very important. As far as the flash drive goes, Ms. Thompson saw how a mistake could be made with this type of equipment. She believes if Rep. Cressey purchased the flash drive, that would be acceptable.

Ms. Gardiner asked whether Rep. Cressey had contacted Staples himself to find out the actual price of the literature and whether he had asked Staples to give him a quote for an order similar to the order he actually got. Rep. Cressey stated he had not but that it was something he could do.

Ms. Ginn Marvin asked when he was notified that he would be audited. Rep. Cressey stated it was some time in October. He stated that he thought it was a burden to get a letter telling him that he was being audited for primary activity so close to the general election.

When asked by Ms. Ginn Marvin, Rep. Cressey stated that he had all the receipts for other expenditures except for the Staples expenditure. He said that he threw out copies of receipts but not the receipts themselves.

Rep. Cressey reiterated that Staples would not take a starter check in response to a question from Mr. Friedman.

Rep. Cressey also informed the Commission that he did not claim any mileage during his campaign. He paid out of pocket.

Mr. Wayne provided some background regarding this type of circumstance and provided the Commission with three options. The first option was to allow a candidate who cannot provide documentation to present oral testimony, and if the testimony is believable, find the candidate in violation but not assess a penalty. Another option would be if a penalty was deemed necessary because documentation was not kept, the Commission could assess a penalty for not keeping the documents (as opposed to penalty for misusing funds). Mr. Wayne also suggested the third option to disallow the

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expenditure. This has been the staff's preferred method in the past and is in line with other governmental audit and reimbursement policies, including the State's policy for employees and contractors. However, even though the MCEA program needs to be accessible, it also needs to be accountable to tax payers. He expressed concern that first time candidates may have these sorts of issues and may not be adept at keeping records. Mr. Wayne also expressed the concern he has heard from others, including Legislators, that the program may become too regulated.

Mr. Cassidy asked what the staff recommendation is. Mr. Wayne stated that there may be other cases where candidates are acting in good faith when they cannot come up with documentation. In these instances, finding a violation without a penalty may be appropriate. He said the staff recommendation for Rep. Cressey's case would be to find him in violation for not keeping receipts, and not ask for repayment for the Staples purchase in question.

Mr. Cassidy made a motion to accept the staff recommendation; Mr. Friedman seconded.

Mr. Friedman expressed concern over letting candidates off the hook, especially veteran candidates. Rep. Cressey has been through the program before. He stated that he believed Rep. Cressey's explanation, but was troubled by the message that could be sent to candidates if the Commission excuses the lack of a receipt.

Ms. Thompson cautioned against discouraging people from running for office because of the rigors of the Clean Election recordkeeping process but acknowledged that it was necessary to hold candidates accountable. Ms. Thompson feels there should be a penalty in absence of a policy which speaks to this issue directly and therefore said she would vote against the motion.

Ms. Ginn Marvin indicated that she would vote against the motion. She would suggest going back to Staples to get some sort of proof of this purchase. She cautioned the Commission not to make exceptions for people on case by case basis. It needs to be the same standard for all. Without receipts, there should be no reimbursement. As far as the flash drive, Ms. Ginn Marvin stated she understands how someone could think it was a one-time use and technology changes so quickly. Thus, she would not require repayment for the flash drive.

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The motion failed by a vote of 1-3 (Mr. Cassidy in favor, all others opposed.)

Ms. Thompson asked if Rep. Cressey would be allowed to go back to Staples and get a receipt or proof of purchase.

Ms. Ginn Marvin asked Rep. Cressey if he could go back to Staples. He confirmed that he would be willing to do that.

Ms. Thompson moved and Mr. Cassidy seconded to table the matter for determination at a future meeting after Rep. Cressey has approached Staples for documentation. The motion passed (4-0).

### **Agenda Item #3 Complaints/Carol Grose and Susan Wasserott Campaigns**

Mr. Wayne explained that these two candidates ran against each other. There are complaints by each candidate and one by Daniel Billings, Esq.

Rep. Carol Grose, House District 65, addressed the Commission and handed out some additional materials. She informed the Commission that she ran in the 2004 election. Her opponent, Fred Kahrl, is now the editor of a local paper, The Coastal Journal. She called this newspaper to get some space to write articles but he denied her space. She continued to request space and was denied. Ms. Wasserott began writing articles every week for the Coastal Journal after Rep. Grose had made several requests for space. She further learned that Ms. Wasserott's articles were 'advertorials' and was informed that 'advertorials' were costly. When Rep. Grose questioned Mr. Kahrl, he said he was giving Ms. Wasserott the space in the paper because she works at Mid-Coast Hospital. Rep. Grose was concerned since Ms. Wasserott was putting her campaign e-mail address at the bottom of the articles which put Ms. Wasserott at an advantage. Mr. Kahrl later gave Rep. Grose space for two articles. Rep. Grose felt she was the 'targeted' candidate during this campaign. Mr. Kahrl wrote an article just prior to the election which was very negative towards her. She went on with other examples of negative actions against her. Rep. Grose stated her main concern was the campaign e-mail address Ms. Wasserott put in her articles and the fact that it was free space for Ms. Wasserott. If two or more people are running, she believes they should all get the same treatment by the newspapers.

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Rep. Grose said that the printing of Ms. Wasserott's articles constitutes unreported contributions to Ms. Wasserott's campaign.

Rep. Grose explained the sign issue portion of her complaint, saying the signs were very elaborate and ornate and a previous opponent, Rick Tetrev, gave them to Susan Wasserott. They were not left over wood, as was claimed by the Wasserott campaign.

Mr. Friedman asked Rep. Grose to clarify that these signs were used by Mr. Tetrev in a previous election running against Rep. Grose, his name was removed and they were repainted for Ms. Wasserott's campaign.

Rep. Grose stated that Ms. Wasserott should have paid for the articles in the paper since her campaign e-mail and website address and 'running for candidate in District 65' were printed on the articles. If they were not paid for then they should have been reported as in-kind contributions.

Susan Wasserott addressed the Commission and was represented by Daniel Billings, Esq. Mr. Billings addressed the articles published in the Coastal Journal. Mr. Billings cited the definition of expenditure, according to Maine law, "does not include any news story, or periodical. ...." Mr. Billings stated that the newspaper which ran these articles is not controlled by a political party or candidate, therefore it is not within jurisdiction of the Commission. It is not a contribution. Newspapers do not have to be fair, nor provide equal space.

Mr. Billings explained how the website was financed. The work on the website was initially provided by Mr. Stevenson as a volunteer. The costs for web-hosting and domain registration were reported by Ms. Wasserott and she did pay \$250 compensation to the website design service after the campaign after consulting with Commission staff. This was a voluntary service provided to the campaign and was partially compensated after the campaign. The signs were loaned by a previous candidate, which is done regularly. Candidates pass them on and just repaint with the new candidate's name.

Mr. Friedman expressed concern over the newspaper articles. He questioned whether the articles are news articles or promoting candidacy.

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Ms. Susan Wasserott stated that Mr. Kahrl contacted her to write eight health and wellness articles in the summer. She was not aware of the 'bad blood' between Rep. Grose and Mr. Kahrl. Her job as a human resource provider for the hospital is educating the public and she thought this opportunity was perfectly natural. She thought putting her name and e-mail on the articles was part of the disclosure requirement and was more interested in the educational aspect than in promoting her campaign.

Mr. Friedman asked if these articles were still being published in the paper. Ms. Wasserott confirmed that they were being written by other people. She said that she was a replacement candidate and did not begin campaigning until June which is when she was asked to write the articles.

Mr. Friedman said he believes the request to write articles feels more like political rivalry.

Ms. Wasserott could understand his feelings; however, she was not aware of any of history until today, after listening to Rep. Grose. If she was, in fact, used as a pawn, Ms. Wasserott does not feel it fair to hold that against her. She believed Rep. Grose would receive equal space in the newspaper at some point. Rep. Grose was given space right before the election.

Mr. Billings stressed that the Commission should not judge editorial decisions made by newspapers. The law is broad, and the history between the parties (Rep. Grose and Mr. Kahrl) should not be held against Ms. Wasserott.

Mr. Cassidy asked what 'advertorial' means.

Jeanna Hamilton, staff reporter for the Coastal Journal, stated that an advertorial is an article given to the newspaper, sometimes paid for, to be placed in the paper. The newspaper does not take responsibility for the content of the article.

Ms. Wasserott addressed the sign issue and explained that Mr. Tetrev had used the signs for his campaign. He offered to loan the signs to Ms. Wasserott and her husband repainted them. Mr. Tetrev told Ms. Wasserott he did not buy the wood for campaign purposes, and that since his last campaign he had used the signs for his daughter's wedding. She reported that her husband had repainted the signs with used paint that was around the house.

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Ms. Wasserott also informed the Commission that the web design services were provided by a volunteer. When she checked with the Commission about compensation after the election, she was told she could pay him a token amount for his help.

Mr. Billings addressed his complaint, saying the error was as a result of the advertising company who printed the disclaimer. He would suggest finding a violation, but not assessing any penalty.

Ms. Jeanna Hamilton was asked by Mr. Cassidy if the paper charges for the advertorial. Ms. Hamilton stated that some times there is a charge. She also informed the Commission that there are local professionals in the health and wellness industry who write for the newspaper from time to time and purchase space to do so.

Ms. Thompson stated she cannot see where the articles are anything other than newspaper articles, so her opinion is it would not be considered an expenditure.

Mr. Friedman stated that is the case only if the article is a news story, commentary or editorial. He is not convinced that is what these articles fall under and asked Ms. Gardiner for her thoughts on the news article issue.

Ms. Gardiner stated that "commentary" is not defined in the statute, and it is difficult to judge what is and is not a commentary. It is clear that this is not news reporting or an official editorial, so it and more or less falls into the 'all other' category. However, she has not done any research on this issue as to past practice. Her sense was that the exception in section 1012(3)(B)(1) was written to be broad.

Ms. Ginn Marvin stated her local paper writes information articles like this one by Ms. Wasserott occasionally also. They are just informational.

Mr. Cassidy noted that during election time, newspapers write many articles regarding candidates both in favor and not favorable and he understands how broad the area of commentary is.

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Ms. Thompson made a motion that the articles in the Coastal Journal written by Susan Wasserott do not fall under the term expenditure; Mr. Cassidy seconded.

Ms. Ginn Marvin noted that Rep. Grose won the election.

The motion passed (3-1) with Mr. Friedman opposing.

Mr. Friedman made a motion that the website and the wood reused for campaign signs are not to be considered to be contributions or expenditures; Mr. Cassidy seconded. The motion passed (4-0).

Mr. Friedman reminded the Commission of Mr. Billings's allegation regarding the lack of a disclaimer on TV ads.

Mr. Friedman acknowledged that the absence of the disclaimer was an inadvertent error; however, the public needs to know who paid for the ad. Mr. Friedman made a motion that Commission adopt the staff recommendation to find a violation but no penalty. It was seconded by Ms. Thompson. The motion passed (4-0).

#### **Agenda Item #4 Audit Findings/Hon. S. Peter Mills**

Mr. Wayne explained the staff is in the process of auditing the four Clean Election candidates for Governor. Senator Mills received \$200,000 in the primary election and had four findings in the final audit report. The first finding involved a payment made on June 2 to reimburse Senator Mills for \$722.20. He purchased 830 money orders for the qualification process out of his own pocket and this amount was to reimburse him. The reimbursement was made with Clean Election funds instead of his seed money. Also, the campaign worker who made the calculations double counted; it should have been only \$253. The staff recommends a civil penalty in the amount of \$253. The message needs to be clear and consistent to all candidates to be careful about reimbursements. The staff is sure this was totally unintentional on the part of the Mills Campaign.

Senator Peter Mills addressed the Commission and stated he did not disagree with any findings of the Commission staff and he is content with the staff recommendation.

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Mr. Cassidy made a motion to adopt the staff recommendation; Mr. Friedman seconded. The motion passed (4-0).

Mr. Wayne explained that the second finding relates to cell phone use. The campaign had an agreement with the campaign manager to use his personal cell phone for campaign use and he would be reimbursed for half of the expenses. Documentation produced for this reimbursement was the personal cell phone bill which is not sufficient because there is no way to determine which calls are personal and which are campaign-related.

Senator Mills explained that he was not sure how to go about reimbursing his campaign manager for this expense. They agreed on half of the fee on the personal cell phone bill. Sen. Mills said that he would like some advice on how to deal with this issue in the future.

Mr. Dinan, staff auditor, explained that there was no written agreement between Senator Mills and the manager and no log of campaign phone calls; therefore, the documentation is incomplete. In other instances, campaigns have purchased phones for campaign use.

Mr. Billings noted that the agreement he had as counsel for the Woodcock campaign was that anything above the monthly limit for his personal plan would be reimbursed by the campaign.

Mr. Friedman moved to accept the staff recommendation that \$501.40 was for campaign-related purposes and not disallow the expenditure. This was seconded by Ms. Thompson. The motion passed (4-0).

Mr. Wayne explained the third finding which relates to car travel. The current rule states that if travel is to be reimbursed, a travel log must be kept and the reimbursement rate is 36 cents/mile. In the Mills' documentation, the reimbursement amount per mile was the amount paid for the gas, and in one case it was 41 cents/mile. Since so many candidates have not understood the rule that they are supposed to keep a log, the staff recommends no action. However, the case of reimbursing at 41 cents/mile, the staff believes the State should be reimbursed the difference for the correct amount of 36 cents/mile.

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Senator Mills explained that he thought he had discretion to pay up to the federal reimbursement rate of 41 cents/mile. He went on to say that he wants to make it clear that he was not misusing public funds.

Mr. Friedman asked if the \$242.21 represented the amount in excess of the 36 cents/mile. Mr. Dinan confirmed that it did.

Mr. Friedman made a motion to have Senator Mills repay the \$242.21. This was seconded by Ms. Thompson. The motion passed (4-0).

Mr. Wayne said the last finding relates to public relations work done for the campaign. Bill Johnson who lives in Florida was not paid by the Mills campaign; he worked on a voluntary basis. The campaign reimbursed him for some personal expenses (food, travel, laundry). The Clean Election Act funds are not allowed to be spent on these types of personal expenses. Mr. Wayne did add that the consultant was from out of state and perhaps this would be an exception. The staff has no final recommendation.

Mr. Friedman stated that paying a volunteer does not seem right. If one volunteers, then they are not an employee. However, if someone (a volunteer) comes from out of state, a little more flexibility would be acceptable.

Mr. Cassidy agreed.

Ms. Thompson asked if any action needed to be taken. Mr. Wayne said that no action was necessary at this time. Ms. Thompson indicated she would like more feedback from the staff regarding this issue of out-of-state volunteers before she could make a determination.

Mr. Friedman suggested the Commission close out the audit and still have the staff come back with recommendations regarding this issue at a later time. He made a motion that the Commission not require reimbursement of MCEA funds and find no violation; Ms. Thompson seconded. The motion passed (4-0).

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**Agenda Item #5 Request for Investigation/Carl Lindemann and Maine Heritage Policy Center**

Due to a conflict of interest, Ms. Ginn Marvin recused herself from the discussion of this matter. Mr. Friedman chaired this portion of the meeting.

Mr. Wayne explained that Mr. Lindemann's appeal of the Commission's determination in December as to whether Maine Heritage Policy Center should be considered a PAC is still pending. Mr. Lindemann is complaining that the 1056-B report filed in January by MHPC at the request of the Commission is not complete. MHPC has filed a response requesting the Commission decide whether this second complaint is worth considering at this time, since the appeal is still in the Court's hands.

Mr. Friedman expressed concerns as to whether this discussion has any validity at this point in time since the appeal is still pending. He asked Assistant Attorney General, Phyllis Gardiner for her thoughts on whether this is the appropriate time to consider this second complaint. Mr. Friedman reviewed the order of events and the status of the appeal.

Mr. Friedman asked whether, if the Superior Court does rule in Mr. Lindemann's favor and MHPC is a PAC, that would cause the 1056-B report filed by MHPC to be withdrawn or subsumed.

Ms. Gardiner thought it would then be subsumed, in effect, because a PAC report would be broader in terms of reporting all contributions and expenditures and thus include more than the 1056-B report.

Mr. Friedman stressed that the issue is not whether these complaints are worth pursuing; the issue here is whether the complaints should be pursued at this time. Procedurally, Mr. Friedman does not believe the complaint is ripe because the Commission has not received a final adjudication as to MHPC's status. At this point, he thinks Mr. Lindemann and Mr. Billings should be heard as to the appropriateness of addressing the issue today. Mr. Friedman thought this hearing ought to be delayed until after the court has ruled.

Mr. Cassidy asked whether MHPC would have to report retroactively if the court determined it was a PAC. Ms. Gardiner confirmed that it would. Mr. Cassidy agreed that it would be wise to wait at this point; however, he would like to hear from Mr. Lindemann and Mr. Billings on the issue of delaying the hearing on this complaint.

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Ms. Thompson expressed concern with the Commission not hearing a complaint that has been filed against someone who submits a 1056-B report. She believes all complaints should be heard when they are filed regardless of what may be pending. Ms. Thompson asked what the normal procedure is when someone files a complaint against a 1056-B filer. She asked if the staff looked at the MHPC 1056-B report. Mr. Wayne said that the staff did review it. Ms. Thompson does not think this complaint should wait since there is no legal prohibition against hearing the complaint in light of the pending appeal.

Mr. Friedman stressed that this is not a normal situation since there are pending issues regarding the complaint. If this were in front of a court, the court would probably not want to take the complaint up until a final decision had been made regarding MHPC's status because it would not want to take time on an issue that may become moot because of a decision in another forum.

Mr. Cassidy stated that he would favor scheduling the complaint at a later time when the loose ends were more tied up.

Mr. Lindemann addressed the Commission as to whether this is the right time to hear his second complaint. His two major concerns are: 1) how to deal with a 1056-B filing when the reported expenditures far exceed contributions, and 2) the larger issue of new political public relation firms operating under the guise of public policy groups. Mr. Lindemann thought that MHPC should voluntarily disclose all its financial activity in the same way that Democracy Maine had voluntarily disclosed its financial activity on a PAC report as a part of its response to a complaint brought against it by Roy Lenardson. Mr. Lindemann said that the Commission tabled the complaint against Democracy Maine (March 9, 2007 meeting) after it had considered the complaint and thought that the same should be done in this case.

Mr. Lindemann addressed two procedural issues regarding this matter brought up in Mr. Billings' response. First, he believes that this matter is worth pursuing. The Commission has the authority to conduct an investigation if there are sufficient grounds for believing that a violation may have occurred. Mr. Lindemann said that the materials he has presented the Commission more than sufficiently state the grounds for an investigation. Second, Mr. Lindemann said that Mr. Billings asked that the complaint be

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summarily dismissed. However, Mr. Lindemann stated that Mr. Billings has not provided any sworn statement to substantiate his request for a summary dismissal.

He feels that it would have been appropriate for MHPC to ask for a stay for filing the 1056-B report pending the appeal back in January; however, it did not. It accepted the Commission's determination that it had to file the report and filed one. The 1056-B filing itself is separate and apart from the appeal. For example, if there were material false statements in the report, that would be a separate violation that would not be dependent on the Superior Court's ruling. He believes the fact finding should go forward and stop short of a final determination until the court decision.

Mr. Billings addressed the Commission. He expressed concern with the amount of time his client, MHPC, has already had to put into this issue and this second complaint today will just add more time to process. If there is going to be a fact finding investigation, Mr. Billings believes it should be done once, in accordance with the court's direction. If the complaint were unrelated and a separate factual matter, it would be justified to investigate further. He agreed that the Commission has the discretion to decide how it should proceed. He noted that a similar complaint against the AARP had been tabled pending resolution of the court case. In response to Mr. Lindemann's point about the stay, Mr. Billings noted that since MHPC had decided not to appeal the Commission's earlier ruling, it had no basis to request a stay.

Ms. Thompson stated that she thought the Commission should hear the substantive issues presented in the complaint and not delay because of pending Superior Court case.

Mr. Cassidy made a motion to reschedule this complaint until after the Superior Court decision; Mr. Friedman seconded. The motion passed 2-1, Ms. Thompson opposed.

Mr. Friedman stated that the vote to delay does not cast any doubt on the validity of the complaint. The complaint is worthy of hearing, but the Commission needs to be concerned with administrative economy. The Commission will look at every aspect of the complaint when the time is right.

Ms. Ginn Marvin took the Chair at the conclusion of this item and stated that items would be taken out of order to prevent parties from having to wait longer.

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**Agenda Item #9 Request for Waiver of Late Filing Penalty/Richard Dort**

Mr. Wayne explained that Mr. Dort is requesting a waiver of a late filing penalty for his last report, the 42-Day Post-General, due December 19, which he filed fifteen days late. Under the statutory formula, a penalty of \$1,908 would be assessed because this was Mr. Dort's third report that he filed late. He paid prior penalties with his campaign funds, which is a violation. The staff does not feel Mr. Dort's excuse for lateness is valid. However, the staff does feel the penalty should be reduced to \$300 total for all three penalties since the statutory penalty is disproportionate to the level of harm done to the public from late disclosure and the fact that he is a first time candidate. The staff also recommends that Mr. Dort be required to reimburse the Fund for the \$403.49 in previous penalties that he had paid out of his Maine Clean Election Act funds.

Mr. Cassidy asked if there were payment schedules set up for candidates. Mr. Wayne said this has been done; however, most candidates who do file late usually pay late also. The best method is to have them pay all up front.

Mr. Dort stated that he did not have a valid reason for not filing on time. He did not realize he could not use Clean Election funds to pay his penalties. He did say that he lost his job and access to the internet so one of the earlier reports was late due to that. He expressed thanks for the reduction in the penalty.

Mr. Friedman asked if the penalty were reduced, would Mr. Dort be able to pay the penalty. Mr. Dort stated he could pay with a credit card.

Mr. Friedman asked if he understood that if he did not pay the penalty, he would be referred to the Attorney General's Office for further action. Mr. Dort said he understood this.

Mr. Friedman made a motion to accept the staff recommendation to reduce Mr. Dort's total penalty to \$300 and require reimbursement of \$403.49, for a total payment of \$703.49; Mr. Cassidy seconded. The motion passed (4-0).

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**Agenda Item #13 Violations of Maine Clean Election Act Funds/Thomas J. Bossie**

Mr. Wayne explained that Mr. Bossie received \$13,000 from the MCEA fund and spent some of the funds on personal expenses. His personal and campaign bank account records were subpoenaed by the Commission. The findings were that Mr. Bossie had 95 payments in the campaign account totaling \$2,867 that appeared to be personal in nature and were made after the election. In addition, \$1,200 was transferred from his campaign account to his personal account and was used to pay a car loan and other loans. There were other payments made for personal expenses. The violation would be for using MCEA funds for purposes that were not campaign-related. The staff recommends a penalty of \$1,250. Mr. Wayne stated that all the funds have been repaid to the Clean Election Fund, so the State has not lost any money.

The second violation is failure to return unspent campaign funds which were due back to the Commission on November 21 and December 19. The funds were finally returned two months late after repeated requests and referral to the Attorney General's Office. The recommended penalty for this violation is \$750.

A penalty of \$500 is recommended for failing to report expenditures accurately. His original December 19 report had no expenditures listed, when in fact he had made several. Finally, staff recommended a penalty of \$250 for commingling campaign funds with personal funds.

Mr. Wayne summarized there are a total of four penalties in the amount of \$2,750. Mr. Wayne also stated that Mr. Bossie has submitted a letter of apology dated May 3. Mr. Wayne advised that his goal is to keep the penalty under \$3,000 since the Clean Election Fund has been reimbursed completely and he is also concerned that when penalties are too high, it may discourage candidates from choosing to run as Clean Election candidates.

Mr. Bossie addressed the Commission. He expressed his apologies and embarrassment. He appreciates the professionalism of Sandy Thompson, his candidate registrar. He does not wish to deny the seriousness of his mistakes and would like to pay the fine and move forward.

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Mr. Friedman made a motion to accept the staff recommendation and assess a penalty of \$2,750 with a credit of \$384.85 which has already been paid. This was seconded by Ms. Thompson. The motion passed (4-0).

#### **Agenda Item #6 Presentation of Audit Reports**

The audit reports were accepted as written.

#### **Agenda Item #7 Request for Waiver of Late Filing Penalty/Jennifer Anderson**

Mr. Wayne informed the Commission that Ms. Anderson, a registered lobbyist, chose not to attend the meeting today. She was one day late filing her April report due to being ill and also she had a loss of power at her home. She lives on Peaks Island and the power was out for a few days.

Ms. Thompson commented that the power outages are regular on Peaks Island.

Mr. Wayne stated that the staff recommends finding a violation of late filing but waiving the penalty, since power was out at her home.

Mr. Cassidy moved to accept the staff recommendation; Ms. Thompson seconded. The motion passed (4-0).

#### **Agenda Item #8 Referral to Attorney General for Possible Criminal Prosecution/Kenneth Anderson**

Mr. Wayne informed the Commission that this matter had been resolved.

#### **Agenda Item #10 Referral to Attorney General for Collection of Penalty/Phillip Morris Napier**

Mr. Wayne explained that Mr. Napier was a candidate for Governor. He filed his 6-Day Pre-General report one day late. The statutory penalty amount is \$32.63. When the candidate registrar called Mr. Napier and asked that he pay the penalty or request a waiver, he refused to do either. The Commission is required to refer to the Attorney General if the penalty has not been paid within 30 days.

Mr. Cassidy made a motion to refer to the Attorney General Office; Ms. Thompson seconded. The motion passed (4-0).

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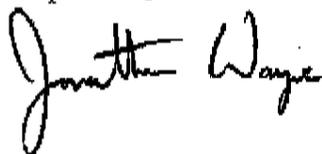
**Agenda Item #11 Violations of Maine Clean Election Act/Hon. Arthur H. Clement AND  
Agenda Item #12 Request for Waiver of Late-Filing Penalty/ Hon. Arthur H. Clement**  
Mr. Clement did not attend the meeting.

Mr. Wayne recommended that Mr. Clement's issues be put off for one month until the next meeting since the penalties are in excess of \$2,000.

Ms. Thompson moved to postpone; Mr. Friedman seconded. The motion passed (4-0).

There being no further business, the meeting adjourned.

Respectfully submitted,



Jonathan Wayne  
Executive Director



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

Minutes of the March 9, 2007 Meeting of the  
Commission on Governmental Ethics and Election Practices  
Held in the Commission's Meeting Room,  
PUC Building, 242 State Street, Augusta, Maine

Present: Hon. Jean Ginn Marvin, Acting Chair; Hon. Vinton Cassidy; Hon. Mavourneen Thompson; Michael Friedman, Esq.; Staff: Executive Director Jonathan Wayne; Phyllis Gardiner; Counsel.

At 9:13 a.m., Jean Ginn Marvin convened the meeting. The Commission considered the following items:

**Agenda Item #1 – Public Hearing on Proposed Rule Changes**

Mr. Wayne reviewed the procedures reminding the Commission that comments are welcome until March 19 and final review of rule changes will take place at the April 5 meeting.

Daniel Walker, Esq., representing the Maine Democratic Party, addressed the Commission. -Mr. Walker commented on the amendment to Chapter 1, Section 7, §1 (expenditures). He felt this change would create an unnecessary burden on the candidate and committees and would require vendors to keep track of all expenditures, which would double the tracking of expenditures. He stated that the MCEA is to level the playing field for funding purposes, not strategy. He said that this would slow process down.

Regarding the elimination of 15 day time period to correct errors and omissions in campaign finance reports as contained in Chapter 1, Section 4, §2, he believes the intent of this amendment is good; however, it removes incentive to make sure that report is correct. Flexibility is often good but hard lines are easier to follow.

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Regarding the requirement to keep travel logs, Mr. Walker believes this is a really important piece of the reporting process and is in favor of it.

Mr. Friedman asked Mr. Walker how good the parties are at advising their candidates.

Mr. Walker admitted that the parties would need to get better at training, etc.

Daniel Billings, Esq., addressed the Commission. He said that he was not representing any candidate or party but was speaking from his experience. He felt overall the rule changes were very good and addressed issues that have come up in the past. In particular, Mr. Billings felt the changes in Chapter 3 regarding qualifying contributions forms were extremely important. Having the collector sign the form and verify contributions is a major improvement.

Mr. Billings also concurred with Mr. Walker's comments regarding tracking expenditures made by consultants. Mr. Billings felt some detail was necessary to account for the public funds, but he felt that there needs to be a middle ground so as not to become too cumbersome for parties and candidates.

Senator Debra Plowman addressed the Commission regarding 24-Hour Reports. Her concern was whether MCEA candidates were required to file the 24-Hour Report. Sen. Plowman's opinion is that all candidates should file this report, not only the privately financed candidates.

Mr. Wayne addressed this concern. He advised the Commission that its bill which will be before the LVA Committee will clarify the requirement. Mr. Wayne did confirm that the MCEA candidates are currently required to file 24-Hour Reports. The bill will make the threshold the same for all candidates, private or MCEA.

**Agenda Item #2 – Complaints/Carol Grose and Susan Wasserott Campaigns (postponed until May 14)**

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### **Agenda Item #3 – Complaint/Late Filing of Independent Expenditures**

Mr. Wayne reviewed the background of the law that applies. In 2004 elections, the Commission received several complaints from candidates that PACs and parties were not filing independent expenditure reports promptly. As a result, in 2005, the statute and rules were amended to improve the expenditure definition and reporting requirements. Mr. Wayne shared a calendar which indicates the timeline for reporting expenditures.

Mr. Billings addressed the Commission. He said that the complaints were filed because questions were raised by specific expenditure dates reported in several independent expenditure reports filed by the Maine Democratic Party (MDP). He said that the dates raised questions as to whether the reports should have been filed earlier and whether they were filed later in order to delay matching funds to the Democratic candidates' opponents. He said the MDP's IE report #84 illustrated these problems. The report submitted by MDP showed a specific date indicating start of the design process and a later date for actual mailing. The MDP defended its report by saying that it reported the expenditure after it found out how much the mailing cost would be. Mr. Billings questioned whether the date of the actual expenditure was when the order for the mail piece was placed or when the final postage cost was known. Mr. Billings said that he has advised his clients to get a full estimate of the cost – from design to postage – and report the amount of the estimate. Mail house expenditure dates vary since designing, printing and mailing date are all different dates but it is possible to get an estimate. The approved practice is once order is placed with vendor, and then expenditure is recorded.

Mr. Friedman asked what changes Mr. Billings would like to see happen.

Mr. Billings stated that he felt the Commission has to consider whether design services are a separate expenditure when ordered and/or only when the decision has been made to disseminate the communication to the public. That is a policy interpretation for the Commission to make. He said the date of placing the design order was perhaps too premature to trigger a report because it is not truly known whether the piece will be disseminated to the public. But he felt that the placement of a print order was a good indication that the piece would be distributed and the expenditure should be reported then. He said that it was also possible to get an estimate at the design stage for postage, file a report, and then amend the report after getting the actual amount from vendor.

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Ms. Ginn Marvin recalled facing this issue before and the Commission had decided that the reporting had to take place when the vendor was asked to print. Ms. Ginn Marvin was under the impression that the printing and mailing costs had to be reported.

Mr. Wayne stated that the mail house should have a figure for printing and mailing when the order is placed.

Daniel Walker, Esq., addressed the Commission on behalf of the Maine Democratic Party. Mr. Walker stated that, in his opinion, an order to design a piece is not influencing an election, and, therefore, should not need to be reported or trigger any matching funds.

Ms. Ginn Marvin read the section of the rule that states, "... expenditures must be reported at the earliest of these events ... placement of an order for a good or service." She understood that to mean that when you place the order, the expense would need to be reported.

Mr. Walker felt that the statute definition of expenditure reads, "..... made for the purpose of influencing the election ...." He said that he did not believe that anything had influenced the election at the design stage.

Ms. Ginn Marvin stated that it would be highly unlikely to print information and then not mail it out. Once vendors design something, then the expenditure is made in her opinion.

Mr. Wayne did inform the Commission that some parties did have designs done for several candidates and then fewer of the mailers were disseminated than were designed. If these mailers are reported as expenditures, matching funds go out, and then the report is amended to delete some of those expenditures because they were not mailed out. This then puts the Commission in a tough spot because matching funds were paid out based on the original number of mailers. The Commission then has to go to the candidate who received the matching funds and ask whether the money has been spent. This is the difficulty in reporting design costs at the outset. Mr. Wayne felt that if the mailer has not been printed, then they should not report it until it is. This would save

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amending reports and matching fund payments. Mr. Wayne's opinion was that once the step is taken to print, then it should be reported.

Ms. Ginn Marvin felt the design service date would be one charge to report and then, once the materials are printed, another report would be due.

Discussion took place regarding design cost, printing costs and mailing costs time line for reporting.

Mr. Friedman noted that the postage fee should be separate from the design fee; however, the postage costs are a promise to pay.

Ms. Thompson asked whether a House candidate making expenditures from their own pocket would be less likely to cancel a project, whereas parties are more apt to cancel and if so, should they be treated differently.

Ms. Ginn Marvin asked Mr. Walker for clarification on when the expenditure should be reported. Mr. Walker feels that the expenditure should not be reported until it has been mailed. If they do not use the piece, it should not have to be reported. He believes if the decision is made to use it, then the design and printing should be reported at the same time.

Ms. Ginn Marvin asked about the postage.

Mr. Walker stated that the postage should be separate because it is a separate vendor, the US Postal Service. The check is separate from the vendor who created the flyer.

Mr. Friedman pointed out that when the vendor is told to proceed, the number of pieces is known, so the postage fee should be known at that point also. Mr. Friedman stated that, if the print order is given to the vendor, then the commitment is made for postage at that time also and should be reported.

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Mr. Cassidy stated the timing is a factor as the election day draws near. In fairness, an opponent would need time to respond to any mailer in an equal manner. To level the playing field, that has to be considered when making the rule.

Newell Auger addressed the Commission in order to receive any questions regarding IE #83. No questions were raised.

Mr. Wayne recommended that the Commission find the MDP in violation for late reporting of postage on IE #84. He would encourage all parties to be more forthcoming with getting the postage costs reported in a timely fashion. Regarding when an independent expenditure has to be reported, Mr. Wayne stated that the reporting requirement is for communications. The statute is not specific about actual and intended communications. The issue is to decide at what point a communication actually becomes an expenditure, and what constitutes a communication. Mr. Wayne feels that a design is not really a communication; when the mailer is printed, then it becomes a communication.

Mr. Wayne further stated that he did not think it was fair to request reports for design services only because the design had not influenced voters. If the literature is not printed and sent out yet matching funds have already been distributed to the opponent, that will give the opponent an unfair advantage because the literature did not influence the voters.

Mr. Wayne advised that for the sake of clarity, the requirement should be that once a communication is printed, the report should include design, printing and postage. No report is necessary at the design stage.

Mr. Friedman asked whether that would be the case if the communication is not mailed out after printing. Mr. Wayne stated that, in almost all cases, if the literature was designed and printed, the literature would be sent.

Mr. Cassidy noted that this would prevent parties from holding onto literature until the last minute and preventing response from opponent.

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Mr. Friedman stated that the intent to communicate and influence voters happens when the vendor is called and told to print the literature. You can estimate the postage because you know how many pieces you have and you know the amount of postage; therefore the postage should be reported at that time.

Mr. Walker disagreed. He believes there are two separate items and two separate vendors.

Mr. Cassidy agreed that the postage should be a given at the point of printing.

Mr. Augur noted that some orders to mailhouses are bulk orders – an order for three candidates at once. However, there may only be a definite decision to send out a mailing for one candidate. He said that the expenses for the other two communications should not have to be reported at the same time as the communication that was definitely going out. The parties needed to have the flexibility to make a decision about any changes to the other mailings.

Ms. Thompson felt the vote should be handled separately for each IE.

Mr. Friedman made a motion that IE reports #48 and #71 were timely filed; IE report #84 was not timely filed and the Commission needs further information to assess a penalty on IE Report #84. Seconded by Mr. Cassidy. The motion passed (4-0).

**Agenda Item #4 – Assessment of Civil Penalty for Late Filing/Nancy Bessey**

Mr. Wayne explained that this was brought up by the Commission staff and Ms. Bessey is currently in Florida so would be participating via phone.

Mr. Wayne explained that Ms. Bessey ran as a privately funded candidate against an MCEA candidate. She was required to file a 101% Report. Her receipts went over that amount on October 21, so she was required to file on October 23. She filed eight days late on October 31. The maximum penalty would be \$6,108. Her opponent would have received matching funds earlier if she had submitted her report on time; therefore, he was at a disadvantage due to the delay. Mr. Wayne handed out a calendar with the dates and amount of matching funds which should have been disbursed to her opponent had her 101% Report been filed on the required date. The staff believes a

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substantial penalty is required since her MCEA opponent did not receive the matching funds he was entitled to until six days before the election instead of ten days before the election. The potential that this may have influenced the campaign was great. This was a very close race and her opponent won by a very small margin. She also received several notices from the staff regarding the reporting requirements.

Daniel Billings, Esq., approached the Commission, representing Nancy Bessey. He stressed that Ms. Bessey self-funded her campaign and did not understand how to manage her account balances in her favor with regard to receipt amounts. There is a violation; however it was unintentional on the part of a first time candidate.

Ms. Bessey also added that she received two unexpected contributions within the month of October which put her over the 101% amount in receipts. She was not clear on how or when to repay the loan she had taken for campaign expenses, so her receipts got higher and expenses remained the same. She did not realize money she donated to herself counted as receipts.

Mr. Billings also noted that most candidates are not clear that they have to look at both the receipts and expenditures. He did not agree that the closeness of the election should be a factor in deciding the penalty.

Mr. Friedman made motion to adopt the Commission staff's recommendation to assess a penalty of \$1,527.04 which represents 25% of the maximum penalty allowed. This was seconded by Ms. Thompson. The motion passed (4-0).

**Agenda Item #5 - Request for Reconsideration of Late Filing Penalty/South Portland Democratic City Committee**

Mr. Wayne explained that the Chair of the South Portland Democratic City Committee, Richard Rottcov, was present to address the Commission for reconsideration of a penalty that was issued at a prior meeting which Mr. Rottcov could not attend. Local party committees who raise or spend more than \$1,500 are required to file three reports during an election year. This committee had a fund raiser in October 2005 to fund scholarships. There was a problem collecting the credit card

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payments electronically, so the receipts were not collected as expected in 2005 but had to be recollected from the contributors in 2006.

Mr. Friedman asked if reconsideration was a practice the Commission usually upheld.

Mr. Wayne explained that there is no rule regarding reconsideration. Requests are considered on a case by case basis.

Mr. Friedman asked if the facts had changed or new evidence had been provided and Mr. Wayne believed there may be new information that was not available previously.

Mr. Wayne briefly reviewed the past decision of the Commission to assess a penalty of \$500. It was decided that the Commission first needed to establish if there was enough new evidence to warrant reconsideration; therefore, Mr. Rottcov was allowed to speak to the new evidence.

Mr. Richard Rottcov addressed the Commission. His reason for seeking reconsideration of this penalty was to address the fact that this fundraising event was for high school scholarships and was not intended for political use. After the event, they realized that the Pay Pal system to deposit contributions was not functioning correctly and the money was not deposited into the scholarship account. The committee tried for several months to collect the pledge money. Mr. Rottcov produced a bank statement showing deposits that were recorded in 2006 but which represented contributions which should have been received in 2005. When he became chair in 2006, he was not aware of any fundraising in 2005. This bank statement was new evidence.

Ms. Thompson moved that the Commission reconsider its earlier decision, seconded by Mr. Cassidy. The motion passed (4-0).

Mr. Rottcov explained further that the money the committee received in 2006 was actually supposed to be received through the Pay Pal system and it was strictly for scholarship funding only. He reviewed the financial sheet which showed the activity for 2005 and 2006, indicating that the 2006 deposits were the 2005 scholarship fundraiser.

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Mr. Rottcov admitted that as the new chair of the committee he should have been paying closer attention to the bank statements and asked more questions of the treasurer.

Mr. Wayne made a staff recommendation to reduce the penalty by 50% as a result of the new evidence provided by Mr. Rottcov.

Mr. Cassidy moved to accept the staff recommendation to reduce the penalty to \$250; Ms. Thompson seconded. The motion passed. (4-0)

### **NEW BUSINESS**

#### **Agenda Item #6 - Ratification of Minutes of October 31, 2006**

Mr. Friedman moved, Mr. Cassidy seconded and the Commission unanimously voted to ratify the minutes of October 31, 2006.

#### **Agenda Item #7 - Request for Waiver of Late Filing Penalty/Newell Augur**

Mr. Wayne informed the Commission that two monthly lobbyist reports were filed late by Mr. Augur on behalf of Maine Beverage Association and Bangor Hydro. Once a lobbyist registers they are responsible to file monthly reports. The preliminary penalty would be \$100 for each report. Mr. Augur would like a waiver. Mr. Wayne did state that the staff understands Mr. Augur claims he did not reach the eight hours per month threshold.

Mr. Newell Augur addressed the Commission. He explained that he had a third client he was lobbying for and was confused as to the timing. He also lost his secretary who had been doing the filing for him.

Ms. Thompson asked if he received notice from the Commission, and he confirmed that he did receive a notice by way of e-mail but was not in the office the day the e-mail was sent.

Mr. Wayne advised the Commission the staff recommendation would be to assess a penalty in order to enforce the timely filing of reports.

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Ms. Thompson moved to assess penalty of \$200 for late filing; and the motion was seconded by Mr. Friedman.

Ms. Thompson explained that the full penalty is necessary since consistency is very important and supporting the staff who enforce these rules is also critical. The motion passed (4-0).

**Agenda Item #8 - Request for Waiver of Late Filing Penalty/MaineCasinoNow.com**

Mr. Wayne explained that the report was two days late. The treasurer, Seth Carey, sent a letter in defense which stated that a volunteer who normally handled the report was hospitalized during the reporting time. The recommendation is to assess a penalty of \$18.24.

Mr. Cassidy moved to assess the penalty of \$18.24, seconded by Mr. Friedman. The motion passed (4-0).

**Agenda Item #9 - Request for Waiver of Late Filing Penalty/Hancock County Democratic Committee**

Mr. Wayne explained to the Commission that because the Committee raised more than \$1,500 last year, it was required to file a report. Due to computer problems, the report was a few hours late beyond the 5:00 p.m. deadline. The Committee can file paper reports. It is not required to e-file reports. The staff recommendation is to assess a penalty.

Sally Crowley, the Committee's treasurer, addressed the Commission. Ms. Crowley described how far out in the country she lives. Her internet connection kept going out off and on all afternoon. At that point, she could not mail it. After the wind stopped, she was able to get the report filed electronically. She is requesting that the penalty be dropped or reduced substantially since it was the weather than kept her from timely filing.

