

Agenda

Item #1



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

Minutes of the September 21, 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: Michael Friedman, Esq., Chair; Hon. Mavourneen Thompson; Hon. David Shiah; Hon. Francis C. Marsano; Hon. Edward M. Youngblood. Staff: Executive Director Jonathan Wayne; Phyllis Gardiner, Counsel.

At 9:04 A.M., Chair Michael Friedman convened the meeting and welcomed the new Commission members, the Honorable Francis Marsano and the Honorable Edward Youngblood.

The Commission considered the following items:

Agenda Item #1 Ratification of Minutes: August 13, 2007 Meeting

Mr. Wayne noted that the staff received comments from Carl Lindemann offering advice to the Commission regarding the minutes for August 13 and some inaccuracies that he perceived in the minutes. Mr. Wayne explained for the benefit of new Commission members how the minutes are drafted and approved. Both he and Ms. Gardiner listened to the 16 minutes of audio recording of the previous meeting which contains the items that Mr. Lindemann disputes. Neither he nor Ms. Gardiner believe that the minutes are inaccurate as written. Mr. Wayne noted that the minutes are not intended to be a transcript of the meeting. The staff recommends that the minutes be adopted as written.

Mr. Friedman noted Ms. Gardiner, staff counsel, had listened to the recording of the last meeting, and she affirmed that she had done so and she concurs with the staff recommendation.

Carl Lindemann, representing Truedialog.org, stated that he could not find any record of any statement by staff regarding the substantive issue. He stated Mr. Wayne indicated to him that

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there was no written statement about that issue and that it had taken place in a conversation, of which there is no record, among the Chair, Mr. Wayne, and Ms. Gardiner. He questioned how a motion could be made about an item when the staff had made no statement of it. He said that he found it odd that there was a motion to accept a view when the view did not appear to have been presented.

Mr. Friedman recalled he had made the motion regarding the jurisdictional issue of whether the Commission could hear the particular complaint that Mr. Lindemann had brought. Mr. Friedman said that he thought the minutes reflected that motion.

David Shiah moved that the Commission ratify the minutes of the August 13 meeting without change. The motion was seconded by Ms. Thompson and passed by a vote of 3-0. (Mr. Marsano and Mr. Youngblood were not present at the August 13th meeting and, therefore, did not vote on the motion.)

In order to accommodate the attendance of Rep. William Walcott's attorney, David Van Dyke, Esq., the discussion of Agenda Item #2 was delayed.

Agenda Item # 3 Recommended Referral of Benjamin Meiklejohn to Maine Attorney General for Collection of Late-Filing Penalty

This matter was resolved before the meeting. Mr. Meiklejohn paid his penalty on September 20.

Agenda Item #4 Staff Proposals on Legislation

Mr. Wayne explained the two proposed bills for submission to the Legislature by October 3, 2007. He said the first bill relates to campaign finance regulation, exceptions to public records law, and conflicts of interest issues. Mr. Wayne briefly summarized the proposed bill changes as drafted:

- 21-A MRSA § 1002 would authorize the Commission to hold meetings by telephone for discussion of procedure or logistics affecting upcoming monthly meetings.
- 21-A MRSA § 1003(1-A) would make auditing documents confidential, unless they become part of a final audit report.

- 21-A MRSA § 1005 would prohibit the commercial use of contributor information which is collected and stored in the Commission's database; would allow the use of this information for a variety of electoral and political purposes; and would prohibit the use of this information by non-electoral political organizations, charities, and other non-profits for non-political purposes, *e.g.*, fundraising.
- 21-A MRSA §§ 1011 and 1059 would allow municipal clerks to set their deadlines for candidate, parties, and PAC finance reports for municipal elections at the close of their business day.
- 21-A MRSA § 1125(3) would amend a law enacted in 2007 which allows voters to make their \$5 qualifying contributions over the Internet, to prohibit the Commission from releasing names and addresses of contributors in an electronic format to anyone but the candidate or someone designated by the candidate.
- 21-A MRSA § 1125(12) would require candidates using MCEA funds to pay family members to disclose their relationship on their campaign finance reports.
- 1 MRSA § 1012 relates to Commission member qualifications and conflict of interest issues with regard to serving as an officer of a political committee or as an officer of a 1056-B filer. The questions of concern are: 1) under what conditions should an individual's political activities prevent him or her from serving on the Commission altogether and 2) under what conditions should a member's political affiliations require them to recuse themselves from a particular matter. Mr. Wayne noted that currently, Commission members may be removed by the Governor or by impeachment under the Maine Constitution.

Mr. Wayne summarized the second bill's proposed changes regarding lobbyist disclosure. The Legislature has already directed the Commission to create a profile page for each lobbyist, lobbyist associate, and employer. The lobbyists' profile page would include a photograph of the lobbyist. Under the proposed bill, the Commission's website would also have a "face book" of lobbyists organized by each joint standing committee of the Legislature. The bill would require lobbyists to submit photos when registering as lobbyists. The proposed law would grant a waiver if a lobbyist did not want to submit a photo for security reasons.

Mr. Friedman asked the Commission's counsel if she had any substantive changes to the recommendations after reviewing the proposed amendments. Ms. Gardiner said she thought that the issues raised in the amendments were policy decisions for the Commission, that Mr. Wayne's drafting was sound, and that she only had a few minor language changes.

Mr. Friedman asked for clarification regarding the public record exception for qualifying contributor lists from the Internet. Mr. Wayne noted that if the list is conveniently stored electronically and is easily sent in an e-mail, the use of the list may go beyond how the voter intended their information be used, which is for political or election related purposes.

Ms. Thompson asked whether there was any other state agency with experience with this issue.

Mr. Wayne said that the language in the proposed bill is based on the section of the law that deals with the voter information that is stored on the Secretary of State's Central Voter Registration System. Ms. Gardiner said that information in the Central Voter Registration System is confidential but there are exceptions made for very specific purposes. She explained that with the ease of obtaining a complete voter list electronically, also comes the risk of for-profit companies obtaining lists for commercial use. The data is more valuable and useful for both profit and non-profit users because it is easy to obtain. The restrictions on the Commission's database for contributor information would be similar to those for the Central Voter Registration database.

Mr. Youngblood asked what the penalty would be for using the voter lists in a way that was prohibited by law. Ms. Gardiner was unsure about the penalties for using the lists inappropriately.

Ms. Thompson expressed concern regarding restrictions on transparency by limiting what information is given out regarding contributors. She thought that was in conflict with what MCEA is all about. She feels the electronic contributions should be known also.

Mr. Wayne stated that the \$5 contributors are basically trying to support candidates, not influence candidates. The hard copy of the form which lists the \$5 contributors would be available in the candidate's folder if anyone wanted to access that list.

Greg Lewis, member of the public, spoke regarding civil penalties of up to \$5,000 for using contributor lists for commercial purposes (21-A M.R.S.A. § 1005). He felt the civil penalty of up to \$5,000 is not enough for a big company that would be willing to pay that small amount for a large list of voters in Maine. It could be considered the cost of doing business. He suggests a penalty on a per instance basis.

Mr. Marsano stated that he believes the wording in the last sentence – “knowingly violates... is guilty of a Class E crime” – would deter someone from attempting to use these lists in a manner which is prohibited.

Carl Lindemann expressed his concern that the Commission was not following the proper procedure for submitting legislation to the Legislature. He said that, as far as he could determine, the Commission staff had not solicited suggestions prior to presenting the proposed legislation to the Commission. He said that he was perplexed as to how the Commission could consider proposed legislation dealing with the disqualification of a Commission member since, on the one hand, the Commission can only propose legislation regarding matters over which it has jurisdiction (21-A M.R.S.A. § 1009) and, on the other hand, the Chair, the Executive Director, and Commission counsel have all indicated that they do not believe that the Commission has the jurisdiction to decide on the qualifications of a member to serve on the Commission.

Ms. Thompson summarized Mr. Lindemann's concerns as she understood them: the proposals for legislation were not discussed by the people affected, but were researched by staff only; the LVA Committee expects discussion has already happened among Commission members and that our decision regarding legislative proposals has been discussed and reviewed prior to being submitted; we as a Commission had a member whose qualifications for serving on the Commission were questioned by Mr. Lindemann and whether we have jurisdiction to examine that member; and finally, Mr. Lindemann feels the staff is bringing issues before the

Commission members regarding jurisdictional legislative proposals based on the staff's own ideas. Ms. Thompson felt strongly that the Commission needs to decide whether it has the right to question qualifications of a sitting member of the Commission and get it off the table once and for all.

Mr. Freidman stated this issue was settled last month and has been taken off the table.

Mr. Marsano stated he believes this statute does exactly what Mr. Lindemann suggests, which is to present the Commission's position to the Legislature that there is no right to the type of jurisdiction that Mr. Lindemann is seeking (for the Commission to question member's qualifications). Mr. Marsano said this proposed legislation would answer the jurisdiction question. He noted that the only remedy would be referral to the Governor or Legislature for removal or impeachment. The Commission then is required to look at the recusal concept, which is how judges in the state courts operate on conflict of interest issues. Mr. Marsano said that the jurisdiction issue is resolved through this legislation if the Legislature approves it; however, Mr. Lindemann is free to argue to the Legislature that there should be an internal process at the Commission level.

Mr. Lindemann said he was not aware of the two part process for judges. He went on to say events of the last year have raised important questions as to what needs to happen when there are failures to disclose information and conflicts of interest by nominees to the Commission and sitting Commission members. He believes there is a different standard for Commissioners, in comparison to Legislators. He reiterated the importance of disclosure by Commissioners. The goal, he said, is to create greater public confidence in the Ethics Commission by holding it to the same standards as Legislators. He asked how the process worked, whether the Ethics Commission simply puts forth legislation and the LVA Committee decides whether it is within the Commission's jurisdiction.

Mr. Marsano said if the bill were adopted, the question of recusal falls to the individual on the Commission. If an individual questioned a Commissioner's decision, it can be tested by certain processes. The Commissioner would be held accountable for his or her decision to recuse or not.

Mr. Marsano explained that if the Legislature agrees with proposed legislation provided by the Commission, then the issues are resolved.

Mr. Lindemann said that he thought the Commission was being inconsistent when it maintains that it does not have jurisdiction over an issue in Agenda Item #1 and that it does have jurisdiction over the issue in Agenda Item #4. He said that this goes to the issue of public confidence in the Ethics Commission. He believes it is important for the Commission to be consistent. He also believes that the Commission's interpretations of the issue were made and shifted as it serves to insulate the former Commission Chair.

Mr. Marsano stated that with regard to the jurisdiction issue, the proposed legislation leaves any decision with regard to recusal in the hands of the individual Commission member and is, therefore, consistent with the Commission lacking jurisdiction to determine what actions one of its members may take.

Mr. Friedman stated for clarification that the jurisdictional issue that was decided last month was whether the Commission had the authority to sit in judgment of another Commissioner. He said that was the limited jurisdictional issue addressed at the last meeting. He further stated that the proposed bill is not a jurisdictional issue, he sees it as clarification. Mr. Friedman said there is an underlying authority of any State board to go to the Legislature and get clarification on issues that help that board run in smoother fashion. He said he does not believe that the proposed language in 21-A M.R.S.A. § 1012(2-A) is a jurisdictional issue for the Commission to present to the Legislature. Mr. Friedman stated that the jurisdiction issue was decided last month.

Mr. Lindemann said it appears to be up to LVA Committee to make any final determination regarding the Commission's jurisdiction.

Mr. Friedman confirmed the Legislature does give the Commission authority to act.

Mr. Lindemann requested a formal vote on the jurisdictional issue and asked for clarification.

Mr. Lindemann said a specific view was taken by Commissioners on jurisdiction in the past and the Commission needs to be consistent in these views.

Ms. Gardiner stated there are two different issues here. Mr. Lindemann is challenging whether Commission has jurisdiction to consider legislative proposals relating to qualifications of its members, if indeed, under current law, the Commission does not have jurisdiction to disqualify its own members. She said the language in 21-A M.R.S.A. § 1009 is permissive and invites the Commission to make recommendations to the Legislature on matters that the Commission adjudicates within its jurisdiction, *e.g.*, complaints and reports, but does not muzzle the Commission, as a legal matter, from bringing forth other proposals to the Legislature. There is no procedural requirement that a vote be taken on that particular jurisdictional issue as Mr. Lindemann is suggesting.

Mr. Lindemann again brought up the issues of solicitation for comments regarding proposed legislation, the role of the Commission in proposing legislation, whether the Commission can *sua sponte* bring forward proposed legislation to the Legislature, and whether due process has been observed. He said that if due process has not been observed and, therefore, the proposed legislation should not go to the LVA Committee, he did not see any point for him to comment on the proposed legislation.

Ms. Gardiner stated that due process is not involved in submitting proposals to the Legislature. It is not a final action that the Commission has taken. The proposed legislation will get a hearing at the Legislature which is free to amend it, reject it, or completely substitute a new version. Section 1009 of Title 21-A, to which Mr. Lindemann refers, encourages the Commission to solicit suggestions but does not require a public hearing process before the Commission submits legislative proposals.

Mr. Lindemann expressed his concern about the proposed language change from “political committee” to “party committee, political action committee, or authorized candidate committee” in 1 M.R.S.A. § 1012(2). He said that he did not know what the impact or the intent of this change is. He stated he believes any person who is part of an organization that the Ethics Commission regulates should be excluded from being a member of the Commission. If a 1056-B filer is later determined to be a PAC while the officer is on the Commission, this would pose a problem.

Mr. Wayne addressed the issue of Commission member qualifications. The staff recommendation is that only those people who are officers or directors of party committees or PACs or candidate committees be disqualified, since it is difficult to find people to serve on the Commission. He advised that barring people beyond that would place too great a limit on the pool of possible Commission members. Mr. Wayne further reviewed the two options in the proposed legislation regarding a nominee to the Commission or a sitting Commission member who was an officer, director, employee, or decision-maker of a 1056-B organization. One option would exclude those individuals from being on the Commission; the other option would allow them to serve but recuse themselves from participation in a matter before the Commission which involved the organization with which they were affiliated.

Mr. Marsano moved to strike the bracketed language from the proposed legislation in 1 M.R.S.A. § 1012(2) Mr. Youngblood seconded the motion. The motion passed 5-0.

Mr. Marsano moved that the proposed legislation presented by the staff be approved and forwarded to the Legislature. Mr. Youngblood seconded the motion. The motion passed 5-0.

Agenda Item #2 Recommended Referral of Rep. William R. Walcott to Maine Attorney General for Misuse of Public Funds

Mr. Wayne explained that Rep. Walcott was late in returning the unspent authorized portion of his 2006 MCEA funds (\$1,940.56) even after several attempts by staff requesting Rep. Walcott return the money. This prompted an audit of his campaign. In August, a meeting was held with Rep. Walcott and his attorney, David Van Dyke, at which Rep. Walcott admitted to falsifying expenditures on his reports, totaling \$2,933.44. Shortly after the meeting, he returned that amount to the Fund. Although he returned the funds after this meeting, the staff believes a stern response needs to be taken because spending public funds for personal purposes and falsifying campaign finance reports are serious violations. Mr. Wayne further stated that Rep. Walcott has had many accomplishments while serving in the Legislature and the Commission does not want to diminish his accomplishments. Nevertheless, the staff believes that a person in public trust who takes advantage of the process should receive a serious response from the State. The staff recommends referral to the Attorney General's Office for criminal prosecution. Mr. Wayne said that this would likely mean postponing consideration of imposing any civil penalties by the

Commission until the Attorney General's office has investigated. Mr. Wayne stressed the rarity of this type of violation (less than 1%) with regard to publicly funded candidates. Out of 621 candidates, only 6 have intentionally used public funds for personal purposes.

Mr. Friedman asked if there would be a statute of limitation issue, if the civil penalty were put on hold until after the Attorney General's investigation.

Mr. Wayne stated that there would not be any time restriction.

Mr. Marsano said there may be a question whether Rep. Walcott should answer questions today, due to the fact that he may say something to incriminate himself before the Attorney General's investigation. In order to prevent statements that would be admissible against him later on, Mr. Marsano stated he would be willing to make a motion.

Mr. Van Dyke stated that he would not allow his client to speak today. He said at the meeting with Mr. Wayne a few weeks ago, Rep. Walcott gave a statement admitting to what he is charged with. Since there will possibly be a referral to the Attorney General, Mr. Van Dyke has advised Rep. Walcott not to speak today.

Mr. Marsano made a motion to accept the staff's recommendation and refer the matter to the Attorney General. Mr. Shiah seconded the motion.

Ms. Thompson noted that this was not the procedure that has been practiced in the past, which was that a party would be able to address the Commission prior to a motion being made or voted upon. She asked if this motion was made basically to protect Rep. Walcott in light of a possible criminal investigation.

Mr. Marsano clarified that if the motion is approved, Mr. Van Dyke could make a statement on behalf of his client and that statement would not be admissible against Rep. Walcott. The motion passed 5-0.

Mr. Van Dyke stated that Mr. Walcott came to him and indicated the wrongdoing had occurred. Mr. Walcott had been very burdened by the matter. Mr. Walcott told him he would have come forward even without the audit, and he was relieved when he received the audit letter. Mr. Van Dyke said he and his client were ready to meet with the investigator from the Attorney General's Office and answer any questions.

Agenda Item #5 Procedures for Commission Meetings/Hearings

Mr. Friedman stated that he would like to have more time to go over the information presented by the staff, especially with new members on the Commission. Due to the importance of the matter, he would like to table the matter and look more closely at the materials.

Mr. Marsano moved to table this item until next month. The motion was seconded by Mr. Youngblood. The motion passed 5-0.

Agenda Item #6 Presentation of Audit Reports for Rep. Jonathan B. McKane, Randall Greenwood, and Clayton Haskell

Mr. Dinan reviewed the findings and reported that the only exception was a minor technical violation with regard to Rep. McKane's audit with no penalty assessed. The remaining audits found no exceptions.

Mr. Shiah moved to accept the audits as presented, including a technical violation against Rep. McKane with no penalty. Ms. Thompson seconded the motion. The motion passed 5-0.

Agenda Item #7 MCEA Violation of Overspending by \$253/Anne P. Graham

Mr. Wayne explained that Ms. Graham was a first-time candidate and she has been very responsive to staff requests for information. He also noted that bookkeeping issues can be a problem for new candidates on occasion. Due to an expenditure not being accounted for, her campaign spent more than it was authorized. Mr. Wayne said the staff recommends a penalty of \$125 for overspending, which is approximately half of the amount she went over. Mr. Wayne stressed the importance for the need for candidates to understand this requirement and comply with it. Mr. Wayne noted her over-spending was a little more than other candidates had committed.

Mr. Youngblood asked what the policy allows for penalties and how this amount was devised.

Mr. Wayne stated that the \$125 is approximately half of the overage but also took into consideration her good intentions and that she is already out of pocket \$253.

Mr. Youngblood said this seems to be a record keeping error. He also confirmed that because Ms. Graham came forward and amended her original finance report, the overage was discovered.

Mr. Youngblood cautioned against assessing a penalty that was so high as to prevent candidates from coming forward to admit their error. Mr. Wayne said most candidates do not want or intend to overspend or take advantage of the process.

Anne Graham said that she was new to campaigning and explained that not having any political experience and being a first-time candidate put her at a definite disadvantage. She stated that she was on the phone or e-mailing the Commission constantly for help from her candidate registrar. She explained that she used her debit card for making payments, instead of writing checks. Her expenditure for the newspaper ad was made in mid-October and the bank did not deduct the amount until December, so she thought she had more money than she actually did. She asked her husband to buy stamps at the end of the campaign period and repaid him after the election. This reimbursement to her husband put her over the allotted amount. Ms. Graham stated she would not have run if the clean election funds were not available to her. She said she does plan to run again and fully supports the process and respects the public's money.

Mr. Shiah asked whether she would have known her balance if the newspaper had debited the charge in a timely fashion. Ms. Graham confirmed this was the problem.

Mr. Friedman stated that Ms. Graham did not purposefully overspend her public money and there was no intention of fraud. Since she came forward and did everything correctly, he does not feel comfortable assessing a penalty in this case. He would support the violation, but not a penalty.

Mr. Youngblood agreed. He said public confidence is affected every time a violation occurs. He also stated he believes Ms. Graham has certainly gone through \$125 of mental anguish over this matter.

Ms. Thompson expressed her concern over the message the Commission sends to publicly funded candidates. In order to be consistent and send the right message, whether they are small or large mistakes, she believes a penalty should be assessed.

Mr. Marsano suggested a middle-ground resolution, recognizing the violation and setting an example for other candidates. He thought perhaps a \$50 penalty (which is 4% of the overage) would recognize the violation, but also confirm that this was an honest error. Mr. Marsano made a motion to find Ms. Graham in violation of 21-A M.R.S.A. § 1125(6) and reduce the penalty assessed to \$50. Mr. Shiah seconded the motion which passed by a vote of 4-1 with Mr. Friedman opposed.

Agenda Item #8 Selection of Meeting Dates

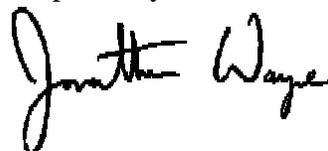
Discussion took place regarding establishing a regular fixed day for monthly meetings. Mr. Wayne explained that in the past, the second Wednesday of the month was the established Commission meeting day. After a brief discussion, it was decided that setting the date each month would be preferable. Mr. Shiah moved to set the monthly meeting date on a month-by-month basis in consideration of the various time commitments of the Commissioners. Ms. Thompson seconded the motion. The motion passed 4-1, with Mr. Marsano opposing. The next meeting date will be October 30, 2007.

OTHER BUSINESS

Gregg Lewis addressed the Commission regarding what he felt was inappropriate behavior by a candidate during the 2004 election. After a brief discussion, he was advised to bring the matter forward to the Executive Director.

Meeting adjourned at 11:13 a.m.

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

October 18, 2007

Audit Report No. 2006-GV004

**Candidate: Patricia LaMarche
2006 Green Independent Party Candidate for Governor**

Background

Patricia LaMarche was the Green Independent Party candidate for governor of the State of Maine in 2006. The Commission on Governmental Ethics and Election Practices (Commission) certified Ms. LaMarche as a Maine Clean Election Act (MCEA) candidate on April 26, 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:

- January, 2006 Semi-annual
- 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 disbursed \$1,076,139 to the LaMarche campaign during the primary and general election periods. The total initial distribution to the candidate for both the primary and general elections was \$599,993; in addition, the Commission paid the candidate \$476,146 in matching funds for the general election.

Audit Findings and Recommendations

Finding No. 1A – Incomplete Media Expense Documentation: The LaMarche campaign paid Message Strategy Group (MSG) \$659,935 for media placement, media relations management, and production services. The audit disclosed that \$28,735 of MSG'S total expenditures was inadequately documented (excluding Finding No. 1B below). While the actual payments to media outlets were on file, the campaign was unable to provide invoice copies for the questioned amounts (see the attached exhibit). Without the invoice documentation, the auditor was unable to determine the services purchased or the campaign purpose of such services.

Finding 1B – Improper Invoicing for Media Services by MSG: Maribeth Stuart, the LaMarche campaign's Communications Director, was an employee of MSG and was compensated for her services to the LaMarche campaign. After the Commission initiated the audit of LaMarche's 2006 campaign finance reports, the candidate notified us that she had determined that the campaign had not received an invoice for Ms. Stuart's professional services. The auditor found that MSG had included the value of Ms. Stuart's services in their master invoices, but had neglected to provide specific invoicing. Accordingly, the total charges reported by the LaMarche campaign for MSG's services was correct (excluding the errors described above), but the invoicing supporting the charges was deficient by the details of the costs associated with Ms. Stuart's services. MSG has provided an invoice dated August 15, 2007 in the amount of \$58,751.16 for the services provided by Maribeth Stuart to the campaign.

Criteria: 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 ..." 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."

Recommendations: The Commission staff recommends that the Commission find the candidate and campaign treasurer in violation of 21-A M.R.S.A. § 1125(12-A)(B) (C) and assess a penalty of \$150.

Finding No. 2A – Duplicate Billings for Media Services: The examination of the campaign's financial records indicated that a \$770 charge invoiced to MSG by a vendor (Ruth Lucas Finegold) was billed in duplicate by MSG to the LaMarche campaign. Thus, the campaign's reporting overstated the campaign's actual expenditures by \$770. The auditor believes that the error was unintentional, but duplicate charges did result. The overcharging affected the amount of unspent campaign funds returned to the state after the election.

Finding No. 2B – Erroneous Billing of an Amount Refunded by a Vendor: WPFO-TV invoiced \$850 to MSG for television advertising, which MSG paid. Subsequently, the television station refunded the payment to MSG because the ad never ran. MSG passed along the original

cost to the LaMarche campaign, but failed to credit LaMarche for the refund. The campaign's reporting overstated its actual expenditures by \$850. Again, this appears to be an unintentional error, but the fact remains that the LaMarche campaign was over-charged for the service, which affected the amount of unspent campaign funds returned to the state after the election.

Finding No. 2C – Unsupported Payments to an MSG Vendor: MSG paid television station WABI-TV \$5,057.50 on two invoices that taken together did not support the amount paid. Based on the invoice totals, it appears that MSG over-paid the television station by \$97.75.

