



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

To: Commission Members and Counsel  
From: Jonathan Wayne, Executive Director  
Date: October 29, 2007  
Re: Additional Matter for Tomorrow's meeting

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On November 6, 2007, special elections will be held to fill five vacancies in the State House of Representatives, including District 99 covering Baldwin, Cornish, Denmark, Limington, and Sebago. In that district, Democratic nominee Kate Smith is running against Republican Ralph W. Sarty, Jr. Both have received funding under the Maine Clean Election Act (MCEA).

As explained below, Ms. Smith has requested that the Commission grant her a waiver of the seed money restrictions with respect to one of her contributions she collected as she was qualifying for public funds.

### Seed Money Restrictions

While candidates are qualifying for public funding under the MCEA, they are permitted to collect optional "seed money contributions" from restricted sources to begin their campaigns. The concept of seed money is that candidates may need some initial campaign funds in order to collect the required number of \$5 qualifying contributions to become eligible for public funding.

Candidates for the House of Representatives are allowed to raise a total of \$500 in seed money, and can collect no more than \$100 from any contributor.

As approved by voters in 1996, prospective MCEA candidates were permitted to collect seed money contributions *only from individuals*. Political action committees, political parties, labor unions, businesses, and associations could not give seed money contributions. Unfortunately, earlier this year this important restriction was *inadvertently* deleted from the definition of seed money in 21-A M.R.S.A. § 1125(9) by Chapter 443 of the Public Laws of 2007:

**9. Seed money contribution.** "Seed money contribution" means a contribution of no more than \$100 ~~per individual~~ made to a participating

candidate, including ~~a contribution from~~ the candidate or the candidate's family spouse or domestic partner. ...<sup>1</sup>

The Commission's oversight committee is planning on drafting retroactive legislation to re-insert the individual-contributor requirement, and will be sending a letter to the Commission verifying that it did not intend to change the requirement.

When the candidates turn in their qualifying paperwork to the Commission to become "certified" (*i.e.*, verified that they have met the qualifications to receive public funding), they submit a "seed money report" showing the sources of their seed money, how they spent it, and their cash balance.

### Waiver of Restrictions

It is not uncommon for candidates seeking to qualify for MCEA funds to inadvertently collect contributions outside the seed money restrictions (*e.g.*, the candidate pays for more than \$100 worth of goods and services or inadvertently accepts and deposits more than the maximum amount of seed money). In these circumstances, the MCEA and Commission Rules contain provisions allowing the Commission to waive unintentional errors provided that the candidate has not gained an advantage on their opponent:

**Seed money restrictions.** To be eligible for certification [by the Commission as a MCEA candidate], a participating candidate may collect and spend only seed money contributions subsequent to becoming a candidate and prior to certification. . . .

A participating candidate who has accepted contributions or made expenditures that do not comply with the seed money restrictions under this chapter may petition the commission to remain eligible for certification as a Maine Clean Election Act candidate in accordance with rules of the commission, if the failure to comply was unintentional and does not constitute a significant infraction of these restrictions. . . . (21-A M.R.S.A. § 1125(2-A))

**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:

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<sup>1</sup> Chapter 443 was based on a bill drafted by the Commission. In the original bill, the Commission proposed a further restriction that seed money could only be contributed by individuals *who were residents of Maine*. The Commission's oversight committee did not approve of this restriction, and deleted it from the Commission's bill. In doing so, the committee inadvertently deleted the requirement that seed money contributions be from individuals only.

- (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.

(Chapter 3, Section 2(3)(E) of Commission Rules)

Since 2000, the Commission has waived the seed money restrictions for a handful of candidates each year who have unintentionally ran afoul of the seed money restrictions. In almost all cases, the Commission has granted the requests for the waivers, which generally have not been contested.

#### **Contribution from Rep. Sean Faircloth's PAC**

When Kate Smith submitted her seed money report, she reported receiving a contribution from Sean Faircloth, who is the Assistant Majority Leader in the House of Representatives. The Commission staff discovered that the contribution actually came from the Faircloth Blue Ribbon political action committee (PAC). (The Commission staff noticed the contribution in reviewing a campaign finance report submitted by the PAC.) Because the source of the contribution was Rep. Faircloth's PAC – and not his personal funds – it did not comply with the traditional restriction that seed money contributions can only be made by individuals. Presently, that requirement is not technically in effect because of the deletion of "per individual" from 21-A M.R.S.A. § 1125(9).