Mr. Cassidy asked whether she could have faxed her report, and she replied that she was not aware she could do this, but had no means of doing so anyway.

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Ms. Crowley stated that she has been Treasurer for approximately nine months and has not been late before. In the past, she has filed at her office in Ellsworth so the internet connection has not been an issue.

Mr. Friedman, recognizing the Commission's role, asked what Ms. Crowley felt was a fair penalty. Ms. Crowley responded that since she did get the report into the system only a few hours late, she felt that \$25 for a two hour late report was more than sufficient.

Mr. Wayne stated that a 50% reduction in the penalty would be appropriate.

Mr. Cassidy made a motion that the penalty be assessed at one-half of \$176.77 or \$88.38. This was seconded by Ms. Thompson. The motion passed (4-0).

**Agenda Item #10 - Request for Waiver of Late Filing Penalty/Maine Taxpayer Action Network PAC**

Mr. Wayne explained the Treasurer of this PAC, Carol Palesky, is incarcerated at the Women's Center at the Maine Correctional Center in Windham. Her husband has asked for a waiver on her behalf. The PAC has not had any activity during the report period – no contributions, no expenditures. However, the policy of the Commission is to assess a penalty of \$50 for perennial late filers, even when inactive since the staff still uses administrative time. Mr. Wayne pointed out that the PAC could appoint Mr. Palesky as treasurer and reminder notices are sent out prior to filing deadlines.

Mr. Cassidy moved and Mr. Friedman seconded to assess a \$50 penalty. The motion passed (4-0).

**Agenda Item #11 - Request for Waiver of Late Filing Penalty/David F. Kirkpatrick**

Mr. Wayne explained that Mr. Kirkpatrick did not file his post election report on time. He mailed his report from Freeport one day prior to the deadline. The statute states that the penalty is based on when the reports are received, not on the mailed date. The exception is when a candidate mails the report by registered mail and it is postmarked two days before the deadline. The staff recommends imposing the full penalty.

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Mr. Friedman stated concern over the fact that the US Postal Service cannot get mail from Augusta to Freeport within a day. He moved to waive the penalty, since blame rests with Post Office. There was no second.

Mr. Wayne further explained mitigating factors within the rules that would reduce a penalty, one being "unexplained delays in postal service."

Ms. Thompson asked why the penalty amount was low. Mr. Wayne explained the formula used to calculate the penalty. Ms. Thompson expressed concern that the penalty did not indicate the seriousness of filing on time. Other candidates could file the reports in the mail the day before, and hope that the report arrives on time. She felt the Commission should not be 'easy' on this issue; she would not have supported Mr. Friedman's motion to waive the penalty.

Mr. Cassidy asked for clarification on faxing reports. Mr. Wayne explained that it was permissible to fax a report as long as it was received by 5:00 p.m. on the due date and the original was received by the Commission within 5 days.

Ms. Thompson moved to accept staff recommendation and assess the statutory penalty of \$14.79. Mr. Cassidy seconded. The motion passed (3-1), Mr. Friedman opposing.

**Agenda Item #12 - Waiver of Late Filing Penalty/Richard Dort (postponed until May 14)**

**Agenda Item #13 - PAC Reporting Requirement/Democracy Maine**

Mr. Wayne advised the Commission that this was a request for an investigation filed by Roy Lenardson against Democracy Maine, which is a non-profit organization that opposed TABOR in 2006. The staff advised Democracy Maine to file a 1056-B Report since it did not qualify as a PAC, but was spending funds in regard to this ballot issue. Two reports were filed, showing expenditures of \$58,689 against TABOR, and also contributions. Mr. Lenardson's complaint is that Democracy Maine should have filed as a PAC and been filing regular reports.

Ms. Thompson asked for a review of previous discussions on PAC filing requirements.

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Mr. Wayne explained that a few months ago, a complaint had been filed against the Maine Heritage Policy Center (MHPC) by Carl Lindemann. The Commission at that time considered whether the MHPC should file a 1056-B report or whether it was a PAC. The Commission decided at the December meeting that MHPC did not qualify as a PAC since its major purpose was not influencing the TABOR ballot question. The purpose of the organization is the determining factor as to whether it would be considered as a PAC. The Commission required MHPC to file a 1056-B report if it raised or spent more than \$1,500 to influence the TABOR election. MHPC did file this report. Since then, Carl Lindemann and Democracy Maine have filed an appeal from the Commission's determination with Superior Court.

Mr. Wayne stated that using that same standard, it would appear that the major purpose of Democracy Maine is not to influence TABOR.

Mr. Roy Lenardson addressed the Commission regarding the three complaints he filed. He did note that his complaint was filed prior to the Commission's determination regarding proposed rule changes regarding PACs and 1056-B reporting. His major concern is creating a situation where active campaigning by a political committee is being confused with a 1056-B filer who is only 'weighing in' on an issue, not campaigning for that issue. Currently, an organization may spend \$300,000 on a campaign for a political issue and not be considered a PAC. Mr. Lenardson thought that the definition of what qualifies an organization to be PAC needs to be clearer. The loophole exists when an organization files as a PAC only when it is advantageous for that organization. Mr. Lenardson passed out an example of this type of flyer. He stressed that he is not interested in correcting past issues, only in moving forward for 2008 elections.

Mr. Friedman stated that this should be brought before the Legislature. Mr. Lenardson agreed and said he will be doing so. Mr. Friedman noted that the Commission is constrained to follow the existing statute.

Ms. Thompson asked whether an organization can switch back and forth as a PAC.

In response, Mr. Lenardson expressed his concern over the clarity of defining a PAC in order to prevent the cloudiness there is now between 1056-B filers and PACs. There is a difference between

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think tanks and PACs. He feels the 527 organizations, 501(c)(4) organizations and other national organizations that are not as restricted by federal law as 501(c)(3) organizations could see this loophole and take advantage on any issue they wish. He feels that running TV ads and mailers, saying "vote for" is influencing votes and therefore, creates a PAC. Mr. Lenardson wants the Commission to make a distinction between studies done on an issue versus running ad campaigns when defining a PAC. Any organization can spend big bucks on an issue and say "it is not our primary purpose." Mr. Lenardson believes the rule needs to change, going forward, to keep these two entities separate.

Ms. Gardiner questioned where the line should be drawn, based on the nature of the activity or communication and how it relates to the "major purpose" referred to in the statute.

Mr. Lenardson feels the "major purpose" relates to that moment, to the communication, or to each issue, not the organization's original purpose. He said any large organization could be involved in ballot issues in Maine and not be considered a PAC. He does not believe that is the way the statute was intended to be interpreted.

Mr. Cassidy asked if there were any pending legislation regarding this issue. Mr. Wayne pointed out that Item #16 on the Agenda speaks to this exact issue of a PAC definition. Mr. Wayne said that the staff does concur with Mr. Lenardson that it is preferable to bring organizations into the PAC law in order to get the disclosure out to the public.

Mr. Lenardson reiterated that he does not want to look backward nor seek penalties for past circumstances. He only wants to look ahead for 2008.

Mr. Friedman stated he understood Mr. Lenardson's view. He did say changes to a statute need to go before the Legislature.

There was a discussion as to how to proceed with Agenda Items #13, 14 and 15 given that Mr. Lenardson said that he was not interested in seeing penalties assessed but was more interested in the Commission developing a better policy for 2008. Mr. Lenardson filed the inquiries on these items because he wanted to come before the Commission and get the issue out in the open; he wishes to

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keep the complaints active. It was decided to continue hearing from the parties involved in these complaints.

Jonathan Crasnick, Executive Director of Democracy Maine, addressed the Commission along with counsel, Russ Pierce, Esq. Mr. Crasnick stated that he believes MHPC and MCEP had a greater impact on TABOR than Democracy Maine had. Democracy Maine is a 501(c)(4) organization. He feels Mr. Lenardson is inconsistent with his accusation that Democracy Maine is a PAC. Mr. Crasnick also stated that Mr. Lenardson's position that a 501(c)(3) organization (such as MHPC and the Maine Center for Economic Policy) should not have to file as a PAC because it only does studies yet a 501(c)(4) should have to file is inconsistent. Mr. Crasnick believes the Commission made the right decision in requiring MHPC to file a 1056-B report. Mr. Crasnick filed a 1056-B report after consulting with staff. He was told that if a non-profit organization was not created to support or oppose a referendum, specifically, then it did not meet the definition of PAC and did not have to file as a PAC. Martha Demeritt, the PAC Registrar, did state that Democracy Maine would need to file a 1056-B Report and report only those funds that went specifically to influence TABOR, which it did.

Mr. Crasnick told the Commission that in a letter from Mr. Wayne, Mr. Crasnick was advised that if Democracy Maine did receive contributions to its general activities fund from a founder and that founder was a board member who was able to vote on issues Democracy Maine became involved with, then they had to list those funds on the report. If these funds were not listed, then they would be shielding the source of those funds.

Mr. Crasnick stated that Mr. Wayne's questions in the letter show how weak the reporting laws are. He went on to say the report shows how much is spent, but not where the funds come from. PACs do have to report the sources. These loopholes are being taken advantage of by several organizations. They can spend much more money than is raised and the sources are hidden by claiming the money came from a general activities fund, which is not required to be disclosed. Democracy Maine believes any time an organization spends or raises money to influence an election, it should be required to report these activities as a registered PAC. The general activities fund should be part of the reporting. Mr. Crasnick demonstrated with a sample PAC finance report by Democracy Maine for 2006. The report showed that Democracy Maine spent just over \$66,000

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but raised only \$1,700 from solicitations specific to TABOR. Mr. Crasnick stated that Democracy Maine has decided to lead by example and fully disclose the sources behind the money it spent during the last election. He stated that the report discloses the original sources of the funds in the general activities account. Mr. Crasnick said that the bottom line is that more disclosure is required. He challenged MHPC and all Maine organizations to do the same.

Mr. Wayne asked if Democracy Maine wished to change its status to a PAC. Mr. Crasnick responded that the way the current law is written, Democracy Maine does not meet the requirements. The exhibit is an example of what they feel should be required by all.

Mr. Pierce also noted that the 1056-B filings report expenditures that exceed contributions.

Daniel Billings, Esq., representing the Maine Heritage Policy Center, addressed the Commission. Mr. Billings stated that he does not feel Democracy Maine is a PAC under current law. However, he does think the Commission should table the matter and postpone action on the issue until after the appeal filed by Democracy Maine to Superior Court is resolved. He feels if MHPC is to be considered a PAC as Mr. Crasnick contends, then Democracy Maine also should be. Democracy Maine certainly advocated for the defeat of TABOR.

Carl Lindemann addressed the Commission, indicating that he was neither for nor against the parties to these complaints. Mr. Lindemann restated that the lines are very blurry with regard to PAC definitions. The fact that reports indicate discrepancies between contributions and expenditures is very concerning.

Mr. Lindemann brought up the question as to whether Ms. Ginn Marvin should be involved in hearing Mr. Lenardson's complaint in light of the connection they have through involvement with MHPC. The Ethics Commission needs to be perceived by all to be above reproach, in his opinion.

Ms. Ginn Marvin asked for a vote on Item #13. Mr. Wayne stated that Mr. Lenardson does want to proceed with his complaint; however, the Commission may want to table the complaint.

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Ms. Thompson expressed her desire again to hear from Mr. Wayne regarding staff's research on Item #16, Changes for the Definition of Political Action Committee, and §1056-B Reporting since it relates to Items #13, 14 and 15.

Mr. Friedman stated that Items #13, 14 and 15 are dependent upon the Legislature and Superior Court in his view. The comments today have not altered his opinion. Mr. Lenardson is looking for changes in laws. He agrees with Mr. Billings's suggestion to wait until direction from the Legislature.

Mr. Friedman moved to table Items #13, 14 and 15, with Mr. Lenardson's approval, for discussion at a future time after the Legislature has provided the Commission with statutory guidance or the court has provided a judicial interpretation of the statutes already existing.

Mr. Lenardson stated the issue with Item #15 would need to be resolved in his opinion. Item #13 and 14 are identical.

Mr. Friedman then altered his motion to table only Items #13 and 14; Mr. Cassidy seconded. The motion passed (3-1). Ms. Thompson opposed.

Mr. Cassidy asked when we would hear from the court. Ms. Gardiner stated that this was very hard to predict. It could be a year or six months, but four months, minimum. She said it is up to the court to schedule oral argument and, after that, up to the Judge to determine when to render a decision.

**Agenda Item #15 - Section 1056-B Reporting Requirement/The Katahdin Institute**

Mr. Wayne pointed out for the Commission that the Katahdin Institute received a \$10,000 grant to conduct workshops regarding communications about taxation and government spending issues. The Executive Director of the Katahdin Institute spoke to Mr. Wayne and explained that part of the workshop related to TABOR. The grant proposal does seem to refer to the TABOR issue.

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Mr. Lenardson addressed the Commission. He expressed his frustration with the current law. The Legislature, he feels, is waiting for the Commission to react to this issue since they have tabled bills.

Mr. Lavin stated that the Legislature would like to consider all bills of this nature at the same time. He believes the Legislature does realize its role in determining policy.

Mr. Lenardson restated his concern regarding consistency and clarity – knowing what the rules are and being sure every one is playing by these same rules.

Mr. Lenardson raised the Katahdin Institute issue because of the grant of \$10,000 for workshops appears actually to be focused on TABOR. He believes the Katahdin Institute should be brought into compliance as the other groups discussed today – Democracy Maine, MHPC, etc.

Anna Marie Klein, Director of the Katahdin Institute, and Thomas Foley, staff writer for the Katahdin Institute, addressed the Commission. Ms. Klein said the grant was shared with Community Leadership Network, \$5,000 each. Since the workshops were dealing with several issues, they believed they were in compliance. She said clarification would benefit all organizations. She passed out examples of handbooks that were used at the workshops.

Ms. Klein reviewed the books and the philosophy of the Katahdin Institute and told how they used TABOR as a useful tool. The Katahdin Institute took no actual position on TABOR.

Mr. Foley stated that there was not an inordinate amount of time spent on TABOR; therefore filing did not seem necessary. He said they were more than willing to file, if that needs to happen.

Mr. Friedman asked how much was spent. Ms. Klein thought perhaps \$2,500. She explained how their workshops are conducted. She said the workshops were intended to get participants the tools they needed to address issues but did not tell people what to do regarding any specific issue.

Mr. Cassidy asked if the \$2,500 included staff time; Ms. Klein confirmed that it did.

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Mr. Cassidy further asked what the annual budget was. Ms. Klein responded somewhere around \$70,000 and \$75,000. She noted that this is not directly campaign-related; work is more related to government education, and not that many participants, maximum of 20 people. She clarified that of the \$5,000 grant, \$2,500 went to TABOR-related activities and that was for staff time.

Ms. Ginn Marvin noted that there were several knowledgeable people on the board that were aware of the rules and could have advised better.

Ms. Klein acknowledged that their board's input would have been very helpful.

Mr. Wayne advised that the Commission write a letter to Ms. Klein asking what Katahdin Institute's financial expenditures and contributions regarding TABOR were and suggesting that they file a 1056-B Report, which may include mail costs, workshop expenses, other such costs relating to TABOR.

Mr. Wayne said that under § 1056-B, "an organization is required to report contributions or expenditures made for the purpose of initiating, promoting, defeating, or influencing in any way a ballot question." He noted that one purpose of these workshops was to provide people with ways to talk about TABOR, and sample editorials were provided in the workshop that urged defeat of TABOR. Mr. Wayne said that if the purpose of that expense was in fact to defeat TABOR, it should be included on a 1056-B report.

Dan Billings, Esq., representing the Maine Heritage Policy Center, addressed the Commission. He said that Ms. Klein has appeared regularly on a radio program (WLOB) and often spoke against TABOR. In addition to staff time, he was aware of a couple of press releases by the Katahdin Institute urging defeat of TABOR; therefore, they should be required to file, since they went over the \$1,500 threshold. He went on to say this is why the 1056-B statute is too broad in his view and threshold is too low. Organizations involved in a small amount of activity as part of their overall mission, get brought within the scope of this filing requirement unnecessarily, in his view.

Carl Lindemann addressed the Commission. He spoke to the freedom of speech issue as it relates to 1056-B disclosure.

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Ms. Ginn Marvin noted that both sides want the same thing: clear directions to follow.

Mr. Friedman made a motion that the Commission direct the staff to communicate to the Katahdin Institute information regarding the filing of a 1056-B report, given that the facts show spending of more than \$1,500 on TABOR. Mr. Cassidy seconded, suggesting a time limit for reporting be imposed, as it was with MHPC the last time.

Mr. Friedman amended his motion to include a time frame of 30 days for the Katahdin Institute to file its 1056-B report after the staff's communication.

The motion passed (4-0).

**Agenda Item #16 - Recommended Statutory Changes for the Definition of PAC, and §1056-B**

Mr. Wayne reviewed the staff recommendation for changes to the PAC definition from the January meeting. The proposed definition would replace the § 1056-B requirement. The staff is now seeking the Commission's approval of a new proposal. The current bill at the Legislature may be revised before the public hearing scheduled for the bill.

Mr. Wayne reported that organizations are influencing either candidate elections or ballot question elections as PACs and are reporting as PACs, which is the way it should be. PACs are required to register and identify primary decision makers and fund raisers, which is helpful for public disclosure. PACs report through the Commission's e-filing system. The 1056-B Report is different because those reports are filed in hard copy, made into PDFs and posted under other disclosures on our website. Mr. Wayne noted the public thinks of disclosures by parties, PACs or candidates, and the staff prefers this financial activity be reported as a PAC. The old definition (current law) refers to a PAC as any person who serves as a "funding and transfer mechanism and spends money ...." Mr. Wayne stated that the staff believes this is confusing and ambiguous. The staff recommends deleting that provision. The newly proposed definition for a candidate PAC reads "any organization that raises or spends more than \$5,000 to influence a candidate election," even if organization does not have as its major purpose influencing elections, would be required to form a PAC. Mr. Wayne noted the possibility of constitutional issues with this definition.

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Mr. Cassidy asked how this would apply to an organization like the Maine Educational Association. It has a PAC that supports candidates and also has a dues paying organization that supports educational issues.

Mr. Wayne confirmed that they funnel their political activity through the PAC, so the union itself would not have to register.

Mr. Wayne went on to explain the constitutional issues. Under federal law, an organization is a political committee if the major purpose is political activity and would be subject to strict federal regulation. The Maine law is much less burdensome. It requires only disclosure. PACs are free to raise money from whomever – labor unions, corporations – without any contribution limits. Mr. Wayne said that even under the proposed law, he believes an organization's First Amendment rights remain intact.

Mr. Wayne stated that the parts of the proposed law regarding ballot question elections still refer to "the major purpose" of organizations. If political issue is not the major purpose, the organizations should be allowed to file a 1056-B Report instead of forming a PAC. Because, even though the Commission prefers that these organizations form a PAC, if challenged, courts may find it to be burdensome on these organizations and individuals to do so. Mr. Wayne explained that the 501(c)(3) organizations, as the staff understands it, are not allowed to form PACs because of their tax exempt status. This would prohibit them from getting involved in ballot question elections, which is not the intent of the Commission. Mr. Wayne suggested, at this point, to keep the 1056-B requirement for "non major purpose" organizations, but make the following improvements to this requirement: clarify that all expenditures made to influence the election need to be reported, not just ones over \$100; clarify which contributions need to be reported; clarify which contributors need to be reported and what is the purpose of the contributor in giving the funds. If an organization does not have as its major purpose influencing ballot question elections under this requirement, then it would not have to report money given to support its general activities. The State has an interest in having non-profit organizations disclose their financial activity for the purpose of influencing elections. However, Mr. Wayne feels the State cannot ask non-profit organizations to disclose all financial information related to their general purpose simply because a "non-major purpose"

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organization has decided to engage in electoral issues. The staff also proposed a record keeping requirement which would have organizations keep their records for two years after the election.

Mr. Cassidy noted the reporting amount requirement has increased from \$1,500 to \$5,000.

Mr. Friedman asked who has to report contributors. Mr. Wayne said it would be the filer. Mr. Friedman asked about a situation where an individual donates \$5,000 towards organization and 85% of the work done by organization is for one ballot issue. The contributor gave the money, telling the organization to use it however it liked but knew that 85% of that donation will go towards that issue. Mr. Friedman asked whether that contribution would be reported.

Mr. Wayne explained that the contributions that would be reported are those that were donated specifically for that purpose; those that were given in response to a specific solicitation which would lead the contributor to believe that the funds would be used for that purpose; and contributions that could be reasonably determined to be provided for the purpose of influencing a ballot question when viewed in the context in which they were given. Mr. Wayne said that the last option would likely pertain to Mr. Friedman's example.

Ms. Thompson asked how these recommendations proposed today would change the decisions that have been made in the last few months regarding PACs and 1056-B filers.

Mr. Wayne stated that the four organizations that have come before the Commission – MHPC, Democracy Maine, AARP, and Katahdin Institute – would only be required to file 1056-B Reports since their major purpose is not to influence political activity. If the organizations spent more than \$5,000 in candidate elections, they would be required to register and file as PACs. There are other elements that could be explored in crafting the proposed law; for example, defining “a major purpose” to be when organizations spend more than \$10,000 or 200 hours of staff time on communications to influence elections. Mr. Wayne pointed out that if the Commission is still unsure whether some of these previous organizations are 1056-B filers or PACs, then the Commission could ask the staff to begin thinking about these factors to determine the status of the different organizations.

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Ms. Thompson asked what kind of burden would be experienced by "small actors."

Mr. Wayne explained that the spending threshold would make a difference. If the threshold is \$5,000, an organization that wants to send out mailers, etc., regarding an issue, but spends less than \$5,000, would not have to file a PAC report. Mr. Wayne said the Legislators seem to want a lower threshold.

Ms. Thompson stated that raising the threshold does help the "small actors." Mr. Wayne agreed; however, it does decrease disclosures.

Daniel Billings, Esq., addressed the Commission, saying he agrees with this direction. It will be clearer where the lines are; he believes the current definition is not clear at all. The proposal does seem to dodge the issue of what type of activity would trigger a reporting requirement. There are many "small actors" that are spending small amounts and have not filed. There are many small organizations wanting to speak out on ballot issues. The current threshold is too low.

Jonathan Crasnick addressed the Commission saying he feels any group that takes part in a ballot question should disclose whether there is express advocacy or not, should include all areas of money spent, including staff time. Most organizations spend more than they raise in his opinion. Also, he believes the report has to show where the money comes from, the original source, and who is funding a PAC or funding an issue.

Mr. Friedman asked whether Mr. Crasnick agreed with the staff recommendation, and he said he did.

Ms. Gardiner asked if the \$5,000 threshold was sufficient. Mr. Crasnick stated he has no strong opinion. He believes the dollar amount should not be a factor.

Mr. Wayne questioned how a non-profit organization would choose as to which general activity donation went to a political issue and what if a donor wishes to remain anonymous.

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Mr. Crasnick acknowledged that this is a challenge, but that it needs to be addressed nevertheless, especially if the contribution comes from an out-of-state donor.

Mr. Friedman noted that there are donors that do not want to be identified and so will stop giving.

Mr. Crasnick said it may change past practice; however, PACs have to do this now. Non-profits have not been required to do this; this would be a positive change. Currently, any group can start a non-profit, get unlimited amounts of money from out-of-state or in-state, and put it towards a referendum and not have to disclose it.

Carl Lindemann addressed the Commission. He feels the 501(c)(3) organizations want you to give to the general fund and do not want earmarked contributions. Mr. Lindemann said the need to get to the sources for these specific ballot issues is important.

Roy Lenardson addressed the Commission. Mr. Lenardson believes the \$5,000 is reasonable. He believes the "major purpose" definition could be a checklist of three or four specific activities, which if met, would trigger an obligation to register as a PAC. If non-profits want to play in politics, they would have to form a PAC. He feels that between this proposal and the \$5,000 the Commission could eliminate 1056-B reporting in Maine.

Mr. Wayne stated he would like to investigate specific triggers for PAC registration.

Ms. Ginn Marvin asked when proposals need to be submitted to the Legislature. Mr. Wayne said that it would be by end of March or sooner.

Mr. Friedman acknowledged that there are First Amendment considerations. However, he feels that if an organization chooses to become involved in the political process, then it has to accept publicity.

#### **Agenda Item #17 - Presentation of Audit Reports**

Mr. Friedman moved to accept the audit reports presented; and Ms. Ginn Marvin seconded. The motion passed (3-0).

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**Agenda Item #18 - Request for Further Advice by Rep. Thomas B. Saviello**

Mr. Wayne did inform the Commission that there is a bill before the Legislature that would affect Verso Paper, Rep. Saviello's employer.

Rep. Saviello, District 90, addressed the Commission. He stated that the bill (L.D. 437) regarding oil spill reporting in Maine was sponsored by other Representatives, and he has not been to hearings or meetings regarding this bill. He also stated that this bill affects the entire industry, not just Verso Paper. This is an example of what he would be contacting the Commission staff for guidance on in the future.

Michael Herz addressed the Commission on behalf of Maine Rivers as board member. He has worked with Rep. Saviello on a Legislative task force in the past and respects his ability. Mr. Herz believes that the conflict of interest issue which was brought up last month regarding RGGI presents a similar conflict of interest issue but he believes that L.D. 437 presents an even clearer conflict. He believes Rep. Saviello will derive a benefit from this bill. Rep. Saviello's reputation in his company and his industry will be directly affected as will his employer's financial benefits in Mr. Herz opinion, and therefore Rep. Saviello should recuse himself in regards to L.D. 437.

Mr. Cassidy asked whether oil spills had to be reported to DEP. Mr. Herz said it would depend on the size; if the spill was less than a certain threshold level, it would not have to be reported. This will affect companies' bottom line because they will not have to do as much reporting as they do now, if the bill passes. Mr. Cassidy stated the intent of these kinds of bills is to protect the environment; therefore, we all benefit from these types of bills. Mr. Cassidy asked Mr. Herz if the entire Legislature has a conflict if we all benefit. Mr. Herz said that this bill would create a special benefit to a restricted class of people, i.e., the mill's employees.

Ms. Ginn Marvin explained that in the past the Commission determined that Rep. Saviello derives no special financial benefit as a result of the bills. Mr. Herz said that he thought that this specific bill will affect a small set of employers.

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Rep. Saviello stated that the bill exempts those mills within the State that fall within the 50 gallon reporting threshold, but they would still have to file a log, they would have to have a HAZMAT team on-site, an on-site waste treatment facility, etc., so these costs incurred by the industry are not a benefit to the industry at all. In fact, this bill will increase the costs to the industry.

Mr. Cassidy asked for clarification as to the intent to protect all citizens of the State of Maine. Rep. Saviello confirmed that this was the intent of the bill, keeping track and cleaning up any oil spills on their facility. Everyone is affected by this.

Mr. Wayne stated that Rep. Saviello wants to be sure he can vote on this bill. The amount of spills by IP (Verso Paper) last year was 20%, which is still not enough impact to constitute a conflict of interest since there are hundreds of facilities in Maine. However, with RGGI, there was a clearer impact because Rep. Saviello's employer was one in five or six companies that would have to buy carbon dioxide allowances.

Mr. Friedman stated that there needs to be proof that the Legislator acquires a direct, substantial personal financial interest. In his opinion, it is very difficult to disqualify someone from voting on a bill because it disenfranchises voters in his district, unless that individual has a "direct, personal, substantial financial interest."

Mr. Cassidy agreed.

Ms. Ginn Marvin stated that Rep. Saviello was only one out of 151 Representatives.

Mr. Saviello wants to be able to work with Mr. Wayne in the future and not have to come before the Commission.

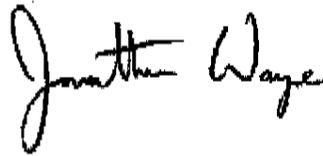
Mr. Friedman made a motion to issue an advisory opinion to Rep. Saviello which suggests that there is not a conflict of interest for his participation in debate and voting on L.D. 437 and that future questions of this nature be taken up with Executive Director, Jonathan Wayne.

Mr. Cassidy seconded. The vote was unanimous.

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There being no further business, Mr. Friedman motioned to adjourn, and Mr. Cassidy seconded.  
The motion passed (3-0).

Respectfully submitted,

A handwritten signature in black ink that reads "Jonathan Wayne". The signature is written in a cursive, flowing style.

Jonathan Wayne  
Executive Director

# Agenda Item #2



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

July 6, 2007

Hon. Philip A. Cressey  
PO Box 183  
Cornish, ME 04020

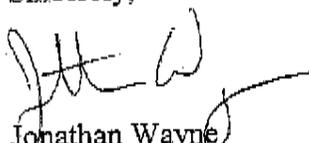
Dear Representative Cressey:

This is to notify you of the next meeting of the Maine Commission on Governmental Ethics and Election Practices at 9 a.m., Monday, July 16, 2007, at the Commission office.

At our May 14 meeting, the Commission asked you to obtain a detailed explanation regarding your expense in the amount of \$517.63 to Staples. In March, I telephoned the manager at Staples in North Windham, Michele Hardin. This was a departure from our usual procedures, but I made the inquiry to try to resolve the issue. Ms. Hardin ran a search for the payment in her computer system and could not verify it. Also, she could not explain why a ream of card stock and the photocopying job would add up to \$517.63. That explanation would assist the Commission in verifying that the expenditure was for campaign-related purposes. Kindly attend the July 16 meeting with an oral or written explanation. I will put your matter first on the agenda so that you can complete your business with the Commission as quickly as possible.

If you have any questions, please call me at 287-4179.

Sincerely,



Jonathan Wayne  
Executive Director

cp



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

May 15, 2007

Hon. Philip A. Cressey  
PO Box 183  
Cornish, ME 04020

Dear Representative Cressey:

At its meeting yesterday, the Maine Ethics Commission tabled its consideration of the findings in your audit report.

If you would kindly contact Staples to obtain a receipt or other explanation of your expenditure in the amount of \$571.63, this matter will be heard again at the next meeting of the Commission to be scheduled in June.

Please feel free to call me at 287-4179 should you have any questions regarding this issue.

Sincerely,

A handwritten signature in black ink, appearing to read "Jonathan Wayne".

Jonathan Wayne  
Executive Director

cp



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

March 30, 2007

Hon. Philip A. Cressey  
PO Box 183  
Cornish, ME 04020

Dear Representative Cressey:

This is to ask you for a little more information to assist the Ethics Commission in resolving the audit finding regarding your June 28, 2006 payment of \$517.63 to Staples. Please understand that we are simply trying to confirm that the payment was made for campaign-related purposes as required by statute and to confirm that Staples received a payment in this amount.

You explained in your January 18, 2007 letter that you had a receipt for the payment, but cannot locate it now. In your letter you also stated that the \$517.63 payment was for

printing of 2000 copies of my flyer handed out at the four parades and three fairs during the summer months, on yellow card stock and printed on both sides. Plus a ream of 125 card stock blank yellow paper.

In addition, you stated that "Staples can verify this expense." Following up on your suggestion, I faxed the attached letter today to managers at the Staples in North Windham hoping to verify the expense. I received a telephone response from Michele Hardin, a manager at the store, who said:

- She ran various searches for payments her store received and could not find the payment. In particular, she ran a search for payments her store received in the range of \$450 - \$550 within the dates of June 1 - July 25, 2006. She could not find a purchase within those ranges for printing and cardstock.
- A ream of card stock would cost \$4.34. Photocopying with one color only (black) costs eight cents per page. So, a copying job of 2,000 pages with both sides (4,000 sheets) would cost only \$320. A print job with more than one color costs thirty-nine cents per sheet. Without more information, she was unable to confirm that the purchase you described would cost \$517.63.

OFFICE LOCATED AT: 242 STATE STREET, AUGUSTA, MAINE  
WEBSITE: WWW.MAINE.GOV/ETHICS

Hon. Philip A. Cressey

- 2 -

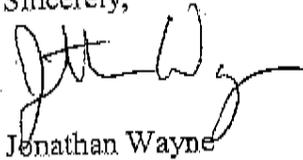
March 30, 2007

If you could provide the following information at the April 5, 2007 meeting, I believe it could help the Commission resolve the audit finding.

1. Please provide the Commission with information about the printing job at Staples, including whether more than one color was printed on the flyers and how many sheets were involved in the printing. In other words, can you give the Commission some idea of why the card stock and printing job cost \$517.63?
2. Please bring a copy of the flyer with you to the meeting.
3. In order to assist the Commission in confirming that Staples received a payment of Maine Clean Election Act funds in the amount of \$517.63, please explain how it is that you wrote check #108 to yourself in that amount. For example, did you go to Staples to determine that the exact price of the print job and card stock, later cash check #108 at TD Banknorth in the amount of \$517.63, and then return to Staples to make a cash payment in the amount of \$517.63?

Thank you for being prepared to help the Commission better understand the expenditure when it is considered at the April 5, 2007 meeting. Please feel free to call me or the Commission auditor at 287-4179 if you have any questions.

Sincerely,



Jonathan Wayne  
Executive Director

cc: Vincent W. Dinan, Commission Auditor



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

March 30, 2006

Faxed to (207) 892-1744

Michele Hardin or Ken Hagan  
Staples  
770 Roosevelt Trail  
North Windham, ME 04062

Dear Sir/Madam:

The Maine Commission on Governmental Ethics and Election Practices has been conducting a routine audit of a candidate for the Maine State Legislature in 2006. This type of audit is strictly routine, and is conducted of 20% of legislative candidates who receive public funds for their election campaigns.

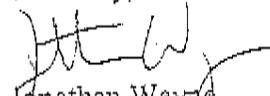
One of the candidates we are auditing is unable to locate a receipt for a purchase made at your store last summer, and he suggested that we attempt to confirm the purchase through your store. We are simply trying to confirm that the purchase took place and that the goods he states he purchased is consistent with the cost. The candidate states that on June 28, 2006, he made a cash purchase in the amount of \$517.63. He states that he bought one ream of 125 card stock yellow paper, and had 2,000 copies of a flyer printed at your store.

You could help us in two ways:

- If there is any way you could confirm a purchase in that amount on that date, we would greatly appreciate it.
- If you can confirm whether or not a ream of card stock paper and the photocopying job described would cost about \$517.63, that would also be very helpful.

Thank you very much for whatever assistance you can provide. My telephone number is 287-4179 if you would like to discuss the request.

Sincerely,



Jonathan Wayne  
Executive Director

OFFICE LOCATED AT: 242 STATE STREET, AUGUSTA, MAINE  
WEBSITE: WWW.MAINE.GOV/ETHICS



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: Audit of Rep. Philip A. Cressey

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Rep. Philip A. Cressey was a candidate for re-election to the House of Representatives in the 2006 elections. He was selected at random to be one of the 20% of Maine Clean Election Act (MCEA) legislative candidates who were audited. I have attached the final audit report. It includes a January 18, 2007 letter from Rep. Cressey responding to the two findings in the audit report.

#### **Timing of Audit**

Rep. Cressey complains that the Ethics Commission's audit of his campaign should not have begun in the last month before the November 7, 2006 election. I agree that in the last four to six weeks before a general election, candidates should not be burdened with responding to audit requests from the Commission. That will be the staff policy in 2008. In fact, in 2008 the staff is leaning toward conducting all audits of candidates after the general election. I disagree, however, with Rep. Cressey's view that the timing of the Commission's audit somehow caused the Representative to lose a receipt.

### **Record-Keeping Requirements**

MCEA candidates are required to keep two documents for expenditures over \$50:

- a receipt or invoice from the vendor which demonstrates that the goods or services purchased were campaign-related;
- a canceled check, bank statement, credit card statement or other document proving that the vendor received a payment from the campaign.

Candidates are not required to submit these records to the Commission unless they are requested, but they are required to keep them for two years after the election. The Commission has found in conducting these audits that a significant number of candidates are unaware of these requirements.

### **Finding #1: Rep. Cressey's Payment of \$517.63**

On June 28, 2006, Rep. Cressey wrote a check in the amount of \$517.63 to himself. He told the Commission auditor that he cashed the check and used the cash to pay Staples for a ream of 125 yellow card stock and for the printing of 2,000 copies of a flyer on yellow card stock that was handed out at four parades and three fairs. Rep. Cressey states that he kept the Staples receipt for the expenditure, but after faxing his receipts to the Commission's auditor he accidentally dropped a file folder and cannot now relocate the receipt.

The Commission's audit discloses that Rep. Cressey does not have written proof that Staples received a payment of \$517.63 or a receipt or invoice from Staples proving what goods or services were purchased. Rep. Cressey notes that he wrote "Staples Printing"

on the personal check which supports his explanation that the amount of the check was intended for Staples.

I recommend that you hear Rep. Cressey explain the goods he purchased. If you find him to be credible that the purchase was for goods that were campaign-related, I recommend that you do not disallow the expenditure which would require him to repay \$517.63.

I am sympathetic to the view that in order to educate candidates about the requirement to keep records of expenditures and to encourage compliance it could be helpful to impose some sanction against candidates that do not keep the required records. In this case, however, if the Commission is convinced that Rep. Cressey used the \$517.63 to buy campaign-related goods and services, I do not favor as a remedy disallowing the expenditure and requiring Rep. Cressey to return the funds.

#### **Requirement to Sell Goods that Could be Converted to Personal Use**

Candidates who use MCEA funds to buy goods that could be converted to personal use (e.g., computers, software, cell phones, printers) are required by the Commission's rule to sell them at fair market value and return the proceeds to the Commission. This is to prevent candidates from using the MCEA in order to buy goods that they will use personally after the election. Few candidates buy electronics equipment with that intention and I do not believe that was the intention of Representative Cressey.

**Finding #2: Purchase of Flash Drive for \$62.50**

Rep. Cressey states that he designed three mailers and one palm card, and was unable to send them by e-mail to his printer in New Hampshire. Because his computer does not let him copy files on to compact discs, the printer advised him to buy a "flash drive". A flash drive is a small piece of equipment (about the size of one's thumb) that can be plugged into a computer to save a large amount of data. Rep. Cressey states that he hadn't heard of flash drives previously, but bought one for \$62.50 at Staples. He copied the material onto the flash drive and mailed it to the printer.

Rep. Cressey states that he did not understand that the flash drive could be reused, and he thought it was a disposable item similar to a compact disc (CD). Initially he told the auditor that he had kept the flash drive, but later realized he threw it away.

In my view, Rep. Cressey did not comply with the Commission's rule, which is explained in the Commission's expenditure guidelines. Because the item cost \$62.50, it would have been preferable if he had considered whether the item was something that could have some personal value to him or someone else after the campaign.

I would urge you to hear from Rep. Cressey at the April 5 meeting. If you find his explanation credible, I would suggest finding him in violation of the Commission's rule but not asking him to reimburse the Commission for the device. He states that he no longer has it, so he is unable to make use of it himself or to find a buyer. Thank you for your consideration of these points.

## Title 21-A, §1125, Terms of participation

**12-A. Required records.** The treasurer shall obtain and keep:

A. Bank or other account statements for the campaign account covering the duration of the campaign; [2005, c. 542, §5 (new).]

\* B. A vendor invoice stating the particular goods or services purchased for every expenditure of \$50 or more; and [2005, c. 542, §5 (new).]

C. A record proving that a vendor received payment for every expenditure of \$50 or more in the form of a cancelled check, receipt from the vendor or bank or credit card statement identifying the vendor as the payee. [2005, c. 542, §5 (new).]

The treasurer shall preserve the records for 2 years following the candidate's final campaign finance report for the election cycle. The candidate and treasurer shall submit photocopies of the records to the commission upon its request. [2005, c. 542, §5 (new).]

**13. Distributions not to exceed amount in fund.** The commission may not distribute revenues to certified candidates in excess of the total amount of money deposited in the fund as set forth in section 1124. Notwithstanding any other provisions of this chapter, if the commission determines that the revenues in the fund are insufficient to meet distributions under subsections 8 or 9, the commission may permit certified candidates to accept and spend contributions, reduced by any seed money contributions, aggregating no more than \$500 per donor per election for gubernatorial candidates and \$250 per donor per election for State Senate and State House candidates, up to the applicable amounts set forth in subsections 8 and 9 according to rules adopted by the commission. [IB 1995, c. 1, §17 (new).]

**14. Appeals.** A candidate who has been denied certification as a Maine Clean Election Act candidate, the opponent of a candidate who has been granted certification as a Maine Clean Election Act candidate or other interested persons may challenge a certification decision by the commission as follows.

A. A challenger may appeal to the full commission within 7 days of the certification decision. The appeal must be in writing and must set forth the reasons for the appeal. [2005, c. 301, §32 (amd).]

B. Within 5 days after an appeal is properly made and after notice is given to the challenger and any opponent, the commission shall hold a hearing. The appellant has the burden of providing evidence to demonstrate that the commission decision was improper. The commission must rule on the appeal within 3 days after the completion of the hearing. [IB 1995, c. 1, §17 (new).]

C. A challenger may appeal the decision of the commission in paragraph B by commencing an action in Superior Court according to the procedure set forth in section 356, subsection 2, paragraphs D and E. [IB 1995, c. 1, §17 (new).]

D. A candidate whose certification by the commission as a Maine Clean Election Act candidate is revoked on appeal must return to the commission any unspent revenues distributed from the fund. If the commission or court find that an appeal was made frivolously or to cause delay or hardship, the commission or court may require the moving party to pay costs of the commission, court and opposing parties, if any. [IB 1995, c. 1, §17 (new).]

[2005, c. 301, §32 (amd).]

IB 1995, Ch. 1, §17 (NEW).

PL 2001, Ch. 465, §4-6 (AMD).

PL 2003, Ch. 270, §1,2 (AMD).

PL 2003, Ch. 448, §5 (AMD).

PL 2003, Ch. 453, §1,2 (AMD).

PL 2003, Ch. 688, §A21,22 (AMD).

PL 2005, Ch. 301, §29-32 (AMD).

PL 2005, Ch. 542, §3-5 (AMD).

- (2) Actual Expenses. Actual expenses include the pro rata, campaign-related share of vehicle depreciation or lease payments, maintenance and repairs, gasoline (including gasoline taxes), oil, insurance, and vehicle registration fees, etc. For reimbursement using this method, the candidate must maintain detailed records reflecting use of the vehicle for campaign-related purposes. The records must include the dates the vehicle was used for campaign-related purposes, the total mileage the vehicle was used for campaign-related purposes, the total mileage the vehicle was used for all purposes during the period for which reimbursement is made, and the percentage of total vehicle usage that the vehicle was used for campaign-related purposes.