Criteria: 21-A M.R.S.A. § 1016(3)(C): "A treasurer shall keep a detailed and exact account of: ...All expenditures made by or on behalf of the...candidate...." 21-A M.R.S.A. §1125(12), "Notwithstanding any other provision of law, participating and certified candidates shall report ... all campaign expenditures, obligations and related activities to the commission according to procedures developed by the commission."

Recommendations: The Commission staff recommends that the Commission find the candidate and campaign treasurer in violation of 21-A M.R.S.A. § 1016(3)(C) and 21-A M.R.S.A. § 1125(12) of the Maine Clean Election Act, and that a penalty of \$150 be assessed. In addition, the Commission should direct the candidate and campaign treasurer to amend the LaMarche campaign finance reports as warranted by the audit findings, and to refund the amount of over-payments and duplicate payments listed above to the Maine Clean Election Fund.

Finding No. 3 – Misreported Seed Money Expenditure; Seed Money Expenditures in Excess of the Maximum Allowable: The LaMarche campaign engaged Verisign to process campaign contributions submitted over the internet. The campaign reported a processing fee payment to Verisign on April 18, 2006 of \$257.23; the audit disclosed that the amount should have been \$456.10. The unreported portion of the expenditure caused total seed money expenditures to exceed the maximum allowable by an adjusted amount of \$192.22.

Criteria: 21-A M.R.S.A. §1125 (12), "Notwithstanding any other provision of law, participating and certified candidates shall report ... all campaign expenditures, obligations and related activities to the commission according to procedures developed by the commission." 21-A M.R.S.A. § 1016(3)(C): "A treasurer shall keep a detailed and exact account of: ...All expenditures made by or on behalf of the...candidate...."

Recommendations: The Commission staff recommends that the Commission find the candidate and the campaign treasurer in violation of 21-A M.R.S.A. § 1125(12) for not reporting the full \$456.10 expenditure. It should be noted that the staff found the LaMarche campaign's financial records to be generally well maintained, and the violation is relatively insignificant when compared to the level of MCEA funding distributed to the candidate. Nonetheless, this violation had implications for qualification as an MCEA candidate, because candidates must pay for all expenditures in the qualifying period with money that meets the seed money requirements (up to \$100 contributed from individuals) and that is disclosed in

campaign finance reports. For that reason the staff believes a penalty is appropriate. Accordingly, the staff recommends the Commission assess the LaMarche campaign with a penalty of \$100. The staff also recommends that the Commission direct the candidate to make the appropriate amendment to her Seed Money report.

Auditor's Note: The LaMarche campaign reported 124 separate expenditures for food over the course of the 2006 campaign and after qualifying as an MCEA candidate. Total reported costs for these expenditures were \$5,044. The Commission's 2006 Candidate Guidelines state that "Candidates may spend a reasonable amount of MCEA funds on food for campaign events or to feed volunteers while they are working." Using public funds to pay for food has been a concern raised by Legislators with the Commission and with the Commission's oversight committee. Nevertheless, it should be noted that the LaMarche campaign's total food expenditures represented less than one-half of one percent of the MCEA funds she received. The auditor tested the food expenditure documentation extensively, and found no deficiencies. Rather, we bring this matter to the Commission's attention as an issue for policy consideration.

The Commission's guidelines indicate that "Candidates may spend a reasonable amount of MCEA funds on food..."; in the present circumstance, we question whether 124 expenditures constitutes "reasonable" as intended by the Commission in establishing guidelines and limitations on the use of public funds for campaign purposes. In contrast, the other two publicly financed candidates in the general election reported 13 (Merrill) and 7 (Woodcock) food expenditures, respectively. In the opinion of the Commission staff, the current MCEA expenditure guidelines appropriately allow paying for food for volunteers when they are working (e.g., stuffing envelopes) or when they travel for campaign purposes and appropriately allow paying for food for campaign events for the public. For the 2010 elections which could involve publicly funded campaigns for Governor, the Commission may wish to consider whether MCEA funds should be used at meetings of volunteers for purposes of team-building or morale-boosting, or for pre-election parties primarily held to thank volunteers.

We suggest that the Commission consider this matter in terms of

- Appropriate use of MCEA funds.
- Public perception of campaign expenditures for food.
- Potential impact on support for public financing of elections.

If in the Commission's judgment food expenditures by publicly funded candidates should be more tightly controlled, they may wish to direct the Commission staff to strengthen existing guidelines.

Candidate's Comments:

Mr. Vincent Dinan
State of Maine
Commission of Governmental Ethics
and Election Practices
133 State House Station
Augusta, Maine 04333

Dear Mr. Dinan,

I have reviewed your remarks regarding the audit of my campaign for governor in 2006.

First let me thank you for the patience and assistance you rendered myself and my staff as we worked through the process to make available to you the documents you needed.

It seems most expeditious for me to mere go through your points one at a time and respond to each directly. I trust this will be satisfactory.

Finding 1A and finding 1B both involve invoices paid to Message Strategy Group. As you have indicated the criterion for payment by my campaign demanded that "The treasurer shall obtain and keep: ... [a] vendor invoice stating the particular goods or services purchased for every expenditure of \$50 or more..."

No where in the statute does it refer to a paper trail of cancelled checks and media invoices. It only states that an invoice detailing the purchases for payment is necessary. Our treasurer Theresa Savage never paid a bill without an invoice from MSG without being told that it would be for media buys or polling or public image building or other additional work necessary to create our media image; and the TV and radio parts of the invoices were accompanied by "time orders" for media that would be purchased.

Because the media outlets demanded payment in advance it was not possible to pay on their invoices. And because we hired a company to do this work, we paid on their (MSG) invoices.

Additionally when we got to the audit stage, the time orders which she did pay on were not used by the state as verification that we paid according to the requirements. We still have copies of these documents that were never required by the audit process.

During the audit process we learned of the need for this type of documentation and worked diligently to provide it. The media outlets were not forthcoming and we would make the recommendation that the legislature pass some sort of legislation requiring all media outlets which work with campaigns that use public funds to produce documentation. The statute and work book for the candidates should also be amended to indicate that invoices to the consultants and venders hired by candidate will be required above and beyond the invoices supplied by the consultant or vendor.

Maribeth Stuart, as an employee of Message Strategy Group was paid from the proceeds of the billing MSG provided to us directly. It was not until after the audit process began that we were aware of the fact that fees for her services needed to be separated out and billed separately.

When we learned of the necessity for separate billing, even though she worked for/as the vendor, we complied.

Auditor's Response: We believe that that the language of the Maine Clean Election Act is clear regarding the documentation requirements imposed by the Act on the candidate and her campaign workers and vendors who either spend or are paid with the public funds disbursed to the candidate by the Commission (the specific requirements are outlined in the *Criteria* section of Finding No. 1, but in summary, the requirement is that the candidate must obtain and keep a vendor invoice from the ultimate provider of campaign services, such as television time). In addition, the Commission staff provided written and oral guidance throughout the 2006 campaign to all candidates regarding their expenditure documentation obligations. Message Strategy Group, the LaMarche campaign's media buyer/advisor, spent more than 60 percent of the nearly \$1.1 million dollars disbursed by the Commission to the candidate. Clearly, Ms. LaMarche relied on the vendor to meet the Act's expenditure documentation requirements. Documents supporting the vendor's billings to the campaign were obtained only after the audit was initiated, and then, as we have indicated, the documentation provided was incomplete. While we commend Ms. LaMarche and her treasurer, Ms. Savage, for their committed efforts to locate and deliver the required documents, we cannot overlook the fact that some required items were missing.

Finding 2A pertains to a bill one of MSG's vendor supplied to them. Because we were unaware of the double billing, when we – after the fact – separated Maribeth Stuart's billing for her services, we neglected to include this money in her bill. This is actually not money that should have been returned to the state, but money that was part of the payment which we should have included for Ms. Stuart.

Finding 2B this is the same issue as listed above. As I explained in a prior email, we agreed to a price range for Ms. Stuart's services. This fell well within that price range.

Finding 2C same as above.

Auditor's Response: Our examination disclosed that MSG made billing errors that resulted in the LaMarche campaign being over-charged. We believe these errors were unintentional. Finding 2A involved a duplicate charge of \$770; Finding 2B concerned a refund from a television station of \$850 that was not credited to the campaign; and Finding 2C was an apparent over-payment of \$97.75 to a television station. The total amount of the identified

errors is \$1,717.75, and represents services paid for but not received by the campaign, and therefore must be repaid to the Maine Clean Election Fund.

Finding No. 3 is a case of pure human error. Mrs. Savage has scoured her records and can only determine that she wrote the wrong number. While this error is unfortunate, we have no real explanation other than, with some relief, we have determined that Mrs. Savage is not flawless.

Sincerely,

Patricia LaMarche

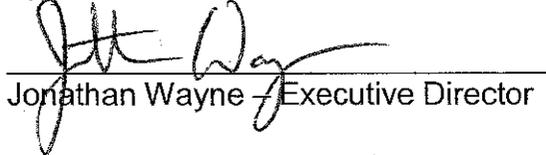
End of Candidate's Comments

Respectfully submitted,



Vincent W. Dinan - Staff Auditor

Approved:



Jonathan Wayne - Executive Director

PATRICIA LAMARCHE 2006 GUBERNATORIAL CAMPAIGN**Analysis of Payments by Message Strategy Group
Schedule of Missing and Incomplete Documents**

Message Strategy Group Invoices and Vendor Billings	Missing, Incomplete, or Questioned Doc. No.	Payment Date	Payment Amount
MSG Invoice No. 112:			
WMCM	23820	10/30/2006	\$280.00
WQHR	843090	10/31/2006	\$918.00
MSG Invoice No. 111:			
WTOS	823266	10/23/2006	\$578.00
WMCM	23268	10/23/2006	\$238.00
WVII-TV	1106-1151-1 incomplete	10/31/2006	\$2,890.00
WVII-TV	1106-1278-1 incomplete	10/22/2006	\$5,025.00
WPOR	215587	10/23/2006	\$1,105.00
WKCG	23819	10/23/2006	\$510.00
WYNZ	412095 and 115967	10/23/2006	\$510.00
WCLZ	84759	10/23/2006	\$743.75
WYNZ	115967	10/23/2006	\$510.00
MSG Invoice No. 109:			
WVII-TV	1106-1296-1	10/23/2006	\$2,422.50
WPFO	109725	10/20/2006	\$2,890.00
WPFO	109727	10/23/2006	\$3,400.00
MSG Invoice No. 105:			
Tom Pierce	No Invoice	10/27/2006	\$3,000.00
MSG Invoice No. 102:			
WABI-TV	2915	6/2/2006	\$2,312.00
Portland Radio Group	508000	6/6/2006	\$1,020.00
Time Warner	538700 (wrong invoice)	6/2/2006	\$382.50
Total MSG Incomplete Documentation			<u>\$28,734.75</u>

Title 21-A, §1125, Terms of participation

8. Amount of fund distribution. By July 1, 1999 of the effective date of this Act, and at least every 4 years after that date, the commission shall determine the amount of funds to be distributed to participating candidates based on the type of election and office as follows.

A. For contested legislative primary elections, the amount of revenues to be distributed is the average amount of campaign expenditures made by each candidate during all contested primary election races for the immediately preceding 2 primary elections, as reported in the initial filing period subsequent to the primary election, for the respective offices of State Senate and State House of Representatives. [2003, c. 453, §1 (amd).]

B. For uncontested legislative primary elections, the amount of revenues distributed is the average amount of campaign expenditures made by each candidate during all uncontested primary election races for the immediately preceding 2 primary elections, as reported in the initial filing period subsequent to the primary election, for the respective offices of State Senate and State House of Representatives. [2003, c. 453, §1 (amd).]

C. For contested legislative general elections, the amount of revenues distributed is the average amount of campaign expenditures made by each candidate during all contested general election races for the immediately preceding 2 general elections, as reported in the initial filing period subsequent to the general election, for the respective offices of State Senate and State House of Representatives. [2003, c. 688, Pt. A, §21 (amd).]

D. For uncontested legislative general elections, the amount of revenues to be distributed from the fund is 40% of the amount distributed to a participating candidate in a contested general election. [2003, c. 453, §1 (amd).]

E. For gubernatorial primary elections, the amount of revenues distributed is \$200,000 per candidate in the primary election. [2003, c. 453, §1 (new).]

F. For gubernatorial general elections, the amount of revenues distributed is \$400,000 per candidate in the general election. [2003, c. 453, §1 (new).]

If the immediately preceding election cycles do not contain sufficient electoral data, the commission shall use information from the most recent applicable elections.

[2003, c. 688, Pt. A, §21 (amd).]

9. Matching funds. When any campaign, finance or election report shows that the sum of a candidate's expenditures or obligations, or funds raised or borrowed, whichever is greater, alone or in conjunction with independent expenditures reported under section 1019-B, exceeds the distribution amount under subsection 8, the commission shall issue immediately to any opposing Maine Clean Election Act candidate an additional amount equivalent to the reported excess. Matching funds are limited to 2 times the amount originally distributed under subsection 8, paragraph A, C, E or F, whichever is applicable.

[2003, c. 688, Pt. A, §22 (rpr).]

10. Candidate not enrolled in a party. An unenrolled candidate certified by April 15th preceding the primary election is eligible for revenues from the fund in the same amounts and at the same time as an uncontested primary election candidate and a general election candidate as specified in subsections 7 and 8. For an unenrolled candidate not certified by April 15th at 5:00 p.m. the deadline for filing qualifying contributions is 5:00 p.m. on June 2nd preceding the general election. An unenrolled candidate certified after April 15th at 5:00 p.m. is eligible for revenues from the fund in the same amounts as a general election candidate, as specified in subsections 7 and 8.

[2001, c. 465, §6 (amd).]

11. Other procedures. The commission shall establish by rule procedures for qualification, certification, disbursement of fund revenues and return of unspent fund revenues for races involving special elections, recounts, vacancies, withdrawals or replacement candidates.

[IB 1995, c. 1, §17 (new).]

12. Reporting; unspent revenue. Notwithstanding any other provision of law, participating and certified candidates shall report any money collected, all campaign expenditures, obligations and related activities to the commission according to procedures developed by the commission. Upon the filing of a final report for any primary election in which the candidate was defeated and for all general elections that candidate shall return all unspent fund revenues to the commission. In developing these procedures, the commission shall utilize existing campaign reporting procedures whenever practicable. The commission shall ensure timely public access to campaign finance data and may utilize electronic means of reporting and storing information.

[IB 1995, c. 1, §17 (new).]

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).

Title 21-A, §1127, Violations

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§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).

Title 21-A, §1016, Records

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§1016. Records

Each treasurer shall keep detailed records of all contributions received and of each expenditure that the treasurer or candidate makes or authorizes, as provided in this section. When reporting contributions and expenditures to the commission as required by section 1017, the treasurer shall certify the completeness and accuracy of the information reported by that treasurer. [1991, c. 839, §13 (amd); §34 (aff).]

1. Segregated funds. 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. Personal funds of the candidate used to support the candidacy must be recorded and reported to the treasurer as contributions to the political committee, or the candidate if the candidate has not authorized a political committee. [1991, c. 839, §13 (amd); §34 (aff).]

2. Report of contributions and expenditures. A person who receives a contribution or makes an expenditure for a candidate or political committee shall report the contribution or expenditure to the treasurer within 5 days of the receipt of the contribution or the making of the expenditure. A person who receives a contribution in excess of \$10 for a candidate or a political committee shall report to the treasurer the amount of the contribution, the name and address of the person making the contribution and the date on which the contribution was received. [1991, c. 839, §13 (amd); §34 (aff).]

3. Record keeping. A treasurer shall keep a detailed and exact account of:

A. All contributions made to or for the candidate or committee, including any contributions by the candidate; [1989, c. 504, §§10, 31, (amd).]

B. The name and address of every person making a contribution in excess of \$10, the date and amount of that contribution and, if a person's contributions in any report filing period aggregate more than \$50, the account must include the contributor's occupation and principal place of business, if any. If the contributor is the candidate or a member of the candidate's immediate family, the account must also state the relationship. For purposes of this paragraph, "filing period" is as provided in section 1017, subsections 2 and 3-A; [1991, c. 839, §13 (amd).]

C. All expenditures made by or on behalf of the committee or candidate; and [1985, c. 161, §6 (new).]

D. The name and address of every person to whom any expenditure is made and the date and amount of the expenditure. [1985, c. 161, §6 (new).]
[1991, c. 839, §13 (amd).]

4. Receipts preservation. 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 political committee or a candidate and for any such expenditure in a lesser amount if the aggregate amount of those expenditures to the same person in any election exceeds \$50. The treasurer shall preserve all receipted bills and accounts required to be kept by this section for 2 years following the final report required to be filed for the election to which they pertain, unless otherwise ordered by the commission or a court. [1991, c. 839, §13 (amd); §34 (aff).]

PL 1985, Ch. 161, §6 (NEW).

Agenda

Item #3



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

September 27, 2007

Audit Report No. 2006-HR041

**Candidate: John W. Churchill
House District 7**

Background

John W. Churchill was a candidate for re-election to the Maine House of Representatives, District 7, in the 2006 general election. The Commission on Governmental Ethics and Election Practices (Commission) certified Mr. Churchill as a Maine Clean Election Act (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

Auditor's Note No. 1: In June 2007, after being notified that his campaign had been selected for audit, Mr. Churchill informed the Commission staff that he had encountered a serious problem regarding his campaign documentation. He stated that in early 2007, he was working out of state in Florida, and that he had his campaign financial records with him at that time. Mr. Churchill said that a weather event caused the destruction of many of those records, and that he would have to obtain copies from the vendors to his campaign. Since bank records and vendor invoices are the centerpieces of campaign expense documentation,

and since such documents can be replaced, we encouraged Mr. Churchill to contact his bank and the vendors to his campaign as soon as possible to obtain any missing items. Mr. Churchill's statement regarding the loss of records is included as Exhibit I to this report.

Finding No. 1 – Campaign expenditures in excess of authorized MCEA funding: The audit disclosed three expenditures that when taken together exceeded the total amount of MCEA funding distributed to the candidate and authorized by the Commission. The excess expenditures totaled \$119.27 and are described in Exhibit II to this report. The transactions in question were a combination of unreported and under-reported payments from the campaign bank account. Mr. Churchill reported and accounted for a total of \$7,714.62 in campaign expenditures, which was the amount the Commission authorized him to spend. However, our examination indicates that at least \$7,833.89 was spent by the campaign. Mr. Churchill explains that the overspending was due to a dispute with a printing company regarding a June 1, 2006 expenditure of \$512 which he hoped would be reduced because he did not receive expected palm cards.

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. 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." Commission Rules, Chapter 3, Section 5(2)(C)(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."

Recommendation: the Commission staff recommends that the Commission find Mr. Churchill in violation of 21-A M.R.S.A. §1125 (6) for spending money other than Maine Clean Election Act funds to promote his election. If Mr. Churchill believed that his \$512 expenditure would be discounted, the staff believes he should have resolved the dispute with the vendor before spending all of his allowable campaign funds after the election. Also, the staff is concerned that most of the \$119.27 overspending was due to an unreported expenditure of \$98.26 for tee-shirts, so that the full extent of the overspending was only discovered through the audit. Nevertheless, the staff recommends assessing no penalty for this violation.

Finding No. 2 – Incomplete documentation of campaign expenditures: Mr. Churchill reported a June 2006 payment of \$512.00 for political signs to 27 Sign Place. According to Mr. Churchill, he paid the vendor with a personal credit card that he later cancelled. Although a copy of the vendor invoice was on file, there was no record of payment by the candidate, and no record of reimbursement from the campaign bank account. According to Mr. Churchill (see attachment), payment documentation was lost in the weather event in Florida (see Auditor's Note No. 1).

Finding No. 2A: Mr. Churchill reported a food expenditure of \$138.03 at WalMart; payment was made by credit card and there was no invoice or receipt listing the campaign purchases.

Finding No. 2B: Mr. Churchill reported a \$206.41 purchase of sign materials from the Maine Potato Growers (MPG) store; payment was made by credit card and the sales slip from MPG provided no listing of the items purchased.

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(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. 3 – Undocumented campaign expenditure: On September 26, 2006, Mr. Churchill made what we understand was an online purchase from Macy's of tee shirts to be distributed at a hunters' breakfast. The payment amount of \$98.26 was processed through the campaign bank account. There was no invoice from Macy's on file to document the expenditure. According to Mr. Churchill, the vendor invoice was one of the documents lost during the weather event in Florida. We also determined that this expenditure was not listed in any of the candidate's campaign finance reports, and was one of the transactions that caused total campaign expenditures to exceed the maximum allowable amount (see Finding No. 1).

Criteria: 21-A M.R.S.A. §1016(3)(C), "A treasurer shall keep a detailed and exact account of: ... All expenditures made by or on behalf of the...candidate...." 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." 21-A M.R.S.A. §1125(12), "[P]articipating and certified candidates shall report any money collected [and] all campaign expenditures...according to procedures developed by the commission."

Recommendation (applicable to Findings No. 2 and 3): the Commission staff recommends that the Commission find Mr. Churchill in violation of 21-A M.R.S.A. §1125(12-A) for not keeping required documentation of expenditures for two years after he filed his final campaign finance report for the 2006 election. The staff recommends assessing no penalty for the violation because of the contributing factor of the weather event.

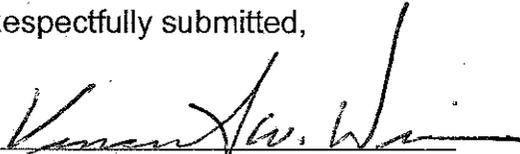
Auditor's Note No. 2: Mr. Churchill withdrew \$2,547.68 from his campaign bank account in December, 2006. Mr. Churchill informed the auditor that the monies withdrawn were to reimburse himself for campaign expenditures that he paid from his personal resources (see Exhibit III to this report). While Commission rules do not prohibit the practice, it should be noted that cash transactions provide no documentary evidence to support proof of payment for individual campaign expenditures. In the present circumstance, Mr. Churchill has provided documentation that forms the basis for the reimbursement. Although we have

accepted Mr. Churchill's submittal, the Commission staff would have preferred payment documentation that was independently verifiable. A better practice would have been for the Churchill campaign to (1) pay vendors directly with checks drawn on the campaign bank account, or (2) and less preferable, to write a reimbursement check to the candidate for each expenditure being reimbursed, supported by the original vendor invoice and original record of payment.

Candidate's Comments

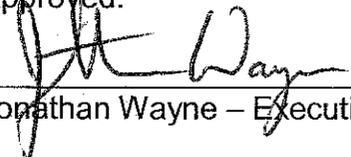
Mr. Churchill's comments are attached.

Respectfully submitted,

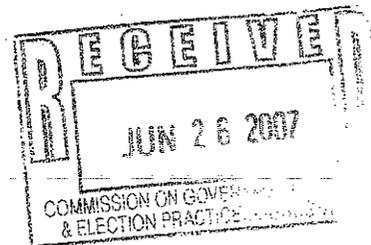


Vincent W. Dinan - Staff Auditor

Approved:



Jonathan Wayne - Executive Director



June 24, 2007

Jonathan Wayne
commission of Governmental Ethics
135 State House Station
Augusta, Maine 04333-0135

Dear Mr. Wayne

I am in receipt of your letter advising of an audit from the 2006 election cycle. I also understand the deadline of July 2, 2007. I am requesting an exception of the deadline for the following reasons:

On February 2, 2007, I was living in the Lady Lake area in Florida, I left Maine for two months to work in that area taking with me all tax and financial records, also included were my Clean election records .

I had taken my pick up, with everything packed under a cargo cover in the rear of the vehicle, during the early morning of February 2 nd , the area I was in received 9 inches of rain with some very high winds, the cargo cover was fiberglass and build to protect objects from thieves and the elements, however this was not the case, the items that were not blown away were destroyed by the water from the storm.

The IRS granted everyone in the area an automatic 6 month exception on filing their 2006 tax return. About 80% of the items you listed are large companies with computer systems that can produce copies of my expenses with them in very little time, however Wal mart- griffins Texaco(where most of my gas was purchased) is now out of business, this is going to take some time , travel is a large expense in district 7 as its 137 miles of rt. 1, I95 and rt 11 not adding for any secondary roads or streets. In my records I had kept a log dated with each trip. I have contacted the last owner of griffins Texaco , He states he can give me receipts for the amount of money I spent there and the date I paid him.

Would it be acceptable to forward everything I have on July 2 , with a letter of explanation of the situation at that time.?