When the Commission's Candidate Registrar, Sandy Thompson, brought up the issue with Ms. Smith by telephone, she stated that she assumed the funds came from Rep. Faircloth's personal funds. Sandy found the candidate's explanation to be credible. Ms. Smith returned the amount of the contribution to Rep. Faircloth, and he has replaced the PAC contribution with \$100 of his personal funds.

Ms. Smith has written a letter requesting an exception to the seed money restrictions with respect to the \$100 contribution from the PAC. She explains that that Sean Faircloth's name "was prominently on the check" and she understood that she was receiving his personal funds. She asks that she be allowed to continue her campaign in the next week as a MCEA candidate.

Rep. Faircloth telephoned the Commission, and was very apologetic. He submitted an e-mail explaining that the error was his – not Ms. Smith’s – and asking that her campaign not be harmed by his mistake. He stated that the title of the checking account on his checks includes both his name and the name of his PAC. I have not received a copy of the check.

#### *Staff Recommendation*

The staff is inclined to recommend the Commission grant the seed money restriction and permit her to continue her campaign as a MCEA candidate. Kate Smith’s acceptance of the PAC contribution seems to meet the requirements of Chapter 3, Section 2(3)(E) of the Commission’s rules. The acceptance of the PAC contribution apparently was unintentional and was quickly rectified. Ms. Smith promptly requested a waiver of the restriction and she did not gain an unfair advantage over her opponent, Mr. Sarty. It is arguable that she should have confirmed with Rep. Faircloth that the contribution was from his personal funds. On the other hand, the contributor’s name was also on the check and it is understandable that the candidate would rely on the contributor’s knowledge of the MCEA program because of his greater campaign experience. The staff will wait until hearing any objection before making a recommendation, but is inclined at this point to recommend granting an exception.

#### **Other Issue – Contribution from Maria Fuentes**

I received word that Ms. Smith’s MCEA status may be challenged on another ground: that her reported seed money contribution of \$20 from Maria Fuentes did not, in fact, occur. I interviewed Ms. Fuentes on October 26, and she confirmed that she made a contribution. Following the interview, she has sent a confirming e-mail. We have contacted all of her seed money contributors, and all but one have confirmed that they made the reported contributions to her. We have not heard back from one contributor. I would be pleased to update you in more depth on this issue at tomorrow’s meeting.

Thank you for your consideration of this memo.

Katherine Smith  
CANDIDATE'S FULL NAME

Page 2 of 7  
(Schedule A only)

**SCHEDULE A  
CASH CONTRIBUTIONS**

- Only individuals may make seed money contributions. Contributions must be from their personal funds and not from other sources. Each contributor may give up to \$100 in seed money. Lobbyists, lobbyist associates, and their employers may not make seed money contributions during the legislative session. Members of the candidate's family may each give up to \$100 in seed money, provided the contributions are from their personal funds.
- Total seed money contributions may not exceed \$50,000 for gubernatorial candidates, \$1,500 for Senate candidates, and \$500 for House candidates.
- Itemize all cash contributions from contributors who have given you more than \$50 in seed money contributions. Both cash and in-kind contributions count toward the \$50 threshold.
- Enter the occupation and employer for every individual contributing more than \$50 in seed money. If you have requested employment information from the contributor and the contributor has not provided it, indicate "information requested" for the occupation and employer.
- For cash contributions totaling \$50 or less, enter "total of contributions \$50 or less" and the total amount on this page. Once a contributor has given you more than \$50 in seed money, you must list that contributor separately.