## 2. Reporting by Participating and Certified Candidates.

- A. General. Participating and certified candidates must comply with applicable reporting requirements set forth in Title 21-A, chapter 13, subchapter II [§ 1017].
- B. Return of Matching Fund Advances and Unspent Fund Revenues. Matching Fund advance revenues that have not been authorized for spending and unspent Fund revenues shall be returned to the Fund as follows:
  - (1) Unauthorized Matching Funds. Candidates must return all Matching Fund advance revenues for which no spending authorization was issued prior to an election to the Commission by check or money order payable to the Fund within 2 weeks following the date of the election.
  - (2) Unspent Fund Revenues for Unsuccessful Primary Election Candidates. Upon the filing of the 42-day post-primary election report for a primary election in which a certified candidate was defeated, that candidate must return all unspent Fund revenues to the Commission by check or money order payable to the Fund.
  - (3) Unspent Fund Revenues for All General and Special Election Candidates. Upon the filing of the 42-day post-election report for a general or special election, all candidates must return all unspent Fund revenues to the Commission by check or money order payable to the Fund.
- C. Liquidation of Property and Equipment. Property and equipment that is not exclusive to use in a campaign (e.g., computers and associated equipment, etc.) that has been purchased with Maine Clean Election Act funds loses its campaign-related purpose following the election. Such property and equipment must be liquidated at its fair market value and the proceeds thereof reimbursed to the Maine Clean Election Fund as unspent fund revenues in accordance with the schedule in paragraph B above.
  - (1) The liquidation of campaign property and equipment may be done by sale to another person or purchase by the candidate.
  - (2) Liquidation must be at the fair market value of the property or equipment at the time of disposition. Fair market value is determined by what is fair,

economic, just, equitable, and reasonable under normal market conditions based upon the value of items of similar description, age, and condition as determined by acceptable evidence of value.

## SECTION 8. RECOUNTS, VACANCIES, WRITE-IN CANDIDATES, SPECIAL ELECTIONS

1. Recounts. After a primary election, if there is a recount governed by Title 21 - A, chapter 9, subchapter III, article III [§ 737-A], and either the leading candidate or the 2nd-place candidate is a certified candidate, the following provisions will apply:
  - A. If the margin between the leading candidate and the 2nd-place candidate is less than 1% of the total number of votes cast in that race and a recount is presumed necessary, the certified candidate immediately must halt the expenditure of revenues disbursed to the candidate from the Fund upon receiving notice of the recount until the recount is complete.
  - B. If the recount results in a changed winner, the certified candidate who originally received the disbursement must return any unspent distributions from the Fund to the Commission, payable to the Fund. If the new winner is a certified candidate, the Commission will distribute the applicable disbursement amount to the candidate.
  - C. If the margin between the leading candidate and 2nd-place candidate is 1% or greater of the total number of votes cast in that race and the 2nd-place candidate requests a recount, the leading candidate, if a certified candidate, is not required to freeze expenditures of the disbursement.
  - D. If the recount results in a changed winner, the certified candidate must return any unspent distributions from the Fund to the Commission, payable to the Fund. If the new winner is a certified candidate, the Commission will distribute the applicable disbursement amount to the candidate.
2. Death, Withdrawal, or Disqualification of a Candidate During Campaign.
  - A. Death, Withdrawal, or Disqualification Before Primary Election. If a candidate dies, withdraws, or is disqualified before the primary election, the Commission will establish a qualifying period during which any replacement candidate may become a participating candidate, collect qualifying contributions, and apply to become a certified candidate.
  - B. Death, Withdrawal, or Disqualification After the Primary Election and before 5:00 p.m. on the 2nd Monday in July Preceding the General Election. If a candidate dies, withdraws, or is disqualified before 5:00 p.m. on the 2nd Monday in July preceding the general election, any replacement candidate will have a qualifying period from the time of the candidate's nomination until 30 days after the 4th Monday in July as a participating candidate to collect qualifying contributions and request certification.
  - C. Death, Withdrawal, or Disqualification after 5:00 p.m. on the 2nd Monday in July Preceding the General Election. If a candidate dies, withdraws, or is



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

February 2, 2007

The Honorable Philip A. Cressey  
P. O. Box 183  
Cornish, ME 04020

Dear Rep. Cressey:

Enclosed please find a copy of the final audit report concerning our examination of contributions and expenditures listed in your Seed Money, Six Day Pre-Primary and 42 Day Post-Primary campaign finance reports.

As you know, the report contains two findings of non-compliance and related recommendations. We anticipate submitting the report to the Members of the Commission at their March, 2007 meeting. At that time, you will be afforded the opportunity to appear before the Commission and comment on the issues identified in the audit. Jonathan Wayne, Executive Director, will contact you in advance of the meeting to schedule your appearance.

Thank you for your cooperation and assistance during the audit process. Please call me at (207) 287-4727 if you have any questions or concerns regarding the report.

Sincerely,

A handwritten signature in black ink, appearing to read 'Vincent W. Dinan'.

Vincent W. Dinan  
Commission Auditor

Enclosure

Cc: Pretrea Cressey, Campaign Treasurer  
Jonathan Wayne  
Paul Lavin  
Sandy Thompson



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

February 2, 2007

Audit Report No. 2006-HR019

**Candidate: Representative Philip A. Cressey  
House District 99**

Background

Representative Philip A. Cressey was a candidate for re-election to the Maine House of Representatives, District 99, and successfully retained his seat in the 2006 general election. Rep. Cressey was certified by the Commission as an MCEA candidate on April 19, 2006. MCEA candidates are required under the Act to submit reports of their receipts, expenditures, outstanding campaign debt, and equipment purchases and dispositions for specified periods during the election cycle.

Audit Scope

Examination of selected candidate contribution and expenditure transactions occurring in the qualifying period, and between April 19 – June 1, 2006 (Six Day Pre-Primary Report), and June 2 – July 18, 2006 (42 Day Post-Primary Report), as recorded in the candidate's accounting records, and as reported to the Commission, to determine if the identified transactions (1) were properly approved by the candidate or his authorized representative; (2) were adequately documented as evidenced by original vendor invoices and cancelled checks or other acceptable disbursement documentation; and (3) complied in all material respects with the requirements of the Maine Clean Election Act and the Commission's rules.

The auditors examined documentation supporting 91 percent of expenditures on his "Six Day" report, and 89 percent of the expenditures listed on his "42 Day" report. The candidate reported no contributions or expenditures for the "Seed Money" period.

Audit Findings and Recommendations

Finding No. 1 - Rep. Cressey reported an expenditure of \$517.63 with Staples for LIT materials on 6/28/2006, during the 42 Day Post-Primary reporting period. Campaign records included a cancelled check dated 6/28/2006 payable to "Philip Cressey" in the amount of \$517.63 with the notation "Staples (second word unreadable)". Rep. Cressey informed us that he cashed the check and paid cash to Staples for the purchase. He was unable to provide a receipt from the vendor or proof of payment. Without proof of purchase or proof of payment the auditor was not able to verify that the expenditure was campaign-related.

*Criteria* - the MCEA requires participating candidates to report campaign expenditures according to procedures developed by the Commission. (21-A M.R.S.A. §1125 (12) and 21-A M.R.S.A. §1125 (12-A)).

*Recommendations* - the Commission staff recommends that the Commission take the following actions concerning Finding No. 1:

OFFICE LOCATED AT: 242 STATE STREET, AUGUSTA, MAINE  
WEBSITE: WWW.MAINE.GOV/ETHICS

- Consider Rep. Cressey's explanation in person at the March, 2007 Commission meeting, including whether to disallow the reported expenditure of \$517.63 for LIT materials by the Cressey campaign based on the candidate's failure to maintain acceptable documentation supporting (a) the campaign purpose of the expenditure, and (b) proof of payment. If the expenditure is disallowed, the Commission should direct the Cressey campaign to repay the amount of \$517.63 to the Maine Clean Election Fund.
- Consider whether failure to maintain the required documentation constitutes a violation that requires a penalty under the Act. The MCEA permits the Commission to assess a penalty of up to \$10,000 for any violation of the MCEA.
- Direct Rep. Cressey to amend his 42 Day Post-Primary campaign finance report to reflect the disposition of the audit finding.

Finding No. 2 -- the Cressey campaign purchased a "flash drive" -- an external data storage device that plugs into a computer's USB port -- for \$62.50 during the 42 Day Post-Primary reporting period. Rep. Cressey stated that he purchased the flash drive to facilitate data transfer to Spectrum, the printer of his campaign materials, and that he considered it a disposable item. Accordingly, he did not report the item on Schedule E (Campaign Equipment/Property Inventory) of his campaign finance report, and he did not sell the item at fair market value and remit the proceeds to the Maine Clean Election Fund. The Commission staff believes that under the Commission's rules for treatment of equipment purchases, the flash drive is a reportable equipment item, and should have been sold at the end of the election period.

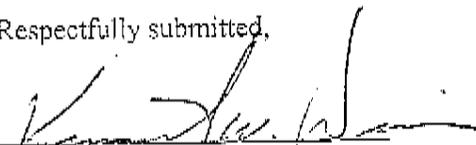
*Criteria* - the MCEA requires participating candidates to report campaign expenditures according to procedures developed by the Commission. (21-A M.R.S.A. §1125 (12) and 21-A M.R.S.A. §1125 (12-A)).

*Recommendation* -- Rep. Cressey has reported (see the Attachment) that he discarded the flash drive in October, 2006. The Commission staff recommends that the Commission hear Rep. Cressey's testimony at its March, 2007 meeting, and consider whether to direct Rep. Cressey to reimburse the Maine Clean Election Fund in the amount of \$62.50, the cost of the item in question. Rep. Cressey should also be instructed to amend his 42 Day Post-Primary report to include the equipment item on Schedule E.

#### Candidate's Comments Regarding the Audit Findings

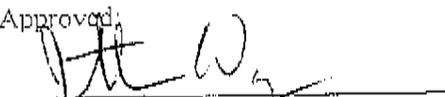
Rep. Cressey's comments on the audit findings and recommendations are attached.

Respectfully submitted,



Vincent W. Dinan - Staff Auditor

Approved:



Jonathan Wayne - Executive Director

**ATTACHMENT**  
**Rep. Philip A. Cressey**  
**Response to Audit Findings**  
**Page 1 of 2**

I disagree with the findings of the audit report. It should be noted that although this audit was for the April 19-June 1, 2006 Six-Day Pre-Primary Report and for the June 2-July 18, 2006 42 Day Post-Primary Report both of which were filed prior to August 2006, this audit was conducted four weeks before the election this past November. The audit took time away from my campaign activities, directly interfered with my campaign efforts and the audit did have a negative impact on my campaign for re-election. This audit should have been conducted in August or September or after the election was over, not during the busiest time of the campaign season. This is a very important point because in my haste to provide the documents requested of me, I lost a receipt that I did have in my possession. I was working ten hours a day at my regular job and then would go knocking on doors with the few hours of daylight remaining and go to various meetings in the evenings. On three separate days, I had to postpone all of those events to fulfill the auditors request which did prevent me from campaigning. This audit should have been held earlier or after the election was over. In my haste, I quickly faxed all documents required of me including the receipt of \$517.63 from Staples. This receipt was faxed along with the other Staples receipt which the auditor acknowledged to have received. I then threw all my receipts back into my folder and at that time accidentally dropped the folder and all the paperwork went all over the place. Because I was in a hurry, I quickly picked up the receipts and threw them back in the file folder and rushed out of the house. A week later, I was again asked for the Staples receipt which I did have earlier but was not able to find it due to my haste and pressed for time. For a third time I had to cancel my campaign activities in order to find the receipt that I had but could not find. During this time our family was packing our belongings up to move to another apartment. I still have not been able to find the receipt which I did have the first time I faxed the receipt to the auditor. He said he did not receive it so I think I must have taped the receipt backwards through the fax machine which would explain why it did not show up at his end or the faxing was too light to be seen at the receivers end. I should not have to reimburse the Clean Elections fund of \$517.63 as this was a legitimate expense and further this would force me to violate the contribution portion and paying for literature yet not counting it as expense is a violation of both clean election and ethic standards in campaign financing. The auditor failed to mention that I clearly stated that the memo portion of the reimbursed check states, "Staples Printing" and this was explained all five times the auditor requested information. Furthermore, this legitimate campaign expense was printing of 2000 copies of my flyer handed out at the four parades and three fairs during the summer months, on yellow card stock and printed on both sides. Plus a ream of 125 card stock blank yellow paper. Staples can verify this expense. I have no problem with an audit. However the timing was inappropriate and negatively impacted on the time constraints of my campaign. There was no reason the audit could have been held sooner in September or after the election was over. Because I was in a hurry and very pressed for time, I had the receipt, faxed it to the auditor, lost the receipt as I was rushing out the door, and we were in the process of moving to another apartment. Had the audit taken place sooner or after the election I know for certain the receipt would not have been lost.

On the second charge, again I disagree with the auditors findings. The "flash drive" is a legitimate campaign expense and was not a Campaign Equipment/Property Inventory in my understanding of the rules. This was the first time I ever used a "flash drive". Back in June I had designed all three of my campaign mailers for October and also my palm cards. However, when I tried to upload my pictures, files, and designs via email to the printer, the internet server providers system would shut down and the files would not be transferred on my dial up connection.

**ATTACHMENT**  
**Rep. Philip A. Cressey**  
**Response to Audit Findings**  
**Page 2 of 2**

I called Spectrum, the printer, and asked what I could do. They asked if I had a USB port. I did not know what that was and they said it is a plug in for many devices and memory card and I can upload the info to the disk just like a CD. That was good news to me as I did not know anything about that sort of high tech stuff at that time so they suggested I go and purchase a PNY flash memory drive and Staples should have them and to get one with at least 512 MB. I believe I purchased the PNY with more memory than 512MB. Because I did not know what they were talking about as this was all new info to me I asked for a specific item to purchase as I did not yet have a grasp on what the "flash drive" was so the PNY model was suggested and I wrote that down and they suggested Staples because that is where they purchased one as well. I had to ask them to spell this out for me as I had never purchased or used anything like this before. They said it works like a CD on the computer, just load the info into it, mail it to them and they can download all the info as it was too much to send over the dial up internet server I had. My computer is not CD writeable which was the first question they asked and then the USB port was the second question to solve the problem of getting the files and pics to them. My understanding of this "flash drive" device is that it is a disposable item like a CD and would work the same way. I did tell the auditor, in error, that I received the "flash drive" back from Spectrum, which I did. However, I no longer have the device when the auditor asked if I did. I thought I did but remembered I threw it away back in October as I mistakenly thought it could not be "written" over again like a CD and apparently a CD can now be written and copied over again like a tape cassette. I wish I had known this before I threw it away. I now understand a "flash drive" is just like a portable hard drive on a computer and works in a similar fashion. Had I known these facts back in June, I would not have listed this as a campaign expense at all. However, due to my understanding at that time, this would still be a legitimate campaign expense and I should not be required to change any reports or reimburse the Clean Election Fund at all as this was a legitimate expense for the purpose of printing campaign literature which in fact was done. The auditor suggested I sell the "flash drive" but because I threw it away I would be unable to comply with that request. Again, at that time I thought it was like a CD that could not be written over again and that the info on it would be permanent and could not be changed. I now realize that is not the case. Another reason I threw it away as I was not going to run for office again due to term limits and that we were moving and had no need for unnecessary items. The auditor may be able to confirm that I stated to him that I believed this to be a disposable item like a CD and not a permanent piece of equipment. Furthermore, there is no mention in the rules that a "flash drive" is to be considered equipment so this should be made clear in future printings and changes to the rules.

Respectfully Submitted via email,  
Philip A Cressey Jr  
January 18, 2007  
philcressey@verizon.net



Banknorth, N.A.

Maine

7 of 7

STATEMENT OF ACCOUNT

PHILIP CRESSEY  
CRESSY FOR LEGISLATURE

HA 94

Page: 4 of 4  
Statement Period: Jun 19 2006-Jul 18 2006  
Cust Ref #: 241903047-711-I-\*\*\*  
Primary Account #: 24-1903047

PHILIP A. CRESSEY  
DBA CRESSY FOR LEGISLATURE  
P.O. BOX 103 PH 00943-0103  
CORNHURST, ME 04002

DATE: June 15, 2006

PAID TO THE ORDER OF: Philip G. Good \$ 572.00

FROM: Banknorth

MEMO: Spectrum Printing

ACCOUNT NO: 0241903047

#101 6/19 \$512.00

PHILIP A. CRESSEY  
DBA CRESSY FOR LEGISLATURE  
P.O. BOX 103 PH 00943-0103  
CORNHURST, ME 04002

DATE: June 17, 2006

PAID TO THE ORDER OF: Philip G. Good \$ 339.94

FROM: Banknorth

MEMO: Printing - misc and copies

ACCOUNT NO: 0241903047

#102 6/20 \$39.94

PHILIP A. CRESSEY  
DBA CRESSY FOR LEGISLATURE  
P.O. BOX 103 PH 00943-0103  
CORNHURST, ME 04002

DATE: June 19, 2006

PAID TO THE ORDER OF: Philip G. Good \$ 86.91

FROM: Banknorth

MEMO: Printing - misc and copies

ACCOUNT NO: 0241903047

#103 6/21 \$86.91

PHILIP A. CRESSEY  
DBA CRESSY FOR LEGISLATURE  
P.O. BOX 103 PH 00943-0103  
CORNHURST, ME 04002

DATE: June 17, 2006

PAID TO THE ORDER OF: Philip G. Good \$ 117.00

FROM: Banknorth

MEMO: Printing - misc and copies

ACCOUNT NO: 0241903047

#104 6/19 \$117.00

PHILIP A. CRESSEY  
DBA CRESSY FOR LEGISLATURE  
P.O. BOX 103 PH 00943-0103  
CORNHURST, ME 04002

DATE: June 22, 2006

PAID TO THE ORDER OF: Philip G. Good \$ 1,839.00

FROM: Banknorth

MEMO: Printing - misc and copies

ACCOUNT NO: 0241903047

#105 6/22 \$1,839.00

PHILIP A. CRESSEY  
DBA CRESSY FOR LEGISLATURE  
P.O. BOX 103 PH 00943-0103  
CORNHURST, ME 04002

DATE: June 28, 2006

PAID TO THE ORDER OF: Philip G. Good \$ 517.63

FROM: Banknorth

MEMO: Printing - misc and copies

ACCOUNT NO: 0241903047

#106 6/28 \$517.63

PHILIP A. CRESSEY  
DBA CRESSY FOR LEGISLATURE  
P.O. BOX 103 PH 00943-0103  
CORNHURST, ME 04002

DATE: July 5, 2006

PAID TO THE ORDER OF: Philip G. Good \$ 95.26

FROM: Banknorth

MEMO: Printing - misc and copies

ACCOUNT NO: 0241903047

#107 7/05 \$95.26

PHILIP A. CRESSEY  
DBA CRESSY FOR LEGISLATURE  
P.O. BOX 103 PH 00943-0103  
CORNHURST, ME 04002

DATE: July 5, 2006

PAID TO THE ORDER OF: Philip G. Good \$ 185.43

FROM: Banknorth

MEMO: Printing - misc and copies

ACCOUNT NO: 0241903047

#108 7/06 \$185.43

# Agenda

## Item #3



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

July 6, 2007

Arthur Clement  
931 Hinckley Rd  
Clinton, ME 04927

Dear Mr. Clement:

This is to notify you that the Maine Commission on Governmental Ethics and Election Practices will hold its next meeting on Monday, July 16, 2007, at 9 a.m.

The staff requests that you be present to respond to the recommended penalties of \$2,000 for misuse of Maine Clean Election Act funds and other violations. Also, the Commission will consider a preliminary penalty of \$2,224 for late filing of your post election report. The staff recommends a reduction in amount of the penalty to \$400.

If you have any questions or cannot attend this meeting, please telephone me at 287-4179.

Sincerely,

Jonathan Wayne  
Executive Director

cp



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

April 13, 2007

**By Regular and Certified Mail**

Mr. Arthur H. Clement  
931 Hinckley Road  
Clinton, ME 04927

**Re: Notice of Recommended Penalties and Opportunity to Respond**

Dear Mr. Clement:

This letter and accompanying memo notify you of your opportunity to respond to the Ethics Commission staff's preliminary factual findings and penalty recommendations concerning your 2006 campaign. The recommendations will be considered by the Commission at its next meeting on Monday, May 14 at 9:00 a.m. We request that you be present at the Commission's meeting to respond to the findings and recommended penalties. Also, we highly recommend that if you disagree with the staff's preliminary recommendations or findings, you respond in writing to them no later than Thursday, May 3. Your response would be included in a packet of materials sent to the Commission members prior to the meeting.

Based on its preliminary factual findings, the staff recommends that the Commission assess the following penalties against you. The full violations are explained in the accompanying memo.

- The Commission should assess a civil penalty of \$1,250 against you for violating 21-A M.R.S.A. §1125(6) by spending Maine Clean Election Act (MCEA) funds for purposes that were not related to your campaign. Although you subsequently used personal funds to reimburse the Maine Clean Election Fund for these purchases, it was a violation of the MCEA for you to use public funds provided to your campaign for these personal expenses.
- The Commission should assess a civil penalty of \$500 against you for violating 21-A M.R.S.A. §1125(12) and Chapter 3, Section 7(2)(B) of the Commission's rules by failing to return all unspent campaign funds by the December 19, 2006 deadline. You eventually returned these funds to the Commission, but it was only after repeated requests by the Commission staff and the Commission's referral of the matter to the State Attorney General for collection.
- The Commission should assess a civil penalty of \$250 against you for violating 21-A M.R.S.A. §1125(7-A) by commingling your MCEA funds with your personal funds. You deposited most of a June 2006 payment of \$4,362 into your

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WEBSITE: WWW.MAINE.GOV/ETHICS

Arthur H. Clement

- 2 -

April 13, 2007

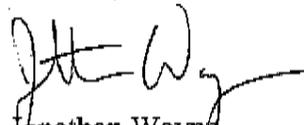
personal account and transferred all of an October payment of \$8,724 to your business account. You went on to spend large amounts of these payments for personal expenses.

The recommended penalties against you total \$2,000. The staff may adjust its recommendations prior to the May 14 meeting depending on any written response you provide by May 3.

Please be aware that the Commission is authorized under 21-A M.R.S.A. §1127(1) to assess penalties of up to \$10,000 for each violation of the Maine Clean Election Act or the Commission's rules. It is possible that at the May 14<sup>th</sup> meeting the Commission could assess penalties that are significantly higher than those recommended by the staff. The staff urges you to take seriously responding to the preliminary findings and penalty recommendations.

Please telephone me at 287-4179 if you have any questions about the recommendations or the enforcement process. Thank you.

Sincerely,



Jonathan Wayne  
Executive Director



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

To: Hon. Arthur H. Clement

From: Jonathan Wayne, Executive Director

Date: April 13, 2007

Re: Preliminary Staff Findings

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This memo describes the preliminary factual findings by the Ethics Commission staff which are the basis for civil penalties the staff intends at this time to recommend to the Commission at its May 14<sup>th</sup> meeting. As stated in the accompanying letter, the staff urges you to attend the May 14<sup>th</sup> meeting and to respond in writing no later than Thursday, May 3. Your response will be included in a packet of materials that we will send to the Commission. The staff is willing to reconsider our recommendations to the Commission if we conclude that our preliminary findings were in error or if there were mitigating circumstances of which we were not aware.

#### Financial Overview of Your Campaign

Cash Activity		Notes
Seed money contributions received	\$25.00	
Total MCEA funds received	\$13,573.00	includes \$6,929.33 which you were not authorized to spend
Total reported expenditures	\$660.98	
Return of unauthorized funds	\$6,949.33	due 11/21/06; returned 11/27/06
Return of unspent MCEA funds	\$5,988.29	due 12/19/06; returned 3/7/07 and 3/20/07

### Legal Restrictions on Use of MCEA Funds

The Maine Clean Election Act (MCEA) requires candidates to use MCEA funds for "campaign-related purposes." (21-A M.R.S.A. §1125(6)) The statute does not define acceptable campaign related expenditures, but rather requires the Commission to issue guidelines on permissible uses of MCEA funds. The Commission's guidelines state:

Candidates must spend all Maine Clean Election Act funds for campaign-related purposes and not for other purposes such as the candidate's personal benefit.

MCEA funds may not be spent on personal expenses. Those expenses are for goods and services that the candidate would otherwise purchase independently of the campaign, such as:

- Day-to-day household food items and supplies;
- Vehicle and transportation expenses unrelated to the campaign;
- Mortgage, rent, or utility payments for the candidate's personal residence, even if part of the residence is being used by the campaign; and
- Clothing, including attire for political functions such as business suits or shoes.

### Your 2006 Campaign Expenditures

Your campaign finance reports indicate that you made a small number of campaign expenditures in 2006:

<b>Date</b>	<b>Payee</b>	<b>Expenditure Code/Remark</b>	<b>Amount</b>
5/9/2006	Gardiner Savings	Service charge	\$3.00
5/9/2006	Gardiner Savings	Service charge	\$3.00
6/14/2006	Capitol Promotions	Signs	\$379.98
10/26/2006	Maine Street Solutions	Literature	\$275.00
<b>Total</b>			<b>\$660.98</b>

## **Expenditures of MCEA for Purposes that were not Campaign-Related**

### *Initial Payment of \$4,362 for the General Election*

On June 21, 2006 you deposited your initial general election payment of \$4,362 into your personal checking account, rather than your campaign account.<sup>1</sup> You were authorized to spend this entire amount for campaign-related purposes, but your only campaign expenditure of these June funds was the October 26 payment of \$275 to Maine Street Solutions. The remaining portion of the \$4,362 apparently was spent on personal expenses.

The Commission staff does not have bank records for this account, so it does not know the exact nature of your personal expenses. In a January 26, 2007 telephone conversation with Sandy Thompson, you stated that you used the \$4,362 check to pay your mortgage and other personal expenses. In your February 7, 2007 letter to the Commission you stated that you "made out checks for bills."

We acknowledge that in March 2007 you eventually reimbursed the Maine Clean Election Fund for these personal expenditures after the Commission referred this matter to the State Attorney General for collection. Nevertheless, it was a violation of 21-A M.R.S.A. §1125(6) for you to spend these funds for purposes that were not campaign-related.

### *Matching Funds Payment of \$8,724 for the General Election*

On October 27, 2006, the State of Maine electronically transferred a matching funds payment of \$8,724.00 to your campaign account. The Commission authorized you

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<sup>1</sup> The Commission staff's review of your campaign disclosed that you have three accounts at the Gardiner Savings Institution: a campaign account, a personal checking account, and a business account.

to spend a total of \$1,774.67 of these funds, but you did not spend any portion of these funds on campaign-related payments.

You transferred the \$8,724 from your campaign account to your business account in two parts on November 6 and 15, 2007. Prior to November 6, you had a limited amount of funds (\$536.45) in your business account from other sources. During the month of November, you were outside of Maine (mostly in Virginia). In considering your expenditures from your business account, the Commission staff presumes that you first used the \$536.45 in non-MCEA money and afterward used the MCEA funds transferred on November 6 and 15.

That presumption leads us to the finding that you used MCEA funds to make personal expenses which included:

<b>Payee</b>	<b>Amount</b>
US Airways	\$307.70
Econo Lodge in Newport News, VA	\$253.13
ATM withdrawals (3)	total of \$140
Direct TV	\$132.95
Retailers/gas stations/restaurants (Rite Aid, Sears, Walgreens, Pizza House, etc )	Various (\$5.00 - \$65.00)

On November 27, 2006, you returned \$6,949.33 to the Maine Clean Election Fund from your business account. It appears that you did not spend this amount while it was in your business account from November 6 and 15 to November 27.

The Commission staff finds that \$1,774.67 - the amount of matching funds that was not returned on November 27, 2006 - was used for purposes not related to your campaign. These expenditures violated 21-A M.R.S.A. §1125(6).

**Failure to Return Unspent Campaign Funds**

Under 21-A M.R.S.A. §1125(12) and Chapter 3, Section 7(2)(B) of the Commission's rules, you were required to return any remaining unspent MCEA funds by December 19, 2006, the reporting deadline for your final campaign finance report. You returned this amount, \$5,988.29, about three months late in two payments on March 7 and March 20, 2007.

You returned the unspent MCEA funds only after repeated requests by the Commission staff and only after the Commission staff scheduled this matter for referral to the Attorney General at the Commission's February 27 meeting. I have attached a list of those requests. By returning these funds about three months after the deadline, you violated 21-A M.R.S.A. §1125(12) and Chapter 3, Section 7(2)(B) of the Commission's rules.

**Commingling MCEA Funds with Personal Funds**

Under 21-A M.R.S.A. §1125(7-A), candidates are required to deposit MCEA funds into a campaign account with a bank or other financial institution, and those "funds must be segregated from, and may not be commingled with, any other funds." It appears you violated this restriction by depositing most of the \$4,362 into your personal account and transferring the \$8,724 payment to your business account. Large portions of these MCEA funds were later used for personal expenses, which is what the prohibition on commingling was intended to prevent.

### Questionable Explanation Previously Provided

The Commission staff is not recommending that the Commission take any action on the following issue, but we are concerned that you may have provided information to the Commission in writing that is inaccurate. In your January 26, 2007 telephone conversation with Sandy Thompson, you stated that:

- you were out of town when a check from the state was delivered to your home;
- your daughter told you that you had received a check from the state; and
- you directed her to deposit in your business account, believing it to be a tax credit check.

You re-stated that account in your February 7, 2007 letter to the Commission:

I [r]eceived a check from Maine Clean Election Fund to my home. I was out of town at the time and when I inquired with my daughter, she said it was a check from the state, in which I thought it was the homeward rebate check, I told her to put it into my business account, in which I made out checks for bills. When I returned home several weeks later, I realized the error of it being the clean elections funds check and not the rebate check.

That story appears to be inconsistent with the bank records we received from the Gardiner Savings Institution. You received two MCEA checks in 2006: a check dated April 24 in the amount of \$487.00 (your primary election payment) and a check dated June 15 in the amount of \$4,362.00. The signature on the checks seem to indicate that you (not your daughter) signed both checks at the time they were deposited on April 27 and June 21. The signatures seem to be consistent with each other, and with the registration documents you signed and submitted to the Commission in February 2006. The \$4,362 check was deposited on June 21, 2006 along with an unemployment check of \$151.00. Your bank has supplied us with the deposit ticket you signed and the cash slip providing you with \$100 in cash.

At the May 14 meeting, the Commission staff hopes you will explain why the bank records are not consistent with the explanation of your daughter depositing the check. The Commission staff have not reached any conclusion but we are troubled by the possibility that you may have provided a false explanation to the Commission in your February 7, 2007 letter.

Thank you for your consideration of these preliminary findings. The Commission staff urges you to be at the May 14<sup>th</sup> meeting to respond to the findings and proposed penalties. We also believe it would help the Commission reach a fair decision of this matter if you would submit no later than May 3 a written response to the proposed factual findings and recommendations.

**Candidate: Arthur Clement****Date: 4/11/2007****Accounts Analysis - Deposits/Credits, Withdrawals/Debits**

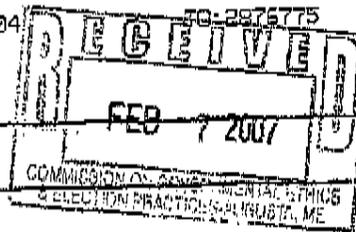
Date	Campaign Account XXXXXX08	Personal Account XXXXXX90	Business Account XXXXXX57	Comments
4/10/2006	\$25 Check deposit			Seed money
4/27/2006	\$487 Check deposit			Primary payment
6-16 and 6/17	\$379.98 Debits			Campaign expenditure paid to Capital Promotions
6/21/2006	\$1,500 Cash deposit	\$4,362 Check deposit		General payment check signed by A. Clement and deposited in personal account.
6/23/2006	\$800 Counter check withdrawal	\$800 Cash deposit		MCE funds deposited into personal account
6/28/2006	\$100 ATM withdrawal			
7/14/2006	\$550 Counter check withdrawal	\$550 Cash deposit		MCE funds deposited into personal account
7/27/2006	\$250 Cash deposit			
8/16/2006	\$275 Payment by check			Campaign expenditure paid to Maine Street Solutions
Please note: Campaign account balance is now \$50.09				
10/27/2006	\$8,724 EFT credit			Matching funds payment
11/6/2006	\$1,500 Telephone transfer (debit)		\$1,500 Telephone transfer (credit)	MCE funds transferred to business account.
11/15/2006	\$7,288.26 Withdrawal		\$7,288.26 Deposit	Campaign account closed. MCE funds deposited into business account.

FEB-7-2007 12:44P FROM:ERRQL W CLEMENT

2076343004

FC-2876775

P.1



**A - CLEMENT CERTIFIED & STUD WELDING**

931 HINCKLEY RD  
CLINTON, ME 04927  
Phone (207) 426-9085  
Cell (207) 314-0525

To: Maine Ethics Commission,

Attn: Sandy Thompson  
Fax (207-6775)

2/7/07

I Received a check from Maine Clean Election Fund to my home. I was out of town at the time and when I inquired with my daughter, she said it was a check from the state, in which I thought it was the homeowner rebate check, I told her to put it into my business account, in which I made out checks for bills. When I returned home several weeks later, I realized the error of it being the clean elections funds check and not the rebate check. My intention was to pay the money back before it was due in December. When I realized that I couldn't, I immediately called Sandy Thompson to explain the situation. In talking to Sandy Thompson there was a misunderstanding as she thought the check was the \$8700 that was electronically put into my campaign account in which it was, but not the check we were discussing. The first check to my home was the check we were talking about.

I would like to pay a schedule of 50.00 a month, to be paid in full in one year if not sooner. It was an unfortunate error on my part and I am truly sorry and embarrassed of the situation and am looking forward to any assistance from your department on this matter.

Authorized by;

Arthur Clement

1611100767

YOUR TOUR ENDORSER  
REQUIRE IDENTIFICATION

VOID 180 DAYS FROM CHECK DATE



Maine 52-7445  
2112

\$487.00

STATE OF MAINE  
Augusta, Maine 04333

CHECK DATE 4/24/06

FOUR HUNDRED EIGHTY SEVEN AND 00/100 DOLLARS

ARTHUR H CLEMENT  
933 HINCKLEY RD  
CLINTON ME 04927

TO THE  
ORDER  
OF

*Justine*  
*Edward A. Hickey*  
*Michael L. L...*

⑆1611100767⑆ ⑆211274450⑆ ⑆999060335⑆

⑆0000048700⑆



WARNING: TO CHECK FOR THE FOLLOWING SECURITY FEATURES PLEASE  
1. HOLD THE CHECK UP TO THE LIGHT. THE WATER MARK APPEARS ON THE REVERSE SIDE OF THE CHECK.  
2. THE PAPER HAS A CHAIN PATTERN WHEN VIEWED THROUGH THE LIGHT.  
3. THE TOP EDGE OF THE CHECK HAS A STATOFORMINE OVER AND OVER IN VERY SMALL TYPE.  
4. PLACE YOUR FINGER ON THE RED INK CIRCLE BELOW. IT WILL FEEL UNUSUALLY DISAPPEAR.

*Arthur H. Clement*

DO NOT WRITE, STAMP OR SIGN BELOW THIS LINE

601007849 20060428 00  
INCLEARINGS 01 058

1110680470 4/27/2006 211272465

1110680470 4/27/2006 211272465

211272465





Account Number: [REDACTED]  
 Date: March 23, 2007  
 Page: 1 of 2

The image shown below represents an official copy of the original document as processed by Gardiner Savings

DEPOSIT TICKET

Name ARTHUR CLEMENT CASH \$ 1500.00

DATE 06/21/2006

Gardiner Savings Institution, FSB  
 Gardiner, Maine 04845

NET DEPOSIT \$ 1500.00

⑆211272465⑆ [REDACTED] 05

06/21/2006 \$1500.00

CHECKS

1114250390 6/21/2006 >211272465<

009 011 6/21/06#0350 - \$1,500.00 0

06/21/2006 \$1500.00

DEPOSIT TICKET

ARTHUR H. CLEMENT  
 031 HINCKLEY ROAD  
 CLINTON, ME 04827  
 207-426-8005

CASH \$ 1510.00  
 FROM OTHER DEPOSIT \$ 4362.00

DATE 06/21/2006

Gardiner Savings Institution, FSB  
 Gardiner, Maine 04845

NET DEPOSIT \$ 2913.00

⑆211272465⑆ [REDACTED] 05

06/21/2006 \$2913.00

CHECKS

1114250390 6/21/2006 >211272465<

009 011 6/21/06#0340 - \$2,913.00 0

06/21/2006 \$2913.00

Version 0 2004 GARDINER 0000

CASH OUT CREDIT TELLER 9 WATERVILLE UPPER MAIN AMOUNT \$ 100.00

⑆5000⑆0000⑆ [REDACTED] ⑆1000⑆

11009 06/21/2006 \$100.00

1114250390 6/21/2006 >211272465<

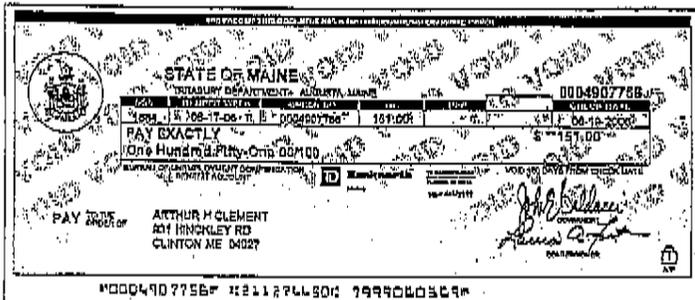
009 011 6-21-06#036 \$100.0000

11009 06/21/2006 \$100.00

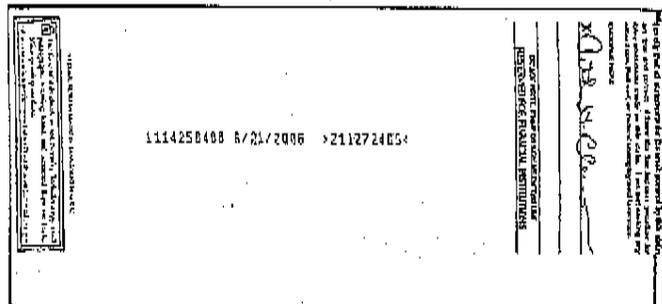


Account Number: [REDACTED]  
 Date: March 23, 2007  
 Page: 2 of 2

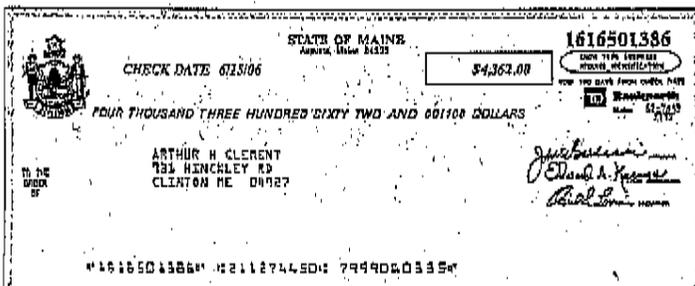
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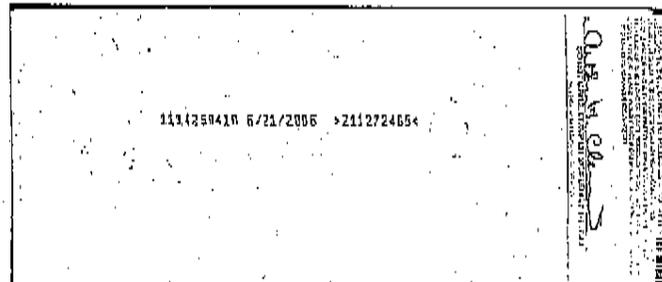
7999060369 06/21/2006 4907756 \$151.00



7999060369 06/21/2006 4907756 \$151.00



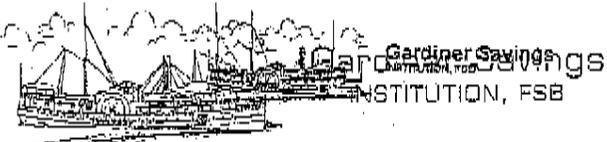
7999060335 06/21/2006 1616501386 \$4362.00



7999060335 06/21/2006 1616501386 \$4362.00

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24-HOUR AUTOMATED PHONE BANKING: 1-800-528-4300 LOCAL NUMBER: 633-8221



Account Number: [REDACTED]  
 Date: March 23, 2007  
 Page: 1 of 1

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**DEPOSIT TICKET**

ARTHUR H. CLEMENT  
 831 HICKLEY ROAD  
 CLINTON, ME 04937  
 207-466-9295

DATE: 06/23/2006

AMOUNT: \$800.00

NET DEPOSIT: \$800.00

06/23/2006 \$800.00

1114390158 6/23/2006 >211272465<

006 001 6/23/06110400 - \$800.00 D

06/23/2006 \$800.00

**COUNTER CHECKING WITHDRAWAL DEBIT**

GARDINER SAVINGS INSTITUTION, FSB NOT NEGOTIABLE

NAME: ARTHUR H. CLEMENT  
 DATE: 6/23/06

AMOUNT OF WITHDRAWAL: \$800.00

06/23/2006 \$800.00

1114390158 6/23/2006 >211272465<

000.00+ 9002705H

06/23/2006 \$800.00

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24-HOUR AUTOMATED PHONE BANKING: 1-800-596-4300 LOCAL NUMBER: 558-2684



Gardiner Savings Institution, FSB

Account Number: [REDACTED]

Date:

March 23, 2007

Page:

1 of 1

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CHECKING DEPOSIT - CREDIT		DESCRIPTION	DOLLARS	CENTS
GARDINER SAVINGS INSTITUTION, FSB		CASH	728826	
DATE	11 15 06			
NAME	A. Clement			
ACCOUNT NUMBER: [REDACTED]		TOTAL	728826	

[REDACTED] 11/15/2006 \$7288.26

1114288178 11/15/2006 >2112724656

001 0111/15/06003D \$7288.26 D

[REDACTED] 11/15/2006 \$7288.26

GENERAL LEDGER DEBIT		DDA & SAVINGS SETTLEMENT ACCT	
DESCRIPTION: Arthur Clement closing acct # [REDACTED]		ACCOUNT TITLE	AMOUNT: 728826
DATE	11 15 06	BRANCH NAME	W24P
ACCOUNT NUMBER	[REDACTED]	PREPARED BY	ALL
00102301000000		APPROVED BY	
728826		AMOUNT	

00102301000000 11/15/2006 \$7288.26

1114288100 11/15/2006 >2112724656

7288.26\* 33011

00102301000000 11/15/2006 \$7288.26

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24-HOUR AUTOMATED PHONE BANKING: 1-800-596-4300 LOCAL NUMBER: 558-8884



Gardiner Savings  
INSTITUTION, FSB

Date 11/07/06  
Primary

Page 1

Arthur H Clement  
Representative for House District 29  
931 Hinckley Rd  
Clinton ME 04927

Gardiner Savings and Calais Federal Savings & Loan are happy to announce the two banks have agreed to merge. The merger complements Gardiner Savings's recent acquisition of First Citizens Bank and helps us better serve our customers.

