

Agenda

Item #8



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

ADDITIONAL MATERIALS

RE: Item #7
July 16, 2007

To: Commission Members

From: Jonathan Wayne, Executive Director

Date: July 13, 2007

Re: Options for Future Legislative Proposals: Maine Clean Election Act Candidates
Using Public Funds to Pay Family Members

In the Commission's bill earlier this year, the Commission proposed that Maine Clean Election Act (MCEA) candidates should be prohibited from using MCEA funds to pay family members for services rendered to the campaign. (Section B-6 of L.D. 1854) This originally became a concern for the staff after the 2004 elections. Although few candidates chose to pay family members, the staff made the proposal because of a concern that the practice erodes public confidence in the MCEA.

The Commission's oversight committee rejected the proposal. The committee considered the issue from the vantage point of a legislative candidate who receives far less public funds than a gubernatorial candidate. The committee questioned why a House or Senate candidate should be prohibited from paying a small amount (e.g., \$200) to a family member to design a website or provide some other service to the campaign.

Options for Future Proposals

In case you believe the Commission should address the issue again in a future legislative proposal, I see three approaches you could take:

- (1) *Prohibition.* The Commission could continue to advocate that MCEA candidates should be prohibited from paying MCEA funds to a family member for services rendered to a campaign. This would, in effect, require family members to provide services to a campaign on a volunteer basis.

- (2) *Impose a Cap.* The Commission could propose a cap on the amount that a MCEA candidate could pay to family members – for example, \$1,000 to all relatives for the entire campaign. You could propose a single cap for all three offices covered by the MCEA (House, Senate, Governor) or different maximums for the three offices. This would allow candidates some flexibility to pay family members, which was preferred by the Commission's oversight committee.
- (3) *Advocate for Better Disclosure.* The Commission could require by rule that if a MCEA candidate pays public funds to a relative of the candidate or a business that is affiliated with a relative, the campaign must disclose the family relationship on Schedule B of the campaign's financial reports. The rule would be major substantive and would be subject to legislative approval.

Conflict of Interest

The Commission's auditor has proposed that officers of a MCEA campaign or any other person involved in authorizing or making expenditures of MCEA funds should be barred from any commercial relationship with the campaign. You may wish to consider adopting this rule. I believe such a rule would be within the Commission's authority "to adopt rules to ensure the effective administration of the [MCEA]." 21-A M.R.S.A. §1126.



123rd MAINE LEGISLATURE

FIRST REGULAR SESSION-2007

Legislative Document

No. 1854

S.P. 668

April 12, 2007

An Act Regarding Campaign Finance Reporting and the Maine Clean Election Act

Reported by Senator MARRACHÉ of Kennebec for the Commission on Governmental Ethics and Election Practices pursuant to the Maine Revised Statutes, Title 1, section 1009.

Received by the Secretary of the Senate on April 11, 2007. Referred to the Committee on Legal and Veterans Affairs pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

1 F. Knowingly accepted any contributions, including any in-kind contributions, or
2 used funds other than fund revenues distributed under this chapter to make campaign-
3 related expenditures without the permission of the commission;

4 G. Knowingly made a false statement or material misrepresentation in any report or
5 other document required to be filed under this chapter or chapter 13; or

6 H. Otherwise substantially violated the provisions of this chapter or chapter 13.

7 The determination to revoke the certification of a candidate must be made by a vote of the
8 members of the commission after an opportunity for a hearing. A candidate whose
9 certification is revoked shall return all unspent funds to the commission within 3 days of
10 the commission's decision and may be required to return all funds distributed to the
11 candidate. In addition to the requirement to return funds, the candidate may be subject to
12 a civil penalty under section 1127. The candidate may appeal the commission's decision
13 to revoke certification in the same manner provided in subsection 14, paragraph C.