Sincerely, John W> Churchill

**COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES
AUDIT OF 2006 CAMPAIGN FINANCE REPORTS**

CANDIDATE: JOHN W. CHURCHILL

HOUSE DISTRICT: 7

MODE OF CAMPAIGN FINANCING: MCEA

EXPENDITURES IN EXCESS OF AUTHORIZED MCEA FUNDING

TRANSACTION	DATE	AMOUNT	COMMENTS
Macy's	9/26/2006	\$98.26	Unreported expense. Undocumented online purchase of tee-shirts for distribution at hunters' breakfast.
Bangor Letter Shop	7/1/2006	\$15.50	Under-reported expense. Actual expenditure was \$409.50; expenditure reported was \$393.00.
Key Bank	6/28/2006	\$5.51	Unreported expense. Payment for checks.
Total		<u>\$119.27</u>	

COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES
AUDIT OF 2006 CAMPAIGN FINANCE REPORTS

CANDIDATE: JOHN W. CHURCHILL

HOUSE DISTRICT: 7

MODE OF CAMPAIGN FINANCING: MCEA

CASH REIMBURSEMENTS TO JOHN CHURCHILL

TRANSACTION	DATE	AMOUNT
Rathbun Lumber Co.	7/7/2006	\$100.46
Sign Place	7/12/2006	\$78.00
USPS	10/19/2006	\$78.00
Spectrum Printing	10/19/2006	\$228.00
Travel Costs	10/28/2006	\$379.00
WalMart Super Center	11/7/2006	\$138.03
MPG	11/7/2006	\$206.41
Bangor Daily News	11/8/2006	\$512.02
NE Publishing - Star Herald, Pioneer Times	11/11/2006	\$276.75
Three Trips to Augusta (Recount Hearings)	11/20/2006	\$120.00
Travel Costs	11/24/2006	\$431.60
Subtotal		<u>\$2,548.27</u>
Unreconciled Amount		<u>(\$0.59)</u>
December withdrawal total, per Key Bank		<u><u>\$2,547.68</u></u>

Audit Report No. 2006-HR041
Candidate: John W. Churchill
House District 7

Response to the Ethics commission :

Finding No.1- overexpendure of \$119.27

Guilty- this expenditure violation was caused by a dispute with one vender as to the materials I was going to receive for \$512.00 I was under the impression that the order included 500 palm cards, when the order was received it contained no palm cards, I inquired to the owner as to why the palm cards were not shipped, He stated the invoice did not include them, however he would look into the matter---- MEANWHILE---- I ordered the palm cards from spectrum at a cost of \$138.00 - my thought at that point was that I would be reimburse these funds when the sign place account got straight. After a few calls The dispute was a she said he said situation and the owner of the shop detailed the invoice showing the palm cards were not suppose to be included , however this was solved weeks after my last filing with ethics, too late to change anything.

Finding No.2 The documentation listed is incorrect, The vender was paid with a 512.00 bank cashier check which was obtained because this was my first election funds and I had not yet opened a checking account. I did keep the carbon copy of that check, it was destroyed in the tornado I sit out in my vehicle in Lady Lakes, Fla.

2A. Duplicate documentation on file for only 90 days.

2B. Material list of each item , same as above.

Finding 3 Macys- attempt to get a duplicate receipt was fruitless.

In closing if I had one recommendation to the commission it would be:
delete words in rules such as should, may or recommends, replace with must..

Sincerely


Main Identity

27 Sign P

From: "June churchill" <jjchurch@verizon.net>
 To: "Dinan, Vincent W" <Vincent.W.Dinan@maine.gov>
 Sent: Friday, August 10, 2007 2:08 PM
 Subject: Re: Campaign Audit - Incomplete Bank Statements

this appeared to have happen prior to the opening of my election account- the money was spent at 27 sign place - I belive the exact figure will match money spent there- they do not accept credit cards, I belive this is what happen-

I ordered a parcel order of signs and handouts thru them- the \$512.00 check from the state was used to purchase a cashiers check from the bankfor \$512.00. and paid to 27 sign place... IF i had my original receipts I belive I could bear this out with a copy of the same. the check could have been purchased in 1 of 3 banks- I will attempt to figure out which one and attempt to get a copy if that is possible. I called to have the bank statements re-faxedoriginal

From: Dinan, Vincent W
 To: June churchill
 Cc: Wayne, Jonathan
 Sent: Friday, August 10, 2007 9:22 AM
 Subject: Campaign Audit - Incomplete Bank Statements

Dear Mr. Churchill:

I have reviewed the bank statements that you faxed to me on August 9th. The statements for July, August, and September of 2006 provide the necessary information; the statements for October, November and December, 2006 are incomplete. In the three instances where the statements are incomplete, all three are missing the detailed listing of withdrawals and checks paid during each of the monthly reporting periods. Your fax contained two blank pages and one reconciliation worksheet page, so the listing pages may have been omitted in error. Please forward the missing statement information to me as soon as possible.

In a related matter, the Commission disbursed \$512.00 to you on March 15, 2006 to fund your primary campaign. Your campaign bank statements do not show a deposit in this amount. Please explain what happened to that payment.

Thanks,

Vincent Dinan

Vincent W. Dinan

Auditor

Maine Commission on Governmental Ethics

and Election Practices

135 State House Station

Augusta, ME 04333-0135

Tel. (207) 287-4727

Fax (207) 287-6775

The personnel presence in Town Hall will remain until 8 pm this Friday evening. We believe the resources Lady Lake's newfound homeless will need to get through today and this weekend have been and will be made available via donations and shelter food supplies at the Villages Lady Lake Elementary School Shelter Facility on Rolling Acres Road.

The Lady Lake American Legion (SE corner of 466 and Rolling Acres) continues to serve as the staging area for donations of food, clothes, tents, toiletries, diapers, mattresses, water, ice if refrigeration unit provided as well, etc.

Temporary housing opportunities for after the shelter potentially closes on Monday being pursued in coordination with Congressman Stearns' Office with the appreciated assistance of FEMA Director Paulson. Portable showers also included in this FEMA request.

Red Cross remains in Lady Lake and will be administering their assistance on site for at least 1 week and we understand on site locations all in areas of southern Lady Lake destroyed by the Tornado(s).

Progress Energy anticipates 3200 electric customers currently without power but at least 400 of these should receive power by 6:00 pm Friday evening. The remaining 2800 should get power back by noon on Saturday.

Road Clearing, driveway clearing and debris removal efforts will commence immediately following the conclusion of ongoing search and rescue efforts. Town provided potable water is safe to drink.

State of Florida Insurance Regulator Phil Harris will be **ATTACHMENT**
providing insurance claims resources within the Lady L:
Villages Elementary School Shelter Facility on Saturday 2/3
and Sunday 2/4 to provide filing assistance to Tornado victims.

Regional emergency services and clean-up support has been provided on a grand scale and continue to be sincerely appreciated by Lady Lake's Mayor and Town Commission.

If you are interested in providing resources of any kind to assist the victims of this morning's tornado please call Town Hall at 751-1502 until 8 pm this evening or between 9-5 pm to provide your information and specific type of assistance you could donate.

Bill Vance
Lady Lake Town Manager


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Tornadoes kill at least 19 in Florida

POSTED: 3:35 a.m. EST, February 3, 2007



Jack Hurst sent this photo of interior damage to one of his neighbor's houses in Lady Lake, Florida.

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VIDEO

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Astonished resident describes what's left



Homes smashed to splinters



What it was like as the storm hit

EMERGENCY CONTACTS

EMERGENCY CONTACTS

- FEMA director reportedly planning to arrive during weekend
- Death toll climbs to 19 as crews search rubble
- Volusia County sheriff declares curfew in affected areas
- Governor declares emergency in Lake, Seminole, Sumter, Volusia counties

[Adjust font](#)

LADY LAKE, Florida (CNN) – At least 19 people were killed in one county catastrophic storms packing tornadoes raked across central Florida.

Lake County authorities said the early-morning storm killed 13 people in the Paisley and six more in Lady Lake.

Among the dead were two high school students – a 17-year-old girl and a freshman, said Anna Cowin, superintendent of Lake County Schools. (What helicopter tour reveal extent of tornado damage [\(more\)](#))

The boy, one of triplets, was killed along with his parents, while a sister, also triplets, is in serious condition at a hospital, Cowin's office said.

Cowin also said a 7-year-old boy and his father were killed.

Officials in Sumter and Volusia counties, which also were hit, said they had 1 deaths. (Retirees live through a nightmare)

Florida Gov. Charlie Crist declared a state of emergency in Lake, Seminole, Volusia counties.

He said he had spoken with President Bush and Homeland Security Secretary Chertoff regarding the importance of receiving federal aid.

In Lady Lake late Friday, Crist told CNN the storm damage was the worst he seen in the state.

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, §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) .

Title 21-A, §1016, Records

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§1016. Records

Each treasurer shall keep detailed records of all contributions received and of each expenditure that the treasurer or candidate makes or authorizes, as provided in this section. When reporting contributions and expenditures to the commission as required by section 1017, the treasurer shall certify the completeness and accuracy of the information reported by that treasurer. [1991, c. 839, §13 (amd); §34 (aff).]

1. Segregated funds. 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. Personal funds of the candidate used to support the candidacy must be recorded and reported to the treasurer as contributions to the political committee, or the candidate if the candidate has not authorized a political committee. [1991, c. 839, §13 (amd); §34 (aff).]

2. Report of contributions and expenditures. A person who receives a contribution or makes an expenditure for a candidate or political committee shall report the contribution or expenditure to the treasurer within 5 days of the receipt of the contribution or the making of the expenditure. A person who receives a contribution in excess of \$10 for a candidate or a political committee shall report to the treasurer the amount of the contribution, the name and address of the person making the contribution and the date on which the contribution was received. [1991, c. 839, §13 (amd); §34 (aff).]

3. Record keeping. A treasurer shall keep a detailed and exact account of:

A. All contributions made to or for the candidate or committee, including any contributions by the candidate; [1989, c. 504, §§10, 31, (amd).]

B. The name and address of every person making a contribution in excess of \$10, the date and amount of that contribution and, if a person's contributions in any report filing period aggregate more than \$50, the account must include the contributor's occupation and principal place of business, if any. If the contributor is the candidate or a member of the candidate's immediate family, the account must also state the relationship. For purposes of this paragraph, "filing period" is as provided in section 1017, subsections 2 and 3-A; [1991, c. 839, §13 (amd).]

C. All expenditures made by or on behalf of the committee or candidate; and [1985, c. 161, §6 (new).]

D. The name and address of every person to whom any expenditure is made and the date and amount of the expenditure. [1985, c. 161, §6 (new).]
[1991, c. 839, §13 (amd).]

4. Receipts preservation. 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 political committee or a candidate and for any such expenditure in a lesser amount if the aggregate amount of those expenditures to the same person in any election exceeds \$50. The treasurer shall preserve all receipted bills and accounts required to be kept by this section for 2 years following the final report required to be filed for the election to which they pertain, unless otherwise ordered by the commission or a court. [1991, c. 839, §13 (amd); §34 (aff).]

PL 1985, Ch. 161, §6 (NEW).

Agenda

Item #4



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: October 23, 2007

Subject: October, 2007 Candidate Audit Report Submittals

Materials submitted with the October, 2007 Commission packet include the four candidate audit reports listed below.

Candidate Name	District	Disposition
Patricia LaMarche	2006 Gubernatorial Candidate	See Commission Agenda
John Churchill	HD 7	See Commission Agenda
Rep. Boyd Marley	HD 114	See Commission Agenda
Sheila Rollins	HD 98	See Commission Agenda

Audit Findings of "No Exceptions" 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

October 1, 2007

Audit Report No. 2006-HR046

**Candidate: Representative Boyd Marley
House District 114**

Background

Representative Boyd Marley was re-elected to the Maine House of Representatives, District 114, in the 2006 general election. The Commission on Governmental Ethics and Election Practices (Commission) certified Rep. Marley as a Maine Clean Election Act (MCEA) candidate on March 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 – incomplete documentation of campaign expenditures: the Marley campaign reported two expenditures that were inadequately documented: Donahue Advertising for \$111.95 and Bayside Printing for \$250.00. In both cases, the campaign did not maintain the vendor invoices in their accounting files, and according to Rep. Marley, were not able to obtain copies from the vendors. In each case, the expenditure was supported by a cancelled check payable to the merchant. Without the vendor invoices, the auditor was unable to verify the campaign purpose of the expenditures.

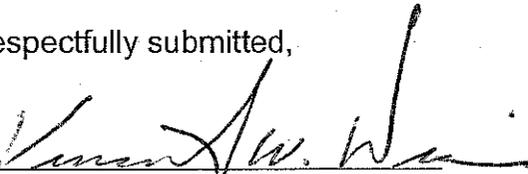
Criteria: 21-A M.R.S.A. §1016, "Each treasurer shall keep detailed records of all contributions received and of each expenditure that the treasurer or candidate makes or authorizes...."

Recommendation: the Commission staff recommends that the Commission find Rep. Marley in technical violation of the cited provision of the MCEA. However, given the generally good condition of the Marley campaign's records, the staff further recommends that the Commission not assess a penalty.

Candidate's Comments

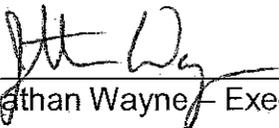
Rep. Marley did not comment on the report.

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

September 24, 2007

Audit Report No. 2006-HR045

**Candidate: Sheila H. Rollins
House District 98**

Background

Sheila H. Rollins was a candidate for the Maine House of Representatives, District 98, in the 2006 general election. The Commission on Governmental Ethics and Election Practices (Commission) certified Ms. Rollins 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 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

Finding – Incomplete documentation: the candidate reported a \$96.00 expenditure for postage during the 42 Day Post-Primary reporting period. The disbursement was supported by a cancelled check, but no invoice or receipt showing the items purchased was on file.

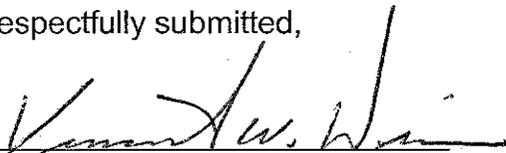
Criterion: 21-A M.R.S.A. §1016, "Each treasurer shall keep detailed records of all contributions received and of each expenditure that the treasurer or candidate makes or authorizes...."

Recommendation: the Commission staff recommends a finding of technical violation of the cited provision of the Act, but given the candidate's generally excellent record-keeping, the staff believes that there should be no penalty assessment.

Candidate's Comments

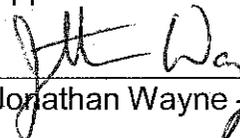
Ms. Rollins had no comment on the audit finding and recommendation.

Respectfully submitted,



Vincent W. Dinan - Staff Auditor

Approved:



Jonathan Wayne - Executive Director

Agenda

Item #5



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: October 22, 2007
Re: Guidance on New Requirement for Lobbyists to Report Communications with
Executive Branch Officials

Lobbyists in Maine must register with the Ethics Commission and file monthly and annual reports of their activity. Among other things, these reports disclose the client that has employed the lobbyist, the bills and other matters lobbied for that client, the compensation received from the client, and expenditures made in the course of lobbying. I have attached an example of the monthly reporting form that must be completed on-line by lobbyists.

Until September 2007, lobbyist reports covered communications that the lobbyist made to officials in the legislative branch for the purpose of influencing legislation. Earlier this year, the Legislature enacted Chapter 373 of the Public Laws of 2007. The law required lobbyists to begin reporting communications with officials in the executive branch and with constitutional officers.

The requirement went into effect on September 20, 2007. In response to requests for clarification from lobbyists, the Commission staff has drafted for your consideration general guidance on the new reporting requirement. On October 4, 2007, the staff circulated the guidance in draft form to all registered lobbyists and invited them to submit comments within two weeks. One lobbyist responded with informal suggestions, and Kristine Ossenfort, a lobbyist for the Maine State Chamber of Commerce, highlighted some additional issues in need of clarification. In response to the lobbyists' comments and questions, the staff made some changes to the draft guidance which is shaded.

Please note that on one issue of interpretation, I have provided two options for your consideration. The definition of lobbying includes "time spent to prepare and submit to the Governor, an official in the legislative branch, an official in the executive branch, a constitutional officer, or a legislative committee oral and written proposals for, or testimony or analyses concerning, a legislative action." Some lobbyists have inquired whether the reporting requirement includes a "clawback" that would apply to quantitative analysis or legislative drafting which was not originally intended to be submitted to a government official. The issue of concern is if the lobbyist or client later decides to submit the analysis or draft legislation to a covered official, it may be difficult to quantify the compensation received or expenditures made months or years earlier.

If you approve of the guidance, the Commission staff would circulate it to lobbyists and post it to the Commission website as final advice. Thank you for your considering it.

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

**Guidance on Reporting
Executive Branch Lobbying**

Lobbyists are now required to report lobbying of executive branch officials and constitutional officers. (Chapter 373 of the Public Laws of 2007, effective September 20, 2007.) This memo offers advice on the new requirement.

CHANGES TO THE DEFINITION OF LOBBYING

How has Chapter 373 changed the definition of lobbying?

Lobbying is defined in the lobbyist disclosure law at 3 M.R.S.A. § 312-A(9), which is attached. To count as lobbying, a communication by a lobbyist must have three elements. It must:

<p>① be made for the purpose of influencing</p>	<p>② a covered governmental official</p>	<p>③ regarding legislative action</p>
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The primary change made by Chapter 373 was to add new categories of governmental officials covered by the lobbyist disclosure law: the staff and cabinet of the Governor, certain agency officials, and the state’s constitutional officers. Some agencies covered by the law are independent but in this memo the Commission will use the term “executive branch agencies” to refer to all agencies covered by the law, regardless of whether they are technically a part of the executive branch. The term “official in the executive branch” is defined in 3 M.R.S.A. § 312-A(10-C) and refers to specific employees in major policy-influencing positions within these agencies, now covered under this law.

In addition to communicating with covered officials, are there other activities that constitute lobbying?

In addition to communicating, lobbying includes “the time spent to prepare and submit to the Governor, an official in the legislative branch, an official in the executive branch, a constitutional officer, or a legislative committee oral and written proposals for, or testimony or analyses concerning, a legislative action.” (Please see the attached definition of lobbying.)

What kinds of legislative action are covered by the law?

“Legislative action” is defined in 3 M.R.S.A. § 312-A(8) as “the drafting, introduction, consideration, modification, enactment or defeat of any bill, resolution, amendment, report, nomination or other matter by the Legislature, by either the House of Representatives or the Senate, any committee or an official in the Legislative Branch acting in his official capacity, or action of the Governor in approving or vetoing any legislative document presented to the Governor for his approval.”

What if a lobbyist communicates with a Legislator or an executive branch official for the purpose of influencing the official regarding a policy issue, but there is no proposed legislation related to that issue at that time? Is that lobbying?

The definition of legislative action includes the drafting of legislation and the introduction of legislation. So, communications made for the purpose of influencing how legislation will be drafted, what to include in the proposed legislation, or whether legislation will be introduced is lobbying.

If a lobbyist does not intend to influence the drafting or introduction of legislation, the communication is not lobbying. Lobbyists who are uncertain whether their communications qualify as lobbying are welcome to turn to the Commission staff for advice.

What about meetings with agency officials made for the purpose of obtaining information or documents or to conduct other research?

If the lobbyist is not communicating with the official for the purpose of influencing legislative action, the meeting is not lobbying. Meeting with agency officials to discuss policy matters in a general way, to explore an agency’s policy positions on issues, or to inquire how proposed legislation would affect an agency’s programs or operations is not lobbying. Merely gathering information or documents is not lobbying, even if the information or documents relate to a subsequent legislative proposal. There may be other types of communications or interactions with agency officials that would not be considered lobbying. The most important factor to determine whether some activity is lobbying is whether its purpose is to influence the agency official concerning a legislative action. If the lobbyist is uncertain, the Commission staff is available to provide specific guidance to the lobbyist.

What about other research or preparatory activities that are conducted before the lobbyist knows whether legislation will be introduced, such as:

- drafting a written history of current law in Maine for a client,
- conducting quantitative analysis on a policy issue of interest to a client, or
- engaging experts in the field to conduct research or to offer advice?

Research or analysis concerning legislative action only counts as lobbying if it is submitted to a covered official in the form of oral or written proposals, testimony, or analysis. If the analysis is conducted only to educate the lobbyist or client and is not submitted to a covered official, it is not lobbying.

If research or analysis is conducted and the lobbyist does not intend to use it to influence legislative action, the research or analysis is not lobbying. [*Option A (no clawback)*: Even if the research or analysis is later submitted to a covered official, it does not count as lobbying if at the time it was prepared the lobbyist did not intend to submit it to a covered official.] [*Option B (with a clawback)*: If the lobbyist later decides to submit the research or analysis to a covered official, the lobbyist should report the costs of the research or analysis at the time that the lobbyist makes or acts upon that decision.]

What about drafting legislation if the lobbyist does not intend to submit it to a covered official?

Lobbying includes “the time spent to prepare and submit to [covered officials] oral and written proposals for...legislative action.” (3 M.R.S.A. § 312-A(9)) If, at the time a legislative proposal is drafted, the lobbyist does not intend that it will be submitted to a covered official, the drafting is not lobbying. If the legislation is later submitted to a covered official, the drafting does count as lobbying. The Commission advises that the lobbyist should report any compensation and expenditures connected with the drafting as though they occurred during the month when the legislation is submitted.

What about monitoring the activities of agency officials regarding legislative action?

Monitoring the legislative plans or other activities of executive branch agencies is not lobbying, as long as there is no communication made to influence legislative action.

What about influencing other kinds of actions by executive branch agencies?

Communications with executive branch officials covered by this law only count as lobbying if they are made to influence legislative action (see definition above). Communicating with agency officials in an effort to influence other

kinds of administrative action, such as licensing, permitting, rate setting, or government procurement is not lobbying. Contacts with an agency to influence a rulemaking prior to the agency's adoption of rule changes do not count as lobbying because they are not intended to influence legislative action. If the rule changes are major substantive, communicating with a covered official to influence the Legislature's review of the adopted rule changes is lobbying.

GOVERNMENTAL OFFICIALS COVERED BY THE LAW

Which governmental officials are covered by the law?

The law covers:

- officials in the legislative branch (“a member, member-elect, candidate for or officer of the Legislature or an employee of the Legislature”),
- the Governor’s cabinet and staff,
- officials in the executive branch, and
- constitutional officers.

Which officials in the executive branch are covered?

The term “[o]fficial in the executive branch” was introduced by Chapter 373. It refers to:

- an official in a major policy-influencing position listed in Title 5, Chapter 71,
- the Governor’s cabinet and staff, and
- any individual in a major policy-influencing position in any other agency or independent agency as defined in 3 M.R.S.A. § 953, who is not specifically named in Title 5, Chapter 71.

Title 5, Chapter 71 [Sections 932-958] lists about 24 agencies and offices within Maine state government and designates 109 high-ranking positions within those agencies as being “major policy-influencing positions.” These specified positions will be listed on the Commission’s website as guidance for lobbyists.

The Governor’s cabinet and staff are listed at www.maine.gov/governor. In the opinion of the Commission, the reference to “staff” in the phrase “the Governor’s cabinet and staff” was intended to mean employees who work in the Office of the Governor and not the entire staffs of those agencies whose Commissioners or directors are in the Governor’s cabinet.

In addition, “[o]fficial in the executive branch” includes “any individual in a major policy-influencing position in any other agency or independent agency, as defined in [Title 3,] section 953, who is not specifically named in Title 5,

Chapter 71.” Section 953(1) of Title 3 defines “agency” to mean “a governmental entity subject to review pursuant to this chapter, but not subject to automatic termination.” Title 3, Chapter 35 provides that a wide range of executive branch agencies and other state governmental offices be reviewed every eight years by their respective oversight committees in the Maine Legislature. The scope of offices subject to review under Chapter 35 is determined by Section 952:

This chapter provides for a system of periodic review of agencies and independent agencies of State Government in order to evaluate their efficacy and performance. Only those agencies, independent agencies or parts of those agencies and independent agencies that receive support from the General Fund or that are established, created or incorporated by reference in the Maine Revised Statutes are subject to the provisions of this chapter.
(underlining added)

The Commission advises that executive branch agencies covered under the new definition of lobbying include any agency that receives support from the General Fund or that is established, created, or incorporated by reference in the Maine Revised Statutes. Section 959 lists a review schedule for 93 agencies, organized by legislative oversight committee. That list does not appear to include all agencies that receive support from the General Fund or that are established or incorporated by reference in the Maine Revised Statutes. Thus, while this list provides a useful guide, it cannot be relied upon as all encompassing.

The state’s constitutional officers are the Attorney General, the Secretary of State, and the State Treasurer. Although some personnel in the offices of the Attorney General and the Secretary of State are listed in Title 5, Chapter 71, for reporting purposes lobbyists should count those officials as constitutional officers rather than as officials in the executive branch. Management-level employees in the Department of Audit, including the State Auditor, should be considered to be officials of the executive branch, because the State Auditor was established by the Maine Revised Statutes and is thus subject to review under Title 3, Chapter 35.

The term “official in the executive branch” only includes officials in a “major policy-influencing” position. Since that term is not defined in Maine Statutes, the Commission recommends that it would apply to those officials or employees of the agency who have policy development as a major function of their position.

EXCEPTION FOR LOBBYING A STAKEHOLDER GROUP

Chapter 373 created an exception to the definition of lobbying in 3 M.R.S.A. § 312-A(9) for persons “providing information to or participating in a subcommittee, stakeholder group, task force or other work group regarding legislative action” provided that the person’s “regular employment does not otherwise include lobbying.” Please see the attached definition of lobbying for the full exception.