STATEMENT INFORMATION

Personal Checking		Number of Enclosures	0
Account Number	[REDACTED]	Statement Dates	10/11/06 thru 11/07/06
Previous Balance	47.25	Days in the Statement Period	28
1 Credited Items	8,724.00	Average Ledger	3,678.96
1 Debited Items	1,500.00	Average Collected	3,678.96
Service Charge	.00	Interest Earned	11.41
Interest Paid	11.41	Annual Percentage Yield Earned	4.12%
Ending Balance	7,282.66	2006 Interest Paid	16.64

CREDIT ITEMS POSTED

Date		Amount
10/27	[REDACTED] STATE OF MAINE	8,724.00
11/07	CTX INTEREST PAID	11.41

DEBIT ITEMS POSTED

Date		Amount
11/06	TELEPHONE TRANSFER DEBIT	1,500.00-

DAILY BALANCE INFORMATION

Date	Balance	Date	Balance
10/11	47.25	11/06	7,271.25
10/27	8,771.25	11/07	7,282.66

\* \* \* END OF STATEMENT \* \* \*

### Arthur Clement Communications Concerning Unspent Funds

Date: 4/3/2007

Date	Mode	Description
1/18/2007	Letter	Form letter sent to all candidates who have not returned unspent funds.
1/24/2007	Letter	Commission letter (from Jonathan Wayne) sent regular and certified mail to Clement requesting the payment of a late filing penalty and the return of unspent funds. If payments not received by 2/5/2007, his name would be on the 2/14 Commission meeting agenda.
1/26/2007	Phone	Sandy Thompson called Clement and left message and he returned her call at 9:45 a.m. He explained situation: he was in VA, thought check was tax credit payment, had daughter deposit it in his personal account, paid his mortgage, when he returned to ME he realized his mistake.
1/26/2007	Letter	Commission letter (from Jonathan Wayne) requesting written explanation from Clement as follow-up to telephone conversation.
2/5/2007	Phone	Clement called Sandy concerning Commission's 1/26 letter. He explained that: the check was the general payment check (6/14) not the matching funds payment (10/27). Since he closed his campaign account on 11/15/2007, he would have to pay with a personal check.
2/7/2007	Letter via fax	Letter from Clement explaining how general payment deposited into his account.
2/13/2007	Phone and Letter	Clement sent letter describing payment plan. Sandy called him back to clarify his plan and recommended that he pay (at least half) ASAP to show good faith effort.
3/5/2007	Phone	Clement called Sandy informing her that he would be sending bank check for full amount (if possible).
3/7/2007	Phone	Clement called Sandy and left message that he would be able to pay \$3000 and will send another check for remaining balance as soon as he had the funds.
3/20/2007	Letter	Commission received payment from Clement of his remaining balance (\$2,988.29) of unspent funds.

## Title 21-A, §1125, Terms of participation

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### §1125. Terms of participation

**1. Declaration of intent.** A participating candidate must file a declaration of intent to seek certification as a Maine Clean Election Act candidate and to comply with the requirements of this chapter. The declaration of intent must be filed with the commission prior to or during the qualifying period, except as provided in subsection 11, according to forms and procedures developed by the commission. A participating candidate must submit a declaration of intent within 5 business days of collecting qualifying contributions under this chapter, or the qualifying contributions collected before the declaration of intent has been filed will not be counted toward the eligibility requirement in subsection 3.

[2005, c. 301, §29 (amd).]

**2. Restrictions on contributions for participating candidates.** Subsequent to becoming a candidate as defined by section 1, subsection 5 and prior to certification, a participating candidate may not accept contributions, except for seed money contributions. A participating candidate must limit the candidate's seed money contributions to the following amounts:

A. Fifty thousand dollars for a gubernatorial candidate; [IB 1995, c. 1, §17 (new).]

B. One thousand five hundred dollars for a candidate for the State Senate; or [IB 1995, c. 1, §17 (new).]

C. Five hundred dollars for a candidate for the State House of Representatives. [IB 1995, c. 1, §17 (new).]

The commission may, by rule, revise these amounts to ensure the effective implementation of this chapter.

[IB 1995, c. 1, §17 (new).]

**3. Qualifying contributions.** Participating candidates must obtain qualifying contributions during the qualifying period as follows:

A. For a gubernatorial candidate, at least 2,500 verified registered voters of this State must support the candidacy by providing a qualifying contribution to that candidate; [IB 1995, c. 1, §17 (new).]

B. For a candidate for the State Senate, at least 150 verified registered voters from the candidate's electoral division must support the candidacy by providing a qualifying contribution to that candidate; or [IB 1995, c. 1, §17 (new).]

C. For a candidate for the State House of Representatives, at least 50 verified registered voters from the candidate's electoral division must support the candidacy by providing a qualifying contribution to that candidate. [IB 1995, c. 1, §17 (new).]

A payment, gift or anything of value may not be given in exchange for a qualifying contribution. A candidate may pay the fee for a money order in the amount of \$5, which is a qualifying contribution, as long as the donor making the qualifying contribution pays the \$5 amount reflected on the money order. Any money order fees paid by a participating candidate must be paid for with seed money and reported in accordance with commission rules.

[2001, c. 465, §4 (amd).]

**4. Filing with commission.** A participating candidate must submit qualifying contributions to the commission during the qualifying period according to procedures developed by the commission, except as provided under subsection 11.

[IB 1995, c. 1, §17 (new).]

## Title 21-A, §1125, Terms of participation

**5. Certification of Maine Clean Election Act candidates.** Upon receipt of a final submittal of qualifying contributions by a participating candidate, the commission shall determine whether or not the candidate has:

- A. Signed and filed a declaration of intent to participate in this Act; [IB 1995, c. 1, §17 (new).]
- B. Submitted the appropriate number of valid qualifying contributions; [IB 1995, c. 1, §17 (new).]
- C. Qualified as a candidate by petition or other means; [IB 1995, c. 1, §17 (new).]
- D. Not accepted contributions, except for seed money contributions, and otherwise complied with seed money restrictions; [2003, c. 270, §1 (amd).]
- D-1. Not run for the same office as a nonparticipating candidate in a primary election in the same election year; and [2003, c. 270, §2 (new).]
- E. Otherwise met the requirements for participation in this Act. [IB 1995, c. 1, §17 (new).]

The commission shall certify a candidate complying with the requirements of this section as a Maine Clean Election Act candidate as soon as possible and no later than 3 business days after final submittal of qualifying contributions.

Upon certification, a candidate must transfer to the fund any unspent seed money contributions. A certified candidate must comply with all requirements of this Act after certification and throughout the primary and general election periods. Failure to do so is a violation of this chapter.

[2005, c. 301, §30 (amd).]

**6. Restrictions on contributions and expenditures for certified candidates.** After certification, a candidate must limit the candidate's campaign expenditures and obligations, including outstanding obligations, to the revenues distributed to the candidate from the fund and may not accept any contributions unless specifically authorized by the commission. Candidates may also accept and spend interest earned on bank accounts. All revenues distributed to a certified candidate from the fund must be used for campaign-related purposes. The candidate, the treasurer, the candidate's committee authorized pursuant to section 1013-A, subsection 1 or any agent of the candidate and committee may not use these revenues for any but campaign-related purposes. The commission shall publish guidelines outlining permissible campaign-related expenditures.

[2005, c. 542, §3 (amd).]

**7. Timing of fund distribution.** The commission shall distribute to certified candidates revenues from the fund in amounts determined under subsection 8 in the following manner.

A. Within 3 days after certification, for candidates certified prior to March 15th of the election year, revenues from the fund must be distributed as if the candidates are in an uncontested primary election. [2001, c. 465, §4 (amd).]

B. Within 3 days after certification, for all candidates certified between March 15th and April 15th of the election year, revenues from the fund must be distributed according to whether the candidate is in a contested or uncontested primary election. [2001, c. 465, §4 (amd).]

B-1. For candidates in contested primary elections receiving a distribution under paragraph A, additional revenues from the fund must be distributed within 3 days of March 15th of the election year. [2001, c. 465, §4 (new).]

C. Within 3 days after the primary election results are certified, for general election certified candidates, revenues from the fund must be distributed according to whether the candidate is in a contested or uncontested general election. [2001, c. 465, §4 (amd).]

Funds may be distributed to certified candidates under this section by any mechanism that is expeditious, ensures accountability and safeguards the integrity of the fund.

[2001, c. 465, §4 (amd).]

**7-A. Deposit into account.** The candidate or committee authorized pursuant to section 1013-A, subsection 1 shall deposit all revenues from the fund in a campaign account with a bank or other financial institution. The campaign funds must be segregated from, and may not be commingled with, any other funds.

[2005, c. 542, §4 (new).]

## Title 21-A, §1127, Violations

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**PLEASE NOTE:** The Revisor's Office CANNOT perform research for or provide legal advice or interpretation of Maine law to the public. If you need legal assistance, please contact a qualified attorney.

### §1127. Violations

**1. Civil fine.** In addition to any other penalties that may be applicable, a person who violates any provision of this chapter or rules of the commission adopted pursuant to section 1126 is subject to a fine not to exceed \$10,000 per violation payable to the fund. The commission may assess a fine of up to \$10,000 for a violation of the reporting requirements of sections 1017 and 1019-B if it determines that the failure to file a timely and accurate report resulted in the late payment of matching funds. This fine is recoverable in a civil action. In addition to any fine, for good cause shown, a candidate, treasurer, consultant or other agent of the candidate or the committee authorized by the candidate pursuant to section 1013-A, subsection 1 found in violation of this chapter or rules of the commission may be required to return to the fund all amounts distributed to the candidate from the fund or any funds not used for campaign-related purposes. If the commission makes a determination that a violation of this chapter or rules of the commission has occurred, the commission shall assess a fine or transmit the finding to the Attorney General for prosecution. Fines paid under this section must be deposited in the fund. In determining whether or not a candidate is in violation of the expenditure limits of this chapter, the commission may consider as a mitigating factor any circumstances out of the candidate's control.

[2005, c. 542, §6 (amd).]

**2. Class E crime.** A person who willfully or knowingly violates this chapter or rules of the commission or who willfully or knowingly makes a false statement in any report required by this chapter commits a Class E crime and, if certified as a Maine Clean Election Act candidate, must return to the fund all amounts distributed to the candidate.

[IB 1995, c. 1, §17 (new).]

IB 1995, Ch. 1, §17 (NEW).

PL 2003, Ch. 81, §1 (AMD).

PL 2005, Ch. 301, §33 (AMD).

PL 2005, Ch. 542, §6 (AMD).

- (2) Actual Expenses. Actual expenses include the pro rata, campaign-related share of vehicle depreciation or lease payments, maintenance and repairs, gasoline (including gasoline taxes), oil, insurance, and vehicle registration fees, etc. For reimbursement using this method, the candidate must maintain detailed records reflecting use of the vehicle for campaign-related purposes. The records must include the dates the vehicle was used for campaign-related purposes, the total mileage the vehicle was used for campaign-related purposes, the total mileage the vehicle was used for all purposes during the period for which reimbursement is made, and the percentage of total vehicle usage that the vehicle was used for campaign-related purposes.

2. Reporting by Participating and Certified Candidates.

- A. General. Participating and certified candidates must comply with applicable reporting requirements set forth in Title 21-A, chapter 13, subchapter II [§ 1017].
- B. Return of Matching Fund Advances and Unspent Fund Revenues. Matching Fund advance revenues that have not been authorized for spending and unspent Fund revenues shall be returned to the Fund as follows:
  - (1) Unauthorized Matching Funds. Candidates must return all Matching Fund advance revenues for which no spending authorization was issued prior to an election to the Commission by check or money order payable to the Fund within 2 weeks following the date of the election.
  - (2) Unspent Fund Revenues for Unsuccessful Primary Election Candidates. Upon the filing of the 42-day post-primary election report for a primary election in which a certified candidate was defeated, that candidate must return all unspent Fund revenues to the Commission by check or money order payable to the Fund.
  - (3) Unspent Fund Revenues for All General and Special Election Candidates. Upon the filing of the 42-day post-election report for a general or special election, all candidates must return all unspent Fund revenues to the Commission by check or money order payable to the Fund.
- C. Liquidation of Property and Equipment. Property and equipment that is not exclusive to use in a campaign (e.g., computers and associated equipment, etc.) that has been purchased with Maine Clean Election Act funds loses its campaign-related purpose following the election. Such property and equipment must be liquidated at its fair market value and the proceeds thereof reimbursed to the Maine Clean Election Fund as unspent fund revenues in accordance with the schedule in paragraph B above.
  - (1) The liquidation of campaign property and equipment may be done by sale to another person or purchase by the candidate.
  - (2) Liquidation must be at the fair market value of the property or equipment at the time of disposition. Fair market value is determined by what is fair,

**STATE OF MAINE  
COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES**

135 State House Station  
Augusta, Maine 04333-0135  
Tel: (207) 287-4179 Fax: (207) 287-6775  
Website: [www.maine.gov/ethics](http://www.maine.gov/ethics)

**EXPENDITURE GUIDELINES FOR 2006  
MAINE CLEAN ELECTION ACT CANDIDATES**

Candidates must spend all Maine Clean Election Act (MCEA) funds for campaign-related purposes and not for other purposes such as the candidate's personal benefit, party-building, or to promote another candidate's campaign.

■ Expenditures for "campaign-related purposes" are those which are traditionally accepted as necessary to promote the election of a candidate to political office. Candidates using MCEA funds must also take into account the public nature of the funds, the underlying objectives of the MCEA, and the reasonableness of the expenditures under the circumstances. In Maine, traditional campaign expenses have included:

- Printing and mailing costs;
- Political advertising expenses;
- Campaign communications such as signs, bumper stickers, T-shirts, or caps with campaign slogans, etc.;
- Office supplies;
- Campaign events (e.g., food, rent of tent or hall, etc.);
- Campaign staff expenses; and
- Campaign travel expenses, such as fuel and tolls.

■ MCEA funds may not be spent on personal expenses. Those expenses are for goods and services that the candidate would otherwise purchase independently of the campaign, such as:

- Day-to-day household food items and supplies;
- Vehicle and transportation expenses unrelated to the campaign;
- Mortgage, rent, or utility payments for the candidate's personal residence, even if part of the residence is being used by the campaign; and
- Clothing, including attire for political functions such as business suits or shoes.

■ Maine Clean Election Act funds may not be spent to:

- make independent expenditures supporting or opposing any candidate, ballot measure, or political committee;
- assist in any way the campaign of any candidate other than the candidate for whom the funds were originally designated;
- contribute to another candidate, a political committee, or a party committee, other than in exchange for goods and services;
- pay a consultant, vendor, or campaign staff, other than in exchange for campaign goods or services;
- compensate the candidate for services provided by the candidate;
- pay an entry fee for an event organized by a party committee, charity, or community organization or to place an ad in an event publication, unless the expenditure benefits the candidate's campaign;
- make a donation to a charity or a community organization, other than in exchange for campaign goods or services;
- promote political or social positions or causes other than the candidate's campaign;

- pay civil penalties, fines, or forfeitures to the Commission, or defend the candidate in enforcement proceedings brought by the Commission; or
- assist the candidate in a recount of an election.

#### ■ Guidelines on Selected Issues

- *Electronics and Other Personal Property.* Goods purchased with MCEA funds that could be converted to personal use after the campaign (e.g., computers, fax machines, and cellular telephones) must be reported on Schedule E of the candidate reporting form. No later than 42 days after the general election, the goods must be sold at fair market value and the proceeds returned to the Maine Clean Election Fund. Candidates are welcome to lease electronic and other equipment.
- *Food.* Candidates may spend a reasonable amount of MCEA funds on food for campaign events or to feed volunteers while they are working. Legislative candidates should not use MCEA funds to purchase food that is consumed only by the candidate and/or the candidate's spouse. Gubernatorial candidates may use MCEA funds to purchase meals for the candidate and/or candidate's spouse if associated with travel for campaign purposes.
- *Vehicle Travel.* Candidates may elect to have the campaign reimburse themselves for vehicle travel at the reimbursement rate that is applicable to state government employees or for amounts actually paid for fuel and repairs (pro-rated to reflect only campaign-related usage). Candidates should keep a record for each trip that includes: date of travel, number of miles traveled, origination, destination, and purpose of travel.
- *Lodging.* Candidates may use MCEA funds to pay for lodging if necessary for campaign purposes, but must keep lodging expenses reasonable.
- *Post-Election Notes and Parties.* Candidates may spend up to the following maximum amounts of MCEA funds on post-election parties, thank you notes, or advertising to thank supporters or voters: \$250 for State Representative candidates, \$500 for State Senate candidates, \$2,500 for gubernatorial candidates. Candidates may also use personal funds for these purposes.
- *Campaign Training.* Candidates may use Maine Clean Election Act funds for tuition or registration costs to receive training on campaigning or policy issues.
- *Salary and Compensation.* Candidates may use MCEA funds to pay for campaign-related services by staff or consultants, provided that compensation is made at or below fair market value and sufficient records are maintained to show what services were received. The Commission recommends keeping a record that shows how many hours of services were provided by the staff member or consultant each month, and a description of services provided that month.

#### ■ Enforcement

- The Commission reviews all expenditures disclosed by MCEA candidates in campaign finance reports, and frequently requests additional information from candidates to verify that public funds were spent for campaign-related purposes. Candidates who misuse public funds may be required to repay some or all public funds received, may be liable for civil penalties, and may be referred to the State Attorney General for possible criminal prosecution.

# Agenda

## Item #4



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

April 19, 2007

Mr. Arthur H. Clement  
931 Hinckley Road  
Clinton, ME 04927

**BY REGULAR AND CERTIFIED MAIL**

Dear Mr. Clement:

RE: Late 42-Day Post-General Campaign Finance Report Due 12/19/2006.

You filed a 42-Day Post-General campaign finance report on 2/12/2007. A penalty must be assessed for late reports based on the amount of financial activity conducted during the filing period, the number of calendar days a report is filed late, and the candidate's filing record. Based on the prescribed statutory formula, the preliminary determination of the penalty for the late filing of your report would be \$2,224.75. Please refer to the enclosed penalty matrix for more details on how the penalty is computed. If you agree with this preliminary determination of the amount of the penalty, you may use the enclosed billing statement to pay that penalty.

If you have a reason for filing late, you may request the Commission to make a final penalty determination. Any request for a Commission determination must be made within 10 calendar days of receipt of this notice, beginning on the day you sign its receipt. If this notice has been refused or left unclaimed at the post office, the 10-day period begins on the day the post office indicates it has given first notice of a certified letter. If you request either a Commission determination or a waiver, it will be placed on the agenda for the May 14, 2007 since you are already scheduled to appear before the Commission on that date. You or a person you designate may then appear personally before the Commission or you may send a written statement for the Commission's consideration. A statement must be notarized and contain a full explanation of the reason you filed late. Statements should be sent to the address shown on this letterhead. The Commission will notify you of the disposition of your case within 10 days after its determination.

**NOTE:** The Commission may waive penalties for late reports only in cases where tardiness is due to mitigating circumstances. The law defines "mitigating circumstances" as: 1) a valid emergency determined by the Commission, in the interest of the sound administration of justice, to warrant the waiver of the penalty in whole or in part; 2) an error by the Commission staff; 3) failure to receive notice of the filing deadline; or (4) other circumstances determined by the Commission that warrant mitigation of the penalty, based upon relevant evidence presented that a *bona fide* effort was made to file the report in accordance with the statutory requirements, including, but not limited to, unexplained delays in postal service.

The Maine Clean Election Act requires all revenues distributed to certified candidates from the fund to be used for campaign-related purposes. Commission guidelines regarding permissible campaign-related expenditures do not include the payment of a penalty as a permissible expenditure.

Sincerely,

Sandy Thompson  
Candidate Registrar

OFFICE LOCATED AT: 242 STATE STREET, AUGUSTA, MAINE  
WEBSITE: WWW.MAINE.GOV/ETHICS



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

April 19, 2007

Mr. Arthur H. Clement  
 931 Hinckley Road  
 Clinton, ME 04927

The Commission staff has made a preliminary determination, based upon application of the statutory formula, that a penalty of \$2,224.75 applies for the late filing of your 42-Day Post-General campaign finance report. If you agree with this determination, please make your check or money order in that amount payable to "Treasurer, State of Maine," and send it, along with the bottom half of this letter, to the Commission on Governmental Ethics and Election Practices, 135 State House Station, Augusta, Maine 04333, within 30 days of the date noted above. Please see the instructions included in the attached letter if you would like the Commission to make a formal determination of any penalty to be assessed in this case.

Failure to pay the full amount of an assessed penalty is a civil violation. The Commission is required to report to the Attorney General the name of any person who fails to pay the full amount of any penalty. Please direct any questions you may have about this matter to Sandy Thompson at 287-7651.

Cut Along Dotted Line

For Office Use Only:  
 Account: CGEEP  
 Fund: 014 Approp: 02

To Commission on Governmental Ethics and Election Practices  
 135 State House Station  
 Augusta, Maine 04333

From: Mr. Arthur H. Clement

RE: Penalty for late filing of 42-Day Post-General Campaign Finance Report

Amount Enclosed: \$ \_\_\_\_\_

Check/M.O. No.: # \_\_\_\_\_

**Please Make Check or Money Order Payable to Treasurer, State of Maine**

OFFICE LOCATED AT: 242 STATE STREET, AUGUSTA, MAINE  
 WEBSITE: WWW.MAINE.GOV/ETHICS

## COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES

### PENALTY MATRIX FOR LATE CANDIDATE REPORT FILINGS

#### BASIS FOR PENALTIES 21-A M.R.S.A. Section 1020-A(4)

The penalty for late filing of a required report is a percentage of the total contributions or expenditures for the filing period, whichever is greater, multiplied by the number of calendar days the report is filed late, as follows:

- For the first violation, 1%
- For the second violation, 3%
- For the third and each subsequent violation, 5%

A penalty begins to accrue at 5:00 p.m. on the day the report is due.  
Any penalty of less than \$5 is waived.

*Example:* The treasurer files the candidate's report two (2) days late. The candidate has not had any previous late violations this biennium. The candidate reports a total of \$2,500 in contributions and \$1,500 in expenditures for the filing period. The penalty is calculated as follows:

\$2,500	Greater amount of the total contributions received or expenditures made during the filing period
<u>X</u> .01	Percent prescribed for first violation
\$25.00	One percent of total contributions
<u>X</u> 2	Number of calendar days late
\$50.00	Total penalty

Your penalty is calculated as follows:

Contributions/Expenditures: \$	<u>\$1,348.27</u>
Percent prescribed:	<u>0.03</u>
	\$ <u>\$40.45</u>
Number of days late:	<u>X</u> <u>55</u>
Total penalty accrued:	\$ <u>\$2,224.75</u>

Violations accumulate on reports with filing deadlines in a 2-year period that begins on January 1st of each even-numbered year. Waiver of a penalty does not nullify the finding of a violation.

**A required report that is sent by certified or registered United States mail and postmarked at least 2 days before the deadline is not subject to penalty.**

#### MAXIMUM PENALTIES 21-A M.R.S.A. Section 1020-A(5)

\$5,000 for reports required to be filed 42 days before an election (gubernatorial candidate only),  
6 days before an election, 42 days after an election, and for 48-hour reports;  
\$1,000 for semiannual reports.

Revised 6/03

7005 3110 0000 2803 6952

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- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mail piece or on the reverse of the mail piece.

1. Article Addressed to:

**MR. ARTHUR H. CLEMENT  
931 HINCKLEY ROAD  
CLINTON, ME 04927**

*42-day POST General Penalty*

2. Article Number  
(Transfer from service label)

**COMPLETE THIS SECTION ON DELIVERY**

- A. Signature  Agent  Addressee  
*Arthur H. Clement*
- B. Received by (Printed Name)  
*ARTHUR H. CLEMENT*
- C. Date of Delivery  
*APR 20 2007*
- D. Is delivery address different from item 1?  Yes  No  
If YES, enter delivery address below:

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  - Certified Mail  Express Mail
  - Registered  Return Receipt for Merchandise
  - Insured Mail  C.O.D.

4. Restricted Delivery? (Extra Fee)  Yes

Sent To *Arthur Clement*

Street, Apt. No., or PO Box No. *42-Post 6 P.O.*

City, State, ZIP+4

7005 3110 0000 2803 6952

102595-02-M-1540



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

January 24, 2007

Mr. Arthur H. Clement  
931 Hinckley Road  
Clinton, ME 04927

**BY CERTIFIED AND REGULAR MAIL**

Dear Mr. Clement:

This is to follow up on the letters we have sent you over the past two months requesting that:

- you pay the penalty of \$51.17 for the late filing of your 6-Day Pre-General campaign finance report;
- you file your 42-Day Post General campaign finance report and;
- you return unspent MCEA funds found on line 6 of Schedule F, 42-Day Post General campaign finance report. Since the report is not filed, the unspent amount is unknown. Under the MCEA, you were required to return these funds at the time you filed your final campaign finance report that was due no later than December 19, 2006. (21-A M.R.S.A. §1125(12)).

Since the Commission did not receive payment of your penalty by January 15, 2007, it is tentatively scheduled for the February 14 meeting for referral to the Attorney General's office for collection. **If the Commission does not receive the payment of your penalty, the unspent MCEA funds and your filed campaign finance report by Monday, February 5, 2007, your name will be printed on the public agenda for the Ethics Commission's February 14, 2007 meeting for all three issues.**

Please telephone me at 287-4179 if you have any questions or I can help in any way.

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Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$

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1-24-2007

Sincerely,

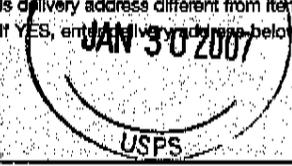
*Jonathan Wayne*  
Jonathan Wayne  
Executive Director

Sent To Mr. Arthur Clement  
 Street, Apt. No., or PO Box No. \_\_\_\_\_  
 City, State, ZIP+4 Clinton, Me

PS Form 3800, June 2002 See Reverse for Instructions

D AT: 242 STATE STREET, AUGUSTA, MAINE  
ITE: WWW.MAINE.GOV/ETHICS

FAX: (207) 287-6775

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> <li>■ Complete Items 1, 2, and 3. Also complete Item 4 if Restricted Delivery is desired.</li> <li>■ Print your name and address on the reverse so that we can return the card to you.</li> <li>■ Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul>	<p>A. Signature <input checked="" type="checkbox"/> Agent <input checked="" type="checkbox"/> Addressee</p> <p><i>Arthur H. Clement</i></p> <p>B. Received as <input checked="" type="checkbox"/> Addressee <input type="checkbox"/> Agent</p> <p>C. Date of Delivery</p>
<p>1. Article Addressed to:</p> <p><i>Mr. Arthur H. Clement</i>  <i>931 Hinckley Road</i>  <i>Clinton, ME</i>  <i>04927</i></p> <p style="text-align: right;"><i>ST</i></p>	<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>If YES, enter delivery address below: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p style="text-align: center;">           USPS       </p> <p>3. Service Type</p> <p><input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail</p> <p><input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise</p> <p><input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p> <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>
<p>2. Article Number (Transfer from service label)</p>	<p>7005 3110 0000 2803 6914</p>
<p>PS Form 3811, August 2001 Domestic Return Receipt 102595-02-M-1540</p>	



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

January 18, 2007

Arthur H. Clement  
 931 Hinckley Road  
 Clinton, ME 04927

**Re: Delinquent Campaign Finance Report – Due Dec 19, 2006**

Dear Mr. Clement:

The Ethics Commission has previously written to you regarding your failure to file a campaign finance report, as required under the Election Law. Failure to file a campaign finance report within 30 days of a filing deadline is a Class E Crime under 21-A M.R.S.A. §1020-A(8-A).

**If you do not file your report prior to the Commission's meeting on February 14, 2007, the Commission staff will recommend to the Commission members that you be referred to the Maine State Attorney General's Office for possible criminal prosecution under 21-A M.R.S.A. §1020-A(8-A).**

To stop this process, immediately submit the following reports:

- **42-Day Post-General Report**

The Commission staff will send you five notices to alert you to your possible referral to the Attorney General, and the Commission staff will also contact you by telephone. The first notice will include a blank reporting form which you can use to file the report.

Please telephone me at 287-4709 regarding this matter, and inform me whether you will be filing the report or if you believe no report is required. Thank you.

Sincerely,

*Gavin O'Brien*

Gavin O'Brien  
 Candidate Registrar

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Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$	

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 or PO Box No.  
 City, State, ZIP+4

AT: 242 STATE STREET, AUGUSTA, MAINE  
 E: WWW.MAINE.GOV/ETHICS

FAX: (207) 287-6775

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> <li>■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</li> <li>■ Print your name and address on the reverse so that we can return the card to you.</li> <li>■ Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul>	<p>A. Signature <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by: (Printed Name) <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>C. Date of Delivery</p>
<p>1. Article Addressed to:</p> <p>Arthur H. Clement 931 Hinckley Road Clinton, ME 04927</p>	<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If YES, enter delivery address below:</p> <p style="text-align: center;"><b>JAN 26 2007</b></p>
<p>2. Article Number (Transfer from service label)</p>	<p>3. Service Type <b>USPS</b></p> <p><input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail</p> <p><input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise</p> <p><input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p> <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p> <p style="text-align: center;"><b>7005 3110 0000 2803 7355</b></p>



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

December 21, 2006

Mr. Arthur H. Clement  
931 Hinckley Road  
Clinton, ME 04927

**Re: Delinquent Campaign Finance Report – Due December 19, 2006**

Dear Mr. Clement:

Our records show that you have not filed your 42-Day Post-General Report. State law [21-A M.R.S.A. § 1020-A] requires that a penalty be assessed for late reports based on the amount of financial activity conducted during the filing period, on the number of calendar days a report is filed late, and on the candidate's filing record. If you raised or spent money during the filing period, you could be subject to civil penalties, which are accruing on a daily basis. Once you have filed your report, our office will calculate the penalty using the enclosed penalty matrix, and will notify you of the amount of the penalty. **Therefore, we urge you to file your report as soon as possible.**

Sincerely,

*Gavin O'Brien*

Gavin O'Brien  
Candidate Registrar

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<b>U.S. Postal Service™</b> <b>CERTIFIED MAIL™ RECEIPT</b> (Domestic Mail Only; No Insurance Coverage Provided) For delivery information visit our website at <a href="http://www.usps.com">www.usps.com</a>		Items 1, 2, and 3. Also complete Restricted Delivery is desired. Your name and address on the reverse we can return the card to you. This card to the back of the mailpiece, in front if space permits.	
<b>OFFICIAL USE</b>		<b>A. Signature</b> <input checked="" type="checkbox"/> M. H. Clement <input type="checkbox"/> Agent <input type="checkbox"/> Addressee	
<b>B. Received by (Printed Name)</b> M. H. Clement		<b>C. Date of Delivery</b> 12-22	
<b>D. Is delivery address different from item 1? If YES, enter delivery address below.</b> <input type="checkbox"/> Yes <input type="checkbox"/> No		<b>3. Service Type</b> <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.	
<b>4. Restricted Delivery? (Extra Fee)</b> <input type="checkbox"/> Yes		<b>5. Restricted Delivery? (Extra Fee)</b> <input type="checkbox"/> Yes	
<b>Postage</b> \$ <b>Certified Fee</b> <b>Return Receipt Fee (Endorsement Required)</b> <b>Restricted Delivery Fee (Endorsement Required)</b> <b>Total Postage &amp; Fees</b> \$		<b>Addressed to:</b> Arthur H. Clement Hinckley Road Clinton, ME 04927	
<b>Sent To</b> Clement <b>Street, Apt. No., or PO Box No.</b> <b>City, State, ZIP+4</b>		<b>Number from service label</b> 7005 3110 0000 2803 6716	
<b>Postmark Here</b>		<b>DEC 22 2006</b>	
<b>102595-02-M-1540</b>		<b>811, August 2006</b>	

Welcome to the Public Campaign Finance Page for the State of Maine - Microsoft Internet Explorer

File Edit View Favorites Tools Help

Address: https://secure.maine-campaign-finance.com/MainPage2.asp

# MAINE

Welcome to the Campaign Finance Electronic Filing System Site

Menu Home Help Logout Change Password Admin Page

5/4/2007

Home Page for Arthur H. Clement

CAMPAIGN YEAR 2006

REPORT TYPE	REPORTING PERIOD	DUE DATE	DATE FILED	STATUS	LAST MODIFIED	
Candidate Registration			2/27/2006 12:06:13 PM	Filed	2/13/2007 1:49:05 PM	Print
Seed Money Report	11/3/2004 to 4/12/2006	4/18/2006	4/12/2006	Filed	4/12/2006	Print
6-Day Pre-Primary - MCEA Candidates	4/13/2006 to 6/1/2006	6/7/2006	6/19/2006	Filed		Print
42-Day Post-Primary	6/2/2006 to 7/18/2006	7/23/2006	7/24/2006	Filed	6/7/2006	Print
6-Day Pre-General	7/19/2006 to 10/26/2006	11/1/2006	11/13/2006 3:18:25 PM	Filed	11/13/2006 3:18:25 PM	Print
42-Day Post-General	10/27/2006 to 12/12/2006	12/19/2006	2/12/2007 8:46:25 AM	Filed	2/12/2007 8:46:25 AM	Print
24-Hr Report of Late Contributions and Expenditures		N/A	MULTIPLE			

Please click on the following buttons to Download schedule informations in excel format.

Done Internet

Late

ARTHUR H. CLEMENT

CANDIDATE'S FULL NAME

Date Submitted

**SCHEDULE F  
SUMMARY SECTION  
(MAINE CLEAN ELECTION ACT CANDIDATES)**

<b>CASH ACTIVITY</b>		
	<b>TOTAL FOR THIS PERIOD</b>	<b>TOTAL FOR CAMPAIGN</b>
1. CASH BALANCE FROM LAST REPORT (if any)	4,640.02	
2. MAINE CLEAN ELECTION ACT Payments	+ 1,348.27	6,648.67
3. SALE OF CAMPAIGN PROPERTY (Schedule E, Part II)	+ 0.00	0.00
4. OTHER CASH RECEIPTS (interest, etc.)	+ 0.00	0.60
5. <i>MINUS</i> TOTAL EXPENDITURES (total of all Schedule B pages)	- 0.00	660.98
6. CASH BALANCE AT CLOSE OF PERIOD (lines 1 + 2 + 3 + 4 - 5)	= 5,988.29	
7. CASH NOT AUTHORIZED TO SPEND	0.00	
8. CASH AUTHORIZED TO SPEND (line 6 - 7)	5,988.29	

<b>OTHER ACTIVITY THIS REPORTING PERIOD</b>		
9. TOTAL UNPAID DEBTS AT CLOSE OF PERIOD (total all Schedule D pages)	0.00	

# Agenda Item #5

**IRWIN  
TARDY  
MORRIS**

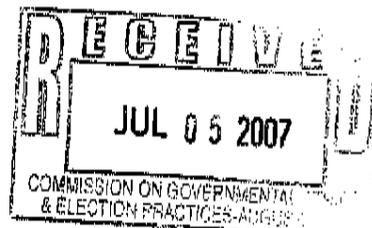
*P.O. Box 476  
159 Main Street  
Newport, ME 04953*

*Joshua A. Tardy  
tardylaw@adelphia.net*

*207.368.2828 T  
207.368.2822 F*

July 3, 2007

Martha Demeritt, PAC Registrar  
State of Maine Commission on  
Governmental Ethics and Election Practices  
135 State House Station  
Augusta, ME 04333-0135



*Via facsimile transmission and U.S. Mail*

RE: Leadership for Maine's Future PAC

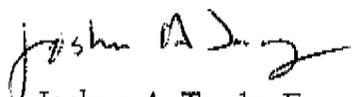
Dear Martha:

Please accept this letter on behalf of Leadership for Maine's Future PAC, as a request for waiver or, in the alternative, a partial waiver of the proposed penalty set forth in your letter of June 19, 2007.

I will provide a detailed basis for my waiver request in a separate filing.

Thank you.

Very truly yours,

  
Joshua A. Tardy, Esq.

JAT/met



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

June 19, 2007

Mrs. Mary Ellen Tardy, Treasurer  
Leadership for Maine's Future  
P.O. Box 381  
Newport, ME 04953

Dear Mrs. Tardy:

You filed the 6-Day Pre-Election campaign finance report on 6/13/07 that was due on 6/6/07. A penalty must be assessed for late reports based on the amount of financial activity conducted during the filing period, the number of calendar days a report is filed late, and the PAC's filing record. Based on the prescribed statutory formula, the preliminary determination of the penalty for the late filing of your report is \$340.68. Please refer to the enclosed penalty matrix for more details on how the penalty is computed. *Since Commission staff failed to notify you within 3 days of the deadline of your late report, we have automatically deducted 3 days from the late filing penalty calculation.*

If you have a reason for filing late, you may request the Commission to make a final penalty determination. Any request for a Commission determination must be made within 10 calendar days of receipt of this notice, beginning on the day you sign for receipt. If this notice has been refused or left unclaimed at the post office, the 10-day period begins on the day the post office indicates it has given first notice of a certified letter. Upon receipt of your request for a Commission determination, we will schedule you to appear and will notify you of the date and time of the next Commission meeting. You or a person you designate may then appear personally before the Commission or you may send a written statement for the Commission's consideration. A statement must be notarized and contain a full explanation of the reason you filed late. Statements should be sent to the address shown on this letterhead. The Commission will notify you of the disposition of your case within 10 days after its determination.

Please note that the Commission may waive the penalty in whole or in part if it determines the failure to file a timely report was due to mitigating circumstances. "Mitigating circumstances" means 1) a valid emergency of the committee treasurer determined by the Commission, in the interest of the sound administration of justice, to warrant the waiver of the penalty in whole or in part; 2) an error by the Commission staff; or 3) other circumstances determined by the Commission that warrant mitigation of the penalty, based upon relevant evidence presented that a bona fide effort made to file the report in accordance with the statutory requirements, including, but not limited to, unexplained delays in postal service.

Sincerely,

A handwritten signature in black ink, appearing to read 'Martha Demeritt', written over a white background.

Martha Demeritt  
PAC Registrar

Enc.: PAC Penalty Matrix

OFFICE LOCATED AT: 242 STATE STREET, AUGUSTA, MAINE  
WEBSITE: WWW.MAINE.GOV/ETHICS

LEADERSHIP 10K TRAINING TUIURE

6-DAY PRE-ELECTION

## COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES

## PENALTY MATRIX FOR LATE POLITICAL ACTION COMMITTEE REPORT FILINGS

BASIS FOR PENALTIES  
21-A M.R.S.A. Section 1062-A

The penalty for filing a required report late is a percentage of the total contributions or expenditures for the filing period, whichever is greater, multiplied by the number of calendar days the report is filed late, as follows:

For the first violation, 1%

For the second violation, 3%

For the third and each subsequent violation, 5%

Example: The treasurer files the PACs report two (2) calendar days late. The PAC has not had any previous late filings in the past 2 years. The PAC reports a total of \$2,500 in contributions and \$1,500 in expenditures for the filing period. The penalty is calculated as follows:

\$2,500 Greater of the amount of total contributions received or expenditures made during the filing period.

X .01 Percent prescribed for first violation

\$25.00 One percent of total contributions

X 2 Number of calendar days late

\$50.00 Total penalty Commission may assess

Your penalty is calculated as follows:

Contributions/Expenditures \$ 8,517.38

Percent prescribed: X 1%

\$ 85.17

Number of days late: X 4

Total penalty accrued: \$ 340.68

A penalty begins to accrue at 5:00 p.m. on the day the report is due.

Any penalty of less than \$5 is waived.

Violations accumulate on reports with filing deadlines in a 2-year period that begins on January 1st of each even-numbered year. Waiver of a penalty does not nullify the finding of a violation.

Title 21-A M.R.S.A. Section 1004-A(1) states the Commission may assess a penalty of no more than \$100 when a person files a late campaign finance report containing no contributions or expenditures.

MAXIMUM PENALTIES  
21-A M.R.S.A. Section 1062-A (4)

\$10,000 for 6-day pre-election reports, 42-day post-election reports, and 24-Hour reports;  
\$5,000 for quarterly reports.

LEADERSHIP FOR MAINE'S FUTURE

(Schedule B only)

Name of PAC

**SCHEDULE B**

**CONTRIBUTIONS AND EXPENDITURES  
TO OR ON BEHALF OF CANDIDATES, COMMITTEES & PARTIES**

List the payee's name with the specific amount benefiting each candidate.  
Do not include in-kind or operational expenditures on this schedule.

Expenditure Types Requiring <u>NO</u> Remark		Expenditure Types <u>REQUIRING</u> Remark	
CON	contribution	CNS	campaign consultants
EQP	equipment	OTH	other
FND	fundraising events	PRO	professional services
FOD	food for campaign events, volunteers		
I,IT	campaign literature (printing and graphics)		
MHS	mail house (all services purchased)		
OFF	office rent and utilities		
POL	polling and survey research		
PHO	phone banks, automated telephones calls		
POS	postage for U.S.Mail		
PRT	print media ads		
RAD	radio ads, production costs		
TRV	travel (fuel, mileage, lodging, etc.)		
TVN	TV or cable ads, production costs		
WEB	Internet and e-mail		

**For every expenditure, list the appropriate code.**

If a remark is required, list additional information such as type of consulting (media, messaging, campaign, etc.) or professional service provided.

Date Of Payment	Payee name	Candidate, Committee, or Party Supported		Amount contributed to or spent on behalf of each candidate, committee, or party
	Payee's complete mailing address	Code	Remarks	
4/28/2007	PENNY MORRELL	Morrell For House		250.00
	864 MANCHESTER ROAD, BELGRADE, ME, 04917	CON		
<b>Total contributions this reporting period</b>				250.00

**Demeritt, Martha**

---

**From:** Demeritt, Martha  
**Sent:** Tuesday, June 12, 2007 4:20 PM  
**To:** Experience Counts (sawinmillett@aol.com); jep1@pivot.net; Roy Lenardson; Leadership for Maine's Future (mtardy@itmlaw.com); Leadership for Maine's Future (tardylaw@adelphia.net)  
**Subject:** LATE PAC REPORT NOTICE

**Importance:** High

**Attachments:** 2007 PAC Filing Schedule.doc

PAC Treasurers,

This e-mail serves as your formal notification that your 6-Day Pre-Election report has not been filed to date.

I apologize for this late notice, however, it was not until today that I realized your PAC has participated in the HD 83 race by giving donations to Penney Morrell during the reporting period for the 6-Day Pre-Election campaign finance report (April 1 - May 31). As you'll recall from my e-mail several weeks ago (see below), any PAC participating (by making an independent expenditure, giving contributions or otherwise) is required under 21-A MRSA Sec. 1059(2-C) to file both the 6-Day Pre-Election and 42-Day Post-Election Reports with the Ethics Commission.

Since penalties accrue daily, please file your PAC report as soon as possible.

