

Agenda

Item #6



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

To: Commission Members

From: Jonathan Wayne, Executive Director

Date: May 22, 2009

Re: Request by Rep. Andre Cushing concerning Lobbyist Disclosure and the Maine State Employees Association

Rep. Andre Cushing has requested an opportunity to address the Ethics Commission regarding the Maine State Employees Association (MSEA) and policy issues concerning disclosure by lobbyists.

For the 2009 lobbying year, the MSEA registered a lobbyist (Mary Anne Turowski) and six lobbyist associates, including Ginette M. Rivard. Ms. Rivard is the Vice President of the MSEA, and works as a Regional Supervisor of the Department of Health and Human Services in Caribou, Maine.

Under Maine's lobbyist disclosure law, the term lobbying refers to direct communication with a covered official for purposes of influencing legislation when reimbursement or compensation is made for those activities. (*See attached definitions*) If an individual is communicating with a covered official without receiving reimbursement or compensation, that communication is not lobbying. Lobbyist associates are individuals who are associates of the primary lobbyist and who spend more than eight hours in a calendar month lobbying covered officials to influence legislation for compensation by the client.

Later in 2009, Ms. Rivard was nominated to serve as a member of the Workers' Compensation Board. Someone questioned her eligibility to serve on the Board in light of the inclusion of her name as a lobbyist associate on the MSEA registration form. Under 39-A M.R.S.A. § 151(1) (attached), a person who is required to be registered with the Commission as a lobbyist cannot be a member of the Board. The MSEA has stated to the Commission staff that Ms. Rivard did not meet the legal requirements to be registered as a lobbyist associate for the MSEA during 2009, and was included on the MSEA registration form as a lobbyist associate unnecessarily. On March 19, 2009, the Commission received the attached letter from Tim Belcher, the Executive Director of the MSEA, requesting that Ms. Rivard be removed from the MSEA lobbyist registration.

As outlined in his e-mails, Rep. Cushing has a number of policy concerns that he would like to discuss concerning lobbyist disclosure which were raised by Ms. Rivard's appointment to the Board. As background for the discussion, I have enclosed a flier that includes the Commission's official advice on what is lobbying. It appears that some of Rep. Cushing's concerns would need to be addressed by statutory changes that he could sponsor.

With regard to the accuracy of the lobbyist registration of the MSEA, I requested a response from Mr. Belcher on some factual questions. He responded, and I have had a follow-up telephone conversation with him. The MSEA appears to understand the legal requirements to register an individual as a lobbyist associate (8 hours of compensated or reimbursed lobbying in a calendar month). My general understanding is that Ms. Rivard

has advocated for legislation only sporadically. I do not believe it is necessary to request further factual information from the MSEA or Ms. Rivard to verify the accuracy of MSEA's lobbyist registration.

Thank you for your consideration of this matter.

CHAPTER 15
LOBBYIST DISCLOSURE PROCEDURES

3 § 311. Declaration of purpose

The Constitution of Maine guarantees the right of the people to petition their government for the redress of grievances and to freely express their opinions on legislation and issues. The Legislature reaffirms its obligation to hear the requests and opinions of all of the people, and to preserve and maintain the integrity and accessibility of the legislative process.

The Legislature recognizes that groups of citizens may choose one among them to present their views to Legislators, and, because of the amount and complexity of proposed legislation, may employ persons knowledgeable in the legislative process to present their views. Such activities are proper methods of expressing the opinion of a group of citizens.

The Legislature also recognizes that such activities must be carried out openly so that other citizens are aware of the opinions and requests made in this manner. Legislative decisions can fully reflect the will of all the people only if the opinions expressed by any citizen are known to all and debated by all, and if the representatives of groups of citizens are identified and their expenditures and activities are regularly disclosed.

Therefore, the Legislature declares that, in order to insure the full participation of all the people of the State in the legislative process, full disclosure of the identity, expenditures and activities of any persons who engage in professional lobbying is required. Such disclosure will insure the openness and integrity of the legislative process and encourage the expression of the will of all the people of the State.