The language “subcommittee, stakeholder group, task force or other work group” appears to be quite broad, but it is limited by the phrases “regarding legislative action” and “by the appointment or at the request of the Governor, a Legislator or legislative committee ...” The Commission interprets this to cover any group of individuals established by the Governor, a Legislator or legislative committee, constitutional officer, state agency commissioner, or a chair of a board or commission for purposes which include proposing, drafting, or influencing legislative action.

If the regular employment of the participant or the person providing information does include lobbying, the exception does not apply and all communications made to covered governmental officials in the stakeholder group to influence legislative action count as lobbying. It does not mean that the person’s other actions in the stakeholder group (e.g., discussing policy ideas unrelated to legislation, or proposing rules or administrative policies) would count as lobbying.

The Commission has been asked to interpret the clause “as long as the person’s regular employment does not otherwise include lobbying.” The Commission interprets this to mean that the exception does not apply to registered lobbyists and lobbyist associates. It also does not apply to other individuals whose employment, outside of the stakeholder group, includes paid lobbying activities even if they have not yet reached the registration threshold of 8-hours of lobbying in a calendar month.

If the lobbyist is not compensated by an employer for participating in or providing information to the stakeholder group, then those activities are not lobbying.

HOW TO REPORT EXECUTIVE BRANCH LOBBYING

How does a lobbyist report compensation received and expenditures made to lobby the Governor's staff, executive branch officials, and constitutional officers?

The law now requires you to report separately the amounts of compensation received and expenditures made to lobby legislative branch officials, executive branch officials, and constitutional officers. The Commission has updated Questions 5 and 6 on the monthly reporting form on its electronic filing website so that the compensation and expenditures can be reported separately in three fields. If the communication is made to influence, simultaneously, officials in two or more categories, the activity should be divided proportionally among the categories based upon whom the lobbyist sought to influence.

When a lobbyist is required to list a legislative action and a legislative document number has not been assigned, how much specificity is required?

Lobbyists are required to provide in their monthly reports “[a] list of each legislative action by Legislative Document or, if unknown, by Senate Paper or House Paper number or, if unknown, by topic or nomination in connection with which the lobbyist is engaged in lobbying” (3 M.R.S.A. § 317(1)(H))

Please use a brief description that provides some specificity about the particular program, regulation, or issue which is the subject of the communication. Avoid descriptions that are so broad as to convey little about what issue has been lobbied on.

<i>Unacceptable</i>	<i>Preferred</i>
Public Assistance	Eligibility criteria
Air Quality	Greenhouse gas emissions
Taxation	Business Equipment Tax Reimbursement
Animal welfare	Mass breeding facilities

In addition, please use a legislative request number if known.

If you have additional questions regarding reporting on executive branch lobbying, please telephone the Commission's PAC/Party/Lobbyist Registrar at (207) 287-4179.

Definition of Lobbying in 3 M.R.S.A. § 312-A(9)

“Lobbying” means to communicate directly with any official in the legislative branch or any official in the executive branch or with a constitutional officer for the purpose of influencing any legislative action or with the Governor or the Governor’s cabinet and staff for the purpose of influencing the approval or veto of a legislative action when reimbursement for expenditures or compensation is made for those activities. “Lobbying” includes the time spent to prepare and submit to the Governor, an official in the legislative branch, an official in the executive branch, a constitutional officer or a legislative committee oral and written proposals for, or testimony or analyses concerning, a legislative action. “Lobbying” does not include time spent by any person providing information to or participating in a subcommittee, stakeholder group, task force or other work group regarding a legislative action by the appointment or at the request of the Governor, a Legislator or legislative committee, a constitutional officer, a state agency commissioner or the chair of a state board or commission as long as the person’s regular employment does not otherwise include lobbying.

From: Kristine Ossenfort [mailto:Kossenfort@mainechamber.org]
Sent: Thursday, October 18, 2007 4:17 PM
To: Wayne, Jonathan
Subject: Draft Guidelines re Executive Branch Lobbying

Dear Jonathan,

Thank you for the opportunity to submit comments on the proposed draft guidelines prepared by the Commission staff with respect to the new executive branch lobbying requirements. I think the draft guidelines are very helpful but do have a couple of questions prompted by the new requirements that do not appear to be addressed by the current draft.

First, I would like to comment on the question in the proposed draft guidance with respect to research and other preparatory activities conducted before a lobbyist knows legislation will be introduced. I do have some concerns about the "clawback" proposal (the proposed Option B). Often research is done with no intention to submit it to a covered official. If it later proves relevant to pending or proposed legislation, it would be virtually impossible to reconstruct the time involved. Furthermore, how back in time would the clawback extend? 30 days? 6 months? Three years? I believe the clawback provision would prove to be unworkable and support Option A, "no clawback."

Some of the other questions that have arisen that do not appear to be addressed by the proposed guidelines include:

How should time be reported if individuals from two or more reportable categories are present at a meeting? For example, if a registered lobbyist or lobbyist associate attends a meeting for 1½ hours to discuss pending legislation and meets with a legislator and a major-policy influencing individual from an executive branch agency, or meets with a legislator, a major-policy influencing individual from an executive branch agency, and one of the constitutional officers, how should that time be reported? Do you report 1½ hours in one category (and if so, which one?), all relevant categories (which would grossly overstate the time and compensation for the time spent lobbying), or should the time be allocated equally between the relevant categories (for example, 1/2 hour executive branch, 1/2 hour legislative and 1/2 hour constitutional)? Such meetings are very common during the legislative session.

If time is spent lobbying a deputy or assistant attorney general, should that time be reported as lobbying the executive branch or a constitutional officer? Deputy and Assistant Attorney Generals are listed as major policy influencing positions in Title 5, chapter 71, technically putting them within the definition of an official in the executive branch; however, lobbying a deputy or assistant attorney general could be intended to influence the position of an executive branch agency or the position of the Attorney General, a constitutional officer, depending upon the situation and policy issue at hand. The same issues would also apply with respect to Deputy Secretaries of State who meet the

definition of "official in the executive branch" by virtue of their inclusion in Title 5, chapter 71, but are employed in the office of a constitutional officer, rather than by an executive branch agency.

Must time spent lobbying the State Auditor be reported and, if so, in which category should it be reported since the State Auditor does not appear to meet the definition of either an official in the executive branch or constitutional officer?

Must time spent preparing testimony or comments on a proposed major-substantive rule or proposed changes to a major-substantive rule be reported? The testimony and comments are made for the purposes of providing input on the proposed rule, but major-substantive rules are subject to review by the legislature. It would appear that, at the rulemaking stage, the contact with the executive branch agency is not lobbying, but I think it would be helpful if the Commission could provide some guidance.

I hope that these comments are helpful to you. Once again, thank you to you and your staff for all of your efforts to provide clarification on this issue!!!

Kris Ossenfort

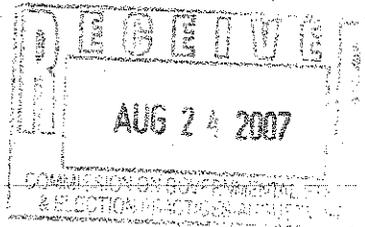
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August 23, 2007

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

Re: Public Law 2007, Chapter 373 – Executive Branch Lobbying

Dear Jonathan:

Thank you very much for meeting with John Delahanty and me to discuss various issues and implications with the recently enacted law, Chapter 373 pertaining to Executive Branch lobbying. During our meeting, we explained our need for guidance from you regarding the interpretation of certain provisions, terminology, and sections of the new law. Guidance and interpretation will help us ensure we are properly complying with the new law, both in our capacities as lobbyists, and as counsel providing advice. The following are the areas regarding which we requested further guidance and interpretation.

1. Official in the Executive Branch

Chapter 373 expands the definition of “lobbying” to include communications with “any official in the Executive Branch” (3 M.R.S.A. §312-A, §§9). The law further defines “official in the Executive Branch” as major policy-influencing positions, and “the Governor’s cabinet and staff” (3 M.R.S.A. §312-A, §§10-C). We are unsure whether the phrase “Governor’s cabinet and staff” refers to the Governor’s staff, the staff of cabinet agencies, or both. Interpretative guidance regarding which staff are meant by the expanded definition would be helpful, including which staff positions are included.

2. Official in the Executive Branch

As part of its expansion of the definition of “lobbying” to the Executive Branch, Chapter 373 defines the Executive Branch to include an “individual in a major policy-influencing position” and enumerated in Title 5, Chapter 71, and other agencies or independence agencies defined in 3 M.R.S.A. §953, who are not specifically named in Title 5, Chapter 71. Given the breadth of Chapter 71 and the vagueness of §953, we are unsure which individuals, agencies, or independent agencies fall within the scope of this particular requirement. We would encourage the Commission to provide on its website a definitive list of the positions that are included in this requirement, the agencies, and the independent agencies that are covered by this requirement.

Further, we are unsure as to which Boards and/or Commissions are included by this provision, and further guidance would be helpful. For example, are all licensing boards within the Department of Professional and Financial Regulation considered "independent agencies" for the purposes of the new definition of "lobbying" or as another example, is the Board of Overseers of the Bar included within this new definition of lobbying? We believe that further guidance and interpretation regarding the scope of this definition, and the agencies which are included will be extremely helpful.

3. Subcommittees, Stakeholder Groups, Task Forces

Chapter 373 states that if a "person's regular employment" does not include lobbying, then participation or providing information to subcommittees or stakeholder groups is not included lobbying. The term "regular employment", however, is not defined, and we would request guidance regarding the scope of this term. For example, does this mean a substantial portion of your employment is as a registered lobbyist (i.e., more than 50% of your time)?

4. Subcommittees, Stakeholder Groups, Task Forces

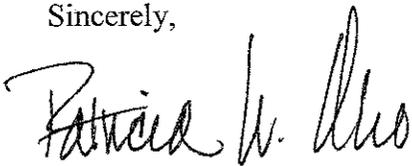
Chapter 373 also uses the new terms of "subcommittee, stakeholder group, task force or other work group" regarding a legislative action. (3 M.R.S.A. §312-A, §§9). Though definitions of the terms subcommittee, stakeholder group and task force would be helpful, the term "other work group" needs to be defined and guidance provided. This is a very broad and overarching term, and guidance regarding what the Commission will expect for disclosure regarding this term would be helpful.

5. Specifying separate activities

Chapter 373 now requires lobbyists separately to identify and report on compensation received for lobbying officials in the Executive Branch, the legislative branch, and constitutional officers. (3 M.R.S.A. §317, §§1 ¶D). This will require new forms, and guidance regarding how to report this new requirement prior to new forms being available will be helpful.

Again, we sincerely appreciate your willingness to discuss Chapter 373 with us, its implications, and the need for interpretative guidance in certain areas of this law. We appreciate your time and consideration in regards to our concerns.

Sincerely,



Patricia W. Aho, Esq.

ajg

cc: John D. Delahanty, Esq.
Martha Currier Demeritt

7A. Specify the total amount of money expended directly to or on behalf of one or more officials of the legislative branch, including members of the official's immediate family. \$ 0.00

7B. If a dollar amount was entered in section 7A, specify the amount for which the lobbyist has been or expects to be reimbursed.
\$ 0.00

8. Enter the name of any official in the legislative branch or member of that official's immediate family on whose behalf an expenditure of expenditures totaling \$25 or more were made during the month covered by this report and the date, amount and purpose of the expenditure or expenditures.

Name	Date	Amount	Purpose

9. Enter the date and a description of the event, and list all officials of the legislative or executive branch or members of an official's immediate family and the total amount of expenditures for the event, if the total amount of the expenditures for officials and family members total \$250 or more.

Date	Description	Official/family member	Amount

10. List each legislative action by Legislative Document number or, if unknown, by Senate Paper or House Paper number or, if unknown, by topic or nomination in connection with which the lobbyist is engaged in lobbying.

1038-1027-1046-1066-1083-109-1116-1125-114-1156-1166-1171-121-124-1253-1258-1262-1311-132-133-1345-1348-1372-1389-1390-1404-1415-1423-1453-1474-1475-1489-1502-1504-1587-160-161-1650-1655-1730-1750-1777-178-223-24-256-286-296-303-341-343-350-388-397-415-416-419-431-494-499-506-552-576-580-590-666-667-676-677-682-690-713-734-75-840-843-851-86-866-911-933-94-946-96

11. Specifically identify each legislative action, Legislative Document, Senate Paper, House Paper or nomination for which the lobbyist was compensated or expects to be compensated, or expended in excess of \$1,000 for lobbying activities related to those actions, and state the amounts compensated or expended for each.

1389	1,000.00
419	1,000.00
866	1,000.00

12. If the lobbyist is required to make a specific list of items in the preceding section of this form, list all original sources of any money received from that employer. "ORIGINAL SOURCE" means any person who contributes \$500 or more in any year directly or indirectly to any employer of a lobbyist, except that contributions of membership dues to nonprofit corporations formed under Title 13-B, any equivalent state law, or by legislative enactment are not considered contributions by an original source. If the employer or person who contributes to an employer is a corporation formed under Titles 13 or 13-A, nonprofit corporation formed under Title 13-B, or limited partnership under Title 31, list the corporation, nonprofit organization or limited partnership, not the individual members or contributors as the original source.

I, the undersigned, hereby swear or affirm that the information contained in this report is true and complete, and that no information is knowingly withheld.

SIGNATURE ON FILE

4/10/2007

Signature of lobbyist or designee

Date

Sworn falsification is a Class D crime(17-A M.R.S.A. Section 453).

THE COMMISSION MAY REJECT REPORTS THAT ARE INCOMPLETE.

NOTE: Violations of 17-A M.R.S.A. Chapter 25, are criminal offenses. Those provisions should be carefully reviewed before making expenditures on behalf of officials in the legislative branch.

Agenda

Item #6



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

October 22, 2007

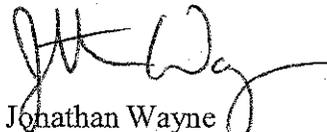
Perry A. Lamb
890 Mere Point Road
Brunswick, ME 04011

Dear Mr. Lamb:

Thank you for your letter of September 2, 2007. The Ethics Commission's Counsel, Assistant Attorney General Phyllis Gardiner, and I have reviewed the materials you have submitted to the Commission. We have determined that they do not suggest a violation of the legislative ethics laws (1 M.R.S.A. §1014) or lobbyist reporting laws (3 M.R.S.A. §§ 313-17) that are within the jurisdiction of the Commission. I have copied the Maine Municipal Association so that it is aware of your dissatisfaction with its interpretation of the local highway law.

I will be informing the Commission of the staff determination on your inquiry at the next meeting of the Commission on Tuesday, October 30, 2007 at 9:00 a.m. You are welcome to make any comments you would like to the Commission at that time. Thank you.

Sincerely,



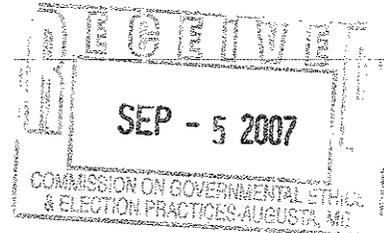
Jonathan Wayne
Executive Director

cc: Bill Livengood, Maine Municipal Association
Phyllis Gardiner, Commission Counsel

890 Mere Point Road
Brunswick, Maine 04011

September 2, 2007

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



Dear Sir,

This letter is in reply to your letter of August 22, 2007 and will attempt to explain why I recently contacted your office.

My "SEVERAL INTERPRETATIVE AND CONSTRUCTION PROBLEMS WITH ONE OF MAINE'S TOWN ROAD CLOSING STATUTES" article addressed certain alleged irregularities regarding the creation of 23 M.R.S.A. Section 3028 and its 1991 amendment.

Section One of this article describes an instance wherein the wording of the easement clause in Section 3028 has been unexplainably modified by some unknown party to read differently than the text of the original document. This error was created sometime during the 1990's and has never been corrected.

Section Two of this article describes how changes in the wording of Section 3028's 1991 amendment caused numerous due process protection flaws in its road abandonment procedures.

Since my article involved legal concepts normally involving lawyers, it seemed logical that I send a copy of my article to Maine's Board of Overseers of the Bar. That I have done though without any reply as yet.

Since I assume that someone in the legislature should be concerned with the issues I have described, it appeared to me that with its lofty title your commission might be interested,- or maybe not. I must admit that the issues I have described arose about 15 years ago and don't seem to be specifically addressed in any of the statutes you sent me, or perhaps nowhere else.

May I make several suggestions? My article describes certain situations that should concern someone in state government. I would

appreciate it if your commission would first find some legal authority to confirm or disprove my contentions. I believe they are accurate since I am reasonably competent in local roads issues and have taken care in writing my article as well as including my reasons for reaching conclusions therein.

If you find my contentions are accurate and someone has successfully misinterpreted wording in a statute for over a 15-year period, or if a statute has been passed by the legislature completely devoid of due process provisions, there should be concern by some office in state government.

I note that you sent a copy of my letter and article to the Maine Municipal Association. That might be a good place for you to start since MMA is well established as an authority on town road issues.

Thank you for your prompt reply to my original letter.

Sincerely yours,

Perry A Lamb
PERRY A. LAMB



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

August 22, 2007

Perry A. Lamb
890 Mere Point Road
Brunswick, ME 04011

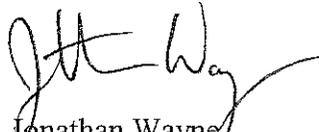
Dear Mr. Lamb:

Thank you for your letter of August 10, 2007 and attached article. This is to request more information so that I can determine whether there are any allegations in your letter which should be considered by the Maine Commission on Governmental Ethics and Election Practices.

Your letter refers to "relationships between non-lawyers and legislative committees which may exceed normally established boundaries." The Ethics Commission has jurisdiction to investigate violations of conflicts of interest, undue influence, and abuses of position as defined in 1 M.R.S.A. §1014 (attached). If you believe a member of the Maine Legislature has violated this provision, please provide more specific information.

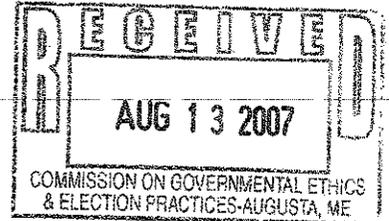
The Maine Ethics Commission also administers the lobbyist disclosure system, which includes lobbyist registration and monthly and annual reporting as described in 3 M.R.S.A. § 313- 317. It also may refer violations of § 318 to the State Attorney General for investigation. If you believe that lobbyists for the Maine Municipal Association have violated these provisions, please provide more specific information. Thank you.

Sincerely,


Jonathan Wayne
Executive Director

cc: Bill Livengood, Maine Municipal Association

890 Mere Point Road
Brunswick, Maine 04011



August 10, 2007

Director
Commission on Governmental Ethics
135 State House Station
Augusta, Maine 04333-0135

Dear Sir,

Attached is a copy of my article entitled "SEVERAL INTERPRETATIVE AND CONSTRUCTION PROBLEMS WITH ONE OF MAINE'S TOWN ROAD CLOSING STATUTES."

This article describes possible unethical relationships by some lawyers with their clients, the general public, other members of the legal profession, the courts and other agencies of this State. It also describes certain possible relationships between non-lawyers and legislative committees which may exceed normally established boundaries. It is for these reasons that this article is being sent separately to both the Board of Overseers of the Bar and the Commission on Governmental Ethics. I would hope that these two groups would work together whenever possible.

PART ONE of this article describes an obvious misinterpretation of Title 23 M.R.S.A. Section 3028's easement clause. This allows towns to retain public easements after Section 3028 abandonments without any consideration of damage payments to affected landowners. The correct reading of Section 3028's easement clause specifies the following procedure for an easement to be acquired during a statutory abandonment. It reads:

"A way that has been abandoned under this section shall be relegated to the same status as it would have had after a discontinuance pursuant to Section 3026, except that this status shall at all times be subject to an affirmative vote of the legislative body of the municipality within which the way lies making that way an easement for recreational use."

As described in PART ONE of my article, someone, possibly associated with the Maine Municipal Association, modified this clause by eliminating the underlined second half and eliminating reference to the Section 3026 requirement in the first half. I mention MMA because of its close involvement with the creation and application of Section 3028 and its amendments since 1976. The net effect of these modifications would (and have) caused full public easements to be retained immediately after Section 3028

abandonments without any need for consideration of damages payments or any reference to the recreational easement limitation.

This interpretation has been accepted as valid by some attorneys and courts in litigation dealing with Section 3028 easement issues for at least the past 15 years. There are several reasons for this unusual degree of acceptance. This modification has been included in all versions of Maine Municipal Association's Municipal Roads Manual since 1992 which is generally accepted as the authority regarding municipal road laws. And during the past 15 years, requests to Maine governors or the Maine Department of Transportation for information regarding Section 3028's easement treatment are usually answered by sending copies of pertinent pages of MMA's Municipal Roads Manual to enquirers. This interpretation has also been used in annual road law seminars sponsored by the Maine State Bar Association.

It would be difficult to determine the number of landowners affected by this misinterpretation. Completed court actions can be determined by Shepardizing Section 3028, however, no such luck if actions were not completed. There are also an unknown number of instances where landowners asked town officials and were shown MMA's Municipal Roads Manual. It would take considerable research to determine the number of roads now classified as statutorily abandoned in error because of this misinterpretation. Such action, however, will be necessary.

PART TWO of this article describes procedural flaws created in the 1991 amendment to Section 3028 which allow towns to effectively have town roads abandoned without following required due process constitutional procedures. These flaws are described on pages 9, 10, and 11 of my article.

At first glance it might be assumed that the creation of this flawed amendment was the sole problem of the legislature. A further review, however, suggests that the Maine Municipal Association plays an important role in the creation and operation of town road statutes and for this reason it is essential that this closeness be closely examined to determine whether MMA has exceeded its legal boundaries as a lobbying agent. Or perhaps, whether the legislature has been lax in recognizing these boundaries.

Consider the reasons for MMA's existence. For example, in 1991, the Maine Municipal Association filed for and was granted to participate as an Amicus Curiae in my Law Court appeal against Franklin County and the Town of New Sharon. MMA's Motion to File contained a statement justifying this request. This very persuasive statement was obviously intended to impress the Law Court with MMA's close association with the creation and operation of Section 3028. Pertinent parts read as follows:

4. The MMA provides legal services to its members. Included in this service are seminars and publications addressing a municipality's use of 23 MRSA §3028, the statute which is the subject of this appeal.

5. The MMA, on behalf of its members, proposes and tracks legislation and in fact drafted legislation in the first regular session of the 115th Legislature which amended 23 MRSA §3028. (Author's note: This amendment changed the test period from 1946 to 1976 to any continuous 30 year period which made it more difficult for a landowner to prevail in a Section 3028 legal action.)

11. The MMA has extensive knowledge and expertise on- road related legal issues, and has participated in the development of 23 MRSA §3028.

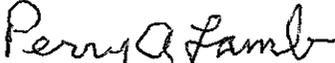
Issues of MMA's Municipal Roads Manual since 1992 contain the following statement:

"This method of disposing of roads is "informal" in the sense that it requires no vote of the municipality, nor are any documents recorded or damages paid."

This achievement may be comforting to MMA and most towns but has caused severe hardships to landowners who have been and will continue to be affected by this "informal" application of Section 3028's 1991 amendment as long as it is in existence.

I conclude this letter with the hope that the issues discussed in my article are important enough to receive maximum attention from all those who have had an interest in or have been part of the problems described therein . I have no way of knowing the extent to which simple or careless error, incompetence, or ethics have been involved in these issues. That is for others to decide.

Sincerely yours,


PERRY A. LAMB

1 ENCL: Easement article

**SEVERAL INTERPRETATIVE AND CONSTRUCTION PROBLEMS
WITH ONE OF MAINE'S TOWN ROAD CLOSING STATUTES**

BY: PERRY A. LAMB

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SEVERAL INTERPRETATIVE AND CONSTRUCTION PROBLEMS WITH ONE OF MAINE'S TOWN ROAD CLOSING STATUTES

By: Perry A. Lamb*

As with the introduction of any innovative type of legislation, some interpretive concerns are likely to develop. Such is the case with Title 23 M.R.S.A. Section 3028 which became law in 1976. This statute was developed to increase the town road closing capabilities of those already provided by Section 3026's town meeting discontinuance procedures as well as common law abandonments.

Some of the circumstances described in this article have been occurring over the past 15 years. For this reason I ask that readers excuse the slightly tedious manner in which I have written this article.

This article consists of three parts:

PART ONE is concerned with the question of what happens to a town road after it has been abandoned pursuant to Section 3028. The most widely accepted current opinion is that a public easement is retained immediately after a Section 3028 court decision is made. After extensive evaluation, it is my opinion that this is not the case.

PART TWO of this article is concerned with due process problems in the wording of the 1991 amendment to Section 3028.

PART THREE of this article addresses possible reasons as to how and why these problems of interpretation came about as well as some suggestions for resolving these problems.

A Review Of Pertinent Road Closing Procedures

Prior to 1976 there were two methods of closing a town road. The first was by common law abandonment and the second by a town meeting vote. Each of these has been in existence since Maine became a state.