Thank you,  
 Martha

Martha Demeritt  
 Lobbyist, PAC & Party Registrar  
 Maine Ethics Commission  
 135 S.H.S.  
 Augusta, ME 04333  
 (207) 287-6221  
[www.maine.gov/ethics](http://www.maine.gov/ethics)

---

**From:** Demeritt, Martha  
**Sent:** Monday, May 14, 2007 4:56 PM  
**Subject:** PAC NOTICE, May 14, 2007  
**Importance:** High

**\*\*\*\* IMPORTANT AMENDED PAC SCHEDULE ATTACHED\*\*\*\***

PAC Treasurers,

**Please disregard my e-mail of May 10th** regarding the amended PAC schedule. I made an error by omitting PACs participating in the HD 83 race. Simply put, those PACs spending money in the HD 83 race in addition to the bond referendum participants must file the 6-Day Pre and 42-Day Post election reports.

Your PAC will only need to file the 6-Day Pre-Election and 42-Day Post-Election reports if you are participating (by spending money to influence the outcome) in the June **bond referendum** or **special election in HD 83**. If your PAC is not participating (by not spending money specifically for the purpose of influencing the outcome of the bonds or special election in HD 83), you fall into the category of needing only to concern yourself with filing the July Quarterly.

Independent expenditure reports and 24-Hour reports should also be on the radar if your PAC is spending money on the bonds or HD 83.

**Demeritt, Martha**

---

**From:** Demeritt, Martha  
**Sent:** Monday, May 14, 2007 4:56 PM  
**Subject:** PAC NOTICE, May 14, 2007

**Importance:** High

**Attachments:** 2007 PAC Filing Schedule.doc

**\*\*\*\* IMPORTANT AMENDED PAC SCHEDULE ATTACHED\*\*\*\***

PAC Treasurers,

**Please disregard my e-mail of May 10th** regarding the amended PAC schedule. I made an error by omitting PACs participating in the HD 83 race. Simply put, those PACs spending money in the HD 83 race in addition to the bond referendum participants must file the 6-Day Pre and 42-Day Post election reports.

Your PAC will only need to file the 6-Day Pre-Election and 42-Day Post-Election reports if you are participating (by spending money to influence the outcome) in the June **bond referendum** or **special election in HD 83**. If your PAC is not participating (by not spending money specifically for the purpose of influencing the outcome of the bonds or special election in HD 83), you fall into the category of needing only to concern yourself with filing the July Quarterly.

Independent expenditure reports and 24-Hour reports should also be on the radar if your PAC is spending money on the bonds or HD 83.

Regarding the HD 83 race, we've established a special section of our website for that election:  
[http://www.maine.gov/ethics/disclosure/h83\\_special\\_election.htm](http://www.maine.gov/ethics/disclosure/h83_special_election.htm)

I've attached the AMENDED Filing Schedule. Remember, when in doubt or when you have questions, contact your PAC registrar!

Best wishes,  
Martha



2007 PAC Filing  
Schedule.doc (...)

Martha Demeritt  
Lobbyist, PAC & Party Registrar  
Maine Ethics Commission  
135 S.H.S.  
Augusta, ME 04333  
(207) 287-6221  
[www.maine.gov/ethics](http://www.maine.gov/ethics)

STATE OF MAINE  
 COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES  
 135 STATE HOUSE STATION  
 AUGUSTA, MAINE 04333  
 Phone: (207)287-4179 Fax: (207)287-6775  
 Website: www.maine.gov/ethics

**2007 FILING SCHEDULE - POLITICAL ACTION COMMITTEES**

<u>Type of Report</u>	<u>Due Date</u>	<u>Covering Period</u>
January Quarterly	January 16, 2007	December 13, 2006 – January 5, 2007
April Quarterly	April 10, 2007	January 6, 2007 – March 31, 2007
July Quarterly	July 16, 2007	April 1, 2007 – July 5, 2007
October Quarterly	October 10, 2007	July 6, 2007 – September 30, 2007
January Quarterly	January 15, 2008	October 1, 2007 – January 5, 2008

PACs participating in the June 12, 2007 bond referendum or special election in HD 83 must file the following additional reports:

6-Day Pre-Election	June 6, 2007	April 1, 2007 – May 31, 2007
July Quarterly	-----	This does not need to be filed.
42-Day Post-Election	July 24, 2007	June 1, 2007 – July 17, 2007

If an election is held on November 6, 2007, PACs participating in that election must file the following additional reports:

6-Day Pre-Election	October 31, 2007	October 1, 2007 – October 25, 2007
42-Day Post-Election	December 18, 2007	October 26, 2007 – December 11, 2007

**24-HOUR REPORTS**

PACs participating in either the June 12, 2007 or November 6, 2007 elections must disclose any expenditure of \$500 or more made:

After May 31, 2007 and before 5:00 p.m. on June 11, 2007

After October 25, 2007 and before 5:00 p.m. on November 5, 2007

in a special report filed within 24 hours making the expenditure (including Saturdays and Sundays). This report can be filed electronically through the Commission's electronic filing system.

**Demeritt, Martha**

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**From:** Demeritt, Martha  
**Sent:** Thursday, May 10, 2007 12:10 PM  
**Subject:** PAC NOTICE

**Importance:** High

**Attachments:** 2007 PAC Filing Schedule.doc

PAC Treasurers,

The purpose of this e-mail is to provide you with an **amended** 2007 PAC Filing Schedule, as it has come to my attention that I omitted the upcoming June referendum filing dates.

Your PAC will only need to file the 6-Day Pre-Election and 42-Day Post-Election reports if you are participating (by spending money to influence the outcome of the bonds) in the June **bond referendum** election. If your PAC is not participating (by not spending money specifically for the purpose of influencing the outcome of the bonds) in the referendum, you fall into the category of needing only concern yourself with filing the July Quarterly.

For those of you spending money on the HD 83 race you also need only concern yourselves with filing independent expenditure reports (as needed) and the July Quarterly report.

I've attached the AMENDED Filing Schedule. Remember, when in doubt or when you have questions, contact your PAC registrar!

Best wishes,  
Martha

Martha Demeritt  
Lobbyist, PAC & Party Registrar  
Maine Ethics Commission  
135 S.H.S.  
Augusta, ME 04333  
(207) 287-6221  
[www.maine.gov/ethics](http://www.maine.gov/ethics)



2007 PAC Filing  
Schedule.doc (...)

# Agenda

## Item #6



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

To: Commission Members  
From: Jonathan Wayne, Executive Director  
Date: July 9, 2007  
Re: Staff Recommendations re: Hon. Joseph C. Perry

---

In the 2006 elections, Senator Joseph Perry (District 32) ran for re-election to the Maine Senate as a Maine Clean Election Act candidate. Including his service in the Maine House of Representatives, Sen. Perry is in his sixth term in the Maine Legislature. Last year, he was randomly selected to be audited. The staff is recommending a total of \$950 in penalties for three violations of the Maine Clean Election Act. This memo is intended to supplement the audit report and to address the issues of proportionality that are raised in the letter of Senator Perry's counsel, Newell Augur.

It should be noted that, overall, Senator Perry ran a compliant campaign except for the documentation problems and overdraft transfers discussed in the audit report. There was no serious misreporting of his campaign receipts and expenditures. He spent his Maine Clean Election Act (MCEA) funds on legitimate campaign expenditures. We find no evidence that Senator Perry intended to keep MCEA funds permanently.

### **Finding No. 1 - Commingling and Personal Use of MCEA Funds**

As explained in the audit report, Senator Perry opened a campaign checking account at the Bangor Credit Union where he had existing personal checking and savings accounts. In order to earn interest on his MCEA funds, he deposited some of them into his personal savings account after withdrawing all but \$25 in personal funds to keep it open.

#### *Use of MCEA Funds for Personal Expenditures*

Sen. Perry's personal checking account was set up with overdraft protection. To avoid a negative balance in the account, the credit union automatically transferred MCEA funds from his savings account to cover payments he made from his personal checking account. Between July and October 2006, the credit union made twenty overdraft transfers of MCEA funds totaling \$4,028 to cover personal purchases made from the checking account:

1	7/12/2006	\$450.37
2	7/18/2006	\$12.40
3	7/18/2006	\$202.50
4	7/20/2006	\$48.12
5	7/20/2006	\$302.50
6	8/16/2006	\$290.06
7	8/21/2006	\$334.12
8	8/24/2006	\$602.50
9	8/30/2006	\$360.95
10	9/11/2006	\$837.27
11	9/22/2006	\$269.26
12	9/25/2006	\$47.78
13	9/26/2006	\$64.60
14	9/27/2006	\$41.13
15	9/27/2006	\$17.15
16	9/27/2006	\$102.50
17	10/21/2006	\$4.15
18	10/24/2006	\$18.05
19	10/27/2006	\$6.04
20	10/27/2006	\$16.40
	<b>Total</b>	<b>\$4,027.85</b>

In each case, the overdraft transfer brought the balance in the checking account to \$0.00. In the view of the Commission staff, this constituted using MCEA funds for personal expenses, which violated 21-A M.R.S.A. §1125(12).

Senator Perry has responded that initially he did not know the transfers were occurring and acknowledges that once he discovered them, he should have stopped them from recurring. In Mr. Augur's letter, the campaign describes the problem as a lack of attentiveness rather than a disregard for oversight. The failure to correct the problem for over three months is the principal reason the staff is recommending a penalty. The staff recognizes that the use of MCEA funds to pay for personal expenses did not involve intentional, affirmative actions such as writing a check that would draw down MCEA funds directly. On the other hand, one cannot say that the payment of MCEA funds for personal expenses was entirely unknowing because Senator Perry was aware of the July transfers and allowed the transfers to continue for the next three months.

Senator Perry states that in addition to his re-election campaign, there were "several personal and non-legislative work related challenges occupying Senator Perry's attention during the final four months of the campaign." I recommend that you take this into consideration as a mitigating factor.

### *Proportionality of Penalties for MCEA Violations*

The Commission staff urges you to look closely at every penalty we recommend, and to adjust them upward or downward to reflect what you believe is fair and advances the goals of the MCEA. The staff regularly recommends no violation for minor reporting or record-keeping errors that were unintentional or that were corrected by the candidates. We choose to recommend penalties in a small number of more serious situations to underscore that compliance with MCEA requirements (accurate reporting and record-keeping, spending public funds appropriately) is part of the bargain candidates make with the state of Maine and taxpayers when they apply to receive full public financing. At the same time, we do not want penalties to be so large that they discourage candidates from participating in the MCEA, cause friction with the Legislature, or result in a perception that the Commission is arbitrary or overly punitive.

After reviewing the 2006 campaigns, the Commission staff has found six candidates who commingled MCEA funds with personal funds or misspent them.<sup>1</sup> (Please see attached chart.) Because of a lack of precedent, we believe the Commission has considerable flexibility to decide what penalties are appropriate in these cases:

- The audits showed that two incumbent Representatives, Joan Bryant-Deschênes and Donald Marean, deposited MCEA funds into bank accounts with personal funds, but did not use the MCEA funds for personal expenses. The staff recommended no penalty for the violation, but the Commission assessed a penalty

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<sup>1</sup> It is important to remember that 313 candidates received MCEA funding for the general election, and only two of them (less than 1%) intended to permanently misuse the MCEA funds they received.

of \$100 in both cases to discourage commingling of MCEA funds with personal funds.

- On the other end of the spectrum, two candidates (Thomas Bossie and Arthur Clement) commingled MCEA and personal funds, and went on to spend substantial portions of the MCEA funds on personal expenses. We discovered the problem because the candidates failed to return unspent MCEA funds by deadlines in November and December 2006. They apparently had no practical intention of returning them to the state of Maine. The Commission was able to recover the unspent funds (including money spent on personal expenses) by threatening civil lawsuits.
- The audits disclosed that two candidates (Joseph Perry and David Feeney) spent MCEA funds in the short term to pay for personal expenses, but there is no evidence that they intended to keep the funds permanently.

In our opinion, the violations by Senator Perry and David Feeney are substantially less serious than the Bossie and Clement situations. Thomas Bossie and Arthur Clement intentionally used MCEA funds for personal expenses with no practical intention of returning them to the Commission. All evidence suggests that Senator Perry did intend to return the appropriate amount of funds to the Commission, and his expenditures of MCEA funds for personal expenses – while knowing – were not as intentional as using MCEA funds to write a check to cover a personal loan, for example.

In the cases of Senator Perry and David Feeney (scheduled for August), the Commission staff is recommending a penalty of \$600 for spending MCEA funds on purposes that were not campaign-related. We arrived at the \$600 amount because it was roughly one-half of the penalties recommended against Thomas Bossie and Arthur Clement for misuse of MCEA funds. If – after hearing from Senator Perry and his counsel on July 16 – you believe that \$600 is too high because Senator Perry demonstrated no bad faith or because of other mitigating circumstances, the staff does not oppose reducing the penalty.

The staff has recommended a penalty of \$250 against Senator Perry, David Feeney, Arthur Clement, and Tom Bossie for commingling MCEA funds with personal funds. In these cases, the recommendation is larger than \$100 (the Marean and Deschenes penalties) because the commingling resulted in the use of MCEA funds for personal expenses.

Attorney Newell Augur argues that Senator Perry's situation should be viewed as closer to Representatives Marean and Bryant-Deschenes than to Bossie and Clement. If you agree, you may wish to consider assessing smaller penalties. We believe some penalty is necessary to send the message to Maine Clean Election Act candidates that they must deposit their public funds in a separate campaign account and use them only for campaign-related purposes.

### **Finding No. 2 – Undocumented Campaign Expenditures**

MCEA candidates are required to keep two documents for every expenditure over \$50: a vendor invoice and proof that the vendor received payment (e.g., a cancelled check). As with many of the legislative candidates audited earlier this year, Senator Perry did not initially have the required documentation. Since late 2006, the Commission's auditor has made repeated requests to Senator Perry. He eventually obtained almost all of the requested documentation, but not within a reasonable period of time.

Among the expenditures which the auditor asked the campaign to support were two reimbursements to the candidate in the range of \$200 - \$300. Mr. Augur points out that these reimbursements covered several payments the candidate made to vendors – some of which were for less than \$50. With regard to the payments over \$50, the following documents have been submitted to the Commission during the audit.

	<b>Vendor Invoice</b>	<b>Proof of Payment (e.g., cancelled check)</b>
\$179.58 purchase from Staples	"Rewards card" statement accepted	No
\$84.16 mileage reimbursement to candidate ( <i>satisfactory documentation</i> )	Explanation of mileage accepted	Yes
\$117.00 payment to the U.S. Post Office	No	No

The staff continues to recommend a penalty of \$100 for this violation.

**Comparison of 2006 Penalties for Commingling and Spending  
MCEA Funds for Personal Expenses**

	Joanne Bryant- Deschenes (assessed 12/12/06)	Donald Marean (assessed 12/12/06)	Joseph Perry (recommended for 7/16/06)	David Feeney (for August meeting)	Arthur Clement (recommended for 7/16/06)	Thomas Bossie (assessed on 5/14/06)
Spending MCEA Funds for Non-Campaign Purposes			\$600	\$600	\$1,250	\$1,250
Commingling MCEA Funds with Personal Funds	\$100	\$100	\$250	\$250	\$250	\$250
Failure to Keep Required Documentation			\$100			
Failure to Repay MCEA Funds					\$500	\$750
Failure to Accurately Report MCEA Expenditures						\$500
<b>Total</b>	<b>\$100</b>	<b>\$100</b>	<b>\$950</b>	<b>\$850</b>	<b>\$2,000</b>	<b>\$2,750</b>



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

July 6, 2007

**Audit Report No. 2006-SEN006**

**Candidate: Senator Joseph C. Perry  
Senate District 32**

**Background**

Senator Joseph C. Perry was re-elected to the Maine State Senate, District 32, in the 2006 general election. Sen. Perry was certified by the Commission as a Maine Clean Election Act (MCEA) candidate on April 20, 2006. MCEA candidates are required under the Act to submit reports of their receipts, expenditures, outstanding campaign debt, and equipment purchases and dispositions for specified periods during the election cycle.

**Audit Scope**

Examination of selected candidate contribution and expenditure transactions occurring during the following campaign reporting periods:

- Seed Money
- Six Day Pre-Primary
- 42 Day Post-Primary
- Six Day Pre-General
- 42 Day Post-General

Transactions subject to review were those recorded in the candidate's accounting records and reported to the Commission. The audit's purpose was to determine if the identified receipts and payments (1) were properly approved by the candidate or his authorized representative; (2) were adequately documented as evidenced by original vendor invoices and cancelled checks or other acceptable disbursement documentation; and (3) complied in all material respects with the requirements of the Maine Clean Election Act and the Commission's rules.

Senator Perry received \$22,008 from the Commission in initial MCEA payments for the primary and general elections, and was also paid \$40,164 in matching funds for the general election. Sen. Perry was one of two legislative candidates who received the maximum amount of matching funds. The total amount disbursed by the Commission to Sen. Perry was \$62,172.

### Audit Findings and Recommendations

Finding No. 1 – Commingling of Funds and Personal Use of Public Funds: Sen. Perry maintained two personal bank accounts – savings and checking – with the Bangor Federal Credit Union. In June 2006, he opened a third (checking) account to serve as the campaign bank account. The initial payments for the primary and general elections were deposited into the campaign account. According to Sen. Perry, he decided to transfer a substantial portion of the MCEA monies to his personal savings account, and as needed, to transfer the funds back into his campaign checking account. The purpose of the transfer was to earn interest on the large balances on deposit.

In June 2006, Sen. Perry deposited \$22,008 of MCEA funds into the campaign checking account. The Commission distributed these funds to the senator to finance his primary and general election campaigns. Subsequently, on July 11, 2006, he transferred \$18,000 from the campaign checking account into his personal savings account. With that transfer, the balance in the savings account was entirely MCEA money, exclusive of \$25.00 to maintain the account in “open” status. In August 2006, Sen. Perry deposited an additional distribution of \$40,164 in matching funds directly into his personal savings account, bypassing the campaign bank account. From August through December 2006, Sen. Perry incrementally transferred more than \$58,000 from savings back into the campaign checking account to meet campaign obligations.

The audit also disclosed that from July through October of 2006, 20 transfers of MCEA funds were made from Sen. Perry’s savings account into his personal checking account. The transfers were made automatically by the credit union to avoid an overdraft (negative cash balance) in Sen. Perry’s personal checking account. The total amount of the 20 transfers was \$4,028. The first transfer occurred on July 12, 2006 – one day after Sen. Perry transferred the \$18,000 into the savings account. Sen. Perry stated that his savings account had been originally set up with an overdraft protection feature for his personal checking account, and that he had neglected to change the terms of the overdraft facility when he deposited MCEA funds into the savings account. He indicated the first transfers from savings to his personal checking were unintended. However, he acknowledged that even after he became aware of the transfers he failed to act to stop them and he did not notify the Commission of the error. Sen. Perry said he did not contact the Commission about the transfers because he was concerned that the matter would become a campaign issue that his opponent could take advantage of in a close and competitive election race. In December, 2006, Sen. Perry deposited \$4,300 into his savings account, and subsequently transferred \$4,208 from savings into the campaign checking account.

In the auditor’s opinion, Sen. Perry’s actions constitute serious violations of the Maine Clean Election Act and the Commission’s rules prohibiting commingling of funds and the use of public funds for private purposes. First, deposit of MCEA funds into personal bank accounts is by definition commingling. In the present circumstance, public funds were commingled in two accounts: Sen. Perry’s personal savings and checking account. Second, the transfer of MCEA funds into Sen. Perry’s personal checking account resulted in the use of public money for personal expenditures. The overdraft protection facility was established to cover deficits in Sen. Perry’s personal checking account, presumably due to personal expenditures. We also believe that Sen. Perry’s failure to act when he became aware of the impermissible transfers compounded the seriousness of the violation.

*Criteria:* 21-A M.R.S.A. § 1016(1), "All funds of a political committee and campaign funds of a candidate must be segregated from, and may not be commingled with, any personal funds of the candidate, treasurer or other officers, members or associates of the committee." 21-A M.R.S.A. § 1125(7-A), "The campaign funds must be segregated from, and may not be commingled with, any other funds." 21-A M.R.S.A. § 1125(6), "The candidate or committee ... shall deposit all revenues from the fund in a campaign account with a bank or other financial institution. All revenues distributed to a certified candidate from the fund must be used for campaign-related purposes." Commission Rules, Chapter Three, Section 6 (3), "A certified candidate must use revenues distributed from the Fund only for campaign-related purposes as outlined in guidelines published by the Commission, and not for personal or any other use."

*Recommendations:* The staff recommends that the Commission find Senator Perry in violation of 21-A M.R.S.A. §1125(12) for using \$4,028 in MCEA funds for purposes that were not campaign-related. The staff recommends a penalty of \$600 for this violation. The recommended penalty is intended to reflect that knowingly allowing MCEA funds to be used on a temporary basis to pay for personal expenditures is a serious violation of the MCEA, but there is no evidence that the candidate intended to keep MCEA funds permanently. He promptly returned to the Commission the correct amount of funds that were not used for campaign purposes.

The staff recommends that the Commission find Senator Perry in violation of 21-A M.R.S.A. §1125 (6-A) for commingling campaign funds with personal funds. The staff recommends a penalty of \$250 for this violation.

Finding No. 2 – Undocumented Campaign Expenditures: Sen. Perry made seven expenditures grouped into two payments that were unsupported by some or all of the required documentation. The transactions, which were listed in the 42 Day Post-Primary report, are as follows:

- a. Sen. Perry was reimbursed in the amount of \$272.96 for three expenditures: personal campaign mileage expenses (\$84.16), a purchase from Staples (\$179.58), and a purchase from Wal-Mart (\$9.22). The campaign was not able to provide proof of purchase or proof of payment for the Staples or Wal-Mart purchases, although the auditor reviewed and accepted Staples "Rewards" documentation as an alternative proof of purchase from that vendor. In addition, the three reimbursements were lumped together inappropriately, and will require an amendment to the report.
- b. Sen. Perry reimbursed himself in the amount of \$213.46 for four purchases made during the 42 Day Post-Primary reporting period: USPS (postage) - \$117.00; Sam's Club (printing supplies) - \$24.32; campaign travel - \$27.36; and Fairmount Market (pizza) - \$44.78. The campaign was not able to provide proof of purchase or proof of payment for any of the four purchases.

*Criteria:* 21-A M.R.S.A. §1016 (4), "A treasurer shall obtain and keep a receipted bill, stating the particulars, for every expenditure in excess of \$50 made by or on behalf of ... a candidate...." 21-A M.R.S.A. §1016, "Each treasurer shall keep detailed records of all contributions received and of each expenditure that the treasurer or candidate makes or authorizes...." 21-A M.R.S.A. §1125(12-A)(C), "The treasurer shall obtain and keep... a record proving that a vendor received payment for every

Campaign Audit  
Candidate: Sen. Joseph C. Perry  
Page 4

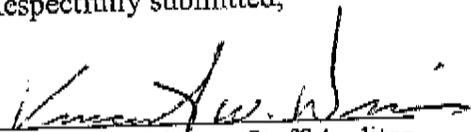
expenditure of \$50 or more in the form of a cancelled check, receipt from the vendor or bank or credit card statement identifying the vendor as the payee.”

*Recommendation:* the staff recommends that the Commission find Senator Perry violated 21-A M.R.S.A. § 1125(12-A) (C) for not obtaining and keeping complete documentation (vendor invoice and proof of payment) for three expenditures (the \$84.16 mileage reimbursement, the \$179.58 Staples purchase, and \$117.00 payment to the U.S. Post Office) and for not obtaining other required expenditure documentation when expenditures were made and when notified of the requirement during the audit process. The staff recommends that the Commission assess a penalty of \$100 for this violation.

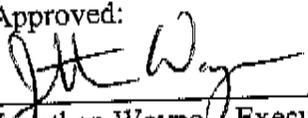
Candidate's Comments

The comments of Atty. Newell Augur, counsel to Senator Perry, are attached.

Respectfully submitted,

  
\_\_\_\_\_  
Vincent W. Dinan - Staff Auditor

Approved:

  
\_\_\_\_\_  
Jonathan Wayne - Executive Director

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**BY HAND DELIVERY**

July 3, 2007

Vincent W. Dinan  
Auditor  
Maine Commission on Governmental Ethics and Election Practices  
135 State House Station  
Augusta, ME 04333-0135

Dear Mr. Dinan:

I appreciate the opportunity to provide further information relevant to your initial findings.

Finding No. 1

In the main, the report accurately represents Senator Perry's management of Maine Clean Election Act Funds (MCEA). Most significantly, Senator Perry credited back all MCEA funds that were automatically transferred from the campaign savings account to his personal checking account, along with all interest that the MCEA funds earned while in the savings account. This was done concurrent with the 42 day post-general election report. For these reasons, a reduction in the \$850 proposed penalty is appropriate.

The reduction is justified when this case is viewed alongside other cases where MCEA funds were commingled. As the Executive Director has noted previously, the purpose of requiring candidates to establish separate and distinct accounts for MCEA funds is based upon the underlying principle that doing so "encourages good record keeping and good reporting." (Minutes of the Commission on Government Ethics and Election Practices, November 20, 2006).

**ATTACHMENT**  
**Perry Campaign Audit**  
**Page 2 of 4**

Predictably, even though there is not extensive history on the subject, the cases before the Commission that have involved the commingling of MCEA funds generally divide into two categories: those where the record keeping and reporting was good; and those where it wasn't.

In cases where commingling has occurred but the candidate's reporting has been accurate, the Commission has assessed a modest penalty. The audits involving J. Bryant-Deschene and D. Marean, for example, cited no other reporting inconsistencies, even though MCEA funds were commingled with personal funds and, technically, could have been used temporarily for purposes unrelated to a campaign. A \$100 penalty was assessed in both cases.

By contrast, the Commission has found commingling to be much more problematic when the 42 day post-general election report is not filed or does not accurately account for all MCEA funds. This makes the expenditure of MCEA funds on items unrelated to the campaign a permanent matter, rather than a temporal one. The Commission recently delineated this distinction and its seriousness in an audit of T. Bossie. As the Executive Director noted in a letter to the candidate:

"[G]iven the difficulty the Commission staff had in recovering the reimbursements from you, it is unclear whether after the election you initially intended to return the funds." Preliminary Staff Findings, April 13, 2007, pg 2.

In this and other recent cases before the Commission, the commingling of funds was exacerbated by a failure or outright refusal to file an accurate 42 day post-election report. In addition to requiring the involvement of the Attorney General's office, this meant that MCEA funds, whether unwittingly or deliberately, would be permanently used for purposes unrelated to the campaign.

Senator Perry's 42 day post-general election report *accounted for all of the overdraft transfers* from campaign savings account into the personal checking account. There was never any possibility, to say nothing of any intent, that MCEA funds could be used on a permanent basis for non-campaign expenditures.

The commingling of funds in the instant case is further distinct from the more serious violations because MCEA funds were affirmatively and directly used to purchase non-campaign related items. Here, the savings account had been established to be debited when the checking account had a negative balance. This was a standing feature of the account when it was

opened in 2003 and became a standard feature on all Bangor Federal Credit Union accounts beginning in 2005.

Admittedly, Senator Perry should have taken steps to amend the overdraft protection feature of the savings account once he became cognizant that the transfers were taking place. This mistake indicates a lack of attentiveness to detail and perhaps is attributable to the fact that Senator Perry served as the treasurer for his own campaign. (The treasurer named in his filing papers was unable to fulfill those duties). It does not, however, rise to a level that suggests any disregard, much less blatant disregard, for state law and Ethics Commission oversight.

There are two additional modifications that may be appropriate in the final report with regard to the campaign savings account. First, the report states that from August to December 2006 there were deposits of personal funds into the savings account. In fact, the only deposit of personal funds during the relevant period occurred on August 28, 2006 when a \$200 check that should have been deposited into the personal checking account was incorrectly deposited in the campaign savings account. As I noted in my letter of June 14, 2007, the August bank statement indicates that this error was corrected the following day.

The remaining three deposits totaling \$4,300 occurred in December and correspond to the filing of the 42 day post-general election report. At that time, the campaign savings account was effectively dissolved and all automatic overdraft transfers were reconciled.

Second, the lack of affirmative action to report or correct this issue, namely to contact Bangor Federal Credit Union and request that the automatic transfers be discontinued, was not politically motivated. There were several personal and non-legislative work related challenges occupying Senator Perry's attention during the final four months of the campaign. These all collectively contributed to the lack of action to reverse the automatic overdraft protection.

## Finding No. 2

The report accurately represents the lack of documentation for the seven expenditures listed. Regrettably, the receipts from these campaign related purchases have been misplaced.

However, alternative proof for the \$179.58 purchase from Staples, namely the documentation of the "Rewards" card, was reviewed and accepted. This amount represents nearly half of the total amount that forms the basis for the recommended penalty. In addition, four other items cited in the finding

fall below the \$50 threshold set forth in 21-A M.R.S.A §1016 (4) and 21-A M.R.S.A §1125 (12-A)(c). These factors mitigate in favor of a reduction of the \$100 proposed penalty.

I apologize for the delay in providing this additional information. Please let me know if you have any further questions.

Sincerely,



Newell Augur  
Counsel for Senator Joseph Perry

Cc: Jonathan Wayne, Executive Director  
Paul Lavin, Legal Counsel  
Senator Joseph Perry

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**BY HAND DELIVERY**

June 14, 2007

Vincent W. Dinan  
Auditor  
Maine Commission on Governmental Ethics and Election Practices  
135 State House Station  
Augusta, ME 04333-0135

Dear Mr. Dinan:

I appreciate the opportunity to provide you with additional information regarding Senator Perry's campaign accounts at Bangor Federal Credit Union.

I have enclosed for your review a copy of the Checking Agreement ("the agreement"), signed in 2003, for Share 71 of Account Number 2316077. (The specific checking account number is 585690-71.) Paragraph B of the agreement indicates that in instances when a check presented for payment exceeds the balance in Share 71, the personal account, that account would be automatically replenished with funds sufficient to pay the check from the Prime Share Account, the savings account. This was not problematic prior to July 11, 2007 when the Prime Share Account was being used exclusively for personal purposes.

I also have enclosed for your review a current copy of Bangor Federal Credit Union's list of Account Service Fees. The charge for a Preauthorized Overdraft Transfer is \$2.50. This is the resulting service charge when a check is paid that exceeds the current balance in a checking account.

A review of the relevant bank records from July until the end of 2007 indicates that in all but one instance when funds were withdrawn from the Prime Share Account and deposited into Share 71, a corresponding \$2.50 fee was levied against Share 71. The \$2.50 fee indicates that each transfer was a preauthorized, done automatically per the agreement, and not directly by the account holder.

The notation "CU2You Transfer" represents an electronic banking transfer when the member has actively and directly accessed an account over the internet and moved funds from one share account to another. The one instance when funds were moved via electronic banking from the Prime Share Account to Share 71 was on August 29, 2006. The transfer was to balance out a \$200 check of non campaign funds that had been incorrectly deposited into the Prime Share Account, then serving as the campaign savings account, on August 28, 2006.

Further, the agreement indicates that a maximum of six (6) preauthorized overdraft transfers would be allowed in any calendar month. Bangor Federal Credit Union amended that policy sometime after the date of the agreement to allow an unlimited number of overdraft transfers. This new policy was applied to all checking agreements and explains why there were seven (7) such transactions on the September statement.

I apologize for the delay in providing this additional information. Please let me know if you have any further questions.

Sincerely,



Newell Augur

Cc: Jonathan Wayne, Executive Director  
Paul Lavin, Legal Counsel  
Senator Joseph Perry

# CHECKING AGREEMENT

## With Limited Overdraft Transfer Clause

I/We hereby authorize the Bangor Federal Credit Union (the Credit Union) to establish a special savings account for me/us to be known as a "Checking Account." The Credit Union is authorized to pay checks signed by me (or by any of us, if this agreement is signed by more than one person) and to charge the payments against the Checking Account.

### It is agreed that:

- (a) only check blanks and other methods approved by the Credit Union may be used to withdraw funds from this Checking Account;
- (b) the Credit Union is under no obligation to pay a check which exceeds the balance in the Checking Account; the Credit Union may, however, up to a maximum of six (6) times per calendar month, pay such a check and charge the amount of the resulting overdraft plus a service charge against any other savings account from which the person who signed the check is entitled to withdraw savings; and the Credit Union is under no obligation to pay a check on which the date is more than six months old; checks presented for cash at the Credit Union will not be honored without collected available funds in the Checking Account;
- (c) except for negligence, the Credit Union is not liable for any action it takes regarding the payment or non-payment of a check;
- (d) notwithstanding Paragraph (c) above, the Credit Union is not liable for any loss incurred or damage sustained due to the premature payment of a post-dated check;
- (e) any objection respecting any item shown on a monthly statement of the Checking Account shall be waived unless made in writing to the Credit Union on or before the twentieth day following the day the statement is mailed;
- (f) the Checking Account shall be subject to service charges in accordance with the rate schedules adopted by the Credit Union from time to time;
- (g) the use of the Checking Account is subject to such other terms, conditions, and requirements as the Credit Union may establish from time to time;
- (h) if signed by more than one person, this agreement is subject to the additional terms and conditions of any joint savings account agreement that applies to a savings account in our joint names; or, if there is no such agreement, this agreement is subject to the additional terms and conditions printed on the back of this form; and
- (i) if the Checking Account has ten (10) or more overdrafts within one calendar year, the account may be closed.
- (j) if I overdraw my Checking Account or otherwise misuse it, I realize that the Credit Union may close my account. I agree not to write checks when my balance is insufficient to cover them and I agree to pay the Credit Union for all losses or damage caused by my/our use of this Checking Account, including costs of collection and reasonable attorney's fees.
- (k) merchants and other payees may be authorized to electronically debit your share draft or checking account using information you provide on or with a share draft or check. These debits are electronic funds transfers subject to this agreement.

Dated 12.31.08

Signatures X Joseph C. Perry

Joint Owner \_\_\_\_\_

Checking Account Number [REDACTED]

DOB \_\_\_\_\_ SSN \_\_\_\_\_

**(Instructions to Signer:** If you have been notified by the Internal Revenue Service (IRS) that you are subject to backup withholding due to payee underreporting and you have not received a notice from the IRS that the backup withholding has terminated, you must strike out the language in clause 2 of the certification you sign below.)

### Certification as to Taxpayer Identification Number and Backup Withholding

Under penalties of perjury, I certify (1) that [REDACTED] is my correct taxpayer identification number (2) that I am not subject to backup withholding either because I have not been notified that I am subject to backup withholding as a result of a failure to report all interest or dividends, or the Internal Revenue Service (IRS) has notified me that I am no longer subject to backup withholding, and (3) I am a U.S. person (including a U.S. resident alien).

Signature Joseph C. Perry

Date 12.31.08

**Bangor**  
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### Account Service Fees:

The rates and yields appearing in this Fee Schedule are accurate and effective for accounts as of 2/1/2007. If you have any questions or require current fee information on your accounts, please call Bangor Federal Credit Union at (207) 947-0374.

Savings Account Fees		
New Account Fee	\$5.00	
Account Fees		
NSF Fee	\$25.00	Per Overdraft
Check Copy	\$2.00	Per Check
Stop Payment	\$20.00	Per Item
Account Reconciliation Fee	\$18.00	Per Hour
Account History	\$2.00	Per History
Prauthorized Overdraft Transfer	\$2.50	Per Transfer
Returned Deposited Items	\$10.00	Per Item (fee not to exceed check value)
Substitute Check	\$5.00	Per Check
Returned Statement Fee	\$2.00	Per Statement
Check Printing Fee		Price varies depending on style.

#### Other Service Fees (applicable to all accounts)

Account Research Fee	\$16.00	Per Hour
Money Order	\$2.00	Per Item
Cashier's Check	\$2.00	Per Item under \$1000
Traveler's Checks		
Single Signature	\$1.00	Per \$100.00
Dual Signature	\$1.50	Per \$100.00
Wire Transfer (domestic)		
Outgoing	\$15.00	Per Transfer
Incoming	\$8.00	Per Transfer
Wire Transfer (foreign)		
Outgoing	\$30.00	Per Transfer
Incoming	\$15.00	Per Transfer
Share to Share		
Outgoing	\$5.00	Per Transfer
Incoming	\$2.50	Per Transfer

#### Electronic Funds Transfer Fees

ATM Withdrawals		FREE
Point-of-Sale		FREE
Visa® Check Card Purchase		FREE
CU2You, Shared Branch Network, CUe-Statements & Teller-Phone, Check Imaging		FREE
New ATM or Visa® Check Card	\$5.00	Per Card
Bill Pay	\$3.95	Per Month
Outgoing Apex Transfers	\$10.00	Per Month/Transfer

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access to your  
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Certificate >>

Equal Housing Lender

Your Savings Federally Insured to at least \$100,000 by the **NCUA**

# Agenda

## Item #7



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

To: Commission Members  
From: Jonathan Wayne, Executive Director  
Date: July 10, 2006  
Re: Audit of Barbara Merrill Campaign/Recommendations of Staff

---

This memo is intended to supplement the audit report of the Barbara Merrill campaign by further explaining the findings and recommendations of the Commission staff.

### **Background**

Barbara Merrill was an independent candidate for Governor in the 2006 elections. She received \$915,732 in Maine Clean Election Act (MCEA) funding. Overall, the Merrill campaign complied with the major requirements of Maine's campaign finance law: it spent Maine Clean Election Act funds on traditional, legitimate campaign expenditures and mostly disclosed its campaign receipts and expenditures correctly in campaign finance reports. She was the first independent candidate for Governor who qualified for Maine Clean Election Act funding, and received 21% of the general election vote. The Commission staff does not wish the findings in the audit report to detract from Ms. Merrill's accomplishments as a candidate or her successful participation in the Maine Clean Election Act as an independent candidate.

**Additional Comment on Finding No. 1 – Conflict of Interest**

Phil Merrill served as the deputy treasurer of the campaign. He also formed an entity called Mountain Top Productions for the purpose of producing advertisements for the campaign and for buying advertising time and space from media outlets. The campaign paid Mountain Top Productions \$211,215, which included \$109,427 apparently paid as compensation to Mr. Merrill for his production and placement services and \$101,785 paid to Mountain Top Productions as a pass-through to media companies. Mr. Merrill is also the candidate's husband.

Mountain Top Productions had no bank accounts, corporate registration, or tax identification numbers, and appears to have no other clients. Phil Merrill, as deputy treasurer, made payments on behalf of the campaign to Mountain Top Productions which were deposited in his pre-existing business and personal bank accounts. Mr. Merrill has advised the staff that two other individuals, James and Christian Wilfong, were associated with Mountain Top Productions. To the best of our knowledge, James and Christian Wilfong received no compensation from Mountain Top Productions. (The campaign paid Christian Wilfong \$6,300 for video production services that were separate from the campaign's contract with Mountain Top Productions.)

I have attached a February 8, 2007 letter from the candidate explaining the campaign's decision to hire Mountain Top Productions. She states that the campaign hoped initially to engage a different consultant, that she did not have as many options as an independent

candidate, and that the campaign received services from Mountain Top Productions at a discount.

In Finding No. 1, the Commission's auditor, Vincent Dinan, expresses his professional opinion that it is contrary to traditional internal control principles for an individual who is the primary disbursement agent for a large campaign committee also to receive more than \$200,000 in payments from the campaign. He included the comment in the report because he believes that the Commission should encourage publicly funded campaigns for Governor – which may spend more than \$1,000,000 – to meet high standards in its management of public funds. Although he is critical of the arrangement, he notes that it did not result in any misuse of public funds.

Phil Merrill submitted a June 28, 2007 response to a draft of the audit report on behalf of the campaign. He believes that Finding No. 1 is unwarranted and patently unfair, although he does not dispute the factual description in the finding. He points out correctly that the Commission staff has proposed that a candidate should not be able to pay MCEA funds to a family member and the Legislature has rejected the proposal – thus permitting the practice. He argues that the campaign is being criticized unfairly for an arrangement that the Legislature has decided to allow.<sup>1</sup>

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<sup>1</sup> In fact, the Commission first made this proposal in 2007, and it was rejected earlier this year by the Commission's oversight committee. Members of the committee commented that a legislative candidate ought to be allowed to pay a small amount (\$200) to a family member for campaign services such as creating a website for the campaign. The committee's discussion did not contemplate a gubernatorial candidate paying a spouse more than \$100,000 in public funds.

The auditor's opinion is not that Phil Merrill, as the candidate's husband, must provide his services on a volunteer basis. Rather, the opinion is that it is a bad management practice for any individual (regardless of relationship to the candidate) to serve both as a principal vendor to the campaign and to be a primary disbursement agent for the campaign. I believe that is a reasonable comment to make in the context of an audit report.

I also wish to raise my own concern about the forthrightness of the campaign's financial reporting, because it goes to the sufficiency of current legal requirements for disclosing campaign expenditures. More than one-ninth of Barbara Merrill's total campaign expenditures were paid to her husband as compensation for his services, but one would not know that by reading her campaign finance reports. Mr. Merrill's business is listed only as Mountain Top Productions without further explanation.

One major purpose of Maine's campaign finance law is public disclosure – both of the sources of a campaign's revenue and how it is spent. We believe a publicly funded campaign is under a special obligation to provide taxpayers with a clear understanding of how their tax dollars have been spent in a political campaign. If it was publicly known that the campaign was making large payments to Phil Merrill as a principal of Mountain Top Productions, it seems likely that this arrangement would have been the subject of public comment. Because the arrangement was not known until after the election, there was no discussion of this during the campaign.

The Commission staff has accepted the campaign's reporting of Mountain Top Productions as the campaign's payee within its financial reports.<sup>2</sup> Nevertheless, the lack of any disclosure about the entity's relationship to the candidate's husband did not provide the public with the full disclosure that many would prefer for a publicly funded candidate for Governor. By way of comparison, when David Emery was considering exploring a run for Governor in July 2005, he wrote a letter asking the Commission whether his campaign would be permitted to pay his own polling and statistical analysis firm if he were a MCEA candidate. Mr. Emery's inquiry acknowledged the sensitivity of a candidate using public funds to reimburse his own company for rendering campaign services.

#### **Additional Comment on Finding No. 5 -- Incomplete Expenditure Documentation**

MCEA candidates are required to obtain and keep two documents for every expenditure over \$50: a proof of payment to the vendor (*e.g.*, a cancelled check) and a vendor invoice.

The precise statutory requirement is:

**12-A. Required records.** The treasurer shall obtain and keep:

- A. Bank or other account statements for the campaign account covering the duration of the campaign;
- B. A vendor invoice stating the particular goods or services purchased for every expenditure of \$50 or more; [underscoring added] and
- C. A record proving that a vendor received payment for every expenditure of \$50 or more in the form of a cancelled check, receipt

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<sup>2</sup> Since the campaign's payments to Mountain Top Productions were, in fact, transfers into bank accounts which made no reference to Mountain Top Productions, it is arguable that the reporting of Mountain Top Productions as the payee does not meet the statutory requirement for candidates to report "the name of each payee." (21-A M.R.S.A. §1017(5))

from the vendor or bank or credit card statement identifying the vendor as the payee.