14 **6. Restrictions on contributions and expenditures for certified candidates.** After
15 certification, a candidate must limit the candidate's campaign expenditures and
16 obligations, including outstanding obligations, to the revenues distributed to the candidate
17 from the fund and may not accept any contributions unless specifically authorized by the
18 commission. Candidates may also accept and spend interest earned on fund revenues in
19 campaign bank accounts. All revenues distributed to a certified candidate from the fund
20 must be used for campaign-related purposes. The candidate, the treasurer, the candidate's
21 committee authorized pursuant to section 1013-A, subsection 1 or any agent of the
22 candidate and committee may not use these revenues for any but campaign-related
23 purposes. A candidate may not spend fund revenues on payments to the candidate, a
24 member of the candidate's immediate family or a business or nonprofit entity affiliated
25 with the candidate, except to make payment for goods or property provided to the
26 candidate's campaign. A candidate may not use fund revenues to pay or reimburse a
27 member of the candidate's immediate family for services provided to the campaign. The
28 commission shall publish guidelines outlining permissible campaign-related expenditures.

29 **6-A. Assisting a person to become an opponent.** A candidate or a person who later
30 becomes a candidate and who is seeking certification under subsection 5, or an agent of
31 that candidate, may not assist another person in qualifying as a candidate for the same
32 office if such a candidacy would result in the distribution of revenues under subsections 7
33 and 8 for certified candidates in a contested election.

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

37 A. Within 3 days after certification, for candidates certified prior to March 15th of
38 the election year, revenues from the fund must be distributed as if the candidates are
39 in an uncontested primary election.

40 B. Within 3 days after certification, for all candidates certified between March 15th
41 and April 15th of the election year, revenues from the fund must be distributed
42 according to whether the candidate is in a contested or uncontested primary election.

Maine Citizens for Clean Elections

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July 16, 2007

To: Maine Commission on Governmental Ethics and Election Practices

Re: MCEA Candidates Using Public Funds to Pay Family Members

Maine Citizens for Clean Elections

Maine Citizens for Clean Elections (MCCE) is a nonpartisan coalition of groups and individuals which has advocated in support of the Maine Clean Election Act since its inception. Throughout the 10 years of Clean Elections in Maine, MCCE has provided a consistent, nonpartisan voice for the Act. While we have encouraged candidates to use the Clean Election public funding program, we never have and never will endorse or oppose individual candidates or political parties for any reason. Our aim is to make sure the Maine Clean Election Act works well for the people of Maine.

Our Clean Election system has been used successfully and with integrity by hundreds of candidates since it went into effect in 2000. The law's success is a result of strong citizen participation, broad popularity among candidates, and vigorous enforcement by the Ethics Commission. As with all reform laws, continual vigilance is needed to ensure that the law in practice continues to live up to the voters' intent in passing it.

Summary Statement on MCEA Candidates Using Public Funds to Pay Family Members

In our testimony earlier this year on LD 1854, we said

While we understand the concern when a candidate pays a family member with public funds, we believe candidates have the right to pay for campaign related professional services from their Clean Election distribution. We do not think it is appropriate to limit who may provide those professional services.

While we support candidates' right to pay family members for professional services, we do not believe such payments should constitute a windfall for the candidate's family. This is a particular concern in the case of gubernatorial candidates where larger sums of money are available. Such payments should be consistent with what someone else would pay that family member for their professional services in a similar capacity.

For this reason, we feel that it is vital to the integrity of the system that any payments to family members by an MCEA candidate be clearly and transparently disclosed. We believe the most important anti-corruption measure that the Commission could adopt here is a "sunshine" measure – full and timely disclosure would make the facts available to opponents, the press and citizens. We support the Ethics Commission's staff recommendation for disclosure on Schedule B of the campaign's financial reports.

We also support the Commission auditor's proposal that officers of an MCEA candidate campaign or any other person authorized to make expenditures of MCEA funds be barred from any commercial relationship with the campaign.

Maine Citizens for Clean Elections is a nonpartisan coalition of organizations and individuals who worked together to help pass Maine's Clean Election Act and who continue to work together to support and defend its use and the integrity of its implementation. Its members include AARP, Common Cause Maine, the League of Women Voters of Maine, Maine AFL-CIO, Maine People's Alliance and Peace Action Maine.