Common law abandonment is based on the presumption that if a road had not been used for a period of time, it could be abandoned and no longer publicly maintained. The underlying abandoned right or way would revert to adjoining owners and no damages would need to be offered or paid to these owners. In order to securely establish that a town road had been abandoned, a Superior Court ruling to that effect would need to be made.

A town meeting discontinuance. Title 23 M.R.S.A. Section 3026 provides a statutory means for a town to discontinue a town road. This method of discontinuing a town road required a series of procedural steps before and during a town meeting including a determination of the amount of damages to be offered. It also required a decision as to whether a public easement would be retained by the town or reverted to adjacent landowners.

Creation Of Title 23 M.R.S.A. Section 2068 In 1967

Inasmuch as the Legislative Record did not include any extended discussions regarding the creation of the following statute I believe it reasonable to assume that it was created to cope with a potential problem of new purchasers buying property on old roads and demanding repairs.

In 1967 the Maine legislature created Title 23 M.R.S.A. Section 2068 which described procedures for town selectmen to cease public maintenance on any town roads deemed to be of limited use and value to the traveling public. This statute was also referred to as dealing with "Limited User Highways". There were sparse procedural requirements, public easements were retained, and no damages were offered or paid.

Section 2068 was declared unconstitutional in *JORDAN V. TOWN OF CANTON, Me.* 265 A.2d 96 (1970) and was declared unconstitutional in 1970. Pertinent findings by the Law Court included the following:

Page 98. "The statute is designed to permit a governmental entity to avoid the expense of maintaining and keeping certain designated roads open for travel and free from dangerous defects. Its responsibility for accident caused by such defects in a road so designated is removed. All this is accomplished without technical discontinuance of the public way and without terminating the public easement therein. No provision is made for compensation to abutting owners for the destruction of property rights."

Page 99. "The fact that a "limited-user highway" continues to have a legal status as a "public way" over which there continues to be a public easement of travel is meaningless if there is no longer any public responsibility for maintenance and repair. Without maintenance or repair, it is only a question of time before a public road will become impassable or unsafe for travel. The rigors of Maine weather, the action of frost and the erosion from rain and melting snow will speed the process of disintegration. The ability to use the road for vehicular travel and thus the abutter's easement of access to and over the road to the public road system will inevitably be destroyed.

In its findings the JORDAN Law Court stated that: "Our research and that of counsel fail to disclose the existence of a statute in any other jurisdiction similar to Section 2068." I have no knowledge regarding Maine Municipal Association's role in the creation of this statute except to note that an MMA attorney co-signed the Town of Canton's Law Court Brief in the JORDAN appeal. One should keep the JORDAN decision in mind while reading the remainder of this article.

PART ONE

What Happens To A Maine Town Road After It Has Been Abandoned?

In 1976, Section 3028 was created by the Maine Legislature. It specified that if a town road had not been maintained with public funds for a previous 30-year period, this statute could be used to cause such a road to be declared abandoned by a Superior Court action. This statute is somewhat similar to common law abandonment except that it is based on non-public maintenance whereas common law abandonment is based on non-use. Section 3028 contains an easement clause which specifies procedures regarding the future status of roadways abandoned by this statute.

It is this easement retention clause that is the issue addressed in this PART ONE.

Creation Of Section 3028's Easement Retention Clause

When the proposed Section 3028 was first introduced in the 107th Legislature in 1976 as part of Legislative Document No. 2108, it contained the following easement clause:

"A discontinuance of a town way by abandonment shall relegate the status of the way to that of a public easement for access to abutting property."

It appears that the majority vote on this amendment hesitated to abandon a town road and immediately retain a full public easement. Or perhaps the legislative committee realized that this amendment would require some type of damages consideration. Nevertheless, for whatever reasons, an amendment was then adopted to delete the originally proposed easement clause and replace it with the following:

"A way that has been abandoned under this section shall be relegated to the same status as it would have had after a discontinuance pursuant to Section 3026.

For reasons best known to the legislative committees another amendment was added that resulted in the finally adopted easement clause. For purposes of clarity in this article, this clause is separated into its two pertinent parts, which read:

“A way that has been abandoned under this section shall be relegated to the same status as it would have had after a discontinuance pursuant to Section 3026,

except that this status shall at all times be subject to an affirmative vote of the legislative body of the municipality within which the way lies making that way an easement for recreational use.”

Two Opposing Interpretations Of Section 3028’s Easement Clause

Maine Municipal Association’s interpretation of Section 3028’s easement clause reads as follows:

“Status of a Road After Abandonment. 23 M.R.S.A. § 3028 provides that when a road is abandoned, it is relegated to the same status as it would have had following discontinuance under Section 3026. Thus, if the abandonment occurred before September 3, 1965, the property reverted back to the abutters (to the centerline) and there is no public right of access remaining. If the abandonment occurred on or after September 3, 1965, a public easement remains.”

This interpretation of Section 3028’s easement clause has been described in Maine Municipal Association’s Municipal Roads Manual in its 1989, 1992, and 1999 editions. The first test of this interpretation is to examine the significance of the September 3, 1965 date and its relationships with Sections 3026 and 3028.

The September 3, 1965 Date

A legislative amendment to Section 3026 made effective on September 3, 1965 reversed defaults for determining what would happen if a town meeting discontinuance order failed to specify the status of a discontinued road. In those instances before this date, failure to so specify would cause a default ruling specifying an easement reversion to adjoining landowners. After this date, failure to so specify would cause a default ruling specifying that a public easement be retained by the town.

The subject matter of this amendment was concerned with defaults and not voting results. MMA’s interpretations used the default settings without noting that each default setting was accompanied by wording that allowed voting in opposition to the default choice if so desired. In both the pre-1965 and the post-1965 versions of Section 3026, the statute included the words “and unless

otherwise stated in the order". Thus, during either time period, town voters had the option to accept either the default version at the time or its alternative. MMA's contention that retention of an easement based on the 1965 date could be determined prior to the conclusion of a Section 3026 discontinuation action is obviously in error.

MMA's Rewording Of Section 3028's Easement Clause

Although Section 3028's easement clause has two parts, MMA appears to have disregarded any reference to the second part which limits any easement obtained after a Section 3028 abandonment to one for recreational uses only.

One can only guess that MMA's reason for this deletion might have been its often-repeated opinion that the second part of the easement clause is curious and unclear. This reads, in pertinent part:

"There is a curious provision in 23 M.R.S.A. § 3028 that an abandoned road "is at all times subject to an affirmative vote of the legislative body of the municipality making that way an easement for recreational use." This language was added in the 1975-76 overhaul of the law, but its intent is unclear."

There are no valid reasons for MMA to have modified the wording and intent of the easement clause just because part of it was confusing. The complete wording of the easement clause remains the same as it was in 1976 when Section 3028 was created and this wording controls any easement creation procedures following a Section 3028 abandonment.

MMA's Interpretation Of The Easement Clause Avoids Use Of The Section 3026 Town Meeting Road Discontinuance Process.

The reason that the Section 3026 town meeting road discontinuance process is included in Section 3028's easement clause was to provide a means for determining damages to be paid to abutting landowners for the taking of an easement. See JORDAN at beginning of this article.

MMA's errors were threefold. It misinterpreted the significance of the September 3, 1965 date. It ignored the recreational easement limitation. It also deleted the mechanism for determining damages for taking of an easement by avoiding the Section 3026 process.

Ignoring these three problems provided MMA with the opportunity to improperly claim for over 20 years that a public easement was automatically retained after a Section 3028 abandonment.

My Interpretation. Oops! I Mean The Legislature's Interpretation.

Actually, the Legislature's opinion is expressed in the single two-part sentence in Section 3028's easement clause which specifies requirements for acquiring a public easement after a Section 3028 road abandonment. It reads:

"A way that has been abandoned under this section is relegated to the same status as it would have had after a discontinuance pursuant to Section 3026, except that this status is at all times subject to an affirmative vote of the legislative body of the municipality within which the way lies making that way an easement for recreational use."

A further simplified interpretation of this easement clause would read as follows:

A town or its inhabitants would first have a choice as to whether they wanted to initiate a Section 3026 town meeting to consider a possible easement acquisition. If the town decided to continue, procedures set forth in Section 3026 would be followed to determine whether town voters wanted to consider acquiring an easement that would be limited to recreational uses and to determine the amount of damages to be offered to affected abutting landowners for the taking of the easement. Town voters would then have the opportunity to vote for or against the easement acquisition.

Now that I've explained how a town acquires an easement after a Section 3028 abandonment, I would add a few more comments about this process. To the best of my knowledge, I don't believe that anyone has used this process as described in the statute. For one thing, it would result in some very unhappy landowners who would not only lose town maintenance on the road but would no longer be able to use the road for farming or forestry purposes because of the recreational easement limitation. From the town's standpoint, the matter of how to determine damages might be more than some voters would want to consider.

An explanation for this situation might be that the legislature did not favor using Section 3028 for public easement acquisition purposes but needed more votes to get the basic statute approved. After all, Section 3028 was explained as a statutory version of common law abandonment which did not retain easements.

It might be that MMA was aware of this inadequacy and decided to just start out from scratch and make up its own easement clause.

PART TWO

Due Process Problems With The 1991 Amendment To Section 3028

In 1976, Title 23 M.R.S.A. Section 3028 was created by the Maine Legislature to provide means for a town or county road not maintained with public funds for a previous 30-year period to be declared abandoned by a Superior Court action. This statute is somewhat similar to common law abandonment except that it is based on non-public maintenance instead of non-use for a period of time.

Although this article is concerned with the 1991 amendment to this statute, a brief summary of the pertinent part of the original statute follows for introductory purposes. There were three sentences in the original statute dealing with the question of which parties were responsible for initiating court action. These read:

1. "Presumption of Abandonment. It is prima facie evidence that a town or county way not kept passable for the use of motor vehicles at the expense of the municipality or county for a period of 30 or more consecutive years has been discontinued by abandonment."

This statement specifies what is needed to be proven in order to cause Section 3028 abandonments. It should be noted, however, that it contains no directions as to the manner or time period in which the presumption of abandonment is created.

The next pertinent sentence explained how this presumption could be rebutted. It reads:

2. "A presumption of abandonment may be rebutted by evidence that manifests a clear intent by the municipality or county and the public to consider or use the way as if it were a public way."

This sentence suggests that whoever is confronted with a presumption of abandonment has an option to rebut the presumption. One should note that the specification as to where, how, and when this rebuttal is to be made is again not mentioned in the statute.

The third and final pertinent sentence in the statute describes a means for someone affected by a presumption of abandonment to seek redress. It reads:

3. "Any person affected by a presumption of abandonment, including the State or a municipality, may seek declaratory relief to finally resolve the status of such ways."

One should notice that the word “finally” included in the above text almost guaranteed contention as to what it meant. There were two opposing interpretations as to when the presumption of abandonment would become effective. One interpretation was that it would become effective as soon as it was created. My interpretation was that a presumption would not become effective until a court decision so ruled. Pointless use of the word “finally” has caused arguments over what this word meant for some time.

The 1991 amendment to Section 3028 was created to resolve this problem as to when the status of a road would be changed in a very simple way. It merely ordained that a road’s status would be changed as soon as a town created a presumption of abandonment.

The 1991 Amendment To Section 3028

It may be that the 1991 amendment was intended to clarify at least some of the confusion resulting from the wording in the original statute. It seems, however, that the new wording was more involved with creating due process problems than clarification. The text of Section 2 is the primary subject of this article. It reads:

“Section 2. Status of town way or public easement. The determination of the municipal officers regarding the status of a town way or public easement is binding on all persons until a final determination of that status has been made by a court, unless otherwise ordered by a court during the pendency of litigation to determine the status.”

One should notice that the word “final” included in the above text almost guarantees continued contention as to what it means. There is also one part of the wording of Section 2 deserving special comment. Use of the words “or public easement” might be interpreted as meaning that Section 2 could be used to create a public easement by use of its determination statement. This would not be possible since the subject of easement retention and its procedures and limitations are already specified in the main text of Section 3028.

One sentence in MMA’s 1999 Municipal Roads Manual (page 17) gives a very clear explanation of its interpretation of this amendment. It reads:

“This method of disposing of roads is “informal” in the sense that it requires no vote of the municipality, nor are any documents recorded or damages paid.”

This description may be comforting to MMA and most towns but has caused severe hardships to landowners who have been and will continue to be affected by this “informal” application of Section 3028 and its 1991 amendment.

Most of the remainder of this article discusses ramifications of this statement since the provisions of the 1991 amendment to Section 3028 certainly warrant discussion of the obvious disregard of constitutionality problems for towns' taking advantage of this "informal" process.

Due Process Considerations

There are three principal components of due process: notice, hearing, and an impartial tribunal. "Due process of law requires notice and opportunity for hearing and judgment of some authorized tribunal." *Inhabitants of York Harbor Village Corp. v. Libby*, 126 Me. 537 (1928). Also, "Notice and opportunity for hearing are of essence of due process of law." See *Warren v. Norwood*, 138 Me. 180, *Jordan v. Gaines*, 136 Me. 291.

Notice. Notice is an essential part of due process. However, the 1991 amendment to Section 3028 makes no reference to any type of notice regarding the municipal officers' action to create a determination of status statement.

Hearing. "It is a violation of due process for a judgment to be binding on a litigant who was not a party or privy and therefore has never had an opportunity to be heard." 16A Am Jur 2d Section 839. The 1991 amendment makes no reference to any type of hearing for the period starting with the creation of a determination statement and ending just moments before the final court action ruling.

The following case is directly on point. "No later hearing and no damage award can undo the fact that the arbitrary taking that was subject to the right of the procedural due process has occurred. . . . The court has traditionally insisted that, whatever its form, opportunity for that hearing must be provided before the deprivation at issue takes effect." *Fuentes v. Shevin*, 407 U.S. 82. The deprivation caused by a town's Section 2 presumption of abandonment starts at least months before an official hearing can be heard in a Superior Court lasts until the court order is issued and finalized.

Impartial Tribunal. The first part of Section 2 of the 1991 amendment includes a statement to the effect that: "The determination of the municipal officers regarding the status of a town way or public easement is binding on all persons" becomes operational immediately after town officials create their determination statement. From that moment on, subject road's status is changed from a regular town road to whatever status the determination statement specifies which is usually an unmaintained public easement.

Temporary Takings

In the event some readers might not be aware of the significance of temporary takings, this subject is briefly described as follows:

It is not possible to determine the extent of the taking period in advance since the issue is in limbo until the matter is finally decided by court action. As soon as a determination is made regarding the proposed new status of the town way or public easement, that status is immediately effective and will remain so until a final determination of that status is determined by a court. At bare minimum this period would likely be at least six months or more. The following instances of case law make it clear that deprivation is a taking regardless of how long it lasts:

"The Fourteenth Amendment draws no bright lines around three-day, 10-day or 50-day deprivations of property. Any significant taking of property by the State is within the purview of the Due Process Clause." *Fuentes v. Shevin*, 407 U.S., at 86. Quoted in *In Re The Oronoka*, 393 F.Supp. 1311 (1975). (A Maine case)

"Our cases show that even the temporary or partial impairments to property rights that attachments, liens, and similar encumbrances entail are sufficient to merit due process protection." *Connecticut v. Doehr*, 501 U.S.1 (1990)

"It is of no consequence for due process that deprivation of an interest within the protection of the Fourteenth Amendment is temporary and not final." *Gunter v. Merchants Warren National Bank et al*, 360 F.Supp 1085 (1973).

Burden Of Proof

The following instances of case law clearly show that the burden of proof is on the party desiring to change the status of a road.

Central Pacific Railroad v. Alameda County, 284 U.S. Reports 468 (1932): "The burden of sustaining the affirmative of this proposition plainly rests upon the party who asserts it, since proof of the establishment of a road raises a presumption of its continuance. That is to say, the respondents having shown the establishment by the county of a road through Niles Canyon in 1859, the continuing identity of that road must be presumed until overcome by proof to the contrary, the burden of which rests upon the petitioners. *Barnes v. Robertson*, 156 Iowa 730, 733; 137 N. W. 1018; *Beckwith v. Whalen*, 65 N. Y. 322, 332; *Eklon v. Chelsea*, 223 Mass. 213, 216; 111 N. E. 866;

***Taeger v. Riepe*, 90 Iowa 484, 487; 57 N. W. 1125; *Oyster Bay v. Stehli*, 169 App. Div. (N. Y.) 257, 262; 154 N. Y. S. 849.”**

Note: It is interesting to note that this appeal involved the first appearance by Earl Warren, then District Attorney for Alameda County, Calif. before the U.S. Supreme Court in 1932.

Davenhall v. Cameron, 366 A.2d 499 (NH 1976). Once a highway is established, it is presumed to exist until discontinued, and discontinuance is not favored in the law. Discontinuance is a fact that must be proved and the burden is upon the party who asserts discontinuance to prove it by clear and satisfactory evidence.

It should also be noted that Section 3028 is considered a statutory version of common law abandonment wherein the burden of action is on the town. Likewise, Section 3026's town meeting discontinuances are also required to be initiated by the town. To do otherwise would be a disservice to landowners.

The following case law suggests that there are probably many more road cases that may come to life, possibly because of this article. “In judging whether a statute satisfies constitutional requirements, we look to the possible and not merely the probable consequences which may flow there from. It is not what has been done, or ordinarily would be done, under a statute, but what might be done under it, that determines whether it infringes upon the constitutional right of the citizen. *Bennett v. Davis* (1897) 90 Me. 102, 105. *JORDAN* contains a similar finding.

The sparse wording of the 1991 amendment allows for a wide variety of interpretations and techniques. It fails to pass just about any basic due process test involving notices, hearings, impartial tribunals, or who had the burden to proceed with appropriate action.. Only some of the ways that landowners are affected by this statute are known to date due to the fact that landowners do not always press concerns regarding road problems. For example, town selectmen could adopt a determination of abandonment at any selectmen's meeting without any notice or anyone in attendance or any need to tell anyone that the document will continue to be effective until such time it suits their interests. Or the town can take a different stance and do nothing after adopting a determination of abandonment until a landowner gives up and/or files the required court action, which is something he/she shouldn't have had to do because of the lines of authority referred to above.

PART THREE

My Relationships With MMA And Section 3028

It might help to explain why I am writing this article if I provide a few memories of my early contacts with MMA and Section 3028. In 1976 when a legislative committee was considering the adoption of an LD which eventually

became 23 M.R.S.A. Section 3028. I spoke against the proposal and an MMA representative spoke in favor of it.

In 1989, an amendment to Section 3028 changed the lack of public maintenance test period from a specific period between 1946 to 1976 to any 30-year period. And in 1991, another amendment was added which simplified the procedure for a town to process a presumption of abandonment.

Between 1987 and 1991 I had been involved in a New Sharon road abandonment case and was having reasonable success in questioning the original wording of Section 3028 relating to these two amendments. Some time later before his untimely death, Maine Municipal Association's Joe Wathen told me that he had resolved these problems by what he referred to as the Perry Lamb Amendments No. 1 and 2. Each of these amendments negated certain flaws I had raised in my road litigation. Acting pro se at the time, it took almost a decade thereafter for me to realize that the full significance of these amendments was that they both made it easier for a town to prevail in Section 3028 litigation.

MMA also participated as a Friend of the Court (and town) in my 1991 appeal to the Law Court. I am not aware of any other instances where MMA has joined other Section 3028 appeals in this manner.

JORDAN Lasted Six Years

As described in PART ONE of this article, the 1970 JORDAN decision declared a statute which permitted a town to avoid expense of maintaining and keeping certain designated roads open for travel free from dangerous defects without terminating public easement therein and without compensating abutting owners was unconstitutional.

With the passage of time and with the creation of Section 3028 in 1976 and its 1991 amendment, however, it again became possible for a town road to be abandoned and a public easement retained without compensation. This was possible since MMA's flawed interpretation of Section 3028's easement retention clause allowed retention of a public easement after a Section 3028 abandonments and the 1991 amendment to Section 3028's lax due-process procedures allowed towns to usually prevail in presumption of abandonment efforts.

So! What Happens Next?

Not much, until some preliminaries are taken care of first. I have identified two problems which need clarification.

PART ONE of this article described MMA's misinterpretation of Section 3028's easement clause. In order for the significance of this action to be

evaluated it is essential that MMA provides an explanation as to how and why this misinterpretation came about.

PART TWO of this article described various due process procedural shortcomings existing in the wording of the 1991 amendment to Section 3028. The reasons why this was possible needs to be explained by someone in the legislative system.

At first glance it might be possible to assume that MMA was completely responsible for the fact that its misinterpretation of the easement clause has survived for years, and that the legislative committee was solely responsible for its creation of the 1991 amendment.

It is more likely, however, that there have been more complex reasons involved. It may be that MMA has grown sufficiently in stature to consider itself part of state government instead of just being a lobbying organization, and it might also be that members of the legislature accepted MMA interpretations without applying normal safeguards when dealing with advice and assistance from a lobbying organization.

An additional complication in this matter is that it appears that the MMA interpretation regarding easement retention has been accepted as valid by what appears to be a majority of attorneys, legislators, lobbyists, state and town officials, and jurists between at least 1989 and the present date. I would hope that input from these groups regarding the contents of this article would be forthcoming eventually.

During the past seven years I have made numerous unsuccessful attempts to communicate with various segments of the legal and legislative communities to discuss Section 3028 and its problems, but to no avail. It may be that this same treatment will be given this article, however, I intend to do my best to see that the issues described in this article receive appropriate attention. There may or may not be any worms in this can when it is opened but it does need to be opened.

At this point I would like to add few words about the plight of landowners who have mislead by all layers of government about the status of roads running through their properties during past years.

Excluding Court Actions, How Many Landowners Have Been Misinformed About Their Town Road Property Rights During At Least The Past 15 Years?

One of the reasons for writing this article has been to determine how many landowners have been misinformed about their town road property rights during at least the past 15 years. For the most part rural landowners are not very informed or interested about the legal aspects of town road management and are

willing to live with less than factual explanations about the status of their road. For those landowners who have made some effort, short of court actions, to find out about the status of a road, the replies received are often based on the flaws described in PARTS ONE and TWO of this article; for example:

If a landowner asks about the easement status of the abandoned road, she will likely be told that a public easement now exists on the closed road. If questioned further, she may be shown a copy of MMA's Municipal Roads Manual's interpretation regarding easement retentions after statutory abandonments.

If a landowner questions why he was not aware that his road had been abandoned, he may be shown a copy of the 1991 amendment to 23 M.R.S.A. Section 3028 which does not require formal notice to anyone before adopting a determination of status of a road.

If a landowner decided to petition county commissioners to hold a Section 3652 road repair petition hearing to require a town to make repairs to a town road, Section 3028's 1991 amendment would allow town officials to submit a determination of abandonment which would block the hearing from continuing. And the hearing would remain blocked until someone went to court. Since the statute did not specify who had the burden of initiating the court action, it could be some time before the landowner could or would bother to reapply to the county commissioners for another road repair hearing.

Any investigation into the issues described in this article should include some means of specifically identifying and informing landowners who have been adversely misled by representations described herein and informing them more accurately of their road rights.

Is There Any Significance To The Fact That Certain Superior Court Findings And Associated Law Court Decisions Have Adopted Maine Municipal Association's Interpretation Of 23 M.R.S.A. Section 3028's Easement Clause?

I have included a discussion of this question in this article since I had at one time been confronted with a suggestion that even if a ruling by an appellate Court was in error, it was forever hereafter carved in granite. I doubt it.

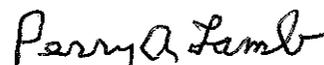
When Courts are confronted with some feature of a statute capable of having more than one interpretation, the Court may decide to include one particular interpretation in its findings. If this finding is also adopted by an appellate Court, there are several doctrines specifying that this interpretation will become the equivalent of case law. These are the Doctrines of Stares Decisis and Res Judicata, both of which are complicated enough to be beyond the scope of this article.

In order for any of the instances described in this article to be subject to either of these doctrines there would need to be some indication on record that the Courts explained why one version of Section 3028's easement clause was selected over another. It is obvious that this was not done since Courts simply used MMA's flawed interpretation without actually reviewing the actual Section 3028 easement clause. If the Courts had actually reviewed this easement clause they would have realized that this statute required a Section 3026 town meeting road discontinuance procedure that would have required damages consideration for acquisition of a public easement limited to recreational uses.

Why Don't I Go To Court To Resolve The Problems Raised In This Article?

No thanks! The problems I have described in this article have been caused by flawed relationships between various branches of state government, segments of the legal community, and the Maine Municipal Association. Landowners have already suffered from these problems and it is past time for those who have caused these problems to solve them.

I conclude this article with the hope that the issues discussed in this article are important enough to receive maximum attention from all those who have had an interest in or have been part of the problems described. I have no way of knowing the extent to which simple or careless error, incompetence, or ethics have been involved in this matter. That is for others to decide.