3 § 312. Definitions (REPEALED)

 **3 § 312-A. Definitions**

As used in this chapter, unless the context otherwise indicates, the following words have the following meanings.

1. Campaign fund raising activity. "Campaign fund raising activity" means any event or solicitation by letter or any other means that is held for the purpose of receiving contributions for a political party, political committee, political action committee, candidate for political office in any primary or election, any elected official or a referendum committee.

1-A. Campaign contribution. "Campaign contribution" is a contribution, as defined in Title 21-A, section 1012, subsection 2.

2. Committee. "Committee" means any committee, subcommittee, joint or select committee of the Legislature or any special committee or commission, by whatever name, established by the Legislature to make recommendations for legislative action or to develop legislation.

2-A. Commission. "Commission" means the Commission on Governmental Ethics and Election Practices as defined in Title 1, Chapter 25.

3. Communicate. "Communicate" means the act of expressing, imparting or conveying information or impressions from one person to another, by either oral or written means.

4. Compensation. "Compensation" means anything of value that is received or to be received in return for, or in connection with, services rendered or to be rendered.

4-A. Covered official. "Covered official" means an official in the executive branch, an official in the legislative branch, a constitutional officer, the Governor and the Governor's cabinet and staff.

4-B. Domestic partner. "Domestic partner" means the partner of an individual who:

- A. Is a mentally competent adult, as is the individual;
- B. Has been legally domiciled with the individual for at least 12 months;
- C. Is not legally married to or legally separated from another individual;
- D. Is the sole partner of the individual and expects to remain so; and
- E. Is jointly responsible with the individual for each other's common welfare as evidenced by joint living arrangements, joint financial arrangements or joint ownership of real or personal property.

5. Employer. "Employer" means a person who agrees to reimburse for expenditures or to compensate a person who in return agrees to provide services. Employer includes any political action committee as defined in this section which communicates through or uses the services of a lobbyist to make campaign contributions or to influence in any way the political process.

6. Employment. "Employment" means an agreement to provide services in exchange for compensation or reimbursement of expenditures.

7. Expenditure. "Expenditure" means anything of value or any contract, promise or agreement to transfer anything of value, whether or not legally enforceable.

- A. (REPEALED).
- B. (REPEALED).
- C. (REPEALED).

7-A. Immediate family. "Immediate family" means a person's spouse or domestic partner and dependent children.

8. Legislative action. "Legislative action" means 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.

8-A. Legislative designee. "Legislative designee" means any employee of a state department or agency who is directed by the head of the department or agency to lobby or monitor legislation on behalf of the department or agency. "Legislative designee" includes an employee who is reasonably expected to lobby or monitor legislation on behalf of the department or agency for more than 20 hours during the session. For the purposes of this subsection, "monitoring legislation" means attending legislative hearings and sessions regarding a legislative action.

 **9. Lobbying.** "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.

 **10. Lobbyist.** "Lobbyist" means any person who is specifically employed by another person for the purpose of and who engages in lobbying in excess of 8 hours in any calendar month, or any individual who, as a regular employee of another person, expends an amount of time in excess of 8 hours in any calendar month in lobbying. "Lobbyist" does not include a lobbyist associate.

10-A. Lobbyist associate. "Lobbyist associate" means an individual who:

- 
- A. Is a partner, associate or employee of a lobbyist or is a coemployee of a regular employee of another person if that regular employee is registered as a lobbyist;
 - B. Lobbies on behalf of the employer named on the lobbyist registration; and
 - C. Expends more than 8 hours in any calendar month lobbying on behalf of an employer of the lobbyist.

10-B. Media outlet. "Media outlet" means a radio or television station, a cable television system, newspapers, magazines and other published written materials.

10-C. Official in the executive branch. "Official in the executive branch" means an individual in a major policy-influencing position in a department or agency listed in

section 959 or in Title 5, Chapter 71 and the Governor's cabinet and staff. As used in this chapter, "major policy-influencing position" means those positions listed in Title 5, chapter 71 and officers or employees of departments and agencies listed in section 959 and in Title 5, Chapter 71 who have policy development as a major function of their positions.