The treasurer shall preserve the records for 2 years following the candidate's final campaign finance report for the election cycle. The candidate and treasurer shall submit photocopies of the records to the commission upon its request. [21-A M.R.S.A. §1125(12-A)]

In Finding No. 5, the audit report concludes that the campaign has not obtained a vendor invoice that meets this standard for nine expenditures totaling \$110,397 listed in Exhibit II of the report. All of these expenditures relate to advertising purchased at five media outlets. (The three expenditures to Mountain Top Productions in Exhibit II correlate to four payments made to WCSH/WLBZ and WMTW.) The campaign has provided proof of payment (cancelled checks) for these expenditures. The Commission staff does not question that these expenditures were campaign-related, but believes nevertheless that it is a serious obligation of MCEA candidates to obtain and keep the expenditure documentation that is required by law.

In keeping with standard audit practice, the Commission mailed a draft audit report to the campaign on June 15, 2007. One purpose of the draft report was to invite the campaign to respond to the preliminary findings of the Commission staff in the hope that the findings (and recommended penalties) could be eliminated from the final audit report. I have attached the June 15, 2007 cover letter for the draft audit report, which included an explicit invitation to submit additional documents or explanation. The letter offers to postpone this matter until the Commission's August meeting to provide the campaign with additional time, if necessary.

In his June 28, 2007 response, Phil Merrill did not submit additional documents or explanation of specific expenditures. Rather, he argues generally that the documentation which the campaign previously submitted to the auditor should be viewed as adequate. Mr. Merrill refers to the documents as logs because they list a large number of advertising purchases (including date and time) with smaller dollar amounts associated with each purchase. He correctly notes that "it is difficult to tie any ad to a specific check" because the amounts charged to the campaign in the logs do not correspond to the amounts of the campaign's payments to the stations. (Please see attached example from WCSH.)

Mr. Merrill notes that he obtained "declarative statements" from some broadcast stations linking the amounts of payments made by the campaign to particular advertising purchases listed in the logs. Unfortunately, the statements he previously submitted to the Commission were from other vendors – not from the payees listed in Exhibit II (WCSH/WLBZ, the Portland Press Herald, Clear Channel Productions, Portland Radio Group, WMTW).

After reading Mr. Merrill's response, two employees of the Commission, Vincent Dinan and Sandy Thompson, spent about 30 hours reviewing all of the documentation supplied by the campaign for the five vendors. They walked me through the documentation for about one hour. In my opinion, it is possible that the advertising purchases listed in the logs could relate to the payments in Exhibit II, but it is impossible to verify that

connection without some further written confirmation from the broadcast stations or some further explanation by the campaign.

The staff believes it is worth considering whether to assess a penalty of \$500 for this violation. The statutory requirement is that campaigns funded by the MCEA must obtain a “vendor invoice stating the particular goods or services purchased for every expenditure of \$50 or more.” (21-A M.R.S.A. §1125(12-A), emphasis added) We do not believe the documentation provided by the Merrill campaign meets this standard. The Commission’s auditor has applied the exact same standard to the two other general election campaigns which received MCEA funding. Nevertheless, because the expenditures are clearly campaign-related and that the campaign has made some effort to gather the required documentation, we recognize that you may wish to consider not assessing a civil penalty for this violation.

#### **Staff Recommendations**

The staff makes its recommendations on pages 6 and 7 of the audit report, including three findings of violation and civil penalties totaling \$1,500. In response to statements made by Mr. Merrill in his response to the draft audit report, we have withdrawn a proposed finding of violation that the campaign commingled campaign funds with funds in Phil Merrill’s business account. Mr. Merrill states that this circumstance was due to an error by his bank.

## Barbara Merrill

265 Lower Road  
Appleton Maine

COPY

February 8, 2007

Vincent W. Dinan  
Auditor for the Commission on Governmental Ethics and Election Practices  
135 State House Station  
Augusta, Maine 04333-0135

Dear Sir:

I have reviewed the issues raised in your letter following the initial meetings in the audit of the spending in my campaign. I am writing to relate to you my thinking in hiring Mountain Top as campaign consultant, producer of all my advertising and buyer of all my advertising.

I qualified for funding at the beginning of June 2006. I was in the race because I was deeply troubled by the direction of state government. This concern had prompted me to write a book. I was running to win, but I was not naive. Incumbent Governors are almost never defeated in Maine and no incumbent has been defeated by an Independent. Furthermore, having early money to spend had been a big factor in Angus King's Independent campaign victory and I knew as a clean election candidate I would be cash starved until late in the campaign. Finally, I was determined to run a very different campaign that focused on the issues and offered the voters a view of my positions on several issues.

Immediately after qualifying and the nomination of Senator Chandler I approached Christian Potholm and asked him to be the political consultant to my campaign. He would have been charged with helping me develop the strategy and design in general terms the message that would be conveyed in all the advertising. We talked about what he would want for these services and he said \$70,000 which would not include the cost of the polls which he would conduct or the design of the advertising or placement of the ads which would have been done by a political media house. The polling by Chris would have run another \$40,000 to \$70,000 and to produce 6 to 10 different ads and place them on TV and the radio would have been at minimum \$150,000. This would amount to more than \$260,000 more than half the money that I could be certain would be available and much of it would need to be spent during the period when I could be relatively certain I would not be getting matching funds.

Because of these concerns I had mixed feelings when Chris decided he would be making his services available to Baldacci instead of me. However, my conversations with Chris helped me focus on what I needed. I needed someone with wide Maine campaign experience, someone with experience in all aspects of campaigns including producing ads and purchasing time and someone who could also oversee any polling I decided to do. Also if possible this person should be very familiar with the major public policy issues facing the state because I wanted ads which would be very issue oriented. The only person available that fit that bill was Phil Merrill. Phil's Maine campaign experience started as southern Maine field organizer for the Hathaway's

successful campaign in for the US Senate in 1972. In 1976 Phil managed Senator Muskie's successful reelection campaign. Since then he has played a central role in campaigns for Governor Joe Brennan, Congressman Mike Michaud, along with campaigns for several state offices. In fact Phil gave up working for the Maine Senate PAC as a political consultant when I announced I was running for Governor as an Independent. On top of that Phil had managed the Democrats redistricting campaigns over 2 decades and run several referendum campaigns. Over the years Phil provided these services in his own name, then as the Kennebec Group. In recent times he organized Mountain Top Video in which he is the principal.

Phil also is a former State Senator and has over 12 years experience working for the Maine Senate as legal counsel. There are few if any people in Maine with his knowledge of state issues and the history of who has supported and opposed these issues. There is one other consideration which needs to be understood about my decision to hire Mountain Top and Phil Merrill. Most knowledgeable professionals who work in campaigns work exclusively for one party or the other. Very few political consultants are willing to go outside that and work for an Independent because the political party candidates will then shun them. Phil himself had never worked for any candidate except Democrats, but he was supporting my campaign and the mere fact that I was running as an Independent would keep him from getting Democratic work in Maine. So he was uniquely available.

I was of course aware of the fact that because I am married to Phil Merrill this could be a matter of political interest. However, I knew that the Ethics Commission had considered prohibiting hiring relatives and that idea had not been incorporated into the rules. So as Jim Webster and I approached this we knew that no one could fairly argue that Phil was not qualified. So we sat down with Phil to arrive at a price for the services of Mountain Top Video which would be well below what I would pay for similar services from any political professional. I wanted to steer between Phil providing the services at such a low rate that it could be characterized as an in kind contribution and still having an arrangement which by any measure would gain me more value per dollar spent than any other campaign.

Mountain Top produced an ad within days of our agreement. They produced 10 issue campaigns ads and 30 minute TV show. Everywhere I went in the campaign people spoke favorably of the campaign and the proof is in the results. The Democratic candidate and his party spent about a million on ads and his numbers actually were lower on election day than in the opinion polls in August. The Republican candidate's numbers remained static from fall to election day after he and his party spent a million dollars. The Green candidate got 2% more of the vote in 2008 than she did in 1998 when she had no money to spend on advertising. I had less money than any of my 3 competitors and my numbers went up from below 5% in the polls in August to 21% on election day and our polling showed this movement very late when we finally got the money to put on a real advertising campaign.

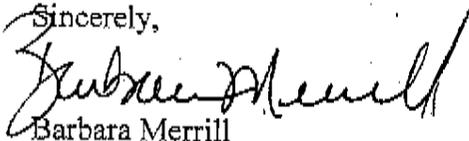
Even if one assumes that I started equally with each of the other campaigns I got more voters per dollar spent than any other campaign. Furthermore, I not only produced the most spots, the most talked about and written about spots and a thirty minute commercial I did it while posting a very favorable ratio of total dollars spent to money spent on direct purchase of TV and radio time and newspaper space. Any of these objective measures prove that the Merrill campaign spent it's money very effectively.

I would also like to address two other issues raised in your letter. Phil was the Assistant Treasurer of my campaign. Jim Bowers was the Treasurer. Neither was paid for their work in

this capacity. Phil was in much closer touch with the campaign on a day to day basis. The way decision making on spending worked was that general spending matters were discussed by me and the campaign manager and if it involved media with Phil. Then I made the final call. On specific spending within these guidelines the campaign manager decided. The expenditures to Mountain Top were all made consistent with the agreement negotiated at the outset. The major exception being the 30 minute infomercial which was agreed to on the run as we struggled to find effective means of allowing the voters to get to know me better. That program was developed by Mountain Top withing 4 days of being suggested at a meeting of my supporters. In the 3 business days between the decision of do it and actual production, Mountain Top negotiated with several studios over a taping location, wrote three iterations of scrips for what was said during the whole half hour, negotiated with every TV station to buy 30 minute spots during the best time slots available, provided direction and all other support for the taping and then managed, working with the campaign, to get the program distributed around Maine in time for airing.

Finally you raised the issue of the detail, or the lack of it in the actual invoices submitted from time to time by Mountain Top. One of our goals in the arrangement we negotiated with Mountain Top was that we would maximize certainty as to how much these services would cost the campaign. Once that agreement was in place we had concerns only that the payments to Mountain Top not be so ahead of work that it would limit our ability to get on the air with paid advertising early in the campaign or to be so far behind in payment to Mountain Top that someone could argue we were in fact the beneficiary of a loan from them. Detailed invoices were not needed for this because the decision making circle was very small and everyone in it knew exactly what Mountain Top was doing. Dick Dyer, the campaign manager, myself were connected with everything Mountain Top did. When filming was done I was there and the campaign had to make room on my schedule. When new ads were cut they were reviewed by the same group. When time was bought it was reported in advance to the campaign and Mountain Top arranged that the originals of the invoices from the TV stations would be sent to the campaign so the campaign could know what space had been bought on which station. Armed with this information the campaign manager knew whether the billing from Mountain Top was within the general guidelines of timeliness that are outlined above.

Sincerely,

A handwritten signature in cursive script, appearing to read "Barbara Merrill".

Barbara Merrill

Cover  
letter to  
draft report



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

June 15, 2007

The Honorable Barbara E. Merrill  
265 Lower Road  
Appleton, ME 04862

Dear Ms. Merrill:

The Commission on Governmental Ethics and Election Practices (Commission) has completed its audit of your 2006 campaign finance reports and related activities. A copy of the draft report is enclosed for your review and comment. \*

Please note there are five deficiency audit findings contained in the report. You may respond in writing, and we will include your comments in the final report we submit to the Members of the Commission. Please submit your comments and any additional documentation you are able to locate to me by Monday, July 2, 2007.

It should be noted that we asked several times for all documentation that supported Merrill campaign expenditures, and the deficiencies discussed in the report indicate that many of the items requested were not supplied. We continue to believe, however, that documents -- particularly the vendor invoices discussed in Finding No. 5 -- should be available that would favorably impact the audit results, and we will consider such items if you submit them to us by July 2. ] \*

This letter also serves as formal notice to you, and the campaign's treasurer and deputy treasurer, that based on information and documentation your campaign has made available, the Commission staff is recommending that the Commission find you in violation of provisions of the Election Law and assess penalties totaling \$1,500. This matter currently is scheduled for the Commission's next meeting on July 16, 2007 at 9:00 a.m. We suggest that a representative of the campaign be present at the meeting to answer any questions of the Commission and to respond to the proposed findings and penalties.

The staff may adjust its recommendations based on information or documentation you provide by July 2. If you wish to request additional time to gather the remaining documentation or to prepare further explanation, please explain the need for additional time in a letter or e-mail, and the staff will consider scheduling this matter for the Commission's August meeting.

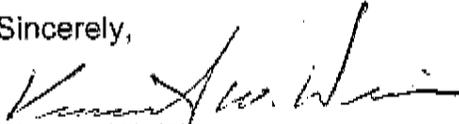
**Hon. Barbara E. Merrill**

**June 15, 2007**

**Page 2**

Call me at (207) 287- 4727 if you have questions or need additional information concerning any of the audit issues outlined in the report.

Sincerely,



Vincent W. Dinan  
Commission Auditor

Enclosure

James Bowers, Campaign Treasurer  
Philip Merrill, Deputy Campaign Treasurer  
Beryl Leach, Campaign Manager  
Jonathan Wayne  
Paul Lavin  
Sandy Thompson

# INVOICE



**WCSH**  
**One Congress Square**  
**Portland, ME 04101**  
**Main: (207) 828-6666**  
**Billing:**

www.wcshtv.com

Billing Address:

**Barbara Merrill Gov Ind**  
**Attention: Accounts Payable**  
**PO Box 1010**  
**Union, ME 04862**

Send Payment To:

**WCSH**  
**One Congress Square**  
**Portland, ME 04101**

Invoice #	Invoice Date	Invoice Month	Invoice Period
135801-1	08/27/06	August 2006	07/31/06 - 08/18/06

Station	Account Executive	Sales Office	Sales Region
WCSH	Pat Archambault	Maine Regional	Regional

Advertiser	Product	Estimate Number
Barbara Merrill Gov Ind	8/7-8/20	

Contract Dates	Order #	Alt. Order #
8/7/2006 - 8/20/2006	135801	

Billing Calendar	Billing Type
Broadcast	Cash

Special Handling

IDB #	Advertiser Code	Product Code

Line	Start Date	End Date	Description	Start/End Time	MTWTFSS	Length	Spots/Week	Rate	Type	Ch
1	08/07/06	08/20/06	Morning Report	5a-7a	MTWTF--	:30	4	\$340	NM	WCSH
<b>Weeks:</b>	<u>Start Date</u>	<u>End Date</u>	<u>MTWTFSS</u>	<u>Spots/Week</u>	<u>Rate</u>					
	08/07/06	08/13/06	MTWTF--	3	\$340					
<b>Spots:</b>	<u>#</u>	<u>Day</u>	<u>Air Date</u>	<u>Air Time</u>	<u>Description</u>	<u>Start/End Time</u>	<u>Length</u>	<u>Ad-ID</u>	<u>Rate</u>	<u>Type</u>
	2	M	08/07/06	6:40 AM	Morning Report	5a-7a	:30	INDEPENDENT	\$340	NM
	1	Tu	08/08/06	5:58 AM	Morning Report	5a-7a	:30	INDEPENDENT	\$340	NM
	3	W	08/09/06	5:29 AM	Morning Report	5a-7a	:30	INDEPENDENT	\$340	NM
<b>Weeks:</b>	<u>Start Date</u>	<u>End Date</u>	<u>MTWTFSS</u>	<u>Spots/Week</u>	<u>Rate</u>					
	08/14/06	08/20/06	MTWTF--	4	\$340					
<b>Spots:</b>	<u>#</u>	<u>Day</u>	<u>Air Date</u>	<u>Air Time</u>	<u>Description</u>	<u>Start/End Time</u>	<u>Length</u>	<u>Ad-ID</u>	<u>Rate</u>	<u>Type</u>
	4	Tu	08/15/06	6:54 AM	Morning Report	5a-7a	:30	INDEPENDENT	\$340	NM
	7	W	08/16/06	5:17 AM	Morning Report	5a-7a	:30	INDEPENDENT	\$340	NM
	6	Th	08/17/06	5:55 AM	Morning Report	5a-7a	:30	INDEPENDENT	\$340	NM
	5	F	08/18/06	6:17 AM	Morning Report	5a-7a	:30	INDEPENDENT	\$340	NM
2	08/07/06	08/20/06	NEWS CENTER at NOON	12p-1230p	MTWTF--	:30	4	\$130	NM	WCSH
<b>Weeks:</b>	<u>Start Date</u>	<u>End Date</u>	<u>MTWTFSS</u>	<u>Spots/Week</u>	<u>Rate</u>					
	08/07/06	08/13/06	MTWTF--	3	\$130					
<b>Spots:</b>	<u>#</u>	<u>Day</u>	<u>Air Date</u>	<u>Air Time</u>	<u>Description</u>	<u>Start/End Time</u>	<u>Length</u>	<u>Ad-ID</u>	<u>Rate</u>	<u>Type</u>
	4	M	08/07/06	12:22 PM	NEWS CENTER at NOON (M-fri)	12p-1230p	:30	INDEPENDENT	\$130	NM
	3	Tu	08/08/06	12:28 PM	NEWS CENTER at NOON (M-fri)	12p-1230p	:30	INDEPENDENT	\$130	NM
	9	W	08/09/06	12:25 PM	NEWS CENTER at NOON (M-fri)	12p-1230p	:30	INDEPENDENT	\$130	NM
<b>Weeks:</b>	<u>Start Date</u>	<u>End Date</u>	<u>MTWTFSS</u>	<u>Spots/Week</u>	<u>Rate</u>					
	08/14/06	08/20/06	MTWTF--	4	\$130					
<b>Spots:</b>	<u>#</u>	<u>Day</u>	<u>Air Date</u>	<u>Air Time</u>	<u>Description</u>	<u>Start/End Time</u>	<u>Length</u>	<u>Ad-ID</u>	<u>Rate</u>	<u>Type</u>
	7	M	08/14/06	12:28 PM	NEWS CENTER at NOON (M-fri)	12p-1230p	:30	INDEPENDENT	\$130	NM
	8	Tu	08/15/06	12:21 PM	NEWS CENTER at NOON (M-fri)	12p-1230p	:30	INDEPENDENT	\$130	NM
	10	W	08/16/06	12:26 PM	NEWS CENTER at NOON (M-fri)	12p-1230p	:30	INDEPENDENT	\$130	NM
	6	F	08/18/06	12:20 PM	NEWS CENTER at NOON (M-fri)	12p-1230p	:30	INDEPENDENT	\$130	NM
3	08/07/06	08/20/06	News Center @ 530p	530p-6p	MTWTF--	:30	4	\$320	NM	WCSH
<b>Weeks:</b>	<u>Start Date</u>	<u>End Date</u>	<u>MTWTFSS</u>	<u>Spots/Week</u>	<u>Rate</u>					
	08/07/06	08/13/06	MTWTF--	3	\$320					
<b>Spots:</b>	<u>#</u>	<u>Day</u>	<u>Air Date</u>	<u>Air Time</u>	<u>Description</u>	<u>Start/End Time</u>	<u>Length</u>	<u>Ad-ID</u>	<u>Rate</u>	<u>Type</u>
	3	Tu	08/08/06	5:45 PM	News Center @ 530p	530p-6p	:30	INDEPENDENT	\$320	NM
	1	W	08/09/06	5:57 PM	News Center @ 530p	530p-6p	:30	INDEPENDENT	\$320	NM

We warrant that the actual broadcast information shown on this invoice was taken from the program log. We warrant spots are posted within two minutes of actual airtime. Notwithstanding to whom bills are rendered, Advertiser, Agency, Service, jointly and severally shall remain obligated to pay to station the amount of any bills rendered by station within the time specified, and until payment in full is received by station. Payment by Advertiser to Agency or to Service, shall not constitute payment to this station. This station is an Equal Opportunity Employer.

# INVOICE



Send Payment To:  
**WCSH**  
One Congress Square  
Portland, ME 04101

Invoice #	Invoice Date	Invoice Month	Invoice Period
135801-1	08/27/06	August 2006	07/31/06 - 08/18/06
Advertiser	Product	Estimate Number	
Barbara Merrill Gov Ind	8/7-8/20		

www.wcsh6.com

Line	Start Date	End Date	Description	Start/End Time	MTWTFSS	Length	Spots/Week	Rate	Type	Ch	
2	F	08/11/06	5:43 PM News Center @ 530p	530p-6p		:30	INDEPENDENT	\$320	NM		
Weeks:	<u>Start Date</u>	<u>End Date</u>	<u>MTWTFSS</u>	<u>Spots/Week</u>	<u>Rate</u>						
	08/14/06	08/20/06	MTWTF--	4	\$320						
Spots:	<u>#</u>	<u>Day</u>	<u>Air Date</u>	<u>Air Time</u>	<u>Description</u>	<u>Start/End Time</u>	<u>Length</u>	<u>Ad-ID</u>	<u>Rate</u>	<u>Type</u>	
	5	M	08/14/06	5:45 PM	News Center @ 530p	530p-6p	:30	INDEPENDENT	\$320	NM	
	4	Tu	08/15/06	5:48 PM	News Center @ 530p	530p-6p	:30	INDEPENDENT	\$320	NM	
	7	Th	08/17/06	5:46 PM	News Center @ 530p	530p-6p	:30	INDEPENDENT	\$320	NM	
	6	F	08/18/06	5:44 PM	News Center @ 530p	530p-6p	:30	INDEPENDENT	\$320	NM	
4	08/07/06	08/20/06	207	7p-730p	MTWTF--	:30	4	\$250	NM	WCSH	
Weeks:	<u>Start Date</u>	<u>End Date</u>	<u>MTWTFSS</u>	<u>Spots/Week</u>	<u>Rate</u>						
	08/07/06	08/13/06	MTWTF--	3	\$250						
Spots:	<u>#</u>	<u>Day</u>	<u>Air Date</u>	<u>Air Time</u>	<u>Description</u>	<u>Start/End Time</u>	<u>Length</u>	<u>Ad-ID</u>	<u>Rate</u>	<u>Type</u>	
	3	M	08/07/06	7:15 PM	207	7p-730p	:30	INDEPENDENT	\$250	NM	
	1	Tu	08/08/06	7:09 PM	207	7p-730p	:30	INDEPENDENT	\$250	NM	
	2	Th	08/10/06	7:12 PM	207	7p-730p	:30	INDEPENDENT	\$250	NM	
Weeks:	<u>Start Date</u>	<u>End Date</u>	<u>MTWTFSS</u>	<u>Spots/Week</u>	<u>Rate</u>						
	08/14/06	08/20/06	MTWTF--	4	\$250						
Spots:	<u>#</u>	<u>Day</u>	<u>Air Date</u>	<u>Air Time</u>	<u>Description</u>	<u>Start/End Time</u>	<u>Length</u>	<u>Ad-ID</u>	<u>Rate</u>	<u>Type</u>	
	4	Tu	08/15/06	7:12 PM	207	7p-730p	:30	INDEPENDENT	\$250	NM	
	7	W	08/16/06	7:12 PM	207	7p-730p	:30	INDEPENDENT	\$250	NM	
	6	Th	08/17/06	7:13 PM	207	7p-730p	:30	INDEPENDENT	\$250	NM	
	5	F	08/18/06	7:22 PM	207	7p-730p	:30	INDEPENDENT	\$250	NM	
5	08/07/06	08/13/06	Meet The Press	9a-10a	-----S	:30	1	\$500	NM	WCSH	
Weeks:	<u>Start Date</u>	<u>End Date</u>	<u>MTWTFSS</u>	<u>Spots/Week</u>	<u>Rate</u>						
	08/07/06	08/13/06	-----S	1	\$500						
Spots:	<u>#</u>	<u>Day</u>	<u>Air Date</u>	<u>Air Time</u>	<u>Description</u>	<u>Start/End Time</u>	<u>Length</u>	<u>Ad-ID</u>	<u>Rate</u>	<u>Type</u>	
	1	Su	08/13/06	9:17 AM	Meet The Press	9a-10a	:30	INDEPENDENT	\$500	NM	
6	08/07/06	08/20/06	Tonight Show	1135p-1235a	MTWTF--	:30	4	\$90	NM	WCSH	
Weeks:	<u>Start Date</u>	<u>End Date</u>	<u>MTWTFSS</u>	<u>Spots/Week</u>	<u>Rate</u>						
	08/07/06	08/13/06	MTWTF--	4	\$90						
Spots:	<u>#</u>	<u>Day</u>	<u>Air Date</u>	<u>Air Time</u>	<u>Description</u>	<u>Start/End Time</u>	<u>Length</u>	<u>Ad-ID</u>	<u>Rate</u>	<u>Type</u>	
	2	M	08/07/06	12:10 AM	Tonight Show	1135p-1235a	:30	INDEPENDENT	\$90	NM	
	3	Tu	08/08/06	11:58 PM	Tonight Show	1135p-1235a	:30	INDEPENDENT	\$90	NM	
	4	W	08/09/06	12:01 AM	Tonight Show	1135p-1235a	:30	INDEPENDENT	\$90	NM	
	1	Th	08/10/06	12:21 AM	Tonight Show	1135p-1235a	:30	INDEPENDENT	\$90	NM	
Weeks:	<u>Start Date</u>	<u>End Date</u>	<u>MTWTFSS</u>	<u>Spots/Week</u>	<u>Rate</u>						
	08/14/06	08/20/06	MTWTF--	3	\$90						
Spots:	<u>#</u>	<u>Day</u>	<u>Air Date</u>	<u>Air Time</u>	<u>Description</u>	<u>Start/End Time</u>	<u>Length</u>	<u>Ad-ID</u>	<u>Rate</u>	<u>Type</u>	
	7	Tu	08/15/06		Tonight Show	1135p-1235a	:00		\$90	NM	
	See MG 6.8										
	traffic error crossed off log by mistake										
	6	Th	08/17/06	12:20 AM	Tonight Show	1135p-1235a	:30	INDEPENDENT	\$90	NM	
	5	F	08/18/06	11:47 PM	Tonight Show	1135p-1235a	:30	INDEPENDENT	\$90	NM	
	8	F	08/18/06	12:31 AM	Tonight Show	1135p-1235a	:30	INDEPENDENT	\$90	NM	
	MG for 6.7 08/15										

<u>Total Spots</u>	36	<u>Gross Total</u>	\$8,410.00
		<u>Agency Commission</u>	\$1,261.50
		<u>Net Amount Due</u>	\$7,148.50

**Payment Terms 30 Days**

We warrant that the actual broadcast information shown on this invoice was taken from the program log. We warrant spots are posted within two minutes of actual airtime. Notwithstanding to whom bills are rendered, Advertiser, Agency, Service, jointly and severally shall remain obligated to pay to station the amount of any bills rendered by station within the time specified, and until payment in full is received by station. Payment by Advertiser to Agency or to Service, shall not constitute payment to this station. This station is an Equal Opportunity Employer.



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

July 10, 2007

The Honorable Barbara E. Merrill  
265 Lower Road  
Appleton, ME 04862

Dear Representative Merrill:

Enclosed please find a copy of the final audit report concerning the Commission's review of your 2006 campaign finance reports and related activities.

We plan to present the report to our members at the July 16, 2007 Commission meeting. Jonathan Wayne will contact you to schedule the appearance of a Merrill campaign representative before the Commission to discuss our findings and recommendations.

Thank you for your cooperation and assistance during the audit process.

Sincerely,

Vincent W. Dinan  
Commission Auditor

Enclosure

Cc: James Bowers, Campaign Treasurer  
Philip Merrill, Deputy Campaign Treasurer  
Beryl Leach, Campaign Manager  
Jonathan Wayne  
Paul Lavin  
Sandy Thompson



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

July 10, 2007

**Audit Report No. 2006-GV002**

**Candidate: Representative Barbara E. Merrill  
2006 Independent Candidate for Governor**

**Background**

Representative Barbara E. Merrill was an independent candidate for governor in the 2006 general election. Rep. Merrill was certified by the Commission as a Maine Clean Election Act (MCEA) candidate on June 9, 2006. MCEA candidates are required under the Act to submit reports of their receipts, expenditures, outstanding campaign debt, and equipment purchases and dispositions for specified periods during the election cycle.

**Audit Scope**

Examination of selected candidate contribution and expenditure transactions occurring during the following campaign reporting periods:

- Seed Money
- 42 Day Pre-Primary
- Six Day Pre-Primary
- 42 Day Post-Primary
- 42 Day Pre-General
- Six Day Pre-General
- 42 Day Post-General

Transactions subject to review were those recorded in the candidate's accounting records and reported to the Commission. The audit's purpose was to determine if the identified receipts and payments (1) were properly approved by the candidate or her authorized representative; (2) were adequately documented as evidenced by original vendor invoices and cancelled checks or other acceptable disbursement documentation; and (3) complied in all material respects with the requirements of the Maine Clean Election Act and the Commission's rules.

The Commission distributed a total of \$915,732 to the Merrill campaign during the general election period. Of this amount, \$400,000 was the initial payment for the election, and \$515,732 was paid in matching funds.

## Audit Findings and Recommendations

### Finding No. 1 – Conflict of Interest

The audit disclosed what we believe was a significant conflict of interest between the Merrill campaign's Deputy Treasurer and the main provider of media services to the campaign.

Philip Merrill, the candidate's husband, served as the campaign's Deputy Treasurer. In that capacity, Mr. Merrill both authorized and disbursed campaign (MCEA) funds for materials and services purchased by the campaign staff. In addition, Mr. Merrill formed an entity called Mountain Top Productions (MTP) for the sole purpose of producing television and radio campaign advertisements, and for purchasing – on behalf of the campaign – television, radio, and print advertising from various media outlets.

Mountain Top Productions became the largest single vendor to the Merrill campaign, with billings of \$211,215, which included \$109,427 apparently paid as compensation to Mr. Merrill for his production and placement services and \$101,785 paid to MTP as a pass through to media companies. MTP was essentially Mr. Merrill himself. The company had no corporate registration, bank accounts, or tax identification numbers, and appears to have no other clients.

Mr. Merrill's dual roles as the campaign's Deputy Treasurer and as the principal vendor to the campaign created, in the auditor's opinion, a critical conflict of interest. Fundamental principles of financial management dictate that there should be an "arm's length" relationship between buyer and seller. Accordingly, the buyer of materials and services cannot also be the seller of such goods and services.

Mr. Merrill was the primary disbursement agent for the campaign. In that capacity, he paid MTP over \$211,000 for production of political advertising and purchase of broadcast and ad space from television, radio, and print media. Payments made by the campaign to MTP were deposited into Mr. Merrill's personal bank accounts. When MTP paid media outlets, the medium of payment was treasurer's checks purchased from a bank by Mr. Merrill.

A matter of some concern to the Commission staff involved the submittal, approval, and payment of MTP invoices. In these circumstances, Mr. Merrill, the vendor, submitted invoices for approval and payment to Mr. Merrill, the Campaign's Deputy Treasurer, who then transferred funds from the campaign bank account into the Philip Merrill bank account. Barbara Merrill informed the auditor that she was always aware of what was being spent. Although there were other campaign officers involved in procurements and disbursements, it was primarily Philip Merrill who made the disbursements on behalf of the campaign.

It is important to note that the auditors did not find evidence of mis-use or mis-appropriation of public funds by the Merrill campaign. All disbursements to MTP were scrutinized, and the auditor determined that payments were supported by cancelled checks or other acceptable payment documentation. The fundamental problem, however, is that the Merrill campaign was funded with

taxpayer dollars, and as such, we believe there was a higher standard of accountability imposed on the candidate and her staff. The lack of appropriate financial controls over campaign funds created the opportunity for wrong-doing, and that should be unacceptable in a publicly financed campaign environment.

*Criteria:* Neither the Maine Clean Election Act nor the Commission's rules prohibits the employment of a candidate's family members as campaign staff. In addition, there is no prohibition against a candidate paying a family member for goods or services provided to the campaign. Finally, the MCEA does not prescribe policies or procedures that dictate the segregation of responsibilities associated with a campaign's financial management practices.

Finding No. 2 – Undocumented Seed Money Contributions; Possible Unreported Contributions; Commingling of Campaign Funds during the Qualifying Period

The Merrill campaign reported receiving \$6,255 in seed money contributions. Our examination of the campaign's banking records, however, found no total deposits in this amount made during the qualifying period. The audit disclosed the following:

- Total deposits into the campaign account during the qualifying period were \$5,385, which implied that \$870 in reported seed money contributions (\$6,255 - \$5,385) were either cashed or deposited into an account other than the campaign account. Records of seed money contributions were incomplete and may not be reliable.
- Campaign records included photocopies of four seed money contributions (Joseph R. Taddeo, Michael P. Towey, Betty K. Howard, Clover Ridge Builders, LLC) totaling \$255 which were not disclosed in campaign finance reports. It is not known if these unreported contributions were used for campaign purposes. If so, the actual total of seed money contributions received by the campaign during the qualifying period could have been \$255 higher, or \$6,510, and the incomplete reporting of seed money contributions failed to comply with the requirements of the MCEA. Also, the contribution from Clover Ridge Builders if used for campaign purposes does not appear to comply with seed money restrictions.
- The Merrill campaign made a telephone transfer of \$1,895 in seed money contributions into the campaign account on April 14, 2006, presumably from another account at the Gardiner Savings Institution. This appears to constitute a commingling of campaign funds with funds in Phil Merrill's business account. The campaign has stated in its response to the draft audit report that the deposit of seed money in the business account was due to a mistake by the credit union.

*Criteria:* 21-A M.R.S.A §1122(9), "A seed money contribution must be reported according to procedures developed by the commission." 21-A M.R.S.A. §1125(12), "participating and certified candidates shall report any money collected [and] all campaign expenditures ... according to procedures developed by the commission." 21-A M.R.S.A. §1016(1), "All funds of a political committee and campaign funds of a candidate must be segregated from, and may not be commingled with, any personal funds of the candidate, treasurer or other officers, members or associates of the committee." 21-A M.R.S.A. §1016(4), "A treasurer shall obtain and keep a receipted bill, stating the

particulars, for every expenditure in excess of \$50 made by or on behalf of ... a candidate ...." The Maine Clean Election Act (21-A M.R.S.A. §1127(1)) also permits the Commission to assess a penalty of up to \$10,000 for any violation of the MCEA.

#### Finding No. 3 – Errors in Documenting and Reporting Money Order Purchases

The Merrill campaign's Seed Money Report included a May 31, 2006 payment of \$500 to Phil Merrill and a May 20, 2006 payment of \$210 to John Simpson for the cash value of one hundred forty-two \$5 money orders purchased for the purposes of qualifying for MCEA funding. This appears to be erroneous reporting.

Transaction costs for money orders (e.g., \$0.46 per money order purchased) are legitimate campaign expenditures. Indeed, if candidates purchase money orders, any transaction costs paid by the candidate must be paid for with seed money and included in campaign finance reports. However, money orders themselves are not expenditures, as they represent merely an exchange of value, cash for a cash equivalent. Generally, when the candidate or a supporter buys a \$5 money order, they are later reimbursed with the \$5 in cash received from the voter making the contribution, so no net expenditure is made.

The initial payment of MCEA funds made to a qualifying candidate is reduced by the amount of unspent seed money. The reporting error may have resulted in an overstatement of seed money expenditures and the overpayment of MCEA funds to the campaign. However, the Commission staff does not believe it is necessary to request rebate of the overpayment, because the campaign returned over \$28,000 that it was authorized to spend.

The purchases of the money orders were also undocumented, so the auditor was unable to confirm the number of money orders purchased or the cost per money order claimed by the campaign. The campaign must have paid some fees for money orders purchased, but those fees do not appear in the reported expenditures for the 42-Day Pre-Primary Report or the Seed Money Report. Finally, the number of money orders purchased (approximately 1,400 according to the campaign) exceeded the number submitted with qualifying contributions (1,321), and the disposition of the remaining 79 is unknown.

*Criteria:* 21-A M.R.S.A. §1016, "Each treasurer shall keep detailed records of all contributions received and of each expenditure that the treasurer or candidate makes or authorizes...." 21-A M.R.S.A. § 1125, "Any money order fees paid by a participating candidate must be paid for with seed money and reported in accordance with commission rules." Commission Rules, Chapter 3, Section 2(4)(C)(3), "This provision does not prohibit a candidate from using seed money to pay the fee for a money order provided the qualifying contributor pays the \$5 amount reflected on the money order as permitted by 21-A M.R.S.A. § 1125(3)."

#### Finding No. 4 – Undocumented Payments for Campaign Expenditures During the Qualifying Period

The audit disclosed five reported campaign expenditures during the qualifying period to family members of the candidate totaling \$2,333 for which there was no documentation of payment. Four of

the five expenditures were supported by vendor invoices. Exhibit I provides the details of the transactions in question. The auditor's review of the campaign account disclosed no payments in these amounts made from the account. A letter from treasurer James Bowers states that apparently the five payments (or perhaps three of the five) were made in cash after 19 seed money contributions were accidentally deposited into the wrong account at Gardiner Savings Institution and, upon discovering the error, Phil Merrill withdrew the equivalent amount of cash from that account to make campaign expenditures.

The lack of documentation raises questions about what funds were used to make the \$2,333 in expenditures, and the troubling possibility that not all contributions received during the seed money period were included in campaign finance reports. If \$5,385 was deposited into the campaign bank account during the qualifying period, and \$2,333 in Exhibit I expenditures were made through funds that were never run through the campaign account (as Mr. Bowers' letter suggests), it appears that the campaign had cash receipts that exceeded the \$6,255 that was disclosed in the campaign's 42-Day Pre-Primary and Seed Money Reports.

If the five expenditures totaling \$2,333 were reported in error and were not in fact made, this would have caused an unwarranted increase in the amount of MCEA funds initially distributed by the Commission to the candidate. If so, the overpayment to the candidate could have amounted to \$2,333 plus \$710 (see Finding No. 3), or \$3,043.

*Criteria:* 21-A M.R.S.A. § 1016(4), "A treasurer shall obtain and keep a receipted bill, stating the particulars, for every expenditure in excess of \$50 made by or on behalf of ... a candidate...." Commission Rules, Chapter 1, Section 6 (3), "Unless specifically exempted under Title 21-A M.R.S.A. Sections 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." 21-A M.R.S.A. §1016, "Each treasurer shall keep detailed records of all contributions received and of each expenditure that the treasurer or candidate makes or authorizes...." 21-A M.R.S.A. §1125(12-A)(C), "The treasurer shall obtain and keep...a record proving that a vendor received payment for every expenditure of \$50 or more in the form of a cancelled check, receipt from the vendor or bank or credit card statement identifying the vendor as the payee."

#### Finding No. 5 – Incomplete Expenditure Documentation

Campaign expenditures should be, at a minimum, supported by two forms of documentation: (1) a vendor invoice that lists the goods or services purchased and that indicates the campaign purpose for the expenditure, and (2) a cancelled check, cash receipt, or other acceptable proof of payment. Tests of documentation supporting the Merrill campaign's expenditures indicated that nine payments to vendors made during the general election period were inadequately supported by invoices or similar documentation. In all instances the proof of payment was on file, but for expenditures totaling \$178,000, about \$110,000 lacked the necessary invoice documentation. The campaign responded that it has turned over to the Commission all documentation it received from the vendors. It notes that some broadcast stations document the purchases through a log, and it is difficult to link the amounts of the purchases listed in the log to the exact amounts paid to the stations. The Commission staff believes that unless the documentation explains the particular goods and services purchased by the expenditure

it does not meet the statutory requirement. All of the \$110,000 in incompletely documented expenditures was made to media outlets. Exhibit II lists the transactions in question.

*Criterion:* 21-A M.R.S.A. §1016 (3) (C) states that "A treasurer shall keep a detailed and exact account of...all expenditures made by or on behalf of the committee or candidate...." 21-A M.R.S.A. § 1125(12-A)(B), "The treasurer shall obtain and keep...a vendor invoice stating the particular goods or services purchased for every expenditure of \$50 or more...."

#### Recommendations:

The Commission staff does not recommend any action specific to the Merrill campaign with regard to Finding No. 1. However, the Commission staff recommends that the Commission consider pursuing an amendment to the MCEA or the Commission's rules to prevent conflicts of interest in the management of campaign financial affairs. Family members who serve as officers of the campaign – particularly in treasury or accounting positions, or any other position that involves authorization and disbursement of campaign funds – should be barred from any commercial relationship with the campaign. Moreover, the Commission's rules should be amended to require gubernatorial campaigns to segregate authority to approve campaign expenditures from the authority to disburse campaign funds. In this manner, the integrity of public funding of the campaigns will have at least minimal protection.

With regard to Findings No. 2 - 4, the staff makes the following recommendations:

- *Inaccurate reporting during the qualifying period.* The Commission should find the candidate, treasurer, and deputy treasurer in violation of 21-A M.R.S.A. §§ 1122(9) and 1125(12) for not accurately reporting contributions received and expenditures made during the qualifying period. The inaccurately reported transactions include up to \$255 in seed money contributions which apparently were received by the campaign but never reported (Finding No. 2), reported expenditures to Phil Merrill and John Simpson totaling \$710 for money orders purchased when the value of the money orders likely was reimbursed to the campaign (Finding No. 3), a reported total of \$2,333 in expenditures to members of the candidate's family listed in Exhibit I for which no proof of payment exists (Finding No. 4), and no reporting of transaction fees for money orders purchased to qualify for MCEA funds. The Commission staff recommends that under 21-A M.R.S.A. §1127(1), the Commission assess a penalty of \$500 against the candidate, treasurer, and deputy treasurer for this violation.
- *Incomplete record-keeping during the qualifying period.* The Commission should find the candidate, treasurer, and deputy treasurer in violation of 21-A M.R.S.A. §1125(12-A) for not keeping complete documentation of contributions and expenditures during the qualifying period, including financial institution records for some seed money contributions (\$1,895 in seed money contributions transferred from another bank account and for other reported seed money contributions which were never deposited in the campaign account) (Finding No. 2); proof of payment for expenditures totaling \$2,333 (Finding No. 4), and any records relating to the purchase of money orders used for MCEA qualification, including transaction costs which are required to be paid for with seed money (Finding No. 3). The Commission staff

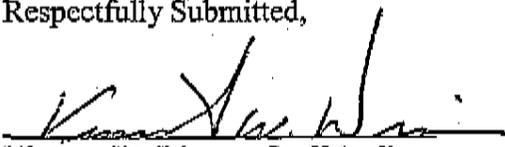
recommends that under 21-A M.R.S.A. §1127(1), the Commission assess a penalty of \$500 against the candidate, treasurer, and deputy treasurer for this violation.