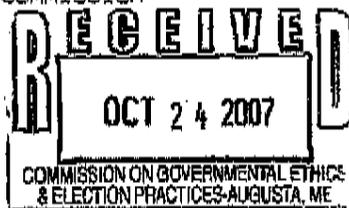
DATE RECEIVED	CONTRIBUTOR'S NAME, ADDRESS, ZIP	OCCUPATION	TYPE (use key code)	AMOUNT
		EMPLOYER		
9/22	Glenn Cummings 24 Nevens St. Portland, ME 04103	<del>MEMBER OF CONGRESS</del> USM University of Maine Southern ME		\$100.00
9/22	Sean Faircloth 299 Pine Street Bangor, ME 04401	<del>ADVISOR</del> University of Maine - Orono		\$100.00
10/2	Nevia Douglas 466W, Auburn Rd. Auburn, ME 04210	*		\$100.00
10/2	Janet Mills PO Box 110 Farmington, ME 04938	info requested		\$30.00
10/2	Jeanne Mattson 92 Middle Street, Hallowell, ME 04347	"		\$50.00
10/2	Kate Knox 57 Glocker Rd Portland, ME 04103	"		\$50.00
10/2	Maria Fuentes 21 Union Street Hallowell, ME 04347	"		\$20.00
10/2	Terry Hayes PO Box 367 Buckfield, ME 04220	"		\$5.00

Total cash contributions (this page only) =>  
(combined totals from all Schedule A pages must be listed on Schedule F, line 2)

~~1000~~.00  
155.00

**Key Codes:**

- 1 = Candidate and Candidate's Spouse or Domestic Partner
- 2 = Other Individuals
- 7 = Contributors giving \$50 or less



Dear Mr. Wayne,

On the afternoon of October 22, I received notice that \$100 had been given to my campaign committee from a PAC. Until that moment, I had understood that I had received only personal contributions.

When I collected my seed money, I believed I had only personal checks, as personal names were prominently labeled on all the checks that I had collected. In the case of the Sean Faircloth check, his name was prominently on the check and in my mind, it was not clear that his check had come from a PAC. When notified of the error, I worked to correct the situation. I contacted Sean Faircloth who had controlled the PAC. I have overnighted him a check for \$100 from my campaign, in return he has overnighted a personal check to my campaign fund.

Representative Sean Faircloth, who had controlled the PAC, personally requests that if any sanction is imposed, it be imposed on him. He reiterates emphatically that this was his error, not mine, for which he takes full responsibility. The PAC checks were printed with his name on them in addition to the PAC. In less than 24 hours since I was notified of the error, I have corrected the problem, and therefore request a waiver and wish to continue to operate my campaign in good faith.



STATE OF MAINE  
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135 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0135

October 23, 2007

**By E-Mail and Regular Mail**

Kate Smith  
P.O. Box 36  
Sebago, ME 04029

Dear Ms. Smith:

In conducting a review of campaign finance reports filed by political action committees, the staff of the Commission noted that you received a \$100 seed money contribution from the Faircloth Blue Ribbon PAC, rather than from the personal funds of Rep. Sean Faircloth. Our candidate registrar, Sandy Thompson, spoke with you yesterday about the issue and you stated that you assumed the contribution was made from Rep. Faircloth's personal funds and that you no longer have a copy of the check. Rep. Faircloth has called the Commission staff, and is very concerned that his error may have an impact on your campaign.

Based upon our conversations with you to date, the Commission staff finds your explanation to be credible. We therefore request that your campaign return \$100 to Rep. Faircloth and obtain a replacement contribution from his personal funds.

Because the contribution was outside the restrictions for seed money contributions, we suggest that you submit a written letter requesting a waiver of the seed money restrictions under Chapter 1, Section 2(3)(E) of the Commission rules (attached). At this time, the staff is inclined to recommend that the Commission grant the waiver, although our final recommendation will be based upon all information and arguments available at the time of the Commission decision. The Commission is meeting on Tuesday, October 30 at 9:00 a.m., and the staff requests that you attend the meeting after 10:30 a.m. to explain the circumstances of the contribution.

During the last 28 days before an election, the Commission is authorized to meet by telephone within one day of receiving a request or complaint. If you or someone else wishes the Commission to meet before October 30 to consider this matter, I can investigate whether that is practical.

I am copying your opponent on this matter, so he is aware that he can object to the waiver of the seed money restrictions if he wishes. Other interested persons may wish to provide comments on this matter as well. If anyone wishes to object to the granting of a waiver, I would appreciate being notified of the objection as soon as possible (preferably

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

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ETHICS COMMISSION

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Kate Smith

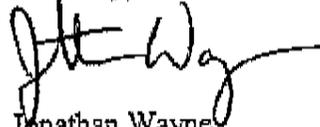
- 2 -

October 23, 2007

no later than tomorrow, October 24) so that I know whether to request a telephone meeting of the Commission members. Any written comments received on or before the October 30 meeting will be considered by the Commission.