11. Official in the Legislative Branch. "Official in the Legislative Branch" means a member, member-elect, candidate for or officer of the Legislature or an employee of the Legislature.

11-A. Original source. "Original source" means any person who contributes or pays \$1,000 or more in any lobbying year directly or indirectly to any employer of a lobbyist for purposes of lobbying, except that contributions of membership dues to nonprofit corporations formed under Title 13-B, under any equivalent state law or by legislative enactment are not considered contributions by an original source.

12. Person. "Person" means an individual, corporation, proprietorship, joint stock company, business trust, syndicate, association, professional association, labor union, firm, partnership, club or other organization, whether profit or nonprofit, or any municipality or quasi-municipality or group of persons acting in concert, but does not include this State or any other agency of this State.

13. Political Action Committee. "Political Action Committee" includes:

A. Any separate or segregated fund established by any corporation, membership organization, cooperative or labor organization whose purpose is to influence the outcome of an election, including a candidate or question; and

B. Any person, as defined in subsection 12 which serves as a funding and transfer mechanism and by which moneys are expended to advance, promote, defeat, influence in any way, or initiate a candidate, campaign, political party, referendum or initiated petition in this State.

14. Reimbursement. "Reimbursement" means anything of value received or to be received as repayment for expenditures.

15. Year. "Year" means a 12-month period starting December 1st and ending the following November 30th.

16. Anything of value. "Anything of value" means, but is not limited to:

A. Negotiable items:

- (1) Money;
- (2) A bank bill or note;
- (3) A stock, bond, note or other investment interest in an entity;
- (4) A promissory note, bill of exchange, order, draft, warrant, check or bond given for the payment of money;
- (5) An honorarium or compensation for services;
- (6) The granting of a discount or rebate:

- (a) Not extended to the public generally; or
- (b) By a media outlet not extended equally to all candidates for the same office; and

(7) The sale or trade of something for reasonable compensation that is not available ordinarily to a member of the public;

B. Obligations:

- (1) A contract, agreement, promise or other obligation for an advance, conveyance, forgiveness of indebtedness, deposit, distribution, loan, payment, pledge or transfer of money;
- (2) A receipt given for the payment of money or other property;
- (3) A right in action;
- (4) A promise or offer of employment; and
- (5) An interest in tangible goods or chattel;

C. Property. The retail or fair market value, whichever is greater, of:

- (1) A work of art, an antique or a collectible;
- (2) An automobile or other means of personal transportation;
- (3) Real property or an interest in real property, including title to realty, a fee simple or partial interest, present or future interest contingent or vested in realty, a leasehold interest or other beneficial interest in realty; and
- (4) Other tangible goods; and

D. Other goods or services. The retail or fair market value, whichever is greater, of:

- (1) The purchase of tickets for an event such as a reception, rally or fund-raising event;
- (2) A meal or lodging; and
- (3) Any service not extended free of charge to other members of the public.

17. State employee or state agency employee. "State employee or state agency employee" means employees of the executive branch, the judicial branch, the Department of the Attorney General, the Department of Secretary of State, the Department of the Treasurer and any employee who directly or indirectly represents an entity listed in Title 5, Chapter 379.

Wayne, Jonathan

From: Cushing, RepAndre [RepAndre.Cushing@legislature.maine.gov]
Sent: Monday, May 18, 2009 11:45 AM
To: Wayne, Jonathan
Subject: RE: MSEA Response

Jonathan,

As indicated in my voicemail of this morning, I respectfully request that the Commission review this at their next meeting if time provides.

I am concerned that there is a misunderstanding of the interpretation of when someone is lobbying.

When someone who is elected to an office of an association then participates in meetings which are part of negotiations on pending legislation should any of the compensation they receive then apply as payment for services that were used in the efforts to influence a member of the Legislature or the Executive branch?

I feel there must be a review of the time that officers are involved in the deliberation process in these matters and what they offer to their lobbyists as research from their organization, and additionally are they present in private meetings with sub committees of the Legislature or members of the Executive branch in discussion of these matters? If so, does this in fact fall under the definition of activities attributal to lobbying and therefore require documentation of that time which would lead to required registration as a lobbyist or lobbyist aassociate?