With regard to Finding No. 5, the staff recommends that the Commission should find the candidate, treasurer, and deputy treasurer in violation of 21-A M.R.S.A. §1125(12-A) for not obtaining and keeping vendor invoices for about \$110,000 in MCEA expenditures listed in Exhibit II (Finding No. 5). The Commission staff recommends that under 21-A M.R.S.A. §1127(1), the Commission assess a penalty of \$500 against the candidate, treasurer, and deputy treasurer for this violation.

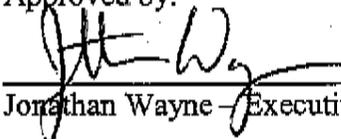
Candidate's Comments

Comments on the audit findings and recommendations by Philip L. Merrill, Deputy Treasurer of the Merrill campaign, made on behalf of the candidate, are attached.

Respectfully Submitted,

  
\_\_\_\_\_  
Vincent W. Dinan – Staff Auditor

Approved by:

  
\_\_\_\_\_  
Jonathan Wayne – Executive Director

## EXHIBIT I

**BARBARA MERRILL CAMPAIGN****Schedule of Undocumented Payments for Campaign Expenditures  
2006 MCEA Qualifying Period**

<b>NAME</b>	<b>DATE</b>	<b>AMOUNT</b>	<b>PURPOSE</b>
Judson Merrill	2/1/2006	\$200.00	Website Services
Philip Merrill	4/14/2006	\$600.00	Literature
Philip Merrill	5/24/2006	\$625.49	Literature
Judson Merrill	5/31/2006	\$407.35	Website Services
Philip Merrill	5/31/2006	\$500.00	Money Order Costs
Total		<u>\$2,332.84</u>	

## EXHIBIT II

**BARBARA MERRILL CAMPAIGN****Schedule of Campaign Expenditures Lacking Required Documentation  
2006 General Election**

<b>DATE</b>	<b>VENDOR</b>	<b>AMOUNT INVOICED</b>	<b>QUESTIONED AMOUNT</b>	<b>ISSUE</b>
6/21/2006	Mountain Top Productions	\$25,651.75	\$11,164.75	Missing Invoices
7/11/2006	Mountain Top Productions	\$22,044.75	\$7,509.75	Missing Invoices
8/25/2006	Portland Press Herald	\$500.00	\$500.00	Missing Invoice
8/28/2006	Portland Press Herald	\$1,000.00	\$1,000.00	Missing Invoice
10/12/2006	WCSH/WLBZ	\$56,810.00	\$56,810.00	Missing Invoice
10/24/2006	Clear Channel Communications	\$4,324.80	\$4,324.80	Missing Invoice
10/26/2006	Portland Radio Group	\$9,486.00	\$9,486.00	Missing Invoice
11/1/2006	Clear Channel Communications	\$3,541.60	\$3,541.60	Missing Invoice
11/6/2006	Mountain Top Productions	\$54,700.00	\$16,060.75	Missing Invoices
		<u>\$178,058.90</u>	<u>\$110,397.65</u>	

**ATTACHMENT**  
**Merrill Campaign Audit**  
**Comments of Philip L. Merrill**  
**Page 1**

Date: June 28, 2007

Response of Philip L. Merrill, Deputy Treasurer of BarbaraMerrill.Com On Behalf  
BarbaraMerrill.Com and Barbara E. Merrill's Independent Campaign for Governor.

This is our response to Audit Report No. 2006-GV002 of the Barbara E. Merrill campaign for Governor. As audit report is 7 pages long and all the material has been reviewed thoroughly with the Commission's staff and the auditor, this response will be brief.

Finding 1 - Conflict of Interest.

*The audit report points out that no law or rule was violated and that there is no "evidence of mis-use or mis-appropriation of public funds."*

There is not a lot we can add to that statement, but there are two factors that may add light to this issue. The Merrill Campaign did not set out to hire me as a campaign consultant. Barbara wanted to retain a consultant from Maine who was experienced and willing to work for an Independent. The first standard significantly limited the pool of eligible candidates, the second standard even more so. Immediately after the Merrill campaign qualified, Barbara Merrill met with Christian Potholm and asked him to play this role in the campaign. After some consideration, Mr. Potholm declined and he subsequently provided his valuable services to the Baldacci campaign.

We were aware of the fact that in the past recommendations have been made to amend the law to prohibit family members from working for publically funded campaigns, but that those recommendations had been specifically rejected by the legislature. Hence we were comfortable that because the Legislature decided to continue to allow such arrangements, it was a viable option.

As a result, an agreement was worked out with Jim Webster, the campaign manager, and Barbara Merrill on behalf of the campaign and Phil Merrill on behalf of Mountain Top Productions. The goal was to produce a wide variety of spots that did not look slick, which featured the candidate taking the issues "head on" while controlling production costs to maximize money to purchase time. While it is always challenging to make objective judgements about the success of a media campaign I will point to the fact that in the final three weeks in which there was ample money for a real TV/radio campaign, the Merrill campaign went from 4 or 5% support to 21 %, while all other campaigns were either stagnant or actually falling.

*Given the undisputed fact that retention of a family member is clearly permitted by Maine law, coupled with the fact that our media campaign was clearly effective as evidenced by the candidate's sharp surge in the latter days of the campaign, both my*

**ATTACHMENT**  
**Merrill Campaign Audit**  
**Comments of Philip L. Merrill**  
Page 2

*wife and I feel strongly that the criticism in this finding is unwarranted and patently unfair.*

Finding 2. Undocumented Seed Money. On the first 2 bullets the campaign did not provide complete and accurate reporting for which I take complete responsibility. In fact there was a period in which it did not appear that Barbara Merrill would qualify and I failed to pay as close attention as I should. As to the third bullet, the charge is totally unfair.

As I pointed out to the auditor, I made the deposit at Gardiner Savings into the campaign account. Several days later when I checked the balance, the money was not there. I went to the bank and realized the bank had mistakenly deposited the money into my business account. The bank *immediately* corrected the error. *The error was made by the bank and I was discovered it very quickly.*

Finding 3. There were errors in documenting and reporting money order purchases. On this the campaign labored mightily and still failed. At times the challenge was daunting. Consider this this actual scenario: the candidate and several workers went to a sportsman's show and asked attendees for support. Most of the attendees didn't have check books with them so most bought money orders. The cash was collected. The team ran out of money orders. (The money collected in sale of the money orders can be used for the face value of new ones and the cost of the money order must be paid from the seed money raised.) Now imagine there are three other teams out seeking qualifying contributions. If I was ever to do this again I would create a book keeping system to meet this challenge, but I do not dispute we were overwhelmed this time.

Finding 4. Undocumented payments. We have no dispute with this finding. During the period in which it was unclear that we were going ahead I failed to document a couple of payments as I should have. For example, I owed money to my son Judson for work he did on the website. I was behind in paying him so when I saw him I paid him from cash on hand that I had with me instead of waiting to when I had a check book. But I do believe it is an important distinction that none of these funds were public funds.

Finding 5 Incomplete Expenditure documentation.

*I believe this charge is unfair and completely without merit.* Every payment to these media outlets has been verified. All documentation provided by the stations has been turned over to the auditor. There are no "missing invoices." Admittedly, the way some stations document these purchases is through their log and sometimes it is difficult to tie any ad to a specific check. When the auditor raised this concern I contacted the stations and in response they sent simple declarative statements saying in essence we received check # x and for that commercials were purchased in the weeks of x and z. Those were provided.

**ATTACHMENT**  
**Merrill Campaign Audit**  
**Comments of Philip L. Merrill**  
**Page 3**

When the auditor expressed continued dissatisfaction I asked that he design a form by which the stations might report to his satisfaction. None was provided. I believe the stations gave Mountain Top Video the same documentation that they provided the purchasing agent for every other campaign. That is the documentation we provided. The report points out that "in all instances the proof of payment was on file. I know that there is no question that the money was spent on the purchases. If the Commission wants different documentation than is provided by TV and radio stations then I submit it should develop a form and ask the campaigns to insist stations use them. Assessing a fine when I have gone way beyond what the stations provide would be arbitrary and capricious.

# Agenda

## Item #8



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

**To:** Commission Members

**From:** Vincent W. Dinan, Staff Auditor

**Date:** July 9, 2007

**Subject:** July, 2007 Candidate Audit Report Submittals

Materials submitted with the July, 2007 Commission packet include the nine candidate audit reports listed below.

<b>Candidate Name</b>	<b>District</b>	<b>Disposition</b>
Rep. Barbara E. Merrill	2006 Independent Gubernatorial Candidate	See Commission Agenda
Sen. Joseph C. Perry	SD 32	See Commission Agenda
Joseph R. Hanslip	SD 3	See Commission Agenda
Anthony V. Cilluffo	HD 147	See Commission Agenda
John Cushing	HD 134	See Commission Agenda
Sen. Beth Edmonds	SD 10	No Exceptions
Rep. Randy Hotham	HD 93	No Exceptions
Rep. Peter Edgecomb	HD 4	No Exceptions
Rep. Jill Conover	HD 78	No Exceptions

Audit Findings of "No Exceptions Noted" are submitted for information and file, and no additional action is required by the Commission.



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

May 24, 2007

**Audit Report No. 2006-SEN011**

**Candidate: Joseph R. Hanslip  
Senate District 3**

Background

Joseph R. Hanslip was a candidate for the Maine State Senate, District 3, in the 2006 general election. Mr. Hanslip was certified by the Commission as an MCEA candidate on April 21, 2006. MCEA candidates are required under the Act to submit reports of their receipts, expenditures, outstanding campaign debt, and equipment purchases and dispositions for specified periods during the election cycle.

Audit Scope

Examination of selected candidate contribution and expenditure transactions occurring during the following campaign reporting periods:

- Seed Money
- Six Day Pre-Primary
- 42 Day Post-Primary
- Six Day Pre-General
- 42 Day Post-General

Transactions subject to review were those recorded in the candidate's accounting records and reported to the Commission. The audit's purpose was to determine if the identified receipts and payments (1) were properly approved by the candidate or his authorized representative; (2) were adequately documented as evidenced by original vendor invoices and cancelled checks or other acceptable disbursement documentation; and (3) complied in all material respects with the requirements of the Maine Clean Election Act and the Commission's rules.

Audit Findings and Recommendations

1. The Hanslip campaign's expenditures exceeded the allowable maximum by \$43.61. The errors included three expenditures that were reported in duplicate and one expenditure that went unreported. The details of the transactions are explained in Exhibit I to this report. *Criteria:* The MCEA requires participating candidates to report campaign expenditures according to procedures developed by the Commission. (21-A M.R.S.A. §1125(12)). The MCEA also permits the Commission to assess a penalty of up to \$10,000 for any violation of the MCEA.
2. Mr. Hanslip failed to reimburse himself for three reported expenditures totaling \$34.88 (see Exhibit I). Failure to reimburse in effect created three in-kind contributions. *Criterion:* The MCEA prohibits candidates from accepting in-kind contributions after they have qualified for public funding (21-A M.R.S.A. §1125 (6)).

**Campaign Audit**  
**Candidate: Joseph R. Hanslip**  
**Page 2**

3. Mr. Hanslip deposited \$30.00 to open his campaign bank account. The deposit was never reported as a contribution, and since it exceeded the \$1,500 maximum that Mr. Hanslip reported, it is considered to be unallowable. Criterion: the MCEA requires all contributions to be disclosed in campaign finance reports and prohibits candidates from accepting contributions other than seed money (21-A M.R.S.A. sections 1122 (9), 1125 (6), and 1125 (12)).

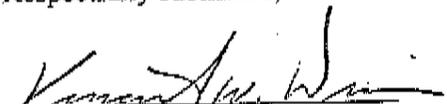
*Recommendations:* the Commission staff recommends that:

- The Commission finds Mr. Hanslip in technical violation of the referenced sections of the Maine Clean Election Act. Mr. Hanslip and his treasurer were extremely cooperative in providing information and documentation regarding their campaign finances, and the staff believes that since the violations are extremely small in terms of total campaign expenditures, that no penalty should be assessed.
- Mr. Hanslip be directed to amend all of his campaign finance reports to correct the errors discussed in (1) through (3) above.

Candidate's Comments

Comments of Faith D. Ballenger, Campaign Treasurer, are attached.

Respectfully submitted,

  
\_\_\_\_\_  
Vincent W. Dinan - Staff Auditor

Approved:

  
\_\_\_\_\_  
Jonathan Wayne - Executive Director

Exhibit I  
Campaign Audit  
Joseph R. Hanslip

<b>Mis-reported Expenditures</b>	
Ending Balance per Line 8, 42 Day Post-General Report	\$89.16
Adjustments:	
Expenditure Adjustments:	
Duplicate Expenditure: 7/26/06 Burpee Signs	\$84.00
Duplicate Expenditure: 10/30/06 USPS	\$78.00
Duplicate Expenditure: 10/30/06 Badge-A-Minute	\$30.83
Balance Subtotal	<u>\$281.99</u>
Unreported: 10/6/06 Mainley Newspapers	<u>(\$325.60)</u>
Adjusted Line 8 of 42-Day Post-General Report	<u>(\$43.61)</u>
Reconciliation to Campaign Bank Balance:	
Adjusted Line 8 Balance	(\$43.61)
Add:	
Unreimbursed contribution to open bank account	\$30.00
Unreimbursed expenditures from 42 Day Post-Primary Report	<u>\$34.88</u>
Campaign Bank Balance at December 19, 2006	<u>\$21.27</u>

**Dinan, Vincent W**

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**From:** Boisvert, Anissa  
**Sent:** Wednesday, May 23, 2007 9:56 AM  
**To:** Dinan, Vincent W  
**Subject:** FW: Hanslip for Senate Campaign

---

**From:** Faith D. Ballenger [mailto:faithb@metrocast.net]  
**Sent:** Tuesday, May 22, 2007 5:09 PM  
**To:** Boisvert, Anissa  
**Subject:** Hanslip for Senate Campaign

**TO:** Anissa Boisvert/Vincent W. Dinan

**FROM:** Faith D. Ballenger

**DATE:** May 22, 2007

**SUBJECT:** Hanslip for Senate

Thank you for your response to our error in reporting expenses this past year. These errors will be corrected before days end.

With reference to the \$30.00 balance in the checking account, from previous campaigns, Mr. Hanslip really thought it was his way of keeping a checking account active and not a donation. This was never thought to be a donation to his campaign. Lesson well learned.

If any further information is required, please let me know.

Again, many thanks for your patience and understanding. It is appreciated more than you will ever know.

**NOTE:** I have just finished making adjustments per exhibit 1. I have the balance of (\$43.61) on Line 8. Now I am at a stand still - I do not know how to "Adjust Line 8 Balance". I will be calling tomorrow morning for HELP!!

5/24/2007



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

June 27, 2007

**Audit Report No. 2006-HR038**

**Candidate: John Cushing  
House District 134**

Background

John Cushing was a candidate for the Maine House of Representatives, District 134, in the 2006 general election. Mr. Cushing was certified by the Commission as an MCEA candidate on April 21, 2006. MCEA candidates are required under the Act to submit reports of their receipts, expenditures, outstanding campaign debt, and equipment purchases and dispositions for specified periods during the election cycle.

Audit Scope

Examination of selected candidate contribution and expenditure transactions occurring during the following campaign reporting periods:

- Seed Money
- Six Day Pre-Primary
- 42 Day Post-Primary
- Six Day Pre-General
- 42 Day Post-General

Transactions subject to review were those recorded in the candidate's accounting records and reported to the Commission. The audit's purpose was to determine if the identified receipts and payments (1) were properly approved by the candidate or his authorized representative; (2) were adequately documented as evidenced by original vendor invoices and cancelled checks or other acceptable disbursement documentation; and (3) complied in all material respects with the requirements of the Maine Clean Election Act and the Commission's rules.

Audit Findings and Recommendations

Finding No. 1 – Unreported Seed Money Expenditure: during the candidate's qualifying period, the Cushing campaign paid \$22.89 for checks to use in the campaign bank account; however, they neglected to report the expenditure to the Commission on the Seed Money Report.

*Criteria:* 21-A M.R.S.A. §1125 (12) "...participating and certified candidates shall report any money collected, all expenditures, obligations and related activities to the commission according to procedures developed by the commission."

Finding No. 2 – Expenditures in Excess of the Maximum Allowable Amount: A series of minor reporting errors by the Cushing campaign caused the campaign to spend, when aggregated over the duration of the campaign, \$18.68 in excess of the MCEA allowable maximum. The details of the transactions are outlined in Exhibit I.

**Campaign Audit**  
**Candidate: John Cushing**  
**Page 2**

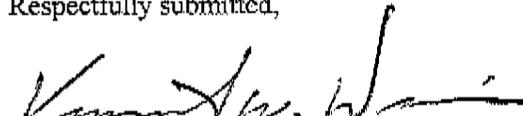
*Criteria:* 21-A M.R.S.A. §1016, "each treasurer shall keep detailed records of all contributions received and of each expenditure that the treasurer or candidate makes or authorizes. When reporting contributions and expenditures to the commission ..., the treasurer shall certify the completeness and accuracy of the information reported by that treasurer." 21-A M.R.S.A. §1125(6), "After certification, a candidate must limit the candidate's campaign expenditures and obligations, including outstanding obligations, to the revenues distributed to the candidate from the fund and may not accept any contributions unless specifically authorized by the commission. 21-A M.R.S.A. §1125 (12) "...participating and certified candidates shall report any money collected, all expenditures, obligations and related activities to the commission according to procedures developed by the commission."

*Recommendations:* The Commission staff recommends that the Commission finds Mr. Cushing in violation of the referenced sections of the Maine Clean Election Act; however, since the errors were relatively minor in nature and appear to have been unintentional, the staff recommends that no penalty be assessed. The staff will work with Mr. Cushing to amend his campaign finance reports.

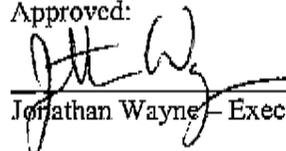
Candidate's Comments

Mr. Cushing's comments are attached.

Respectfully submitted,

  
\_\_\_\_\_  
Vincent W. Dinan - Staff Auditor

Approved:

  
\_\_\_\_\_  
Jonathan Wayne - Executive Director

**EXHIBIT I****JOHN CUSHING****Audit of 2006 Campaign Finance Reports****Ending Balance Reconciliation Between Reports and Bank Account**

DATE	TRANSACTION	AMOUNT
<b>42 Day Post-General Report:</b>		
12/19/2006	Ending Balance	\$1.21
10/25/2006	Amt. of over-stated payment - Z. Landry	\$3.00
3/15/2006	Unreported payment for bank checks	<u>(\$22.89)</u>
12/19/2006	Adj. Ending Balance	<u><u>(\$18.68)</u></u>

**J. Cushing Campaign Bank Statement:**

4/30/2007	Outstanding balance	102.44
3/23/2006	Unreimbursed seed money payment - POS	(94.50)
3/22/2006	Unreimbursed payment to Staples - OTH	(26.44)
4/30/2007	Unreconciled difference	<u>(0.18)</u>
		<u><u>(18.68)</u></u>

**ATTACHMENT**

**Dinan, Vincent W**

---

**From:** CushingJW@aol.com  
**Sent:** Friday, June 15, 2007 8:50 AM  
**To:** Dinan, Vincent W  
**Subject:** Re: Audit of Campaign Finance Reports-2

Hello Vincent,

I have received your latter and agree with your findings. Thank you for your hard work.

Regards,  
John Cushing  
77 Burnham Road  
Saco, ME 04072  
Tel. 741-2443  
Cell 776-0858

---

See what's free at [AOL.com](http://AOL.com).



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

June 15, 2007

**Audit Report No. 2006-HR034**

**Candidate: Anthony V. Cilluffo  
House District 147**

**Background**

Anthony V. Cilluffo was a candidate for the Maine House of Representatives, District 147, in the 2006 general election. Mr. Cilluffo was certified by the Commission as a Maine Clean Election Act (MCEA) candidate on April 13, 2006. MCEA candidates are required under the Act to submit reports of their receipts, expenditures, outstanding campaign debt, and equipment purchases and dispositions for specified periods during the election cycle.

**Audit Scope**

Examination of selected candidate contribution and expenditure transactions occurring during the following campaign reporting periods:

- Seed Money
- Six Day Pre-Primary
- 42 Day Post-Primary
- Six Day Pre-General
- 42 Day Post-General

Transactions subject to review were those recorded in the candidate's accounting records and reported to the Commission. The audit's purpose was to determine if the identified receipts and payments (1) were properly approved by the candidate or his authorized representative; (2) were adequately documented as evidenced by original vendor invoices and cancelled checks or other acceptable disbursement documentation; and (3) complied in all material respects with the requirements of the Maine Clean Election Act and the Commission's rules.

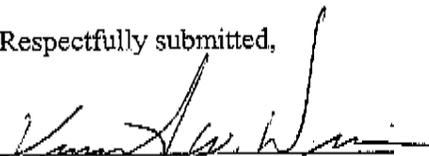
**Audit Findings and Recommendations**

1. The Cilluffo campaign returned \$2,624.47 in unused MCEA funds to the Commission at the end of the 2006 general election period. The audit disclosed that this amount constituted a \$108.99 overpayment because the candidate reported three expenditures he made out-of-pocket during the election season, and inadvertently failed to reimburse himself. The correct amount that Mr. Cilluffo should have returned to the Commission was \$2,515.48. *Criterion:* The MCEA requires participating candidates to report campaign expenditures according to procedures developed by the Commission. (21-A M.R.S.A. §1125(12)). *Recommendation:* The Commission staff determined there was no violation, and will take action to refund the overpayment to Mr. Cilluffo. In the staff's opinion, no further action is warranted.

Candidate's Comments

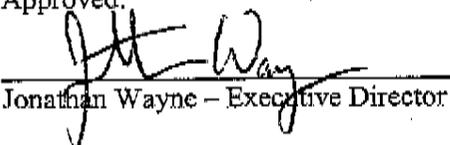
The candidate did not comment on the audit.

Respectfully submitted,



Vincent W. Dinan - Staff Auditor

Approved:



Jonathan Wayne - Executive Director



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

May 14, 2007

**Audit Report No. 2006-SEN012**

**Candidate: Senator Beth Edmonds  
Senate District 10**

**Background**

Senator Beth Edmonds, President of the Maine State Senate, ran successfully for re-election in Senate District 10 in the 2006 general election. Sen. Edmonds was certified by the Commission as an MCEA candidate on April 20, 2006. MCEA candidates are required under the Act to submit reports of their receipts, expenditures, outstanding campaign debt, and equipment purchases and dispositions for specified periods during the election cycle.

**Audit Scope**

Examination of selected candidate contribution and expenditure transactions occurring during the following campaign reporting periods:

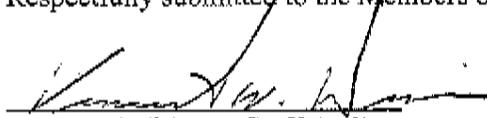
- Seed Money
- Six Day Pre-Primary
- 42 Day Post-Primary
- Six Day Pre-General
- 42 Day Post-General

Transactions subject to review were those recorded in the candidate's accounting records and reported to the Commission. The audit's purpose was to determine if the identified receipts and payments (1) were properly approved by the candidate or her authorized representative; (2) were adequately documented as evidenced by original vendor invoices and cancelled checks or other acceptable disbursement documentation; and (3) complied in all material respects with the requirements of the Maine Clean Election Act and the Commission's rules.

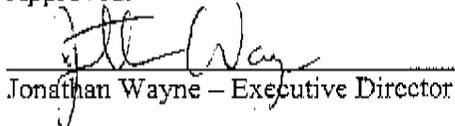
**Audit Findings and Recommendations**

**No exceptions were noted.**

Respectfully submitted to the Members of the Commission for information and file.

  
Vincent W. Dinan - Staff Auditor

Approved:

  
Jonathan Wayne - Executive Director

OFFICE LOCATED AT: 242 STATE STREET, AUGUSTA, MAINE  
WEBSITE: WWW.MAINE.GOV/ETHICS



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

May 17, 2007

Audit Report No. 2006-HR037

**Candidate: Representative Randy E. Hotham  
House District 93**

Background

Representative Randy E. Hotham was re-elected to the Maine House of Representatives, District 93, in the 2006 general election. Rep. Hotham was certified by the Commission as an MCEA candidate on April 21, 2006. MCEA candidates are required under the Act to submit reports of their receipts, expenditures, outstanding campaign debt, and equipment purchases and dispositions for specified periods during the election cycle.

Audit Scope

Examination of selected candidate contribution and expenditure transactions occurring during the following campaign reporting periods:

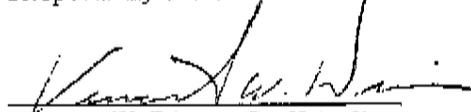
- Seed Money
- Six Day Pre-Primary
- 42 Day Post-Primary
- Six Day Pre-General
- 42 Day Post-General

Transactions subject to review were those recorded in the candidate's accounting records and reported to the Commission. The audit's purpose was to determine if the identified receipts and payments (1) were properly approved by the candidate or his authorized representative; (2) were adequately documented as evidenced by original vendor invoices and cancelled checks or other acceptable disbursement documentation; and (3) complied in all material respects with the requirements of the Maine Clean Election Act and the Commission's rules.

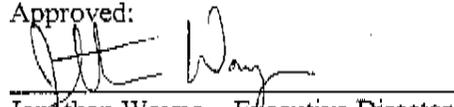
Audit Findings and Recommendations

**No exceptions were noted.**

Respectfully submitted to the Members of the Commission for information and file.

  
Vincent W. Dinan - Staff Auditor

Approved:

  
Jonathan Wayne - Executive Director

OFFICE LOCATED AT: 242 STATE STREET, AUGUSTA, MAINE  
WEBSITE: WWW.MAINE.GOV/ETHICS



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

May 24, 2007

**Audit Report No. 2006-HR035**

**Candidate: Representative Peter Edgecomb  
House District 4**

Background

Representative Peter Edgecomb was re-elected to the Maine House of Representatives, District 4, in the 2006 general election. Rep. Edgecomb was certified by the Commission as an MCEA candidate on March 7, 2006. MCEA candidates are required under the Act to submit reports of their receipts, expenditures, outstanding campaign debt, and equipment purchases and dispositions for specified periods during the election cycle.

Audit Scope

Examination of selected candidate contribution and expenditure transactions occurring during the following campaign reporting periods:

- Seed Money
- Six Day Pre-Primary
- 42 Day Post-Primary
- Six Day Pre-General
- 42 Day Post-General

Transactions subject to review were those recorded in the candidate's accounting records and reported to the Commission. The audit's purpose was to determine if the identified receipts and payments (1) were properly approved by the candidate or his authorized representative; (2) were adequately documented as evidenced by original vendor invoices and cancelled checks or other acceptable disbursement documentation; and (3) complied in all material respects with the requirements of the Maine Clean Election Act and the Commission's rules.

Audit Findings and Recommendations

**No exceptions were noted.**

Respectfully submitted to the Members of the Commission for information and file.

Vincent W. Dinan - Staff Auditor

Approved:

  
Jonathan Wayne - Executive Director

OFFICE LOCATED AT: 242 STATE STREET, AUGUSTA, MAINE  
WEBSITE: WWW.MAINE.GOV/ETHICS



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

May 29, 2007

Audit Report No. 2006-HR036

**Candidate: Representative Jill M. Conover  
House District 78**

Background

Representative Jill M. Conover was elected to the Maine House of Representatives, District 78, in the 2006 general election. Rep. Conover was certified by the Commission as an MCEA candidate on April 13, 2006. MCEA candidates are required under the Act to submit reports of their receipts, expenditures, outstanding campaign debt, and equipment purchases and dispositions for specified periods during the election cycle.

Audit Scope

Examination of selected candidate contribution and expenditure transactions occurring during the following campaign reporting periods:

- Seed Money
- Six Day Pre-Primary
- 42 Day Post-Primary
- Six Day Pre-General
- 42 Day Post-General

Transactions subject to review were those recorded in the candidate's accounting records and reported to the Commission. The audit's purpose was to determine if the identified receipts and payments (1) were properly approved by the candidate or her authorized representative; (2) were adequately documented as evidenced by original vendor invoices and cancelled checks or other acceptable disbursement documentation; and (3) complied in all material respects with the requirements of the Maine Clean Election Act and the Commission's rules.

Audit Findings and Recommendations

**No exceptions were noted.**

Respectfully submitted to the Members of the Commission for information and file.

Vincent W. Dinan - Staff Auditor

Approved:

Jonathan Wayne - Executive Director

OFFICE LOCATED AT: 242 STATE STREET, AUGUSTA, MAINE  
WEBSITE: WWW.MAINE.GOV/ETHICS

# Agenda Item #9



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

To: Legislative Leadership and Staff  
 Joint Standing Committee on Legal and Veterans Affairs  
 Joint Standing Committee on Appropriations and Financial Affairs  
 State Political Parties  
 Other Interested Persons

From: Jonathan Wayne, Executive Director

Date: June 26, 2007

Re: Invitation to Comment on Maine Clean Election Act Issues

At their meeting on July 16, 2007 at 9:00 a.m., the members of the Ethics Commission will be making two decisions about administering the Maine Clean Election Act in the 2008 elections. You are invited to comment in writing or in person at the meeting. My e-mail address is [Jonathan.Wayne@maine.gov](mailto:Jonathan.Wayne@maine.gov).

#### Payment Amounts for Maine Clean Election Act Candidates

The amounts of the initial payments made to MCEA candidates are based on average candidate spending in the two previous elections. The Commission is required to recalculate the payment amounts at least once every four years. At the July 16 meeting, the Commission members will decide whether to adjust the payment amounts for 2008 or to keep them at the 2006 levels.

	2006 Payment Amounts	Adjusted Amounts (based on spending in 2004 and 2006)	Percent Difference
<b>Primary Election</b>			
Contested House candidates	\$1,504	\$1,708	14%
Uncontested House candidates	\$512	\$556	9%
Contested Senate candidates	\$7,746	\$7,900	2%
Uncontested Senate candidates	\$1,927	\$2,072	8%
<b>General Election</b>			
Contested House candidates	\$4,362	\$5,116	17%
Uncontested House candidates	\$1,745	\$2,046	17%
Contested Senate candidates	\$20,082	\$23,381	16%
Uncontested Senate candidates	\$8,033	\$9,352	16%

OFFICE LOCATED AT: 242 STATE STREET, AUGUSTA, MAINE  
 WEBSITE: [WWW.MAINE.GOV/ETHICS](http://WWW.MAINE.GOV/ETHICS)

The Commission staff is inclined to use the 2006 payment amounts in 2008 for two reasons. First, maintaining the 2006 payment levels would control the long-term cost of the program to a degree. In 2006, the Commission paid about \$3.3 million to legislative candidates. Since the Commission is anticipating a shortfall for the 2010 elections, it seems prudent to take reasonable measures now to reduce the size of the shortfall. The second reason is that the 2006 amounts were adequate for legislative campaigns. We received no complaints that the 2006 amounts were inadequate or that MCEA candidates were at a disadvantage.

### **Proposed Changes to Expenditure Guidelines for 2008**

On July 16<sup>th</sup>, the staff will propose the attached changes to the MCEA expenditure guidelines for legislative candidates. We try to find the right balance between keeping the public funding program accountable to taxpayers and giving candidates the flexibility they need to campaign as they think best. If you believe the staff is headed in the wrong direction, please let the Commission know. Our proposed changes would:

- give candidates greater latitude to use MCEA funds to attend a party or charity event or to purchase an ad in an event newsletter, as long as the expenditure has value for the campaign.
- clarify that MCEA candidates may reimburse the candidate or a supporter for car travel in any amount up to \$0.38 per mile. The amended guidelines would emphasize that the person being reimbursed is required to keep a log of their travel, which has been in the Commission's rules since 1998.
- prohibit candidates from using MCEA funds to buy gifts for volunteers and supporters. Candidates could continue to use MCEA funds to compensate campaign workers for their labor or to use a limit amount of MCEA funds for a post-election party. We propose prohibiting gifts, however, to safeguard the public perception that MCEA funds are well-spent. Candidates could use their *personal* funds to buy a gift for a volunteer.
- clarifying that if a consultant working for a MCEA candidate purchases services from another vendor (such as a mailhouse), that purchase should be itemized in the invoice that the candidate receives from the consultant. All candidates are required to itemize purchases made by consultants on their campaign finance reports.
- giving candidates clear notice of what records are required for expenditures over \$50 and that the Commission intends to audit 20% of legislative candidates.

Thank you very much for any comments you wish to provide.

**Wayne, Jonathan**

---

**From:** Pat Flood [patricksafood@adelphia.net]  
**Sent:** Friday, June 29, 2007 12:46 PM  
**To:** Wayne, Jonathan  
**Subject:** MCEA Comments requested

Dear Jonathan,

Thanks for the chance to comment on the ideas in your June 26th memo.

I concur that we should keep the 2008 payment amount to MCEA candidates to the 2006 levels. I generally just think it's a good idea to be conservative with the money that the People entrust us to use. I agree with the Commission staff's thoughts on this.

I agree we should be clear that MCEA funds can not be used to buy gifts for campaign volunteers or supporters.

I agree with all the other items you listed as well.

I've run as both a Traditional and Clean Election candidate and I thought that the Clean Election process was quite straightforward.

I hope you have a pleasant summer.

Sincerely,

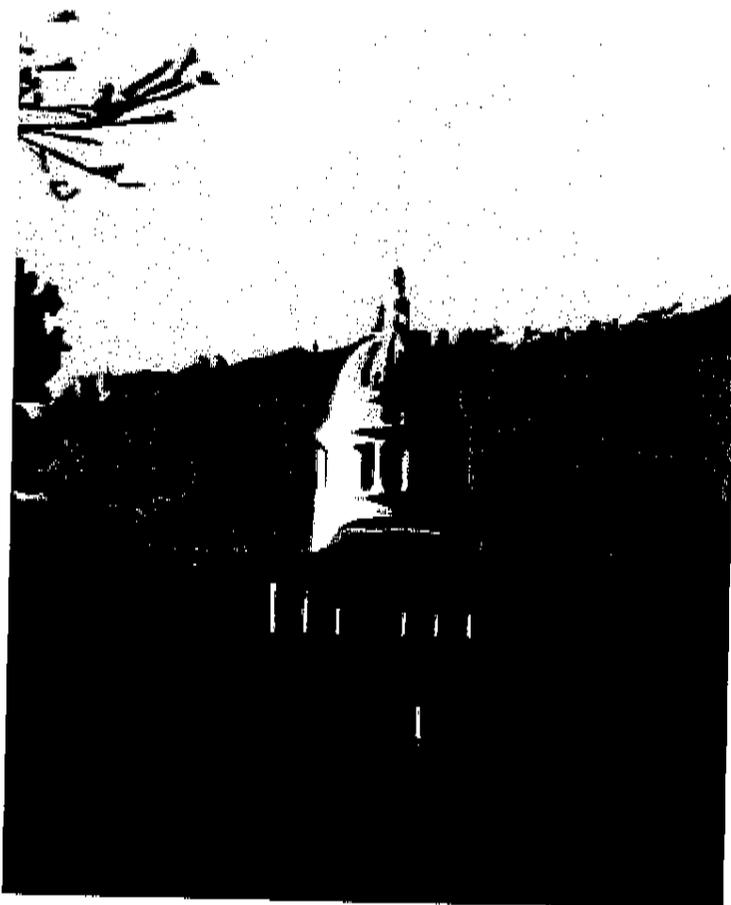
Pat Flood  
State Representative Dist 82 Winthrop and Readfield

2007 REPORT ON THE MAINE CLEAN ELECTION ACT

# 2007 Study Report

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*Has Public Funding Improved Maine Elections?*



Maine Commission on Governmental  
Ethics and Election Practices

to be a reduction since the introduction of the MCEA. The average amounts spent by traditional Senate candidates in 2000, 2002, and 2006 were lower than in the 1992, 1994, 1996, and 1998 elections.

#### Average Spending by MCEA Candidates

Average spending by MCEA candidates has increased at a moderate rate between 2000 and 2006 (Figure 5.7). The Commission staff be-

lieves that one contributing factor is the increasing initial payments made to MCEA candidates for the general election (Table 5.A). While inflation has increased by 17% from 2000 to 2006, the initial payments have increased by 34% in the House and 56% in the Senate. The MCEA requires the Commission to recalculate the amounts of initial payments to candidates at least once every four years. By statute, the amount of the initial payments received by MCEA candidates is based on average spending by

	2000	2002	2004	2006	% Increase (2000 - 2006)	% Increase in Inflation (2002 - 2006)
House	\$3,252	\$4,255	\$4,032	\$4,362	34%	17%
Senate	\$12,910	\$17,528	\$16,791	\$20,082	56%	17%

candidates in the previous two elections. The Commission staff is concerned that

Figure 5.6 Average Amount Spent by Privately Financed Senate Candidates (adjusted for inflation)

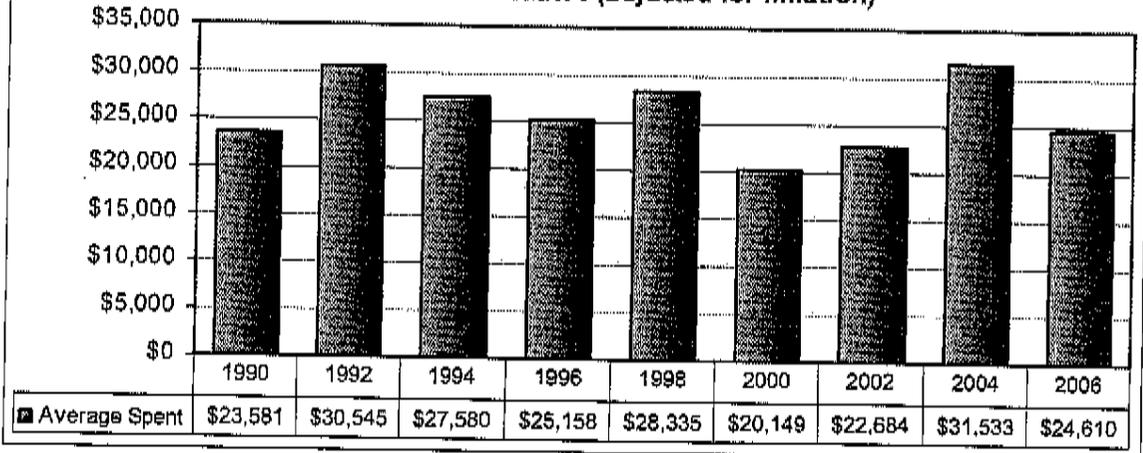
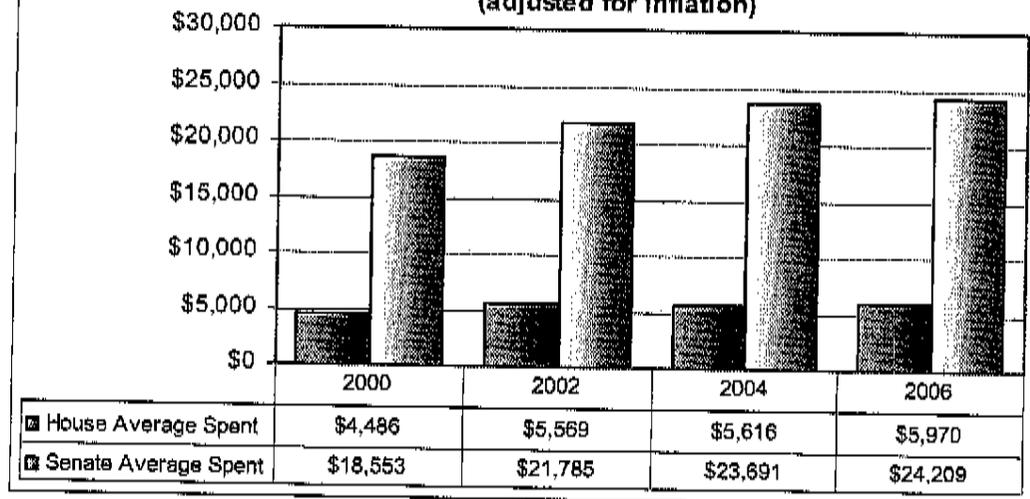


Figure 5.7 Average Spending by MCEA Candidates (adjusted for inflation)



# Agenda

## Item #10

Note: proposed changes  
are shaded.

STATE OF MAINE  
COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES  
135 State House Station  
Augusta, Maine 04333-0135  
Tel: (207) 287-4179 Fax: (207) 287-6775  
Website: www.maine.gov/ethics

## 2008 EXPENDITURE GUIDELINES FOR MAINE CLEAN ELECTION ACT CANDIDATES

Candidates must spend Maine Clean Election Act (MCEA) funds for campaign-related purposes and not for other purposes such as the candidate's personal benefit, party-building, or to promote another candidate's campaign.

■ Expenditures for "campaign-related purposes" are those which are traditionally accepted as necessary to promote the election of a candidate to political office. Candidates using MCEA funds must also take into account the public nature of the funds, the underlying objectives of the MCEA, and the reasonableness of the expenditures under the circumstances. In Maine, traditional campaign expenses have included:

- Printing and mailing costs;
- Political advertising expenses;
- Campaign communications such as signs, bumper stickers, T-shirts, or caps with campaign slogans, etc.;
- Office supplies;
- Campaign events (e.g., food, rent of tent or hall, etc.);
- Campaign staff expenses; and
- Campaign travel expenses, such as fuel and tolls.
- An entry fee for an event organized by a party committee, charity, or community organization or an ad in an event publication, as long as the expenditure benefits the candidate's campaign;

moved  
from the  
"may not"  
section,  
below

■ ~~Candidates may not use MCEA funds for personal expenses or as loans to themselves.~~  
Personal expenses are for goods and services that the candidate would otherwise purchase independently of the campaign, such as:

- Day-to-day household food items and supplies;
- Vehicle and transportation expenses unrelated to the campaign;
- Mortgage, rent, or utility payments for the candidate's personal residence, even if part of the residence is being used by the campaign; and
- Clothing, including attire for political functions such as business suits or shoes.

■ Maine Clean Election Act funds may not be spent to:

- make independent expenditures supporting or opposing any candidate, ballot measure, or political committee;
- assist in any way the campaign of any candidate other than the candidate for whom the funds were originally designated;
- contribute to another candidate, a political committee, or a party committee, other than in exchange for goods and services;
- pay a consultant, vendor, or campaign staff, other than in exchange for campaign goods or services;
- ~~make a thank-you gift (including a gift card) to a volunteer or supporter;~~
- compensate the candidate for services provided by the candidate;
- make a donation to a charity or a community organization, other than in exchange for campaign goods or services;
- promote political or social positions or causes other than the candidate's campaign;
- pay civil penalties, fines, or forfeitures to the Commission, or defend the candidate in enforcement proceedings brought by the Commission; or
- assist the candidate in a recount of an election.