PERRY A. LAMB *
890 Mere Point Road
Brunswick, Maine 04011

May 10, 2007

*The author, Perry A. Lamb is the owner of a 1600 acre Tree Farm in New Sharon, Maine. He has been involved in a continual series of town road controversies since 1971 including pro se appearances before the Maine Law Court in LAMB v. TOWN OF NEW SHARON, 606 A.2d 1042 (Me. 1992), and in LAMB v. TOWN OF FARMINGTON, (2004 ME 50). And LAMB v. TOWN OF FARMINGTON, (Submitted on Brief, Mem 05-69.) Mr. Lamb has a BS degree in forestry from the Univ. of Calif. (1943) and an MS degree in education from the Univ. of Maine (1971). He is the author of "Agricultural Property Rights and the Coastal Commission" in the San Diego County Agriculture Magazine, July 1979 as well as several articles published by the Cooperative Extension Service, Univ. of Maine: "An Introduction to Timber Trespass-Prevention and Prosecution (1980)"; and "Workers' Compensation and the Small Woodland Owner (1982)". This latter article also appeared in the May 1982 American Forests magazine. He is also the author of "Public Use of Maine's Private Woodlands: Some Landowner Observations. (2003.)" He can be reached at 207-725-5076 or 207-778-3772 at 890 Mere Point Road, Brunswick, Maine 04011, or by E-mail currently at palamb@gwi.net.

Agenda

Item #7



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 22, 2007

Re: Confidentiality of Legislative Ethics Complaints

The Legislature is conducting an extensive review of all exceptions to the Freedom of Access Laws. It will examine laws that require certain records and agency proceedings to be kept confidential. In the 2008 legislative session, the Legislature will consider the confidentiality provisions that apply to complaints of legislative ethics violations submitted to the Ethics Commission.

The Right to Know Advisory Committee is a permanent committee that provides advice to the Legislature about Maine's Freedom of Access Laws. It has submitted a questionnaire to the Ethics Commission asking whether the Commission supports or opposes continuing the confidentiality of ethics complaints.

Under 1 M.R.S.A. § 1013(2)(B), the Maine Commission on Governmental Ethics and Election Practices is authorized to receive and consider complaints regarding conflicts of interest by Legislators. Conflicts of interest include influencing legislation that would provide a unique personal benefit to a Legislator and other circumstances such as unduly influencing an administrative agency or obtaining a special privilege due to membership in the Legislature. (1 M.R.S.A. § 1014, attached). The Commission's procedures for considering ethics complaints are set forth in 1 M.R.S.A. § 1013, also attached.

Background on Legislative Ethics Complaints

Few complaints concerning legislative ethics are filed with the Ethics Commission. Recently, one or two complaints have been filed per year, on average. The Commission has received no legislative ethics complaints this year.

The Commission is limited in its jurisdiction to hear complaints about legislative ethics. It may only consider complaints "dealing with alleged conflicts of interest related to the current Legislature" and the statute only contemplates that complaints will be filed by Legislators, not members of the general public. (1 M.R.S.A. § 1013(2)(B)). The Commission does have authority, however, to pursue conflicts of interest complaints "on its own motion," pursuant to 1 M.R.S.A. § 1013(1)(B), and Chapter 1 of the

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

Commission's rules includes a procedure for responding to complaints filed by others (i.e., non-legislators).

When a complaint is filed, the Commission must provide a copy of the complaint to the Legislator. The Commission must also conduct an investigation and hold a hearing if it deems necessary. The Legislator also has a right to request a hearing. (1 M.R.S.A. § 1013(2)(B)) If a hearing is held, the Legislator has the right to call witnesses and to cross-examine witnesses. After the hearing, the Commission must issue findings of fact and an opinion to the legislative chamber of which the Legislator is a member. That chamber is authorized to take any action it believes is appropriate. The Commission is not authorized to take any punitive action against the Legislator. (1 M.R.S.A. § 1013(2)(D))

Current Confidentiality Provisions

Under current law, two provisions require that legislative ethics complaints and related records be kept confidential:

3. Confidentiality. The subject of any investigation by the commission shall be informed promptly of the existence of the investigation and the nature of the charges or allegations. Otherwise, notwithstanding chapter 13 [the Freedom of Access law], all complaints shall be confidential until the investigation is completed and a hearing ordered or until the nature of the investigation becomes public knowledge. Any person, except the subject of the investigation, who knowingly breaches the confidentiality of the investigation is guilty of a Class D crime. (1 M.R.S.A. § 1013(3))

J. The records of the commission and all information received by the commission acting under this subchapter in the course of its investigation and conduct of its affairs shall be confidential, except that Legislators' statements of sources of income, evidence or information disclosed at public hearings, the commission's findings of fact and its opinions and guidelines are public records. (1 M.R.S.A. § 1013(2)(J))

Recent Practice

In 2006, the staff recommended that under § 1013, the following steps be taken after a complaint is filed:

Step A	A complaint alleging a conflict of interest is filed with the Commission.	Confidential
Step B	The Commission staff provides a copy of the complaint to the Legislator, and the staff requests a preliminary written response on the issue of whether	Confidential

	the Commission should hold a hearing and whether an ethics violation occurred.	
Step C	The staff may conduct preliminary fact-gathering.	Confidential
Step D	Legislator responds to the staff request.	Confidential
Step E	The Commission holds a meeting in executive session to decide whether to hold a public hearing to consider the complaint. If the Commission decides not to hold a hearing, the matter would remain confidential permanently.	Confidential
Step F	The Commission holds a public hearing and conducts any further investigation it deems necessary.	Public
Step G	The Commission issues findings of fact and opinion.	Public

Our interpretation of § 1013(3) is that Steps A - E should be confidential. If the Commission decides to hold a hearing, the hearing would be public, including all records presented at the hearing even if they were generated as part of Steps A - E.

Staff Recommendation

The staff recommends that the Commission support continuing the public records exception for legislative ethics complaints, for a number of reasons:

- The confidential screening process is designed to strike a balance between identifying conflicts of interest and not creating a forum that would encourage complaints that are uninformed or ill-motivated. Under the design of § 1013, complaints that present a genuine question of a conflict of interest will receive a public hearing. If the complaint is groundless and is based on a poor understanding of the law, bad faith or political motivations, the complaint will be dismissed and will not be heard publicly.
- The legislative ethics law has been under scrutiny in the past few years, which is appropriate. The law should be reviewed to ensure that meritorious complaints will be heard by the Commission in public. Nevertheless, it is a fact of life that some portion of complaints about legislative ethics received by the Commission may not have merit and may be motivated by politics or even bad faith. Groundless complaints, if made public, can irreparably damage a Legislator's public reputation and standing within state government.
- The confidential screening process is not unlike private screening processes in other ethics enforcement schemes. For example, under the grievance process of the Maine Board of Bar Overseers for reviewing allegations of attorney misconduct, many complaints that lack merit are dismissed without public hearings. Public hearings are held for misconduct cases that meet certain tests for merit.

Recommended Changes to the Confidentiality Provisions

In the autumn of 2006, I was a non-voting member of the Presiding Officers' Advisory Committee on Legislative Ethics. The panel included members with a wide spectrum of viewpoints on the current ethics laws, including some reform-minded members who believed the laws need to be improved. The advisory committee made a number of significant statutory proposals (*e.g.*, allowing members of the public to file ethics complaints; broadening the definition of a conflict of interest), but did not suggest ending the confidentiality of legislative ethics complaints.

The advisory committee recommended certain changes to the confidentiality provisions in § 1013(3). The changes were intended to clarify the current process, but not to alter it significantly. These changes were part of a larger legislative ethics bill, L.D. 1008, which was considered earlier this year by the Legislature. The Legislature rejected the proposed changes and instead required the Commission to provide a report on the history of legislative ethics complaints and an assessment of the current process for considering complaints. This report is due on February 15, 2008.

The Commission staff believes the attached changes, which are identical to those proposed in L.D. 1008 by the advisory committee,¹ would improve the process and would be acceptable to many Legislators and reform advocates. We suggest that the Commission recommend these changes to the Right to Know Advisory Committee for inclusion in its report to the Legislature.

¹ The attached proposed changes differ from L.D. 1008 in one minor respect. The original bill referred to "a violation of legislative ethics," which was a defined term in the bill. The attached changes use the term "conflict of interest" to be consistent with the existing statute.

Proposed Changes to Confidentiality Provisions in 1 M.R.S.A. § 1013

~~(2)(J).~~ The records of the commission and all information received by the commission acting under this subchapter in the course of its investigation and conduct of its affairs shall be confidential, except that Legislators' statements of sources of income, evidence or information disclosed at public hearings, the commission's findings of fact and its opinions and guidelines are public records.

3. Confidentiality. The subject of any investigation by the commission shall be informed promptly of the existence of the investigation and the nature of the charges or allegations. Otherwise, notwithstanding chapter 13, all complaints shall be confidential until the investigation is completed and a hearing ordered or until the nature of the investigation becomes public knowledge. Any person, except the subject of the investigation, who knowingly breaches the confidentiality of the investigation is guilty of a Class D crime.

4. Confidentiality of records and proceedings relating to screening complaints alleging a violation of legislative ethics. Notwithstanding chapter 13, a complaint alleging a conflict of interest is confidential and is not a public record until after the commission has voted pursuant to subsection 2, paragraph B to pursue the complaint, and a commission proceeding to determine whether to pursue a complaint must be conducted in executive session. If the commission does not vote to pursue the complaint, the complaint and records relating to the investigation of that complaint remain confidential and are not public records. This subsection does not prevent the commission from including general information about complaints in any report to the Legislature. Any person who knowingly breaches the confidentiality of a complaint investigation commits a Class D crime. This subsection does not prevent commission staff from disclosing information that is necessary to investigate a complaint.

5. Confidentiality of records other than complaints. Commission records other than conflict of interest complaints are governed by this subsection.

A. Investigative records relating to conflict of interest complaints that the commission has voted to pursue are confidential unless they are provided to commission members or otherwise distributed at a public hearing of the commission.

B. Legislators' statements of sources of income are public records.

C. Findings of fact and recommendations of the commission on complaints alleging a conflict of interest are public records.

D. Advisory opinions of the commission and requests for advisory opinions from the commission are public records, except as provided in subsection 2, paragraph H.

Prev: [Chapter 25 §1012](#)Next: [Chapter 25 §1014](#)**Title 1: GENERAL PROVISIONS****Chapter 25: GOVERNMENTAL ETHICS (HEADING: PL 1975, c. 621, §1 (new))****Subchapter 2: LEGISLATIVE ETHICS (HEADING: PL 1975, c. 621, §1 (new))**Download Chapter 25
[PDF](#), [Word \(RTF\)](#)Download Section 1013
[PDF](#), [Word \(RTF\)](#)[Statute Search](#)[List of Titles](#)[Maine Law](#)[Disclaimer](#)[Revisor's Office](#)[Maine Legislature](#)**§1013. Authority; procedures****1. Authority.** The commission shall have the authority:

A. To issue, on request of any Legislator on an issue involving himself, or on its own motion, advisory opinions and guidelines on problems or questions involving possible conflicts of interest in matters under consideration by, or pertaining to, the Legislature; [1975, c. 621, § 1 (new).]

B. To investigate complaints filed by Legislators, or on its own motion, alleging conflict of interest against any Legislator, to hold hearings thereon if the commission deems appropriate and to issue publicly findings of fact together with its opinion; and [1989, c. 561, §5 (amd).]

C. To administer the disclosure of sources of income by Legislators as required by this subchapter. [1975, c. 621, § 1 (new).]
[1989, c. 561, §5 (amd).]

2. Procedure. The following procedures shall apply:

A. Requests for advisory opinions by members of the Legislature shall be filed with the commission in writing, signed by the Legislator requesting the opinion and shall contain such supporting data as the commission shall require. When preparing an advisory opinion on its own motion, the commission shall notify the Legislator concerned and allow him to provide additional information to the commission. In preparing an advisory opinion, either upon request or on its own motion, the commission may make such an investigation as it deems necessary. A copy of the commission's advisory opinion shall be sent to the Legislator concerned and to the presiding officer of the House of which the Legislator is a member; [1975, c. 621, § 1 (new).]

B. A Legislator making a complaint shall file the complaint under oath with the chairman. The complaint shall specify the facts of the alleged conflict of interest. The Legislator against whom a complaint is filed shall immediately be given a copy of the complaint and the name of the complainant. Only those complaints dealing with alleged conflicts of interest related to the current Legislature shall be considered by the commission. Upon a majority vote of the commission, the commission shall conduct such investigation and hold such hearings as it deems necessary. The commission shall issue its findings of fact together with its opinion regarding the alleged conflict of interest to the House of which the Legislator concerned is a member. That House may take whatever action it deems appropriate, in accordance with the Constitution of the State of Maine. [1975, c. 621, § 1 (new).]

C. When the conduct of a particular Legislator is under inquiry and a hearing is to be held, the Legislator shall be given written notification of the time and place at which the hearing is to be held. Such notification shall be given not less than 10 days prior to the date set for the hearing. [1975, c. 621, § 1 (new).]

D. The commission shall have the authority, through its chairman or any member designated by him, to administer oaths, subpoena witnesses and compel the production

of books, records, papers, documents, correspondence and other material and records which the committee deems relevant. The commission shall subpoena such witnesses as the complainant Legislator or the Legislator against whom the complaint has been filed may request to be subpoenaed. The State, its agencies and instrumentalities shall furnish to the commission any information, records or documents which the commission designates as being necessary for the exercise of its functions and duties. In the case of refusal of any person to obey an order or subpoena of the commission, the Superior Court, upon application of the commission, shall have jurisdiction and authority to require compliance with the order or subpoena. Any failure of any person to obey an order of the Superior Court may be punished by that court as a contempt thereof. [1975, c. 621, § 1 (new).]

E. Any person whose conduct is under inquiry shall be accorded due process and, if requested, the right to a hearing. All witnesses shall be subject to cross-examination.

Any person whose name is mentioned in an investigation or hearing and who believes that testimony has been given which adversely affects him shall have the right to testify, or at the discretion of the commission and under such circumstances as the commission shall determine to protect the rights of the Legislator under inquiry, to file a statement of facts under oath relating solely to the material relevant to the testimony of which he complains. Any witness at an investigation or hearing, subject to rules and regulations promulgated by the commission, shall be entitled to a copy of such testimony when the same becomes relevant to a criminal proceeding or subsequent investigation or hearings.

All witnesses shall be sworn. The commission may sequester witnesses as it deems necessary. The commission shall not be bound by the strict rules of evidence, but its findings and opinions must be based upon competent and substantial evidence.

Time periods and notices may be waived by agreement of the commission and the person whose conduct is under inquiry. [1975, c. 621, § 1 (new).]

F. If the commission concludes that it appears that a Legislator has violated a criminal law, a copy of its findings of fact, its opinion and such other information as may be appropriate shall be referred to the Attorney General. Any determination by the commission or by a House of the Legislature that a conflict of interest has occurred does not preclude any criminal action relating to the conflict which may be brought against the Legislator. [1975, c. 621, § 1 (new).]

G. If the commission determines that a complaint filed under oath is groundless and without foundation, or if the Legislator filing the complaint fails to appear at the hearing without being excused by the commission, the commission may order the complainant to pay to the Legislator against whom the complaint has been filed his costs of investigation and defense, including any reasonable attorney's fees. The complainant may appeal such an order to the House of which he is a member.

Such an order shall not preclude any other remedy available to the Legislator against whom the complaint has been filed, including, but not limited to, an action brought in Superior Court against the complainant for damages to his reputation. [1975, c. 621, § 1 (new).]

H. A copy of the commission's advisory opinions and guidelines, with such deletions and changes as the commission deems necessary to protect the identity of the person seeking the opinions, or others, shall be filed with the Clerk of the House. The clerk shall keep

them in a special binder and shall finally publish them in the Legislative Record. The commission may exempt an opinion or a part thereof from release, publication or inspection, if it deems such action appropriate for the protection of 3rd parties and makes available to the public an explanatory statement to that effect. [1975, c. 621, § 1 (new) .]

I. A copy of the commission's findings of fact and opinions regarding complaints against Legislators shall also be filed with the Clerk of the House. The clerk shall keep them in a special binder and shall finally publish them in the Legislative Record. [1975, c. 621, § 1 (new) .]

J. The records of the commission and all information received by the commission acting under this subchapter in the course of its investigation and conduct of its affairs shall be confidential, except that Legislators' statements of sources of income, evidence or information disclosed at public hearings, the commission's findings of fact and its opinions and guidelines are public records. [1977, c. 252, § 2 (amd) .]

K. When a Legislator has a question or problem of an emergency nature about a possible conflict of interest or an issue involving himself which arises during the course of legislative action, he may request an advisory opinion from the presiding officer of the legislative body of which he is a member. The presiding officer may, at his discretion, issue an advisory opinion, which shall be in accordance with the principles of this subchapter, which shall be in writing, and which shall be reported to the commission. The commission may then issue a further opinion on the matter. The presiding officer may refer such question or problem directly to the commission, which shall meet as soon as possible to consider the question or problem. [1975, c. 621, § 1 (new) .]
[1977, c. 252, § 2 (amd) .]

3. Confidentiality. The subject of any investigation by the commission shall be informed promptly of the existence of the investigation and the nature of the charges or allegations. Otherwise, notwithstanding chapter 13, all complaints shall be confidential until the investigation is completed and a hearing ordered or until the nature of the investigation becomes public knowledge. Any person, except the subject of the investigation, who knowingly breaches the confidentiality of the investigation is guilty of a Class D crime. [1989, c. 561, §6 (new) .]

Section History:

PL 1975, Ch. 621, §1 (NEW) .
PL 1977, Ch. 252, §2 (AMD) .
PL 1989, Ch. 561, §5,6 (AMD) .

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Prev: [Chapter 25 §1013](#)Next: [Chapter 25 §1015](#)**Title 1: GENERAL PROVISIONS****Chapter 25: GOVERNMENTAL ETHICS (HEADING: PL 1975, c. 621, §1 (new))****Subchapter 2: LEGISLATIVE ETHICS (HEADING: PL 1975, c. 621, §1 (new))**Download Chapter 25
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PDF, Word (RTF)**§1014. Conflict of interest**[Statute Search](#)[List of Titles](#)[Maine Law](#)[Disclaimer](#)[Revisor's Office](#)[Maine Legislature](#)

1. Situations involving conflict of interest. A conflict of interest shall include the following:

A. Where a Legislator or a member of his immediate family has or acquires a direct substantial personal financial interest, distinct from that of the general public, in an enterprise which would be financially benefited by proposed legislation, or derives a direct substantial personal financial benefit from close economic association with a person known by the Legislator to have a direct financial interest in an enterprise affected by proposed legislation. [1975, c. 621, §1 (new) .]

B. Where a Legislator or a member of his immediate family accepts gifts, other than campaign contributions duly recorded as required by law, from persons affected by legislation or who have an interest in a business affected by proposed legislation, where it is known or reasonably should be known that the purpose of the donor in making the gift is to influence the Legislator in the performance of his official duties or vote, or is intended as a reward for action on his part. [1975, c. 621, §1 (new) .]

C. Receiving compensation or reimbursement not authorized by law for services, advice or assistance as a Legislator. [1975, c. 621, §1 (new) .]

D. Appearing for, representing or assisting another in respect to a claim before the Legislature, unless without compensation and for the benefit of a citizen. [1975, c. 621, §1 (new) .]

E. Where a Legislator or a member of his immediate family accepts or engages in employment which could impair the Legislator's judgment, or where the Legislator knows that there is a substantial possibility that an opportunity for employment is being afforded him or a member of his immediate family with intent to influence his conduct in the performance of his official duties, or where the Legislator or a member of his immediate family stands to derive a personal private gain or loss from employment, because of legislative action, distinct from the gain or losses of other employees or the general community. [1975, c. 621, §1 (new) .]

F. Where a Legislator or a member of his immediate family has an interest in legislation relating to a profession, trade, business or employment in which the Legislator or a member of his immediate family is engaged, where the benefit derived by the Legislator or a member of his immediate family is unique and distinct from that of the general public or persons engaged in similar professions, trades, businesses or employment. [1975, c. 621, §1 (new) .]

[1975, c. 621, §1 (new) .]

2. Undue influence. It is presumed that a conflict of interest exists where there are circumstances which involve a substantial risk of undue influence by a Legislator, including but not limited to the following cases.

A. Appearing for, representing or assisting another in a matter before a state agency or authority, unless without compensation and for the benefit of a constituent, except for

attorneys or other professional persons engaged in the conduct of their professions.

(1) Even in the excepted cases, an attorney or other professional person must refrain from references to his legislative capacity, from communications on legislative stationery and from threats or implications relating to legislative action.

[1975, c. 621, §1 (new).]

B. Representing or assisting another in the sale of goods or services to the State, a state agency or authority, unless the transaction occurs after public notice and competitive bidding. [1975, c. 621, §1 (new).]

[1975, c. 621, §1 (new).]

3. Abuse of office or position. It is presumed that a conflict of interest exists where a Legislator abuses his office or position, including but not limited to the following cases.

A. Where a Legislator or a member of his immediate family has a direct financial interest or an interest through a close economic association in a contract for goods or services with the State, a state agency or authority in a transaction not covered by public notice and competitive bidding or by uniform rates established by the State, a state agency, authority or other governmental entity or by a professional association or organization. [1975, c. 621, §1 (new).]

B. Granting or obtaining special privilege, exemption or preferential treatment to or for oneself or another, which privilege, exemption or treatment is not readily available to members of the general community or class to which the beneficiary belongs. [1975, c. 621, §1 (new).]

C. Use or disclosure of confidential information obtained because of office or position for the benefit of self or another. [1975, c. 621, §1 (new).]

[1975, c. 621, §1 (new).]

Section History:

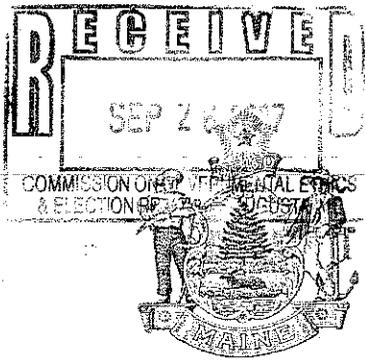
PL 1975, Ch. 621, §1 (NEW).

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STATE OF MAINE

RIGHT TO KNOW ADVISORY COMMITTEE

The Right to Know Advisory Committee was established to serve as a resource and advisor about Maine's Freedom of Access Laws. The Advisory Committee consists of 16 members from various constituencies, and we are working to provide training and other resources for public officials to assist them in complying with the laws governing proceedings and records.

One of the underlying premises of Maine's Freedom of Access laws is that records in the hands of public officials and agencies are public records to which the public has a right of access, unless the law provides that certain records should be treated differently. In addition to responsibilities that assist both the public and public officials and agencies, the Advisory Committee is charged with helping the Joint Standing Committee on Judiciary review and evaluate these statutory provisions that except records from the definition of "public record". Pursuant to Title 1, sections 431 - 433, the Judiciary Committee plans to review public records exceptions in Titles 1, 2, 3, 4, 5, 6, 7, 8, 9-A and 9-B during 2008. (The list of exceptions to be reviewed is posted on our website: <http://www.maine.gov/legis/opla/righttoknow.htm>.) The Advisory Committee will be providing background information and advice to the Judiciary Committee with regard to these exceptions.

With that as background, I am writing to Constitutional Officers and Commissioners, as well as other top public officials and executives who oversee offices, departments, agencies and organizations that have been identified as custodians of records that are described by an existing public records exception. Our staff, working with the Office of the Attorney General, will be contacting the programs and agencies identified and asking for assistance. We hope to better understand the records subject to the exceptions and whether the exceptions should be continued, modified or repealed. On behalf of the Right to Know Advisory Committee, I respectfully request your cooperation and the cooperation of the individuals who deal with the records in working through these questions. We would like to receive all responses by October 19, 2007, if at all possible.

If you have questions, please do not hesitate to contact me. Advisory Committee Staff Colleen McCarthy Reid and Peggy Reinsch in the Office of Policy and Legal Analysis (287-1670), as well as Advisory Committee members Deputy Attorney General Linda Pistner and Karla Black, the Governor's Deputy Legal Counsel, are also available to answer questions and provide assistance in completing the information. The Assistant Attorneys General who work with the agencies in your department can also assist in completing this information.

Thank you in advance for your assistance and cooperation.

Sincerely,

Senator Barry J. Hobbins, Chair
Right to Know Advisory Committee

STATUTE: 1 MRSA §1013, sub-§§2 & 3

AGENCY:

CONTACT PERSON:

CONTACT PERSON'S EMAIL ADDRESS:

QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).
2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.
3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?
4. Does your agency recommend changes to this exception?
5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.
6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

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: Jonathan Wayne

Re: Proposed Changes to Commission Rules

Date: October 22, 2007

The staff of the Commission proposes that you initiate a rulemaking to amend the Commission's rules. This process is governed by the Maine Administrative Procedure Act (MAPA), 5 M.R.S.A. §§ 8000, *et seq.* Three actions would be involved in the rulemaking:

1. approving the rule changes for purposes of accepting public comments
2. receiving written comments, and oral comments at a public hearing (we suggest that the hearing be held as part of your next meeting)
3. adopting the rule changes with any modifications or deletions you wish to make in light of the comments received.