From: Wayne, Jonathan
Sent: Fri 5/15/2009 5:20 PM
To: Cushing, RepAndre
Cc: andycush@aol.com
Subject: MSEA Response

Wayne, Jonathan

From: Cushing, RepAndre [RepAndre.Cushing@legislature.maine.gov]
Sent: Friday, May 15, 2009 2:17 PM
To: Wayne, Jonathan

Jonathan,

Thank you for your call regarding Ginette Rivard's continued appearance in Appropriations in Augusta. I have been advised Ms. Rivard was seat in Appropriations again on Friday May 8th and Wednesday May 13th. I encountered her leaving the Cross office building with Mr. Belcher & Ms Turowski of MSEA on Thursday May 14th. It again begs the question, how an officer of MSEA can spend so much time in Augusta, away from her job in Caribou and not in some way be involved in activities which lead to a certain degree of lobbying activities. I recognize she did not speak before a committee but her presence there especially as an officer of MSEA begs the question as to what role she served. Did she spend time there researching actions of the Legislature so she could provide in put for a lobbying action by MSEA? How is she compensated for the amount of time she is spending in Augusta? How does MSEA allocate any payments to Ms. Rivard for the time she is spending in Augusta?



May 15, 2009

RECEIVED

MAY 18 2009

MAINE ETHICS COMMISSION

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

Re: Ginette Rivard

Dear Jonathan,

I am writing in response to your letter of May 1, 2009 concerning MSEA-SEIU Vice President Ginette Rivard. You note that this union removed Ms. Rivard from its list of registered lobbyists, and that she subsequently spoke to a legislative committee advocating against cuts to State employee health insurance benefits. You requested some information from us in order to assist the Commission in verifying whether the lobbyist registration form is accurate.

I write as Executive Director of the union, and not as an attorney representing Ms. Rivard. I am also the author of the letter promising that Ms. Rivard would not perform certain kinds of lobbying activity. I am generally eager to explain why Ms. Rivard's actions are entirely consistent with law, and with the representations I made to you in my letter. At the same time, I am mindful of the fact that you are writing as a regulatory agency requesting disclosure of private information, under somewhat vague legal authority, on behalf of an elected official with a history of distorting facts to attack Ms. Rivard for political purposes. For these reasons, I am reluctant to provide free discovery without a clear understanding of the legal framework for your request, in order to ensure that Ms. Rivard will have clear notice of her due process rights.

The on-line American Heritage Dictionary defines the verb "lobby" as follows:

1. To try to influence public officials on behalf of or against (proposed legislation, for example): *lobbied the bill through Congress; lobbied the bill to a negative vote.*
2. To try to influence (an official) to take a desired action.

My letter did not commit that Ms. Rivard would refrain from any advocacy to any public official concerning any legislation. As you note in your letter, I stated that Ms. Rivard would not "engage in lobbying as proscribed by the relevant statutes." I tied my promise clearly and unambiguously to the language of the applicable statutes.

BRUCE L. HODSDON
President

GINETTE M. RIVARD
Vice President

TIMOTHY L. BELCHER
Executive Director

MAINE STATE EMPLOYEES
ASSOCIATION, LOCAL 1989

SERVICE EMPLOYEES
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The first such statute is 39A MRSA § 151, which provides that: “A member of the [Workers’ Compensation] Board may not be a lobbyist required to be registered with the Commission on Governmental Ethics and Election Practices...” The statute thus narrowly prohibits board members from activities that would trigger the requirement to register.