Thank you for cooperating with the Commission's consideration of this matter. Please telephone Candidate Registrar Sandy Thompson at 287-4179 if you have any questions.

Sincerely,



Jonathan Wayne  
Executive Director

cc: Ralph W. Sarty, Jr.  
Hon. Sean Faircloth

FAIRCLOTH BLUE RIBBON PAC

Name of PAC

## SCHEDULE B

CONTRIBUTIONS AND EXPENDITURES  
TO OR ON BEHALF OF CANDIDATES, COMMITTEES & PARTIESList 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		
LIT	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, milcage, lodging, etc.)		
TVN	TV or cable ads, production costs		
WEB	Internet and e-mail		
		<p><b><u>For every expenditure, list the appropriate code.</u></b></p> <p>If a remark is required, list additional information such as type of consulting (media, messaging, campaign, etc.) or professional service provided.</p>	

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	
10/4/2007	HOUSE DEMOCRATIC CAMPAIGN COMMITTEE	House Democratic Campaign Committee		2,500.00
	PO BOX 2021 , AUGUSTA , ME , 04338	CON		
10/4/2007	EMERGE MAINE	Emerge Maine		250.00
	PO BOX 2066 , AUGUSTA , ME , 04338	CON		
10/4/2007	MAINE FARMLAND TRUST	Maine Farmland Trust		30.00
	97 MAIN STREET , BELFAST , ME , 04915	CON		
10/3/2007	LINCOLN COUNTY DEMOCRATS	Lincoln County Democrats		150.00
	PO BOX 336 , WALDOBORO , ME , 04572	CON		
10/1/2007	KATE SMITH	Kate Smith for District 99		100.00
	KATIE CROTCH RD , N PORTLAND , ME , 04961	CON		

**From:** Sean Faircloth [sfaircloth@gwi.net]  
**Sent:** Tuesday, October 23, 2007 3:12 PM  
**To:** Wayne, Jonathan  
Mr. Wayne and Members of the Ethics Commission,

I fully support the guidelines of the Ethics Commission in respect to seed money, and respect the requirement that seed money come from personal funds.

I humbly request that my error in failing to give a personal check to Kate Smith's campaign for seed money not harm Ms. Smith's effort to proceed with her campaign and its substantive issues. I had no ill intent. Most importantly, Ms. Smith had no ill intent. My PAC check has my name on it as well. She should not be harmed for acting in good faith.

I agree with the statement in your letter to Ms. Smith regarding the facts of the \$100 contribution at issue. I agree that her explanation is credible. I agree that waiver is the appropriate response. Post offices were closed when I found out about this in the late afternoon of October 22. I suggested to Mr. Wayne Tuesday morning, that I overnight to Ms. Smith a \$100 personal check and she send funds back to me. With Mr. Wayne's approval, that was done. This was all done by midday Tuesday.

Ethics laws are designed to avoid unethical activity. This was an honest error and that error was mine not that of Ms. Smith. I have worked in good faith to correct my error.

I take responsibility for my actions and hope Ms. Smith will not be harmed by them.

Sean Faircloth

**From:** Maria Fuentes [maria@mbtaonline.org]  
**Sent:** Friday, October 26, 2007 11:09 AM  
**To:** Wayne, Jonathan  
**Subject:** Contribution

Mr. Wayne,

I recently attended an event at a neighbor's house in Hallowell organized by the Maine Women's Leadership Fund in Hallowell to promote women running for office. After arriving late, I was involved in an unrelated conversation, when a friend asked if I would contribute (via check) for a political candidate whom I hadn't met. Her name didn't stick in my mind as I was involved in another conversation and didn't have my checkbook with me. When she asked again, I contributed \$20 in cash.

When asked yesterday if I knew a woman named Kate Smith and wrote a check to her, I replied that I hadn't. The reason for that is I didn't associate the question with the \$20 cash contribution which I had forgotten about. I am scheduled to be in Orono on Tuesday, and it would be difficult for you to attend the Commission meeting if asked.

Please let me know if you have further questions. Thank you.

Maria Fuentes

592-0227