The Commission's rules are divided into three chapters. Chapter 1 relates to the Commission's general procedures and campaign finance disclosure requirements. Chapter 2 describes the Commission's hearing procedures. Chapter 3 sets forth the procedures for administering the Maine Clean Election Act. The Commission's Chapter 3 rules are "major substantive," which means that the Commission's initial adoption of them is provisional. The provisionally adopted rule changes must then be reviewed by the Legislature before the Commission can finally adopt them. The Legislature may authorize the Commission to finally adopt the rules with certain specific amendments.

Some of the changes proposed by the Commission staff are consistent with statutory amendments enacted earlier this year in Chapter 443 of the Public Laws of 2007.

Explanation of Proposed Rule Changes

Chapter 1, Section 1(19)

The proposed insertion to the definition of "write-in candidate" would bring it into conformity with the definition in the Election Law at 21-A M.R.S.A. § 1(51).

Chapter 1, Section 2(2)(A) – Commission Hours of Operation

The proposed insertion clarifies that – when permitted by statute – documents may be filed with the Commission outside of normal business hours electronically or by facsimile. For example, the Election Law permits candidates to file campaign finance reports electronically under 21-A M.R.S.A. § 1017(10) and to file written campaign finance reports by facsimile under 21-A M.R.S.A. § 1020-A(4-A).

Chapter 1, Section 3(4) – Providing Official Notice of Commission Meetings

The Commission’s regular practice is to provide notice of upcoming meetings to interested individuals by mailing the agenda seven days before the meeting. The proposed changes to the Commission’s rules are not intended to significantly modify the Commission’s current practice, but rather to state more clearly those individuals and groups that must receive the notice.

Chapter 1, Section 4(2)(C) – Reports of Maine Clean Election Act Violations

This proposed insertion clarifies that the procedures for handling complaints about campaign finance reporting violations also apply to complaints about violations of the Maine Clean Election Act.

Chapter 1, Sections 4(2)(E) and 4(4) – Matters Outside the Commission’s Jurisdiction

Current Section 4(2)(E) provides a procedure by which the Commission staff can administratively reject a complaint that is outside the Commission’s jurisdiction, provided that the staff notifies the Commission members of the rejection at their next meeting. The proposed changes move this language to a new subsection 4(4) in order to emphasize that the rejection procedure applies not just to allegations of campaign finance violations, but also to other topics that are outside the Commission’s jurisdiction (*e.g.*, complaints about the content of political speech or misconduct by executive branch officials).

Chapter 1, Section 5(1) – Preliminary Fact-Finding by Commission Staff

Under the current rule, the Commission staff is authorized to gather facts preliminarily in order to recommend to the Commission whether there appears to be a violation of law or whether a fuller investigation is necessary. The proposed changes would clarify that the staff can engage in preliminary fact-finding on its own initiative – even if no complaint has been filed with the Commission. Also, consistent with the exception to the Executive Session statute in 1 M.R.S.A. § 405(6)(E) for consultations with counsel, the amendment confirms that the Commission could discuss the issuance of a subpoena with its Counsel in executive session if public knowledge of the investigation would substantially disadvantage the Commission’s position.

Chapter 1, Section 7(7) – Non-Express Advocacy Expenditures

Political action committees (PACs) are required to file regular campaign finance reports with the Commission. Among the financial activities that must be disclosed, PACs must report expenditures made “on behalf of” candidates as well as general operational expenses:

4. Itemized expenditures. An itemization of each expenditure made on behalf of any candidate, campaign, political committee, political action committee and party committee or to support or oppose a referendum or initiated petition, including the date, payee and purpose of the expenditure; the name of each candidate, campaign, political committee, political action committee or party committee on whose behalf the expenditure was made; and each referendum or initiated petition supported or opposed by the expenditure. (underlining added)

7. Other expenditures. Operational expenses and other expenditures in cash or in kind that are not made on behalf of a candidate, committee or campaign. (21-A M.R.S.A. §§ 1060(4) and (7))

Party committees (state, county, and municipal) are under similar reporting requirements under 21-A M.R.S.A. § 1017-A(2) and (3).

Some PACs and party committees report the costs of political mailings as operating expenditures on Schedule B-1 of their campaign finance reports. (An example of a Schedule B-1 for a fictional political party is attached.) This disclosure does not seem to comply with the mandate of 21-A M.R.S.A. § 1060(4) because it does not identify the candidate(s) supported. Also, if the expenditure benefits more than one candidate (*e.g.*, a payment to a printer to send three mailings into three legislative districts), the reporting of the payment as an operational expenditure does not break down the amount spent per candidate.

The proposed change would clarify that even if a communication does not expressly advocate the election of a candidate (bipartisan examples of non-express advocacy communications are attached), the costs of the communication must be reported on Schedule B of the reporting form and must specify the candidate supported and the amount spent to support that candidate.

Chapter 1, Section 9 – Filing Schedule for Accelerated Reports

This rule sets forth the filing schedule for “accelerated reports” which are required for traditionally financed candidates who have Maine Clean Election Act opponents. The proposed rule amendment modifies the filing schedule to be consistent with statutory changes made by Chapter 443 of the Public Laws of 2007.

Chapter 1, Section 10(3)(A) – Filing Schedule for Independent Expenditure Reports

As defined by the Election Law (21-A M.R.S.A. § 1019-B), independent expenditures are payments for communications to voters that are made independently of candidates by third-parties such as political action committees (PACs) and party committees. Paragraph 10(3)(A) sets forth the filing schedule for reporting independent expenditures between \$100 and \$250 per candidate. The proposed changes to the rule are in accordance with 2007 changes to the Election Law, under which the pre-election report for PACs and party committees covers through the 14th day before the election.

Chapter 1, Section 10(5)(first paragraph) and (5)(D) – Rebuttable Presumption

Under 21-A M.R.S.A. § 1019-B(2), if a political group distributes a communication to voters in the final weeks before an election that names or depicts a clearly identified candidate, the cost of the communication is presumed to be an independent expenditure and the group must file a report of the expenditure unless the group successfully rebuts the presumption before the Commission. The proposed amendment increases the general election period during which this presumption applies from 21 days before the election to 35 days, in accordance with 2007 changes to the Election Law.

Chapter 1, Section 10(5)(B)(1) – Exception for News Stories

The Election Law contains an exception to the definition of the term “expenditure” for a newspaper or broadcast station’s costs for news stories and editorials relating to an election. The exception was amended by the Legislature in 2007 so that it does not cover a newspaper or broadcast station owned or controlled by the candidate’s immediate family. The proposed change to Section 10(5)(B)(1) reflects that change. As a result, payments for a communication to voters in the last 35 days before a general election made by a news outlet owned or controlled by a member of a candidate’s family may be presumed to be an independent expenditure under 21-A M.R.S.A. § 1019(B)(2).

Chapter 1, Section 11(2)(A) – Filing Schedule for § 1056-B Reports

Section 11 sets forth the filing schedule for organizations that do not qualify as PACs but which spend more than \$1,500 to influence a ballot question. The proposed changes conform the schedule with 2007 statutory amendments to the PAC filing schedule.

PROPOSED AMENDMENT TO CAMPAIGN FINANCE REPORTING FORM

The Election Law requires that any changes to the campaign finance reporting form used by candidates must be made through a rulemaking. (21-A M.R.S.A. § 1017(6))

The Commission staff proposes to eliminate Schedule E of the form for candidates who are traditionally financed (*i.e.*, funding their campaigns through accepting traditional campaign contributions). Schedule E requires candidates to list campaign property or

equipment that could be converted to the candidate's personal use after an election (*e.g.*, computers, fax machines, or telephones) and to disclose how such property or equipment is disposed of.

The staff proposes eliminating the schedule because the Election Law does not require that this information be reported by privately financed candidates, so the Commission's legal basis for requesting the disclosure of this information on Schedule E is not clear. Schedule E would continue to be required for Maine Clean Election Act candidates who have purchased this equipment with public funds.

Chapter 3, Section 5(3)(G) – Maximum Matching Funds (major substantive)

To be consistent with 2007 statutory changes, the proposed amendment states that the maximum amount of matching funds paid to a candidate for Governor for a general election is equal to the amount initially paid to that candidate for the election (currently \$400,000).

Chapter 3, Section 7(1)(A) – Separate Bank Account for Campaign Funds

The proposed amendment clarifies that all campaign funds of a Maine Clean Election Act (including seed money) must be segregated in a separate bank account and not commingled with the candidate's personal funds, as already required by 21-A M.R.S.A. § 1016(1).

Thank you for your consideration of these proposed changes to the Commission's rules.

Name of Party

SCHEDULE B-1

OPERATING EXPENSES

Do not include loan repayments 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	<p><u>For every expenditure, list the appropriate code.</u></p> <p>If a remark is required, list additional information such as type of consulting (media, messaging, campaign, etc.) or professional service provided.</p>	
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		
SAL	campaign workers' salaries		
TRV	travel (fuel, mileage, lodging, etc.)		
TVN	TV or cable ads, production costs		
WEB	Internet and e-mail		

Date of payment	Payee/organization name, address, zip code	Code	Remarks	Amount
9/27/2007	QUICK PRINTING 58 MAIN ST. PORTLAND ME 04101	PRT		1,200.00
1. Total operating expenses this page				1,200.00

Name of Party

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

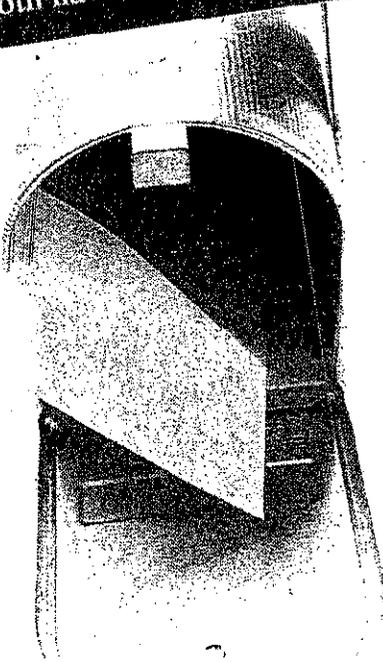
List all contributions and expenditures made in cash or on behalf of each candidate, political committee, PAC or other party committee.
Do not include loan repayments or in-kind expenditure on this schedule.

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><u>For every expenditure, list the appropriate code.</u></i>	
LIT	campaign literature (printing and graphics)	If a remark is required, list additional information such as type of consulting (media, messaging, campaign, etc.) or professional service provided.	
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		

Date of payment	Payee name	Candidate, Committee, or Party Supported		Office sought District #	Amount contributed to or spent on behalf of <u>each</u> candidate, committee, or party
	Payee's complete mailing address	Code	Remarks		
9/27/2007	QUICK PRINTING	John Smith		REPRESENTATIVE	1,200.00
	58 MAIN ST. PORTLAND 04101 ME	PRT		56	
1. Total contributions to candidates this page only					1,200.00

Third-Party Literature Supporting Candidates
(Issue vs. Express Advocacy)

What do your mailman &
Rep. Walter Ash
both have in common?



A: They deliver.

Rep. Walter Ash

is working to build a stronger future for Maine and is standing up for hard-working Mainers.

While in Augusta **Walter Ash** delivered:

- Voted to double tax refunds for Mainers hit hard by local property taxes. (Roll call #18)
- Voted to protect Maine children and communities from sex offenders by creating stricter sentences. (Roll call #330)
- Voted to increase the minimum wage for Maine workers. (Roll call #484)
- Voted to create more protections for women who have been the victim of domestic violence, and to keep guns out of their abuser's hands. (Roll call #537)

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Paid for by the Maine Democratic Party, 16 Winthrop Street, Augusta, ME 04332
This Communication is not authorized by any candidate or candidate's committee.

Mainers and Pete Johnson Agree - Taxes Are Too High!

—■ Augusta Needs Change.

—■ Augusta Needs New Leadership.

—■ Augusta Needs An Outsider Like Pete Johnson.



**Call Pete Johnson at
695-2019 and share your
tax cutting ideas!**

Paid for and authorized by the Maine Republican Party, Phill Roy, Treasurer, 9 Higgins St., Augusta, ME 04330.
Not authorized by any candidate or candidate committee.

Maine Republican Party
9 Higgins Street
Augusta, ME 04330

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94-270 COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES

Chapter 1: PROCEDURES

SUMMARY: This Chapter describes the nature and operation of the Commission, and establishes procedures by which the Commission's actions will be governed.

SECTION 1. DEFINITIONS

In addition to the definitions provided in Title 21-A, chapters 1, 13, and 14, the following definitions shall apply to the rules of the Commission, unless the context otherwise requires:

1. **Act.** "Act" means the Maine Clean Election Act, Title 21-A, chapter 14.
2. **Association.** "Association" means a group of two or more persons, who are not all members of the same immediate family, acting in concert.
3. **Campaign Deficit.** "Campaign deficit" means debts, liabilities, and unmet financial obligations from all previous campaigns as reported to the Commission on campaign termination report forms required by Title 21-A, chapter 13, subchapter II [§1017(9)].
4. **Campaign Surplus.** "Campaign surplus" means money, equipment, property and other items of value remaining after retiring previous campaign deficit as reported to the Commission on campaign termination report forms required by Title 21-A, chapter 13, subchapter II [§1017(9)].
5. **Candidate.** "Candidate" has the same meaning as in Title 21-A, chapter 1, subchapter I [§1(5)], and includes individuals running for office as a write-in candidate.

INFORMATIONAL NOTE: All contributions made after the day of the general election to a candidate who has liquidated all debts and liabilities associated with that election are deemed to be made in support of the candidate's candidacy for a subsequent election, pursuant to section 4.2.A(5)(e) of this rule. A candidate who collects funds subsequent to an election for purposes other than retiring campaign debt is required to register with the Commission. Title 21- A, chapter 13, subchapter II [§1013-A].

6. **Certified Candidate.** "Certified candidate" has the same meaning as in the Act [§ 1122(1)].
7. **Commission.** "Commission" means the Commission on Governmental Ethics and Election Practices established by Title 5, §12004-G, subsection 33, and 1 M.R.S.A. §1001 *et seq.*
8. **Contribution.** "Contribution" has the same meaning as in Title 21-A, chapter 13, subchapter II [§1012(2)].

9. **Election.** "Election" means any primary, general or special election for Governor, State Senator or State Representative. The period of a primary election begins on the day a person becomes a candidate as defined in 21-A M.R.S.A. §1(5) and ends on the date of the primary election. The period of a general election begins on the day following the previous primary election and ends on the date of the general election. The period of a special election begins on the date of proclamation of the special election and ends on the date of the special election.
10. **Expenditure.** "Expenditure" has the same meaning as in Title 21-A, chapter 13, subchapter II [§1012(3)].
11. **Fund.** "Fund" means the Maine Clean Election Fund established by the Act [§1124].
12. **In-Kind Contribution.** "In-kind contribution" means any gift, subscription, loan, advance or deposit of anything of value other than money made for the purpose of influencing the nomination or election of any person to political office or for the initiation, support or defeat of a ballot question.
13. **Member.** A "member" of a membership organization includes all persons who currently satisfy the requirements for membership in the membership organization, have affirmatively accepted the membership organization's invitation to become a member, and either:
- A. pay membership dues at least annually, of a specific amount predetermined by the membership organization; or
 - B. have some other significant financial attachment to the membership organization, such as significant investment or ownership stake in the organization; or
 - C. have a significant organizational attachment to the membership organization that includes direct participatory rights in the governance of the organization, such as the right to vote on the organization's board, budget, or policies.
- Members of a local union are considered to be members of any national or international union of which the local union is a part, of any federation with which the local, national, or international union is affiliated, and of any other unions which are members or affiliates of the federation. Other persons who have an enduring financial or organizational attachment to the membership organization are also members, including retired members or persons who pay reduced dues or other fees regularly to the membership organization.
14. **Nonparticipating Candidate.** "Nonparticipating candidate" has the same meaning as in the Act [§1122(5)].
15. **Participating Candidate.** "Participating candidate" has the same meaning as in the Act [§1122(6)].

16. **Qualifying Contribution.** “Qualifying Contribution” has the same meaning as in the Act [§1122(7)].
17. **Qualifying Period.** “Qualifying period” has the same meaning as in the Act, except that for special elections, vacancies, withdrawals, deaths, disqualifications or replacements of candidates, the qualifying period shall be the period designated in section 8 of this chapter [§1122(8)].
18. **Seed Money Contribution.** “Seed money contribution” has the same meaning as in the Act [§1122(9)].
19. **Write-In Candidate.** “Write-in candidate” means a person whose name does not appear on the ballot under the office designation to which a voter may wish to elect the candidate and who has filed a declaration to be a write-in candidate pursuant to 21-A M.R.S.A. § 722-A.

SECTION 2. ORGANIZATION

1. **Commission.** The Commission on Governmental Ethics and Election Practices is an independent agency of the State, consisting of five (5) members appointed by the Governor, subject to review by the joint standing committee of the Legislature having jurisdiction over legal affairs and confirmation by the Legislature in accordance with Title 1, §1002, subsection 1. The Commission members will elect one member to serve as Chair. Except for the Chair, the members of the Commission have no individual authority.
2. **Office**
 - A. The Commission employs such staff as may be authorized by the Legislature. A Director supervises the staff and is responsible for all day-to-day operations. In the interim between Commission meetings, the Director reports to the Chair, who acts on behalf of the Commission on certain administrative matters. The Commission’s offices are located in the Public Utilities Commission Building at 242 State Street in Augusta, where any filing or written submission may be made between the hours of 8 a.m. and 5 p.m. on any day when state government offices are open, except that filings by facsimile or electronic means, where otherwise permitted by statute or rule, may be transmitted at any time. The office has a mailing address of 135 State House Station, Augusta, Maine 04333.
 - B. All records of the Commission are maintained in these offices, where they are available for inspection or copying, except as particular records are made confidential by law. The cost of copying Commission documents is set by the Director of the Commission, subject to reasonable limitations and approval of the Commission.
 - C. During any period when the position of Director is vacant, the Chair of the Commission will appoint an acting Director.

SECTION 3. MEETINGS

1. **Regular Meetings.** The Commission shall meet at least once per month in any year in which primary and general elections are held.
2. **Special Meetings.** The Commission may meet at any time at the call of the Secretary of State, the President of the Senate, the Speaker of the House of Representatives, the Chairman of the Commission, or a majority of its members. Each member of the Commission must have at least 24 hours notice of the time, place and purpose of the meeting. If written notice is not feasible, telephone notice satisfies the foregoing requirement.
3. **Agenda.** The Director will prepare a written agenda for each meeting of the Commission. The agenda will contain items of business to be considered, staff findings and recommendations, and will include the date, time and location of the meeting. When possible, the agenda will be mailed to each Commission member at least 7 days before the meeting.
4. **Notice.** In addition to the public notice required by the public meetings law, 1 M.R.S.A. §406, notice of Commission meetings ~~will~~ shall be given to those directly involved in a matter or affected by matters pending before the Commission, as follows:
 - A. **Legislative Ethics.** When a properly filed request or referral is made for an advisory opinion on a question of legislative ethics, notice that the matter has been placed on the agenda for a Commission meeting will be given by mail to the Legislator whose circumstances or conduct is at issue, or to the Presiding Officer of either House referring the inquiry. When a complaint alleging a violation of the laws on legislative ethics is filed, the Legislator will be informed promptly of the nature of the allegations and the existence of any investigation by the Commission. Notice that the matter has been placed on the agenda for a Commission hearing will be given by certified mail to both the Legislator and the complainant not less than 10 days before the date set for a hearing.
 - B. **Campaign Reports and Finances Law; Lobbyist Disclosure Law.** Notice of the Commission's consideration of any noncompliance with the requirements of the Campaign Reports and Finances Law, the Maine Clean Election Act, or Lobbyist Disclosure Law will be provided to any person or organization alleged to have committed a violation and to any person who has officially requested a Commission investigation or determination, except that notice of the Commission's consideration of issuing subpoenas to conduct an investigation need not be given.
 - C. **Other Matters** Contents of Notice
 - (1) ~~With respect to any other matter presented to the Commission, notice will be given to the person or organization whose conduct is at issue, and to any complainant, except as provided in Section 3, subsection 1, paragraph B of these rules.~~

- (2) The notice will include the date, time, and location of the Commission meeting. If mail notice of a meeting is not feasible, the staff will make best efforts to give oral notice to Commission members or to those entitled to notice under this provision.
5. **Public Meetings.** All meetings, hearings or sessions of the Commission will be open to the general public unless, by an affirmative vote of at least 3 members, the Commission requires the exclusion of the public, pursuant to 1 M.R.S.A. §1005 or 1 M.R.S.A. §1013(3).
6. **Quorum.** Every decision of the Commission must be made at a meeting at which at least 3 members of the Commission are present and voting. When it is impossible or impractical for a member of the Commission to travel to Augusta to attend a meeting in person, the member may participate in the meeting by telephone. That member will be considered present at the meeting and part of the quorum.

At least 2 members must be present in person for the conduct of a meeting or public hearing before the Commission. If fewer than 3 members are present in person for a hearing, however, objections to rulings of the presiding officer concerning the conduct of the hearing must be preserved until a meeting of the Commission at which a quorum is present in person. The presiding officer at a meeting or public hearing must be present in person.

7. **Minutes**
- A. The Director will prepare minutes of each business meeting of the Commission. These minutes will be the official record of Commission meetings, and will accurately record all matters considered.
- B. The minutes will record any executive session of the Commission and its subject matter, but will not report the proceedings of the executive session. Likewise, minutes will not be taken of any public hearing held by the Commission, since hearings are separately recorded.

SECTION 4. INITIATION OF PROCEEDINGS

1. **Legislative Ethics.** The Commission is authorized to investigate and make advisory recommendations to either House of the Maine Legislature concerning legislative conflicts of interest or any breach of the legislative ethics set forth in 1 M.R.S.A. §§ 1001 - 1023. The Commission's opinion may be sought by three methods, or the Commission may act on its own motion.
- A. **Legislator's Own Conduct**
- (1) A Legislator seeking an advisory opinion with respect to his or her own circumstances or conduct should make a written request for an opinion,

setting forth the pertinent facts with respect to the legislative matter at issue and the circumstances of the Legislator giving rise to the inquiry.

- (2) The request will be officially filed only when received at the offices of the Commission. The Director will promptly send a copy of the request to the Chair, and the matter will be placed on the agenda for the next Commission meeting, or if necessary, at a special meeting.
- (3) An oral request by a Legislator for an opinion with respect to his or her own circumstances will not be considered an official request for an advisory opinion, and a Legislator making such a request will be so notified, by letter, and encouraged to file a written request.

B. Complaints. Any written complaint will be included in the agenda of the next Commission meeting.

- (1) **Complaint by a Legislator.** Copies of any sworn complaint filed by a Legislator will promptly be sent to the Legislator against whom the complaint has been lodged and to the Commission Chair, in each case identifying the Legislator making the complaint. A complaint invokes the Commission's authority only if made under oath and only if it addresses an alleged conflict of interest relating to circumstances arising during the term of the legislature then in office.

(2) **Other Complaints**

- (a) The Director will review each complaint to determine whether the matter relates to the Commission's statutory mandate. When a complaint is filed, the Director, in consultation with Commission Counsel, will review the matter to determine whether the complaint has sufficient merit to warrant recommending the calling of a meeting. When a meeting is called, the Commission will determine in executive session whether to hear the complaint. If the nature of the complaint clearly does not fall within the scope of the Commission's jurisdiction, the Director will so notify the complainant by letter within 14 days of receiving the complaint. In such cases, the respondent need not be notified. The Commission may reverse any administrative decision.
- (b) An oral complaint by any person alleging a conflict of interest concerning any legislator does not constitute a complaint under 1 M.R.S.A. §1013(2)(B), and a person registering such a complaint will be so notified, by letter.

C. Referral by Presiding Officer. When a Legislator has requested an advisory opinion from the Presiding Officer of the House of which he/she is a member, and the Presiding Officer has referred the inquiry directly to the Commission, the

Director will arrange a meeting of the Commission as soon as possible to consider the question.

2. **Election Campaign Reporting and Maine Clean Election Act Violations**

- A. **Report Review.** The Commission staff will review all reports filed pursuant to 21-A M.R.S.A., chapters 13 and 14 to verify compliance with the reporting requirements set by statute or rule. Notice of any omission, error, or violation will be given by mail to the filer and a copy of the notice and any other communication made to or from the filer relating to the problem(s) will be placed in the filer's record. The Commission staff will establish a reasonable time period for the filer to remedy any omission or error. If the filer fails to respond within that time frame, the Commission staff may extend the time period within which the filer must comply or place the matter on the agenda of the next Commission meeting, along with all documents relating to the case. Additionally, any apparent violations or occurrences of substantial nonconformance with the requirements of the law will be placed on the agenda of the next meeting.
- B. **Late Reports and Registrations.** Where required by statute, notice of failure to file a required report will be timely sent by Commission staff. When a report or registration is filed late, the Director's recommendations will be based on the following considerations:
- (1) Lateness of report or registration,
 - (2) Reason for lateness,
 - (3) Kind of report (more stringent application for pre-election reports),
 - (4) Amount of campaign funds not properly reported,
 - (5) Previous record of the filer,
 - (6) Good faith effort of the filer to remedy the matter; and
 - (7) Whether the late filing had an effect on a certified candidate's eligibility for matching funds.
- C. Reports of noncompliance with the provisions of the campaign registration and reporting laws or the Maine Clean Election Act that may come to the attention of the Commission staff from any source other than review of the reports filed will be reported to the Commission Chair. Any person (as defined in 21-A M.R.S.A. §1001) may make an official request for a Commission investigation or determination by filing a written request at the Commission's office, setting forth such facts with sufficient details as are necessary to specify the alleged violation. Statements should be made upon personal knowledge. Statements which are not based upon personal knowledge must identify the source of the information which is the basis for the request, so that respondents and Commission staff may

adequately respond to the request. A copy of any such written request will be promptly mailed to the candidate or organization alleged to have violated the statutory requirements. An official request will be placed on the agenda of the next Commission meeting.