The registration requirements that would trigger the prohibition are set forth in 3 MRSA § 313. That statute requires that every “lobbyist or lobbyist associate who lobbies on behalf of” an employer register with the commission. The terms “lobbying,” “lobbyist” and “lobbyist associate” are defined as follows in 3 MRSA § 312-A:

9. Lobbying. "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 workgroup 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 .
10. Lobbyist. "Lobbyist" means any person who is specifically employed by another person for the purpose of and who engages in lobbying in excess of 8 hours in any calendar month, or any individual who, as a regular employee of another person, expends an amount of time in excess of 8 hours in any calendar month in lobbying. "Lobbyist" does not include a lobbyist associate.
- 10-A. Lobbyist associate. "Lobbyist associate" means an individual who:
 - A. Is a partner, associate or employee of a lobbyist or is a co-employee of a regular employee of another person if that regular employee is registered as a lobbyist.
 - B. Lobbies on behalf of the employer named on the lobbyist registration; and
 - C. Expends more than 8 hours in any calendar month lobbying on behalf of an employer of the lobbyist.

To establish that Ms. Rivard is “a lobbyist required to be registered with the Commission,” the commission would need to prove that:

1. Ms. Rivard is employed by MSEA-SEIU;
2. the employment is for the specific purpose of lobbying;
3. she has communicated with specific officials, or prepared testimony for such communications, with the goal of influencing those officials concerning legislation;
4. she received reimbursement for expenditures or compensation for engaging in such lobbying activities;
5. she engaged in such activity in excess of 8 hours per month.

Each of these conditions must be met before activity triggers a reporting requirement.

There is no dispute that Ms. Rivard advocated to a legislative committee against a piece of legislation, on one occasion since she was removed from the list of registered lobbyists. That single incident does not prove, however, that Ms. Rivard is an employee of MSEA-SEIU; that she is employed “for the specific purpose of lobbying;” that she received compensation for engaging in such advocacy, and that her advocacy lasted longer than 8 hours in any given month. It appears clear from Representative Cushing’s letter that her single instance of advocacy lasted considerably less than 8 hours.

Ms. Rivard is not an employee of MSEA-SEIU, but its Vice President. She is one of the two top leaders of one of Maine’s largest labor unions. When she speaks, she speaks as a leader, not an employee. No one pays her to say anything on their behalf. While I am unwilling to divulge the details of her economic life, I can assure you that Ms. Rivard did not receive compensation or reimbursement from MSEA-SEIU for any expenses incurred in this single incident of advocacy. I can also assure you that Ms. Rivard will be careful to avoid engaging in activity that would trigger a reporting requirement. She will, however, continue to lead this union. That will include speaking out, on occasion, concerning legislation.

Some of the information you request is readily available in reports filed with your office. I will consider providing additional information you requested if you can clarify the legal status of your inquiry.

Sincerely,



Timothy Belcher
Executive Director



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

May 1, 2009

By E-Mail and Regular Mail

Timothy L. Belcher, Executive Director
Maine State Employees Association
P.O. Box 1072
Augusta, ME 04332-1072

Ginette M. Rivard, Vice President
Maine State Employees Association
P.O. Box 1072
Augusta, ME 04332-1072

Dear Mr. Belcher and Ms. Rivard:

The Ethics Commission received the attached inquiry from Representative Andre E. Cushing regarding whether Ginette Rivard should be included on the lobbyist registration for the Maine State Employees Association (MSEA). Rep. Cushing is a member of the Joint Standing Committee on Labor.

As you know, the Commission administers the lobbyist disclosure law for the State of Maine. The Commission has no jurisdiction over a lobbyist's qualification to serve on a state board or the appropriateness of activities of a lobbyist-board member once they have been appointed. Nevertheless, in light of Rep. Cushing's inquiry and the unusual circumstances of Ms. Rivard being removed from the MSEA lobbyist registration and apparent subsequent lobbying, it seems appropriate to ask you for information to assist the Commission in performing its role of verifying that the current MSEA lobbyist registration (without Ms. Rivard) is accurate.

Background Information

For the 2009 lobbying year, the MSEA registered as its lobbyist Mary Anne Turowski. As part of the registration form, the MSEA included six lobbyist associates including Ginette Rivard. Ms. Rivard was subsequently nominated for a position on the Workers' Compensation Board. Someone apparently questioned her eligibility to serve on the board in light of her status as a registered lobbyist associate for the MSEA.

