

Agenda

Item #3



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

November 29, 2007

Mr. Clyde E. Dyar  
PO Box 59  
Mount Vernon, ME 04352

Dear Mr. Dyar:

Thank you for your November 19, 2007 letter explaining that you spent \$409.51 more than was permitted as a Maine Clean Election Act candidate in the 2007 special election. As we discussed last week, this matter will be scheduled for the Commission meeting on December 7, 2007 at 9:00 a.m. The purpose of this letter is to inform you of the staff's recommendation.

After a candidate has qualified for Maine Clean Election Act funding, he or she may spend only public funds received from the state. The candidate is not permitted to contribute his or her own funds to the campaign:

After certification, a candidate must limit the candidate's campaign expenditures and obligations, including outstanding obligations, to the revenues distributed to the candidate from the fund and may not accept any contributions unless specifically authorized by the commission. (21-A M.R.S.A. §1125(6))

Spending more than is permitted – which the Commission staff refers to as overspending – is potentially a serious election violation because it could give a candidate an unfair advantage and could possibly change the results of a close race. It is therefore important for Maine Clean Election Act candidates to keep track of their total expenditures and obligations to avoid exceeding their limit.

Your 2007 campaign was permitted to spend \$8,993.02. Our understanding is that your expenditures and obligations totaled \$9,402.53, which is \$409.51 more than you were allowed. Your November 19 letter explains that in the heat of the campaign you did not remember that you owed a debt to Dyer Associates, and you had insufficient MCEA funds with which to pay that bill. You intend to pay the remaining balance of \$409.51 from your personal funds.

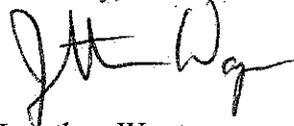
At the December 7 meeting, the staff will recommend that the Commission find that you violated 21-A M.R.S.A. § 1125(6) by spending money other than your Maine Clean Election Act funds to promote your campaign. We will also recommend that the Commission assess a penalty of \$50 against you. The recommended penalty is relatively small based on a number of considerations:

- When you realized the error, you showed good faith on November 19, 2007 by promptly telephoning Candidate Registrar Sandy Thompson, visiting our office in person with your campaign treasurer Dennis Keschl, and by writing a letter the same day explaining the overspending.
- This was your first campaign as a Maine Clean Election Act candidate, and the compressed time period of the special election did not provide you with much time to learn the restrictions of the Maine Clean Election Act program.
- Overall, you and your treasurer demonstrated a noticeable interest in complying with the requirements for Maine Clean Election Act candidates. In that context, the Commission staff finds it credible that the violation was unintentional.
- You will pay the \$409.51 from your own funds to pay the remaining debt to Dyer Associates.
- At its September 21, 2007 meeting, the Commission assessed a penalty of \$50 against a 2006 candidate for a similar violation.

Please be aware that the Commission will have the discretion to assess a penalty that is greater or less than the staff recommendation, or to assess no penalty at all. Under 21-A M.R.S.A. §1127(1), the Commission can assess a penalty of up to \$10,000 for a violation of the Maine Clean Election Act.

Please telephone Candidate Registrar Sandy Thompson or me at 287-4179 if you have any questions.

Sincerely,



Jonathan Wayne  
Executive Director

cc: Dennis Keschl

November 19, 2007

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

Dear Mr. Wayne;

Thanks for meeting with my treasurer, Dennis Keschl and myself today and I hope this letter clarifies the situation I now find myself in.

In finalizing our accounting last Saturday (November 16<sup>th</sup>), while assembling the information for the 42 day report, I discovered that I had not accounted for some advertising that was purchased as I had not received a bill until then and with the consternation of six weeks of campaigning and everything going so fast, I had not remembered the bill was not received or paid. While I received the fax of the bill on the 16<sup>th</sup> it read like there was more due than there actually was so I asked for a new billing, which I received this morning (copy attached) and in reconciling the account with Dennis I became aware that there was not enough money left in the account to pay the bill of advertising (\$493.00 for three weeks of advertising), as we only had \$83.49 left as a balance, therefore, it puts me in the undesirable situation of having to pay the bill (most of it, [\$409.51]) from my own funds. Although it was in the "heat of battle" I know that it is my responsibility to keep within the rules and guidelines of the Clean Election Act and I accept full responsibility for the incident.

I realize that it also puts me in an undesirable situation with the clean election rules and with this letter ask that this matter be resolved as soon as possible, as Dennis and I would like to do the 42 day report as soon as possible. I will pay the bill and wait for a meeting with the Ethics Commission for resolution of any further consequences.

Thank you for your consideration



Clyde E. Dyar  
PO Box 59  
Mount Vernon, ME 04352  
tel: 207-293-6740  
cell: 207-592-3700

Dyer Associates  
263 Main Street  
Winthrop, ME 04364

**Statement**

**Clyde Dyer Political Campaign Advertising**

Display Political Ad/Community Advertiser	157.00	10/13
Display Political Ad/Community Advertiser	168.00	10/26
Display Political Ad/Community Advertiser	168.00	10/27
<b>Total:</b>	<b>493.00</b>	

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

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

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

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

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

[2005, c. 301, §30 (amd) .]

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

[2005, c. 542, §3 (amd) .]

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

- A. Within 3 days after certification, for candidates certified prior to March 15th of the election year, revenues from the fund must be distributed as if the candidates are in an uncontested primary election. [2001, c. 465, §4 (amd) .]
- B. Within 3 days after certification, for all candidates certified between March 15th and April 15th of the election year, revenues from the fund must be distributed according to whether the candidate is in a contested or uncontested primary election. [2001, c. 465, §4 (amd) .]
- B-1. For candidates in contested primary elections receiving a distribution under paragraph A, additional revenues from the fund must be distributed within 3 days of March 15th of the election year. [2001, c. 465, §4 (new) .]
- C. Within 3 days after the primary election results are certified, for general election certified candidates, revenues from the fund must be distributed according to whether the candidate is in a contested or uncontested general election. [2001, c. 465, §4 (amd) .]

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

[2001, c. 465, §4 (amd) .]

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

[2005, c. 542, §4 (new) .]

## Title 21-A, §1127, Violations

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### §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).