## ■ Guidelines on Selected Issues

- *Electronics and Other Personal Property.* Goods purchased with MCEA funds that could be converted to personal use after the campaign (e.g., computers, fax machines, and cellular telephones) must be reported on Schedules B and E of the candidate reporting form. No later than 42 days after the general election, the goods must be sold at fair market value and the proceeds returned to the Maine Clean Election Fund. Candidates are welcome to lease electronic and other equipment.
- *Food.* Candidates may spend a reasonable amount of MCEA funds on food for campaign events or to feed volunteers while they are working. Legislative candidates may not use MCEA funds to purchase food that is consumed only by the candidate and/or the candidate's spouse.
- *Car Travel.* MCEA campaigns may reimburse the candidate or campaign workers for their car travel, as long as the person reimbursed has kept a travel log. For 2008, the campaign may make a travel reimbursement up to the number of miles traveled (as reported in the log) multiplied by \$0.38. Campaigns must keep the travel logs for two years, and provide them to the Commission if requested. Candidates and their spouses or domestic partners may spend any amount of their personal funds for campaign travel without seeking reimbursement. Other individuals may spend up to \$100 of their personal funds to pay for travel without making a contribution to the campaign.
- *Lodging.* Candidates may use MCEA funds to pay for lodging if necessary for campaign purposes, but must keep lodging expenses reasonable.
- *Post-Election Notes and Parties.* Candidates may spend up to the following maximum amounts of MCEA funds on post-election parties, thank you notes, or advertising to thank supporters or voters: \$250 for State Representative candidates and \$500 for State Senate candidates. Candidates may also use personal funds for these purposes.
- *Campaign Training.* Candidates may use Maine Clean Election Act funds for tuition or registration costs to receive training on campaigning or policy issues.
- *Salary and Compensation.* Candidates may use MCEA funds to pay for campaign-related services by staff or consultants, provided that compensation is made at or below fair market value and sufficient records are maintained to show what services were received. Documentation must include a description of the labor performed by the staff member or consultant, and an itemization of any goods or services purchased from other vendors, including date, vendor, and amount.

## ■ Required Record-Keeping

The MCEA requires participating campaigns to keep two documents for every expenditure over \$50: (1) an invoice from the vendor listing the goods or services purchased, and (2) a canceled check or other acceptable proof of payment to the vendor. Please select a treasurer who will be responsible about keeping these records.

## ■ Auditing and Compliance

In 2008, the Commission staff will audit 20% of MCEA candidates and will review all receipts and expenditures disclosed by MCEA candidates in campaign finance reports. The Commission frequently requests additional information from candidates to verify that public funds were spent for campaign-related purposes. Candidates who misuse public funds may be required to repay some or all public funds received, may be liable for civil penalties, and may be referred to the State Attorney General for possible criminal prosecution.



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

To: Legislative Leadership and Staff  
 Joint Standing Committee on Legal and Veterans Affairs  
 Joint Standing Committee on Appropriations and Financial Affairs  
 State Political Parties  
 Other Interested Persons

From: Jonathan Wayne, Executive Director

Date: June 26, 2007

Re: Invitation to Comment on Maine Clean Election Act Issues

At their meeting on July 16, 2007 at 9:00 a.m., the members of the Ethics Commission will be making two decisions about administering the Maine Clean Election Act in the 2008 elections. You are invited to comment in writing or in person at the meeting. My e-mail address is [Jonathan.Wayne@maine.gov](mailto:Jonathan.Wayne@maine.gov).

#### Payment Amounts for Maine Clean Election Act Candidates

The amounts of the initial payments made to MCEA candidates are based on average candidate spending in the two previous elections. The Commission is required to recalculate the payment amounts at least once every four years. At the July 16 meeting, the Commission members will decide whether to adjust the payment amounts for 2008 or to keep them at the 2006 levels.

	2006 Payment Amounts	Adjusted Amounts (based on spending in 2004 and 2006)	Percent Difference
<b>Primary Election</b>			
Contested House candidates	\$1,504	\$1,708	14%
Uncontested House candidates	\$512	\$556	9%
Contested Senate candidates	\$7,746	\$7,900	2%
Uncontested Senate candidates	\$1,927	\$2,072	8%
<b>General Election</b>			
Contested House candidates	\$4,362	\$5,116	17%
Uncontested House candidates	\$1,745	\$2,046	17%
Contested Senate candidates	\$20,082	\$23,381	16%
Uncontested Senate candidates	\$8,033	\$9,352	16%

OFFICE LOCATED AT: 242 STATE STREET, AUGUSTA, MAINE  
 WEBSITE: [WWW.MAINE.GOV/ETHICS](http://WWW.MAINE.GOV/ETHICS)

The Commission staff is inclined to use the 2006 payment amounts in 2008 for two reasons. First, maintaining the 2006 payment levels would control the long-term cost of the program to a degree. In 2006, the Commission paid about \$3.3 million to legislative candidates. Since the Commission is anticipating a shortfall for the 2010 elections, it seems prudent to take reasonable measures now to reduce the size of the shortfall. The second reason is that the 2006 amounts were adequate for legislative campaigns. We received no complaints that the 2006 amounts were inadequate or that MCEA candidates were at a disadvantage.

### **Proposed Changes to Expenditure Guidelines for 2008**

On July 16<sup>th</sup>, the staff will propose the attached changes to the MCEA expenditure guidelines for legislative candidates. We try to find the right balance between keeping the public funding program accountable to taxpayers and giving candidates the flexibility they need to campaign as they think best. If you believe the staff is headed in the wrong direction, please let the Commission know. Our proposed changes would:

- give candidates greater latitude to use MCEA funds to attend a party or charity event or to purchase an ad in an event newsletter, as long as the expenditure has value for the campaign.
- clarify that MCEA candidates may reimburse the candidate or a supporter for car travel in any amount up to \$0.38 per mile. The amended guidelines would emphasize that the person being reimbursed is required to keep a log of their travel, which has been in the Commission's rules since 1998.
- prohibit candidates from using MCEA funds to buy gifts for volunteers and supporters. Candidates could continue to use MCEA funds to compensate campaign workers for their labor or to use a limit amount of MCEA funds for a post-election party. We propose prohibiting gifts, however, to safeguard the public perception that MCEA funds are well-spent. Candidates could use their *personal* funds to buy a gift for a volunteer.
- clarifying that if a consultant working for a MCEA candidate purchases services from another vendor (such as a mailhouse), that purchase should be itemized in the invoice that the candidate receives from the consultant. All candidates are required to itemize purchases made by consultants on their campaign finance reports.
- giving candidates clear notice of what records are required for expenditures over \$50 and that the Commission intends to audit 20% of legislative candidates.

Thank you very much for any comments you wish to provide.

**Wayne, Jonathan**

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**From:** Pat Flood [patricksflood@adelphia.net]  
**Sent:** Friday, June 29, 2007 12:46 PM  
**To:** Wayne, Jonathan  
**Subject:** MCEA Comments requested

Dear Jonathan,

Thanks for the chance to comment on the ideas in your June 26th memo.

I concur that we should keep the 2008 payment amount to MCEA candidates to the 2006 levels. I generally just think it's a good idea to be conservative with the money that the People entrust us to use. I agree with the Commission staff's thoughts on this.

I agree we should be clear that MCEA funds can not be used to buy gifts for campaign volunteers or supporters.

I agree with all the other items you listed as well.

I've run as both a Traditional and Clean Election candidate and I thought that the Clean Election process was quite straightforward.

I hope you have a pleasant summer.

Sincerely,

Pat Flood  
State Representative Dist 82 Winthrop and Readfield

# Agenda

## Item #11



# 123rd MAINE LEGISLATURE

## FIRST REGULAR SESSION-2007

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Legislative Document

No. 1877

H.P. 1309

House of Representatives, April 26, 2007

**Resolve, Regarding Legislative Review of Portions of Chapter 3:  
Maine Clean Election Act and Related Provisions, a Major  
Substantive Rule of the Commission on Governmental Ethics and  
Election Practices**

(EMERGENCY)

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Reported by Representative PATRICK of Rumford for the Commission on Governmental Ethics and Election Practices pursuant to the Maine Revised Statutes, Title 5, section 8072.

Reference to the Committee on Legal and Veterans Affairs suggested and ordered printed under Joint Rule 218.

*Millicent M. MacFarland*  
MILLICENT M. MacFARLAND  
Clerk



94-270 COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES

Chapter 3: MAINE CLEAN ELECTION ACT AND RELATED PROVISIONS

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SECTION 1. APPLICABILITY

This chapter applies to candidates running for Governor, State Senator and State Representative who choose the alternative campaign financing option established by the Maine Clean Election Act for elections to be held beginning in the year 2000. Candidates participating in the Maine Clean Election Act must comply with these rules and all other applicable election and campaign laws and regulations. Some sections in this chapter also apply to and impose obligations on ~~traditionally~~privately financed candidates and political committees that raise contributions and make expenditures in races involving Maine Clean Election Act candidates.

SECTION 2. PROCEDURES FOR PARTICIPATION

1. Declaration of Intent. A participating candidate must file a Declaration of Intent before within five days of collecting qualifying contributions. The Commission will provide a form for this purpose.
2. Content. The Declaration of Intent must include the following information:
  - A. an affirmation that the candidate is seeking certification as a Maine Clean Election Act candidate;
  - B. an affirmation that the candidate understands that has not collected any qualifying contributions collected more than five days before signing filing the Declaration of Intent will not be counted toward the eligibility requirement;
  - C. an affirmation that the candidate has not accepted any contributions, except for seed money contributions, after becoming a candidate;
  - D. an affirmation that the candidate has disposed of any campaign surplus before becoming a candidate for the new election, as required by paragraph 3.C [Campaign Surplus] of this section;
  - E. an affirmation that if the candidate has any campaign deficit, that the candidate will not accept contributions to repay that deficit as a participating candidate or certified candidate, except that the candidate may forgive any campaign loans to himself or herself made during any previous campaigns;

- F. an affirmation that the candidate will continue to comply with applicable seed money restrictions and other requirements of the Act including, but not limited to, procedures for collecting qualifying contributions;
- G. ~~information identifying the candidate's treasurer, political committee, campaign finance account, social security number, and/or federal tax identification number;~~ an affirmation that the candidate has read and will comply with the Commission's guidelines on permissible expenditures; and
- H. authorization by the candidate for the Commission, its agents or representatives to conduct financial audits of the candidate's campaign financial records and account(s).

3. Seed Money Restrictions.

- A. General. After becoming a candidate and before certification, a participating candidate may collect and spend only seed money contributions. The restrictions on seed money contributions apply to both cash and in-kind contributions.
- B. Total Amount.
  - (1) A participating candidate must limit the candidate's total seed money contributions to the following amounts:
    - (a) fifty thousand dollars for a gubernatorial candidate;
    - (b) one thousand five hundred dollars for a candidate for the State Senate; or
    - (c) five hundred dollars for a candidate for the State House of Representatives.
  - (2) Notwithstanding any other provision of this chapter, a candidate may carry forward to a new candidacy of that candidate campaign equipment or property, subject to the reporting requirements of Title 21-A, chapter 13 [Campaign Reports and Finances].
  - (3) The Commission periodically will review these limitations and, through rulemaking, revise these amounts to ensure effective implementation of the Act.
- C. Campaign surplus. A candidate who has carried forward campaign surplus according to Title 21-A, chapter 13, subchapter II [§ 1017(8) and §1017(9)], and who intends to become a participating candidate, must

dispose of campaign surplus in accordance with the requirements of Title 21-A, chapter 13, subchapter II [§ 1017(8)]; provided, however, that a candidate may carry forward only those portions of campaign surplus that comply with the provisions of this Act regarding seed money contributions [§ 1122(9) and 1125(2)]. Any campaign surplus (excluding campaign equipment or property) carried forward under this provision will be counted toward that candidate's total seed money limit.

INFORMATIONAL NOTE: The Commission will provide educational materials to all former candidates who have a campaign surplus describing the requirement that individuals must dispose of campaign surplus to remain eligible for participation as a Maine Clean Election Act candidate.

- D. Return of Contributions Not in Compliance with Seed Money Restrictions. A participating candidate who receives a contribution exceeding the seed money per donor restriction or the total amount restriction must immediately return the contribution and may not cash, deposit, or otherwise use the contribution.
- E. Case-by-Case Exception. A participating candidate who has accepted contributions or made expenditures that do not comply with seed money restrictions may petition the Commission to remain eligible for certification as a Maine Clean Election Act candidate. The Commission may approve the petition and restore a candidate's eligibility for certification if the candidate successfully establishes all of the following criteria:
- (1) the failure to comply was the result of an unintentional error;
  - (2) the candidate immediately returned all contributions that did not comply with seed money restrictions or paid for goods or services contributed that did not comply with seed money restrictions;
  - (3) the candidate petitioned the Commission promptly upon becoming aware of the unintentional error; and
  - (4) the failure to comply did not involve expenditures by the participating candidate significantly in excess of seed money total amount restrictions or otherwise constitute systematic or significant infractions of seed money restrictions.
- F. After becoming a candidate and prior to certification, Aaccepting a loan from any source including a financial institution ~~prior to certification,~~ ~~or~~ and spending money received in the form of a loan, ~~is a~~ are violations of the seed money restrictions of the Act.

- G. Other. A seed money contributor may also make a qualifying contribution to the same participating candidate provided that the contributor otherwise meets the requirements for making a qualifying contribution.

4. Qualifying Contributions.

- A. General. A participating candidate may collect qualifying contributions only during the relevant qualifying period. Qualifying contributions collected more than five days before and only after filing a Declaration of Intent with the Commission will not be counted toward the eligibility requirement. Qualifying contributions must be acknowledged and reported on using forms provided by the Commission. ~~The forms will include an affirmation by the contributor that the contributor received nothing of value in exchange for the signature and contribution.~~

The forms must include:

- (1) the name, residential address and signature of the contributor;
- (2) an affirmation by the contributor that the contribution was made with his or her personal funds, in support of the candidate and that the contributor did not receive anything of value in exchange for his or her signature and contribution;
- (3) a clear and conspicuous statement that the candidate is collecting signatures and qualifying contributions in order to obtain public funding to finance the candidate's campaign;
- (4) the signature of the municipal registrar or his or her designee verifying the voter registration of the contributors listed on the form; and
- (5) the signature of any person, other than the candidate, who circulated the forms and collected signatures and contributions, whether the services were provided for compensation or on a volunteer basis, affirming that he or she collected the qualifying contributions, that the contributor signed the form in the circulator's presence, that to the best of the circulator's knowledge and belief each signature is the signature of the person whose name it purports to be and that the contribution came from the personal funds of the contributor, that the circulator did not give anything of value to the contributor in exchange for the contribution and signature, and that the circulator did not represent the purpose of collecting the contributions and signatures to be for any purpose other than obtaining public funds to finance the candidate's

campaign; the form must also include the residential and mailing addresses and telephone number of the circulator.

- B. Required Number of Qualifying Contributions. A participating candidate must obtain the number of qualifying contributions during the qualifying period as required by the Act [§ 1122(7); § 1122(8); § 1125(3)].
- C. Exchanges For Qualifying Contributions Prohibited.
- (1) A participating candidate or an agent of that candidate may not give or offer to give a payment, gift, or anything of value in exchange for a qualifying contribution.
  - (2) This provision does not prohibit a participating candidate or that candidate's agent from collecting qualifying contributions at events where food or beverages are served, or where campaign promotional materials are distributed, provided that the food, beverage, and campaign materials are offered to all persons attending the event regardless of whether or not particular persons make a qualifying contribution to the participating candidate.
  - (3) This provision does not prohibit a candidate from using seed money to pay the fec for a money order provided the qualifying contributor pays the \$5 amount reflected on the money order as permitted by 21-A M.R.S.A. §1125(3).
- D. Checks Drawn on Business Accounts. Qualifying contributions must be made with the personal funds of the contributor. The Commission will not count a check drawn from an account with a business name toward the eligibility requirements, unless the name of the contributor is included in the name of the account or the candidate submits a written statement from the contributor indicating that he or she uses the business account for personal expenses.
- E. Family Members. Family members, domestic partners, and live-in caregivers who reside in a single household may make qualifying contributions in the form of a single check or money order of more than \$5 provided that:
- (1) all contributors sign the receipt and acknowledgement form;
  - (2) all contributors are registered to vote at the address of the household; and
  - (3) all contributions are made with the personal funds of the contributors.

F. Verification of Registered Voters.

- (1) Before submitting qualifying contributions to the Commission, a participating candidate must establish that contributors who made qualifying contributions to that candidate are registered voters.
- (2) A participating candidate must obtain written verification from the Registrar of the number of persons providing qualifying contributions who are registered voters within the electoral division for the office the candidate is seeking.
- (3) Upon request of a participating candidate, and within 10 business days after the date of the request, the Registrar must verify the names of contributors of qualifying contributions who are registered voters within the electoral division for the office the candidate is seeking.

G. Timing of Verification. For purposes of this chapter, the Commission will deem verification of registered voters by the Registrar at any time during the qualifying period to be an accurate verification of voter registration even if the registration status of a particular voter may have changed at the time the Commission determines certification of the participating candidate. Proof of voter verification submitted after the qualifying period will not be accepted by the Commission and those qualifying contributions will not be counted toward the number required for certification.

~~H. Submission of Verified Qualifying Contributions. A participating candidate may submit a completed request for certification to the Commission at any time during the qualifying period. The request will be deemed complete and the candidate will be certified only if:~~

- ~~(1) the request is accompanied by the original signed qualifying contributions forms that have been verified by the Registrar(s) of the electoral division for the office the candidate is seeking; or~~
- ~~(2) the candidate submits to the Commission during the qualifying period a statement that such signature forms have been submitted to the Registrar(s) for verification on a specific date and the verified signature forms will be received by the Commission within 10 business days thereafter, and submits to the Commission during the qualifying period photocopies of the signature forms.~~

### SECTION 3. CERTIFICATION OF PARTICIPATING CANDIDATES

1. Request for Certification. A participating candidate may submit a completed request for certification to the Commission at any time during the qualifying period but not later than 5:00 p.m. on the last day of the relevant qualifying period. The request will be deemed complete and considered for certification only when the candidate has submitted to the Commission:

- A. After final submission of qualifying contributions, but not later than 5:00 p.m. on the last day of the relevant qualifying period, a participating candidate may request certification as a Maine Clean Election Act candidate, the qualifying contributions attached to the corresponding original receipt and acknowledgement forms that have been verified by the Registrar(s) of the electoral division for the office the candidate is seeking;
- B. All participating candidates must submit qualifying contributions in alphabetical order to the Commission along with qualifying contribution forms and an alphabetical list of all contributors and their town or city of residence, sorted alphabetically by the contributor's last name; of qualifying contributions when applying for certification as a Maine Clean Election Act candidate. Candidates who do not submit the required number of original qualifying contributions within the qualifying period will not be certified.
- C. The Commission will review candidate applications for certification in the order in which they are received, except that it will give priority to those candidates who are in a contested primary election a seed money report of contributions, expenditures, and obligations made or incurred after becoming a candidate, including a report of any unspent seed money; and
- D. a signed request for certification on a form provided by the Commission which contains an affirmation by the candidate that he or she has complied with all seed money and qualifying contribution requirements, has established a separate federally-insured bank account for campaign purposes and, if applicable, that any person who circulated receipt and acknowledgement forms and collected qualifying contributions acted with the candidate's knowledge and consent, and any other information relevant to the certification process.
- E. A candidate may request an extension of time to comply with paragraphs B, C, and D. The Commission staff shall grant all reasonable requests or state in writing the reasons for denying the request. The Commission and the Commission staff may not grant an extension of time to comply with paragraph A.

2. ~~Reporting. Together with the request for certification, a participating candidate must report all seed money contributions received, any other contributions received, and expenditures and obligations made after becoming a candidate.~~ Order of Review. The Commission will review candidate requests for certification in the order in which they are received, except that it will give priority to those candidates who are in a contested primary election.
3. ~~Unspent Seed Money. Together with the request for certification, a participating candidate must report any unspent seed money.~~ In order to distribute funds expeditiously, the Commission will deduct from the initial distribution from the Fund to a certified candidate an amount equal to the amount of unspent seed money reported by that candidate.
4. Certification. The Commission will certify a candidate as a Maine Clean Election Act candidate upon the participating candidate's satisfaction of the requirements of the Act [§ 1125] and this chapter.
5. Appeals. Any appeals challenging a certification decision by the Commission must be in accordance with the Act [§ 1125(14)].

#### SECTION 4. FUND ADMINISTRATION

1. Coordination with State Agencies. The Commission will coordinate with the ~~Bureau of Accounts and Control~~ Office of the Controller and other relevant State agencies to ensure the use of timely and accurate information regarding the status of the Fund.
2. Publication of Fund Revenue Estimates. By September 1st preceding each election year, the Commission will publish an estimate of revenue in the Fund available for distribution to certified candidates during the upcoming year's election. The Commission will update the estimate of available revenue in the Fund after April 15th of an election year and again within 30 days after the primary election in an election year.
3. Computation of Disbursement Amounts. By July 1, 1999, and at least every 4 years after that date, the Commission will determine the amount of revenue to be distributed to certified candidates based on the type of election and office in accordance with the Act [§ 1125(8)].
4. Distributions Not to Exceed Amount in Fund. If the Commission determines that the revenues in the Fund are insufficient to meet distributions under this chapter, the Commission will permit certified candidates to accept and spend contributions in accordance with the Act [§ 1125(13)]. The Commission will notify participating and certified candidates in writing of any projected shortfall in the

Fund and will specify timelines and procedures for compliance with this chapter in the event of any such shortfall.

## SECTION 5. DISTRIBUTION OF FUNDS TO CERTIFIED CANDIDATES

### 1. Fund Distribution.

- A. Establishment of Account. Upon the certification of a participating candidate, the Commission will establish an account with the ~~Bureau of Accounts and Control~~ Office of the Controller, or such other State agency as appropriate, for that certified candidate. The account will contain sufficient information to enable the distribution of revenues from the Fund to certified candidates by the most expeditious means practicable that ensures accountability and safeguards the integrity of the Fund.
- B. Manner of Distribution of Fund. The Commission will authorize distribution of revenues from the Fund to certified candidates by the most expeditious means practicable that ensures accountability and safeguards the integrity of the Fund. Such means may include, but are not limited to:
- (1) checks payable to the certified candidate or the certified candidate's political committee; or
  - (2) electronic fund transfers to the certified candidate's or the certified candidate's political committee's campaign finance account.

### 2. Timing of Fund Distributions.

- A. Distribution of Applicable Amounts. The Commission will authorize the initial distribution of applicable amounts from the Fund to certified candidates in accordance with the time schedule specified in the Act [§ 1125(7)] and this Chapter ~~{see, 3.4}~~.

~~INFORMATIONAL NOTE: An initial distribution from the Fund will not be made to a candidate until the Commission has certified that candidate in accordance with the provisions of the Act and this chapter. The initial distribution may be delayed if a candidate submits a list of qualifying contributors to the Registrar for verification during the last 10 business days of the qualifying period.~~

- B. Matching Fund Allocations. At any time after certification, revenues from the Fund may be distributed to certified candidates in accordance with subsection 3, below.

C. Advances.

- (1) To facilitate administration of the Matching Fund Provision of this chapter, and to encourage participation in the Act, the Commission may authorize the advance distribution of revenues from the Fund to certified candidates. In determining whether to authorize such advances and the amounts of any such advances, the Commission will consider the amount of revenue in the Fund, the number of certified candidates, the number of nonparticipating candidates, and information contained in campaign finance and independent expenditure reports.
- (2) A certified candidate may only draw upon, spend or otherwise use, such advance Fund distributions after receiving written notification from the Commission authorizing a Matching Fund allocation in a specified amount. Written notification by the Commission may be by letter, facsimile or electronic means.

3. Matching Fund Provision.

A. General. The Commission will authorize immediately an allocation of matching funds to certified candidates in accordance with the Act when the Commission determines that the eligibility for receipt of matching funds has been triggered [§ 1125(9)].

~~B. Computation and Distribution. The Commission will determine a certified candidate's allocation of matching funds, if any, in the following manner:~~

~~(1) The Commission first will add —~~

~~(a) the sum of an opposing candidate's expenditures and obligations, or funds raised and borrowed, whichever is greater, including surplus or unspent funds carried forward from a previous primary, general, or special election to the current election; and~~

~~(b) the sum of the independent expenditures made expressly advocating the defeat of the certified candidate or the election of the same opposing candidate.~~

~~(2) The Commission then will subtract —~~

~~(a) the sum of the independent expenditures made expressly advocating the defeat of the same opposing candidate; and~~

- ~~(b) the sum of the independent expenditures made expressly advocating the election of the certified candidate; and~~
  - ~~(c) the sum of any matching funds already provided to the certified candidate; and~~
  - ~~(d) the sum of any seed money raised in computing matching fund eligibility for a primary, general, or special election, as applicable; or any surplus or unspent funds carried forward from a previous primary election to the subsequent general election in computing matching fund eligibility for a general election.~~
- ~~(3) If the final computed amount is greater than the applicable distribution amount for the certified candidate, then the Commission will immediately authorize the distribution of a Matching Fund allocation to the certified candidate equal to that excess.~~
- ~~(4) The Commission will make computations promptly upon the filing of campaign finance reports and independent expenditure reports.~~
- ~~(5) To prevent the abuse of the Matching Fund Provision, the Commission will not base any calculation on independent expenditures that, although containing words of express advocacy, also contain other words or phrases that have no other reasonable meaning than to contradict the express advocacy. For example, expenses related to a communication saying, "Vote for John Doe—he's incompetent and inexperienced," will not be considered a communication in support of John Doe in the calculation of matching funds.~~

B. Matching Fund Computation Involving Only Certified Candidates.

- (1) For each certified candidate, the Commission will
- (a) add to the initial distribution amount for that election:
    - (i) the sum of any matching funds previously provided for that election, and
    - (ii) the sum of independent expenditures made in support of each certified candidate; and
  - (b) subtract the sum of independent expenditures made in opposition to each certified candidate.

(2) The Commission will compare the final computed amounts and will immediately authorize a matching fund allocation equal to the difference to the certified candidate with the lesser amount.

(3) In computations involving only certified candidates, the Commission will not use seed money raised or unspent funds remaining after a primary election in computing the amount of matching funds.

C. Matching Fund Computation Based on Nonparticipating Candidates' Receipts or Expenditures. In races in which there is at least one certified and one nonparticipating candidate, and the matching fund computation is triggered by the financial activity of nonparticipating candidate, including any independent expenditures in support of the nonparticipating candidate:

(1) The Commission will first determine the applicable amount for the nonparticipating candidate

(a) by adding:

(i) the sum of the nonparticipating candidate's expenditures, obligations and in-kind contributions, or the sum of the nonparticipating candidate's cash and in-kind contributions and loans, including surplus or unspent funds carried forward from a previous election to the current election, whichever is greater, and

(ii) the sum of independent expenditures made in support of the same nonparticipating candidate; and

(b) by subtracting the sum of independent expenditures made in opposition to the same nonparticipating.

(2) The Commission then will determine the applicable amount for the certified candidate

(a) by adding:

(i) the amount of the initial distribution for that election;

(ii) the sum of independent expenditures made in support of the certified candidate;

(iii) the sum of matching fund allocations already provided to the certified candidate; and

(iv) the amount of:

a) any seed money raised by an enrolled certified candidate in a primary or special election or by a replacement candidate in a general election; or

b) any unspent funds carried forward from the primary election to the subsequent general election by an enrolled certified candidate in a general election; or

c) any seed money raised and, if applicable, any other distribution received prior to the general election distribution by an unenrolled certified candidate in a general or special election; and

(b) by subtracting the sum of independent expenditures made in opposition to the same certified candidate.

(3) The Commission will compare the final computed amounts and, if the amount for the certified candidate is less than the amount for the nonparticipating candidate, will immediately authorize a matching fund allocation equal to the difference to the certified candidate.

D. Matching Fund Computation Not Involving a Nonparticipating Candidate. In races in which there are two or more certified candidates and at least one nonparticipating candidate,

(1) if the matching fund computation is triggered by an independent expenditure in support of or opposition to a certified candidate, and

(2) the campaign totals, including independent expenditures, of any nonparticipating candidate in the race are equal to or less than the campaigns totals, including independent expenditures, of at least one certified candidate in the race; then

(3) the matching fund computation must be completed according to the procedure in paragraph B of this subsection.

E. The Commission will make computations promptly upon the filing of campaign finance reports and independent expenditure reports.

- F. To prevent the abuse of the Matching Fund Provision, the Commission will not base any calculation on independent expenditures that, although containing words of express advocacy, also contain other words or phrases that have no other reasonable meaning than to contradict the express advocacy. For example, expenses related to a communication saying, "Vote for John Doe -- he's incompetent and inexperienced," will not be considered a communication in support of John Doe in the calculation of matching funds.
- CG. Matching Fund Cap. Matching funds are limited to 2 times the amount originally distributed to a certified candidate from the Fund for that election. Certified candidates are not entitled to cumulative matching funds for multiple opponents.
- DH. Other. Any distribution based on reports and accurate calculations at the time of distribution is final, notwithstanding information contained in subsequent reports.
- EI. Coordination with Other State Agencies. The Commission will coordinate with the ~~Bureau of Accounts and Control~~ Office of the Controller and other relevant State agencies to implement a mechanism for the distribution of Fund revenues to certified candidates that is expeditious, ensures public accountability, and safeguards the integrity of the Fund.
- FJ. Disbursements With No Campaign Value. If a ~~traditionally privately~~ financed candidate has received monetary contributions which are disbursed in ways that do not in any way influence the nomination or election of the candidate, those receipts will not be considered by the Commission in calculating matching funds for his or her opponent. Such disbursements may include repaying a loan received by the candidate, refunding a contribution to a contributor, or transferring funds to a party or political committee for purposes that do not relate to the candidate's race.
4. Advance Purchases of Goods and Services for the General Election.
- A. If, prior to the primary election, a candidate purchases or receives in-kind contributions-a preponderance of consulting services, or the design, printing, or distribution of campaign literature and advertising, including radio and television advertising, purchased prior to the primary election by an opponent of a certified Maine Clean Election Act candidate prior to the primary are used but uses or will use a preponderance of those services exclusively for the general election, then the portion used or to be used for the general election must be counted as a general election receipt or expenditure in calculating the amount of matching funds for the any certified Maine Clean Election Act candidate in the same race.

- B. If a certified candidate in a general election believes that an opponent, or person or committee making an independent expenditure, has failed to disclose an advance purchase for the general election, the certified candidate shall submit a written request for an investigation to the Commission no later than August 30 of the election year, or within 30 days of the opponent's filing of the 42-day post-primary report, whichever is later. The request must identify the pre-primary election expenditure that is believed to be for the general election and must state a specific basis for believing that the goods and services purchased were not used for the primary election.
- C. The Commission will request a response from the opposing candidate or other respondent, and will make a determination whether the expenditure should be counted toward the certified candidate's eligibility for matching funds.

#### SECTION 6. LIMITATIONS ON CAMPAIGN EXPENSES.

A certified candidate must:

1. limit the candidate's campaign expenditures and obligations to the applicable Clean Election Act Fund distribution amounts plus any authorized Matching Fund allocations;
2. not accept any contributions unless specifically authorized in writing to do so by the Commission in accordance with the Act [§ 1125(2) and § 1125(13)];
3. use revenues distributed from the Fund only for campaign-related purposes as outlined in guidelines published by the Commission, and not for personal or any other use;
4. not use revenues distributed from the Fund to purchase goods to sell for profit;
5. not spend more than the following amounts of Fund revenues on post-election parties, thank you notes, or advertising to thank supporters or voters:
  - A. \$250 for a candidate for the State House of Representatives;
  - B. \$750 for a candidate for the State Senate; and
  - C. \$2,500 by a gubernatorial candidate.

The candidate may also use his or her personal funds for these purposes; and

6. not use revenues distributed from the Fund for the payment of fines, forfeitures, or civil penalties, or for the defense of any enforcement action of the Commission.

## SECTION 7. RECORD KEEPING AND REPORTING

1. Record Keeping by Participating and Certified Candidates. Participating and certified candidates and their treasurers must comply with applicable record keeping requirements set forth in Title 21-A, chapter 13, subchapter II [§1016], and chapter 14 [§1125(12-A)]. Failure to keep or produce the records required under Title 21-A and these rules is a violation of the Act for which the Commission may impose a penalty. The Commission may also require the return of funds for expenditures lacking supporting documentation if a candidate or treasurer is found in violation of the record keeping requirements. The candidate or the treasurer shall have an opportunity to be heard prior to any Commission decision imposing a penalty or requiring the return of funds under this section. In addition to these specific actions, the Commission may also take any other action authorized under Title 21-A.
  - A. Fiduciary Responsibility for Funds. All funds provided to a certified candidate or to a candidate's authorized political committee must be segregated from, and may not be commingled with, any other funds, other than unspent seed money. Matching fund advance revenues for which no spending authorization has been issued must be deposited in a federally insured account~~financial institution until the candidate receives and may not be used until the candidate receives~~ authorization to spend those funds.
  - B. Meal Expenses. A candidate or treasurer must obtain and keep a record for each meal expenditure of more than \$50. The record must include itemized bills for the meals, the names of all participants in the meals, the relationship of each participant to the campaign, and the specific, campaign-related purpose of each meal.
  - C. Vehicle Travel Expenses. A candidate or treasurer must obtain and keep a record of vehicle travel expenses for which reimbursements are made from campaign funds. Reimbursement may must be based on the standard mileage rate prescribed for employees of the State of Maine for the year in which the election occurs, using either the standard mileage rate or actual expenses. The candidate must use one method exclusively during an election campaign. For each trip for which reimbursement is made, a record must be maintained showing the dates of travel, the number of miles traveled, the origination, destination and purpose of the travel, and the total amount claimed for reimbursement. A candidate may be reimbursed for vehicle travel expenses at a rate

less than the standard mileage rate. A candidate may also reimburse a volunteer for vehicle travel expenses at a rate less than the standard mileage rate as long as the difference does not exceed \$100 per volunteer per election. The Commission may disallow any vehicle travel reimbursements for which the candidate or the treasurer cannot produce an accurate record.

- ~~(1) Standard Mileage Rate. The standard mileage rate is a set rate per mile that a candidate may use to compute reimbursable vehicle travel expenses. Reimbursement should be calculated using the standard mileage rate currently prescribed for employees of the State of Maine. For each trip for which reimbursement is made, a record should be maintained showing the dates of travel, the number of miles traveled, the origination, destination and purpose of the travel, and the total amount claimed for reimbursement.~~
- ~~(2) Actual Expenses. Actual expenses include the pro-rata, campaign-related share of vehicle depreciation or lease payments, maintenance and repairs, gasoline (including gasoline taxes), oil, insurance, and vehicle registration fees, etc. For reimbursement using this method, the candidate must maintain detailed records reflecting use of the vehicle for campaign-related purposes. The records must include the dates the vehicle was used for campaign-related purposes, the total mileage the vehicle was used for campaign-related purposes, the total mileage the vehicle was used for all purposes during the period for which reimbursement is made, and the percentage of total vehicle usage that the vehicle was used for campaign-related purposes.~~

## 2. Reporting by Participating and Certified Candidates.

- A. General. Participating and certified candidates must comply with applicable reporting requirements set forth in Title 21-A, chapter 13, subchapter II [§ 1017].
- B. Return of Matching Fund Advances and Unspent Fund Revenues. Matching Fund advance revenues that have not been authorized for spending and unspent Fund revenues shall be returned to the Fund as follows:
  - (1) Unauthorized Matching Funds. Candidates must return all ~~M~~atching ~~F~~und advance revenues for which no spending authorization was issued prior to an election to the Commission by

check or money order payable to the Fund within 2 weeks following the date of the election.

- (2) Unspent Fund Revenues for Unsuccessful Primary Election Candidates. Upon the filing of the 42-day post-primary election report for a primary election in which a certified candidate was defeated, that candidate must return all unspent Fund revenues to the Commission by check or money order payable to the Fund, except that a gubernatorial candidate may be allowed to reserve up to \$2,000 in order to defray expenses associated with an audit by the Commission.
- (3) Unspent Fund Revenues for All General and Special Election Candidates. Upon the filing of the 42-day post-election report for a general or special election, all candidates must return all unspent Fund revenues to the Commission by check or money order payable to the Fund, except that a gubernatorial candidate may be allowed to reserve up to \$3,500 in order to defray expenses associated with an audit by the Commission.

C. Liquidation of Property and Equipment. Property and equipment that is not exclusive to use in a campaign (e.g., computers and associated equipment, etc.) that has been purchased with Maine Clean Election Act funds loses its campaign-related purpose following the election. Such property and equipment must be liquidated at its fair market value and the proceeds thereof reimbursed to the Maine Clean Election Fund as unspent fund revenues in accordance with the schedule in paragraph B above.

- (1) The liquidation of campaign property and equipment may be done by sale to another person or purchase by the candidate.
- (2) Liquidation must be at the fair market value of the property or equipment at the time of disposition. Fair market value is determined by what is fair, economic, just, equitable, and reasonable under normal market conditions based upon the value of items of similar description, age, and condition as determined by acceptable evidence of value.

## SECTION 8. RECOUNTS, VACANCIES, WRITE-IN CANDIDATES, SPECIAL ELECTIONS

1. Recounts. After a primary election, if there is a recount governed by Title 21- A, chapter 9, subchapter III, article III [§ 737-A], and either the leading candidate or the 2nd-place candidate is a certified candidate, the following provisions will apply:

- A. If the margin between the leading candidate and the 2nd-place candidate is less than 1% of the total number of votes cast in that race and a recount is presumed necessary, the certified candidate immediately must halt the expenditure of revenues disbursed to the candidate from the Fund upon receiving notice of the recount until the recount is complete.
  - B. If the recount results in a changed winner, the certified candidate who originally received the disbursement must return any unspent distributions from the Fund to the Commission, payable to the Fund. If the new winner is a certified candidate, the Commission will distribute the applicable disbursement amount to the candidate.
  - C. If the margin between the leading candidate and 2nd-place candidate is 1% or greater of the total number of votes cast in that race and the 2nd-place candidate requests a recount, the leading candidate, if a certified candidate, is not required to freeze expenditures of the disbursement.
  - D. If the recount results in a changed winner, the certified candidate must return any unspent distributions from the Fund to the Commission, payable to the Fund. If the new winner is a certified candidate, the Commission will distribute the applicable disbursement amount to the candidate.
2. Death, Withdrawal, or Disqualification of a Candidate During Campaign.
- A. Death, Withdrawal, or Disqualification Before Primary Election. If a candidate dies, withdraws, or is disqualified before the primary election, the Commission will establish a qualifying period during which any replacement candidate may become a participating candidate, collect qualifying contributions, and apply to become a certified candidate.
  - B. Death, Withdrawal, or Disqualification After the Primary Election and before 5:00 p.m. on the 2nd Monday in July Preceding the General Election. If a candidate dies, withdraws, or is disqualified before 5:00 p.m. on the 2nd Monday in July preceding the general election, any replacement candidate will have a qualifying period from the time of the candidate's nomination until 30 days after the 4th Monday in July as a participating candidate to collect qualifying contributions and request certification.
  - C. Death, Withdrawal, or Disqualification after 5:00 p.m. on the 2nd Monday in July Preceding the General Election. If a candidate dies, withdraws, or is disqualified after 5:00 p.m. on the 2nd Monday in July preceding the general election, the Commission will establish a qualifying period during which any replacement candidate may become a participating candidate, collect qualifying contributions, and apply to become a certified candidate.

- D. Replacement Candidates Who Are Participating Candidates. Any replacement candidate choosing to become a participating candidate must otherwise comply with the requirements of this chapter and the Act including, but not limited to, seed money limits and qualifying contribution requirements. The Commission will notify any replacement candidates of the opportunity to participate in the Act and the procedures for compliance with this chapter during a special election.
3. Write-In Candidates.
- A. Write-in candidates are subject to the registration requirements of Title 21-A M.R.S.A. Section 1013-A and the campaign finance reporting requirements of Section 1017, as soon as they qualify as a nominee pursuant to 21-A M.R.S.A. Section 723, file a declaration of write-on candidacy with the Secretary of State pursuant to 21-A M.R.S.A. Section 722-A, or receive contributions or make expenditures with the intent of qualifying as a candidate in the primary or general election, whichever first occurs.
- B. Write-in candidates may not participate in the Maine Clean Election Act, except as provided in paragraph C.
- C. A write-in candidate in a primary election who becomes a party's nominee may participate in the Maine Clean Election Act for the general election. The Commission will establish a qualifying period during which the candidate may become a participating candidate, collect qualifying contributions, and apply to become a certified candidate.
- D. A candidate who is participating in the Maine Clean Election Act and who has no opponent listed on the ballot will be presumed to be in an uncontested election even if there are one or more individuals running as write-in candidates. The participating candidate may rebut this presumption by presenting evidence to the Commission that the write-in opponent(s) received or spent substantial campaign funds. Based upon the evidence presented, the Commission may make a determination that it is a "contested election" and make a distribution of public funds to the participating candidate on that basis.
4. Special Election When One or More Candidates Desire to Become Certified Candidates. If a vacancy occurs in the office of Governor, Senator, or Representative because an incumbent dies, resigns, becomes disqualified, or changes residence to another electoral division, and a special election will be held to fill the vacant office, the following provisions apply:

- A. The Commission, in consultation with the Secretary of State, will establish a qualifying period during which any candidate in a special election may decide to become a participating candidate, collect qualifying contributions, and apply to become a certified candidate; and
  - B. Any candidate in a special election must otherwise comply with the requirements of this chapter and the Act including, but not limited to, seed money limits and qualifying contribution requirements. The Commission will notify any candidates of the opportunity to participate in the Act and the procedures for compliance with this chapter during a special election.
5. Return of Unspent Fund Revenues. Any time a certified candidate withdraws, is disqualified, or dies before an election, the candidate or the candidate's agent must return to the Commission all unspent amounts distributed to the candidate by check or money order payable to the fund, within 2 weeks of the termination of the candidacy.

**STATUTORY AUTHORITY:**

1 M.R.S.A. § 1003(1); 21-A M.R.S.A. § 1126.

**EFFECTIVE DATE:**

November 1, 1998

**NON-SUBSTANTIVE CHANGES:**

December 3, 1998 - minor spelling and formatting.

**2002 MAJOR SUBSTANTIVE RULE-MAKING****AMENDMENTS PROVISIONALLY ADOPTED:**

February 13, 2002

**COMMISSION ADOPTION OF FINAL RULE:**

May 1, 2002

**EFFECTIVE DATE:**

July 31, 2002

**2005 MAJOR SUBSTANTIVE RULE-MAKING****DATE OF PROVISIONAL ADOPTION OF AMENDMENTS:**

April 8, 2005

**COMMISSION ADOPTION OF FINAL AMENDMENTS:**

July 13, 2005