On March 20, 2009, the Commission received the attached letter from Mr. Belcher requesting that Ms. Rivard be removed from the MSEA's registration. In the letter, he stated that Ms. Rivard "is no longer serving as a lobbyist or associate lobbyist ... , and is determined not to engage in lobbying as proscribed by the relevant statutes." Based on the information in the letter, the Commission staff amended the electronic registration form for the MSEA to remove Ms. Rivard as a lobbyist associate.

Representative Cushing stated to me that on April 27, 2009 (following her confirmation to the board), Ms. Rivard lobbied the Joint Standing Committee on State and Local Government against L.D. 417 on behalf of the MSEA. Her written testimony is attached.

Legal Requirement to Register as a Lobbyist Associate

Under the statutory definition, lobbying means "to communicate directly" with a covered official "for the purpose of influencing any legislative action" (3 M.R.S.A. § 312-A(9)) Lobbying also includes time spent "to prepare and submit" to a covered official "testimony or analysis concerning, a legislative action." *Id.* Based on this statutory definition, the Commission has advised that lobbying does *not* include time spent traveling to and from the State House, communicating with the client regarding a bill, monitoring legislation, conducting research that is not submitted to a covered official, or waiting in a government building for an opportunity to communicate with an official.

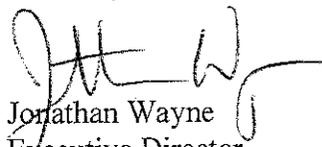
A lobbyist associate is roughly defined as a partner or associate of the lobbyist who spends more than eight hours in a calendar month lobbying on behalf of the employer. (3 M.R.S.A. § 312-A(10-A)) Individuals who lobby for less than eight hours in a calendar month on behalf of the employer are *not* required to register as a lobbyist or lobbyist associate. The lobbyist disclosure law does not specify any particular internal records that a lobbyist or associate must keep in order to comply with the disclosure requirements.

Request for Information

1. Please provide the number of hours of lobbying performed by Ms. Rivard for each calendar month from December 2008 to April 2009.
2. Describe whether lobbying is among the duties for which Ms. Rivard has received compensation from the MSEA since December 2008.

Kindly respond no later than Friday, May 14th. Please call me at 287-4179 if you have any questions about this request. Thank you very much for your cooperation.

Sincerely,



Jonathan Wayne
Executive Director

cp
Enclosure

cc: Mary Anne Turowski
Hon. Andre E. Cushing, III
Joe Boucher, Director of Boards and Commissions, Office of the Governor

Wayne, Jonathan

From: Cushing, RepAndre [RepAndre.Cushing@legislature.maine.gov]
Sent: Thursday, April 30, 2009 1:56 PM
To: Wayne, Jonathan

Jonathan,

Thank you for taking time to meet with me on Tuesday to review my concerns regarding lobbying activities and the manner in which they are interpreted.

As an example of this concern is a recent case involving a member of the Worker's Compensation Commission. This recently appoint member Ginette Rivard is an employee of the Maine Department of Health & Human Services, she also is the vice president of the MSEA. During the nomination hearing it came to light that Ms. Rivard was currently registered with the Commission as a lobbyist associate for MSEA. As indicated in MRSA § title 39A section 151 "A member of the board may not be a lobbyist required to be registered with the Commission on Governmental Ethics and Election Practices, a service provider to the workers' compensation system or a representative of a service provider to the workers' compensation system." This fact was brought to the nominees attention prior to the hearings and she was questions about the issue at length during the proceedings. The Labor Committee was assured that her name would be removed from the registration for MSEA and that she would refrain from lobbying activities. On April 27, 2009 Ms. Rivard did appear before the Legislature's Committee on State & Local Government to testify in opposition to LD 417 "An Act To Require State Employees To Pay 15% of Their Health Insurance Costs". She presented herself as the Vice President for MSEA/SEIU Local 1989, not as an individual citizen or even a state employee but in her capacity as an officer of the largest state employee's union.

The basis for my concern is whether someone, appointed by the governor and confirmed by a joint legislative committee, to serve on a board or commission where they are required to regularly make subjective decisions should be permitted to advocate for a position before a committee of the Legislature, particularly when it is a matter that directly relates to employee benefits.