- D. An oral report of a violation, or a written request containing insufficient detail to specify the violation charged, does not constitute an official request for a Commission determination, and a person registering such a complaint will be so notified.
- ~~E. If the Director and Counsel are in agreement that the subject matter of a request for an investigation is clearly outside the jurisdiction of the Commission, the staff may forward the request to the appropriate authority or return it to the person who made the request, provided that the staff notifies the Commission members of the action at the next Commission meeting. [NOTE: MOVED BELOW WITHOUT CHANGE]~~
- F. E. The signature of a person authorized to sign a report or form constitutes certification by that person of the completeness and accuracy of the information reported. The use of a password in filing an electronic report constitutes certification of the completeness and accuracy of the report.

3. **Lobbyist Disclosure Procedures**

- A. **Report Review.** The Commission staff will monitor all filings made pursuant to 3 M.R.S.A. §311 *et seq.* for timeliness, legibility, and completeness. The staff will send the lobbyist a notice of any apparent reporting deficiency, including failure to use prescribed forms. The notice will include a request that the deficiency be corrected within 15 business days of the notice. If remedy is not made, it will be noted on the agenda of the next Commission meeting. The Commission may reject reports that are incomplete or illegible.
- B. **Late Registrations and Reports.** Notice will be given by mail to any lobbyist whose registration, monthly disclosure report, or annual report is delinquent. In the case of a late monthly report, the notice must be mailed within 7 business days following the filing deadline for the report. In the case of late annual reports and registrations, the notice must be mailed within 15 business days following the filing deadline. The notice must include a statement specifying the amount assessed. A penalty of \$100 will be assessed the lobbyist for every month that a monthly disclosure report is late and a penalty of \$200 will be assessed the lobbyist and employer for every month a registration or annual report is filed late. For purposes of 3 M.R.S.A. §319(1), the month will end on the 15th day of the month following the month in which a report was due. Any failure to submit a required report, registration, or penalty fee will be noted on the Commission agenda.
- C. **Suspensions.** The Commission may suspend any person from lobbying who fails to file a required report or pay an assessed fee. A notice of the suspension must be mailed to the lobbyist by U.S. Certified Mail within three days following the

suspension. Reinstatement will occur on the date the required report or payment is received in the Commission office. A notice of the reinstatement must be mailed to the lobbyist by U.S. Certified Mail or given directly to the lobbyist within three days following receipt of the required report or payment.

- D. **Request for Penalty Waiver.** A lobbyist may request a waiver of any late penalty the lobbyist incurs. The request must be made in writing to the Commission and must state the reason for the delinquency. Any such request must be noted on the agenda of the next Commission meeting. Only the Commission may grant penalty waivers.
- E. **Request for Waiver of Nonsession Reporting Requirement.** A lobbyist may request a waiver of the monthly nonsession reporting requirement set forth in 3 M.R.S.A. §317(4) if the lobbyist does not expect to be engaged in lobbying when the Legislature is not in session. The Director is authorized to provisionally grant such waivers pending approval by the Commission. Provisional waivers may be granted only where a request is properly filed, the statement properly completed, and where there is no apparent reason to doubt the statement is true. During the period in which the waiver is effective, reports will not be required. If lobbying is resumed during the period for which the waiver was granted, the lobbyist must file a monthly disclosure report for the month or months lobbying was conducted.
- F. **Faxing Duly Executed Lobbyist Registration, Reports.** Any registration or report required by 3 M.R.S.A. ch. 15 may be provisionally filed by transmission of a facsimile copy of the duly executed report to the Commission, provided that the original of the same report is received by the Commission within 5 calendar days thereafter.

4. **Matters Outside the Commission's Jurisdiction.** If the Director and Counsel are in agreement that the subject matter of a request for an investigation is clearly outside the jurisdiction of the Commission, the staff may forward the request to the appropriate authority or return it to the person who made the request, provided that the staff notifies the Commission members of the action at the next Commission meeting. [NOTE: *MOVED FROM ABOVE WITHOUT CHANGE*]

SECTION 5. FACT FINDING AND INVESTIGATIONS

1. **Before Commission Meeting.** With respect to any inquiry, ~~report~~ complaint, or request for Commission action properly filed in accordance with the preceding section, or any potential violation that comes to the attention of Commission staff through an audit, review of reports, or other information, the Director may conduct such preliminary fact finding as is deemed prudent and desirable. When the Director and Counsel find a basis for a preliminary investigation, they will recommend such steps to the Chair as necessary. ~~Pursuant to reviewing reports or finding of fact, the Director, in consultation with Counsel, will prepare a summary of findings and recommendations for inclusion on the agenda.~~ The Chair is authorized to issue subpoenas in the name of the Commission to compel the attendance of witnesses or the production of records, documents or other evidence when the Chair and the Commission's Counsel are in agreement that the

testimony or evidence sought by the subpoena is necessary to disposition of the matter; and to issue any subpoena in the name of the Commission on behalf of any person having a statutory right to an agency subpoena. Consultations between the Commission and its Counsel concerning an investigation (including the issuance of subpoenas) where premature public knowledge of the investigation would place the Commission or another investigatory office at a substantial disadvantage may be held in executive session pursuant to 1 M.R.S.A. §§ 405(6)(E), 1005, and 1013(3). Any oral testimony compelled by a subpoena issued by this provision will be presented to the Commission or its staff. When a matter is ready for presentation to the Commission, the Director, in consultation with Counsel, will prepare a summary of findings and recommendations for inclusion on the agenda.

2. **By the Commission.** Once any matter is reached on the agenda of a Commission meeting, the Commission will control any further investigation or proceedings. No hearings will be held except by direction of the Commission. On a case-by-case basis, the Commission may authorize its Chair, Director, or any ad hoc committee of its members, to conduct further investigative proceedings on behalf of the Commission between Commission meetings. Any authorization so conferred will be fully reflected in the minutes of the Commission meeting.

SECTION 7. EXPENDITURES

1. **Expenditures by Consultants, Employees, and Other Agents of a Political Campaign.** Each expenditure made on behalf of a candidate, political committee, or political action committee by any person, agency, firm, organization, etc., employed or retained for the purpose of organizing, directing, managing or assisting the candidate, the candidate's committee, or the political action committee must be reported separately by the candidate or committee as if made or incurred by the candidate or committee directly. The report must include the name of the third party vendor or payee to whom the expenditure was made, the date of the expenditure, and the purpose and amount of the expenditure. It is not sufficient to report only the total retainer or fee paid to the person, agency, firm, organization, etc., if that retainer or fee was used to pay third party vendors or payees for campaign-related goods and services.
2. **Expenditures by Political Action Committees.** In addition to the requirements set forth in 21-A M.R.S.A. §1060(4), the reports must contain the purpose of each expenditure and the name of each payee and creditor.
3. **Timing of Reporting Expenditures**
 - A. Placing an order with a vendor for a good or service; signing a contract for a good or service; the delivery of a good or the performance of a service by a vendor; or a promise or an agreement (including an implied one) that a payment will be made constitutes an expenditure, regardless whether any payment has been made for the good or service.
 - B. Expenditures must be reported at the earliest of the following events:

- (1) The placement of an order for a good or service;
 - (2) The signing of a contract for a good or service;
 - (3) The delivery of a good or the performance of a service by a vendor;
 - (4) A promise or an agreement (including an implied one) that a payment will be made; or
 - (5) The making of a payment for a good or service.
- C. At the time the duty to report an expenditure arises, the person submitting the report is required to determine the value of goods and services to be rendered (preferably through a written statement from the vendor) and to report that value as the amount of the expenditure. If the expenditure involves more than one candidate election, the report must include an allocation of the value to each of those candidate elections.
4. **Advance Purchases of Goods and Services for the General Election**
- A. Consulting services, or the design, printing or distribution of campaign literature or advertising, including the creation and broadcast of radio and television advertising, contracted or paid for prior to the primary election must be received prior to the primary election in order to be considered primary election expenditures.
 - B. If the Commission receives a complaint stating that a candidate or a committee purchased goods or services before a primary election for use in the general election, the Commission may request that the candidate or committee distinguish which of the goods and services were used in the primary election and which were used in the general election.
5. All campaign-related payments made with the personal funds or credit card of the candidate or an individual authorized by the candidate must be reported as expenditures in the reporting period during which the payment to the vendor or payee is made. The candidate must report the name of the vendor or payee to whom the payment was made, the date of the expenditure, and the purpose and amount of the expenditure. When the expenditure is reported, the candidate should indicate the person who made the payment by entering "Paid by [name of candidate or supporter]" in the remarks section of the expenditure schedule. It is not sufficient to report only the name of the candidate or authorized individual to whom reimbursement was made and the total amount of the reimbursement.
6. Multiple expenditures for bank fees and for vehicle travel may be reported in an aggregate amount, provided that the candidate or committee identifies the time period of the expenditures in the remarks section of the report.
7. When a political action committee or party committee makes an expenditure on a communication to voters for the purpose of influencing the election of a clearly

identified candidate, the amount spent to influence that candidate's election must be specified on the regularly filed campaign finance report of the committee, regardless whether the communication expressly advocates for the election or defeat of the candidate. If a single expenditure influences the election of more than one candidate, the political action committee or party committee shall itemize the amount spent per candidate.

SECTION 9. ACCELERATED REPORTING SCHEDULE

1. **General.** In addition to other reports required by law, any candidate for Governor, State Senator or State Representative who is not certified as a Maine Clean Election Act candidate under Title 21-A §1121 *et seq.*, and who has a certified candidate as an opponent in an election must comply with the following reporting requirements on forms prescribed, prepared, and provided by the Commission.

INFORMATIONAL NOTE: Title 21-A §1017 prescribes reporting requirements for candidates.

2. **101% Trigger Report.** Any candidate subject to this section, who receives, spends or obligates more than ~~1% in excess of~~ the primary or general election distribution amounts for a Maine Clean Election Act candidate opponent in the same race, must file with the Commission, within 48 hours of such receipt, expenditure, or obligation, a report detailing the candidate's total campaign contributions, receipts, expenditures and obligations to date. The Commission will notify all candidates who have an opposing certified candidate of the applicable distribution amounts and of the trigger report requirement.
3. ~~Any privately funded candidate with a Maine Clean Election Act opponent shall file A nonparticipating candidate who is required to file a report under subsection 2 shall file no later than 5:00 p.m. the following three reports detailing the candidate's total campaign contributions, obligations and expenditures to date, except that a candidate who has not received, spent, or obligated the amount sufficient to require a report under subsection 2 may file an affidavit, by the date the report is due, attesting that the candidate has not received, spent or obligated that amount:~~
 - A. ~~a report filed not later than 5:00 p.m. on the 42nd day before the date on which an election is held that is complete as of the 44th day before the that date of that election;~~
 - B. ~~for gubernatorial candidates only, a report filed not later than 5:00 p.m. on the 21st 25th day before the date on which an election is held that is complete as of the 23rd 27th day before the that date of that election; and~~
 - C. ~~a report filed not later than 5:00 p.m. on the 12th 18th day before the date on which an election is held that is complete as of the 14th 20th day before the that date of that election.; and~~

- D. a report on the 6th day before the date on which an election is held that is complete as of the 8th day before that date.
4. **24-Hour Report.** Any candidate who is required to file a ~~101%~~ trigger report must file an updated report with the Commission reporting single expenditures of \$1,000 or more by candidates for Governor, \$750 by candidates for State Senator, and \$500 by candidates for State Representative made after the 14th day before any election and more than 24 hours before ~~5:00~~ 11:59 p.m. on the date of that election. The report must be submitted to the Commission within 24 hours of those expenditures.
 5. **Filing by Facsimile or Electronic Means.** For purposes of this section, reports may be filed by facsimile or by other electronic means acceptable to the Commission, and such reports will be deemed filed when received by the Commission provided that the original of the same report is received by the Commission within 5 calendar days thereafter.

SECTION 10. REPORTS OF INDEPENDENT EXPENDITURES

1. **General.** Any person, party committee, political committee or political action committee that makes an independent expenditure aggregating in excess of \$100 per candidate in an election must file a report with the Commission according to this section.
2. **Definitions.** For purposes of this section, the following phrases are defined as follows:
 - A. "Clearly identified," with respect to a candidate, has the same meaning as in Title 21-A, chapter 13, subchapter II.
 - B. "Expressly advocate" means any communication that uses phrases such as "vote for the Governor," "reelect your Representative," "support the Democratic nominee," "cast your ballot for the Republican challenger for Senate District 1," "Jones for House of Representatives," "Jean Smith in 2002," "vote Pro-Life" or "vote Pro-Choice" accompanied by a listing of clearly identified candidates described as Pro-Life or Pro-Choice, "vote against Old Woody," "defeat" accompanied by a picture of one or more candidate(s), "reject the incumbent," or communications of campaign slogan(s) or individual word(s), which in context can have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidate(s), such as posters, bumper stickers, advertisements, etc. which say "Pick Berry," "Harris in 2000," "Murphy/Stevens" or "Canavan!".
 - C. "Independent expenditure" has the same meaning as in Title 21-A §1019-B. Any expenditure made by any person in cooperation, consultation or concert with, or at the request or suggestion of, a candidate, a candidate's political committee or their agents is considered to be a contribution to that candidate and is not an independent expenditure.
3. **Reporting Schedules.** Independent expenditures must be reported to the Commission in accordance with the following provisions:

- A. Independent expenditures aggregating in excess of \$100 per candidate per election but not in excess of \$250 made by any person, party committee, political committee or political action committee must be reported to the Commission in accordance with the following reporting schedule, except that expenditures made ~~in the last 11 days after the 14th day~~ before an election must be reported within 24 hours of the expenditure.

(1) **Quarterly Reports.** Quarterly reports must be filed by 5:00 p.m. on

- (a) ~~A report must be filed on~~ January 15th and be complete as of January 5th;
- (b) ~~A report must be filed on~~ April 10th and be complete as of March 31st;
- (c) ~~A report must be filed on~~ July 15th and be complete as of July 5th; and
- (d) ~~A report must be filed on~~ October 10th and be complete as of September 30th.

(2) **Pre-Election Report.** A report must be filed by 5:00 p.m. on the 12th 14th day before the election is held and be complete as of that day.

If the total of independent expenditures made to support or oppose a candidate exceed \$100, each subsequent amount spent to support or oppose the candidate must be reported as an independent expenditure. As long as the total amount spent with respect to the candidate does not exceed \$250, all reports must be filed according to the deadlines in this paragraph. If the total amount spent per candidate exceeds \$250, the reports must be filed in accordance with paragraph B.

[NOTE: FOR EXAMPLE, IF A COMMITTEE MAKES THREE \$80 EXPENDITURES IN SUPPORT OF A CANDIDATE ON SEPTEMBER 20, THE 15TH DAY BEFORE THE ELECTION AND THE 8TH DAY BEFORE THE ELECTION, THOSE THREE EXPENDITURES MUST BE REPORTED ON OCTOBER 10th, AND THE ~~12TH~~ 14TH AND 7TH DAYS BEFORE THE ELECTION, RESPECTIVELY.]

- B. Independent expenditures aggregating in excess of \$250 per candidate per election made by any person, party committee, political committee or political action committee must be reported to the Commission within 24 hours of those expenditures. If any additional expenditures, regardless of amount, increase the total spent per candidate above the threshold of \$250, each additional expenditure must be reported within 24 hours.

[NOTE: FOR EXAMPLE, IF A COMMITTEE HAS REPORTED INDEPENDENT EXPENDITURES TOTALING \$300 IN SUPPORT OF A CANDIDATE, AND THE COMMITTEE MAKES AN ADDITIONAL \$50 INDEPENDENT EXPENDITURE IN SUPPORT OF THE CANDIDATE, THE ADDITIONAL \$50 EXPENDITURE MUST BE REPORTED WITHIN 24 HOURS.]

- C. Reports must contain information as required by Title 21-A, chapter 13, subchapter II (§§ 1016-1017-A), and must clearly identify the candidate and indicate whether the expenditure was made in support of or in opposition to the candidate. Reports filed after the eighth day before an election must include the following information:
1. the date on which the person making the expenditure placed the order with the vendor for the goods or services;
 2. the approximate date when the vendor began providing design or any other services in connection with the expenditure;
 3. the date on which the person making the expenditure first learned of the total amount of the expenditure; and
 4. a statement why the expenditure could not be reported by the eighth day before the election.
- D. A separate 24-Hour Report is not required for expenditures reported in an independent expenditure report.

4. **Multi-Candidate Expenditures.** When a person or organization is required to report an independent expenditure for a communication that supports multiple candidates, the cost should be allocated among the candidates in rough proportion to the benefit received by each candidate.

- A. The allocation should be in rough proportion to the number of voters who will receive the communication and who are in electoral districts of candidates named or depicted in the communication. If the approximate number of voters in each district who will receive the communication cannot be determined, the cost may be divided evenly among the districts in which voters are likely to receive the communication.

[NOTE: FOR EXAMPLE, IF CAMPAIGN LITERATURE NAMING SENATE CANDIDATE X AND HOUSE CANDIDATES Y AND Z ARE MAILED TO 10,000 VOTERS IN X'S DISTRICT AND 4,000 OF THOSE VOTERS RESIDE IN Y'S DISTRICT AND 6,000 OF THOSE VOTERS LIVE IN Z'S DISTRICT, THE ALLOCATION OF THE EXPENDITURE SHOULD BE REPORTED AS: 50% FOR X, 20% FOR Y, and 30% FOR Z.]

- B. If multiple county or legislative candidates are named or depicted in a communication, but voters in some of the candidates' electoral districts will not receive the communication, those candidates should not be included in the allocation.

[NOTE: FOR EXAMPLE, IF AN EXPENDITURE ON A LEGISLATIVE SCORECARD THAT NAMES 150 LEGISLATORS IS DISTRIBUTED TO VOTERS WITHIN A TOWN IN WHICH ONLY ONE LEGISLATOR IS

SEEKING RE-ELECTION, 100% OF THE COST SHOULD BE ALLOCATED TO THAT LEGISLATOR'S RACE.]

- C. If a candidate who has received matching funds because of a multi-candidate communication believes that he or she deserves additional matching funds because the communication disproportionately concerns his or her race, the Commission may grant additional matching funds in proportion to the relative treatment of the candidates in the communication.
5. **Rebuttable Presumption.** Under Title 21-A M.R.S.A. §1019-B(1)(B), an expenditure made to design, produce or disseminate a communication that names or depicts a clearly identified candidate in a race involving a Maine Clean Election Act candidate and that is disseminated during the 21 days before ~~an~~ a primary election and 35 days before a general election will be presumed to be an independent expenditure, unless the person making the expenditure submits a written statement to the Commission within 48 hours of the expenditure stating that the cost was not incurred with the intent to influence the nomination, election or defeat of a candidate.
- A. The following types of communications may be covered by the presumption if the specific communication satisfies the requirements of Title 21-A M.R.S.A. §1019-B(1)(B):
- (1) Printed advertisements in newspapers and other media;
 - (2) Television and radio advertisements;
 - (3) Printed literature;
 - (4) Recorded telephone messages;
 - (5) Scripted telephone messages by live callers; and
 - (6) Electronic communications.
- This list is not exhaustive, and other types of communications may be covered by the presumption.
- B. The following types of communications and activities are not covered by the presumption, and will not be presumed to be independent expenditures under Title 21-A M.R.S.A. §1019-B(1)(B):
- (1) news stories and editorials, unless the facilities distributing the communication are owned or controlled by the candidate, the candidate's immediate family, or a political committee;
 - (2) activity or communication designed to encourage individuals to register to vote or to vote if that activity or communication does not name or depict a clearly identified candidate;

- (3) any communication from a membership organization to its members or from a corporation to its stockholders if the organization or corporation is not organized primarily for the purpose of influencing the nomination or election of any person for state or county office;
 - (4) the use of offices, telephones, computers, or similar equipment when that use does not result in additional cost to the provider; and
 - (5) other communications and activities that are excluded from the legal definition of "expenditure" in the Election Law.
- C. If an expenditure is covered by the presumption and is greater, in the aggregate, than \$100 per candidate per election, the person making the expenditure must file an independent expenditure report or a signed written statement that the expenditure was not made with the intent to influence the nomination, election or defeat of a candidate. The filing of independent expenditure reports should be made in accordance with the filing schedule in subsections 3(A) and 3(B) of this rule. Independent expenditures aggregating \$100 or less per candidate per election do not require the filing of an independent expenditure report or a rebuttal statement.
- D. If a committee or association distributes copies of printed literature to its affiliates or members, and the affiliates or members distribute the literature directly to voters, the applicable 21-day or 35-day period applies to the date on which the communication is disseminated directly to voters, rather than the date on which the committee or association distributes the literature to its affiliates or members.
- E. For the purposes of determining whether a communication is covered by the presumption, the date of dissemination is the date of the postmark, hand-delivery, or broadcast of the communication.
- F. An organization that has been supplied printed communications covered by the presumption and that distributes them to voters must report both its own distribution costs and the value of the materials it has distributed, unless the organization supplying the communications has already reported the costs of the materials to the Commission. If the actual costs of the communications cannot be determined, the organization distributing the communication to voters must report the estimated fair market value.
- G. If a person wishes to distribute a specific communication that appears to be covered by the presumption and the person believes that the communication is not intended to influence the nomination, election or defeat of a candidate, the person may submit the rebuttal statement to the Commission in advance of disseminating the communication for an early determination. The request must include the complete communication and be specific as to when and to whom the communication will be disseminated.

SECTION 11. REPORTS OF BALLOT QUESTION CAMPAIGN ACTIVITY BY PERSONS AND ORGANIZATIONS OTHER THAN POLITICAL ACTION COMMITTEES

When a person or organization is required under 21-A M.R.S.A. §1056-B to file reports because of contributions or expenditures of more than \$1,500 made in support of or in opposition to a ballot question, the reports must be filed according to the following schedule:

1. **Quarterly Reports.** Reports must be filed by 11:59 p.m. on the following deadlines until the date of the election on which the question is on the ballot:
 - A. A report must be filed on January 15th and be complete as of January 5th;
 - B. A report must be filed on April 10th and be complete as of March 31st;
 - C. A report must be filed on July 15th and be complete as of July 5th; and
 - D. A report must be filed on October 10th and be complete as of September 30th.

2. **Pre- and Post-Election Reports.** The person or organization must also file the following reports by 11:59 p.m. on the deadlines:
 - A. A report must be filed on the ~~6th~~ 11th day before the election is held and be complete as of the ~~12th~~ 14th day before the election.
 - B. A report must be filed on the 42nd day after the election is held and be complete as of the 35th day after the election.

3. **24-Hour Reports.** Any contribution or expenditure in excess of \$500 made after the ~~12th~~ 14th day before the election and more than 24 hours before the election must be reported within 24 hours of that contribution or expenditure or by noon of the first business day after the contribution or expenditure, whichever is later.

PROPOSED AMENDMENT TO CAMPAIGN FINANCE REPORTING FORM

The Commission proposes to eliminate Schedule E of the campaign finance reporting form for county and legislative candidates who have financed their campaign through accepting traditional campaign contributions. This form requires candidates to list campaign property or equipment that could be converted to the candidate's personal use after an election (*e.g.*, computers, fax machines, or telephones) and how such property or equipment is disposed of. This schedule would continue to be required for candidates who have purchased such property with Maine Clean Election Act funds pursuant to 21-A M.R.S.A. §§ 1125(12) and 1126 and Chapter 3, Section 7(2)(C) of the Commission rules.

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COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES

Chapter 3: MAINE CLEAN ELECTION ACT AND RELATED PROVISIONS

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 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.
- 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. **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.
 - G. **Matching Fund Cap.** Matching funds are limited to 2 times the amount originally distributed to a certified candidate from the Fund for that election, except that matching funds paid to candidates for Governor for the general election are limited to an amount equal to the initial distribution amount for that election. Certified candidates are not entitled to cumulative matching funds for multiple opponents.
 - H. **Other.** Any distribution based on reports and accurate calculations at the time of distribution is final, notwithstanding information contained in subsequent reports.
 - I. **Coordination with Other State Agencies.** The Commission will coordinate with the 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.
 - J. **Disbursements with No Campaign Value.** If a 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 of consulting services, or the design, printing, or distribution of campaign literature and advertising, including radio and television advertising, 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 any certified 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 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 seed money contributions and public campaign 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 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 must be based on the standard mileage rate prescribed for employees of the State of Maine for the year

in which the election occurs. 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.

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, 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.