The second point in my concern is how we determine what time is compensated for lobbying and what time is compensated for efforts for an office that someone holds in an organization. Specifically how is an officer, who receives compensation required to record their time to verify if they are preparing for lobbying rather than doing other business of the office to which they were elected.

Finally I feel the question of intent may need to be further addressed in statute, my concerns derive from the following points for which I would like calcification from the Commission.

If Ms. Rivard did not violate the letter of statute did her actions in deed violate the intent of the statute. In my opinion the purpose was to prevent actions where a member of the commission would appear before the Legislature to advocate for or against legislation which is pending.

How is it that we can allow individuals to consider advocacy, for an organization to which they belong, to not be in conflict with statute prohibiting lobbying? As opposed to their appearing as an individual citizen. Additionally, if they receive compensation for their office does this not further highlight the need for a clear separation or definition of what is prohibited and accepted actions?

4/30/2009

Regardless of the matter, which in this case was related to employment benefits, Ms. Rivard was aware of the concerns expressed by some members of the Legislature about the possibility of lobbying being in conflict. Her willingness to engage in advocacy on behalf of her organization so soon after her confirmation shows that there is a need to review and perhaps amend the current statutes. Advice and information from the Commission and staff would be appreciated.

Andre E. Cushing III
State Representative- District 39
(Dixmont, Hampden, Newburgh)
P.O. Box 211
Hampden, Maine 04444
office, 207-631-2898
home 207-449-1358
fax 419-781-5601
email andre@andrecushing.com



LOBBYIST REGISTRATION 2009

LOBBYIST INFORMATION	
Turowski, Mary Anne P.O. Box 1072 Augusta, ME 04332	Telephone: (207)622-3151 Fax: (207)623-4916 maryanne.turowski@mseaseiu.org
CLIENT INFORMATION	
Maine State Employees Association Principal Contact: Timothy L. Belcher PO Box 1072 Augusta, ME 04332-1072	Telephone: (207)622-3151 Fax: (207)623-4916 tim.belcher@mseaseiu.org www.mseaseiu.org
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Hodsdon, Bruce PO Box 1072 Augusta, ME 04332-1072	Telephone: (207)622-3151 Fax: (207)623-4916 bruce.hodsdon@mseaseiu.org
Belcher, Timothy PO Box 1072 Augusta, ME 04332-1072	Telephone: (207)622-3151 Fax: (207)623-4916 tim.belcher@mseaseiu.org
COMMENCEMENT OF LOBBYING ACTIVITIES	
Date when lobbying commenced or is expected to commence: 12/01/2008	Date when lobbying first exceeded 8 hours in a calendar month:
COMPENSATION	
The amount of compensation or the basis upon which the lobbyist will charge for those services. PRO-RATED SALARY AT THE RATE OF \$39.59 PER HOUR	

CLIENT'S BUSINESS DESCRIPTION, LEGISLATIVE INTERESTS, AND LEGISLATIVE COMMITTEES

General Nature of Business: Labor union

Description of Business/Mission: MSEA-SEIU Local 1989 is a labor union that represents 10,000+ members in Maine and advances our members common interests through collective bargaining, legislation and political action.

Legislative Interests: State budget, healthcare, human services, public sector labor law, public employee retirement system

Legislative Committees: Agriculture, Conservation and Forestry, Appropriations and Financial Affairs, Business, Research and Economic Development, Criminal Justice and Public Safety, Education and Cultural Affairs, Health and Human Services, Inland Fisheries and Wildlife, Insurance and Financial Services, Judiciary, Labor, Legal and Veterans Affairs, Marine Resources, Natural Resources, State and Local Government, Taxation, Transportation, Utilities and Energy



BRUCE L. HODSDON
President

GINETTE M. RIVARD
Vice President

TIMOTHY L. BELCHER
Executive Director

MAINE STATE EMPLOYEES
ASSOCIATION, LOCAL 1989
SERVICE EMPLOYEES
INTERNATIONAL UNION

P.O. BOX 1072
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Augusta, ME 04332-1072
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RECEIVED

MAR 20 2009

MAINE ETHICS COMMISSION

March 19, 2009

Jonathan Wayne
Executive Director
Maine Commission on Government Ethics and Election Practices
135 State House Station
Augusta, ME 04333

Re: Ginette Rivard

Dear Jonathan,

The Vice President of MSEA-SEIU Local 1989, Ginette Rivard, has been listed as an associate lobbyist for this organization in recent reports. She is no longer serving as a lobbyist or associate lobbyist for this or any other organization, and I therefore request that she be removed from the list of registered lobbyists. She has been nominated to the Workers' Compensation Board, and is determined not to engage in lobbying as proscribed by the relevant statutes.

Please contact me if you have any questions.

Sincerely

Timothy Belcher
Executive Director

cc: Ginette Rivard
Sen. Troy Jackson
Rep. John Tuttle
Bruce Hodsdon
Roberta de Araujo, Esq.

**TESTIMONY OF GINETTE RIVARD,
VICE-PRESIDENT, MSEA/SEIU, LOCAL 1989**

**BEFORE THE JOINT COMMITTEE ON STATE
AND LOCAL GOVERNMENT**

APRIL 27, 2009 10:00 AM COB ROOM 216

**IN OPPOSITION OF LD 417, AN ACT TO REQUIRE STATE EMPLOYEES TO PAY
15% OF THEIR HEALTH INSURANCE COSTS**

SPONSORED BY REPRESENTATIVE WINDOL WEAVER

Senator Simpson, Representative Beaudette, members of the Committee on State and Local Government; my name is Ginette Rivard, Vice-President of the Maine State Employees Association – Service Employees International Union, Local 1989. MSEA-SEIU Local 1989 is a labor union that represents over 15,000 public sector and publicly funded workers statewide, and who are also Maine taxpayers.

MSEA-SEIU is strongly opposed to LD 417, as it represents a tax on Executive Branch, Judicial, Legislative and Maine Community College employees.

This will add up to a more than a \$1200 tax per year per employee. That is on top of a \$200 individual deductible (\$400 for families), as well as co-pays for doctors, prescriptions, emergency room visits and other medical services. If the employee insures their family, he/she already pays over \$4000 per year for that coverage, plus the previously mentioned co-pays. If this bill passes, a state employee with dependant coverage will be paying over \$5200 for health insurance premiums by 2011.

Everyone here today will tell you that the health insurance benefit is a significant part of their wage and benefit package. It is a reason the State of Maine is able to recruit and retain great employees that work hard for the citizens of Maine. It is a major reason employees stay with state government, especially when they are tempted by private sector salaries, which can be significantly higher than salaries paid by state government. When times are tough and there have been no pay increases, the health insurance benefit has always been the constant. Cutting this core benefit legislatively, outside of the collective bargaining process where the wage and benefit package is negotiated, is a unilateral wage cut, and is unacceptable. It will take money out of our members' pockets; money that will be taken out of our economy. This is not a solution to either the health care crisis or the current budget crisis.

The end result will only add to the growing ranks of the uninsured in Maine. Our members will make tough choices and some will decide that they cannot afford health insurance. Our State Employee Health Commission has worked hard to make health insurance comprehensive and affordable, mindful of the cost to all who pay for this benefit. MSEA-SEIU supports the premise that all Mainers should have affordable, accessible health insurance. Making health insurance less affordable to our members is not the way we envision life should be in Maine.

MSEA-SEIU Local 1989 respectfully urges the Committee to vote "Ought Not to Pass" on LD 417.

STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES.
 135 State House Station, Augusta, Maine 04333-0135
 Tel: (207) 287-4179 Fax: (207) 287-6775
 Website: www.maine.gov/ethics

LOBBYING FAQ

The Ethics Commission staff frequently receives questions regarding what kinds of activities constitute "lobbying." Lobbying is defined by Maine statute (3 M.R.S.A. § 312-A) and generally refers to communicating directly with an official in the Legislature for the purpose of influencing legislative action, including time spent preparing and submitting oral or written proposals, testimony or analysis concerning any legislative action. It also includes communicating with the Governor for the purpose of influencing the approval or veto of a legislative action.

A person has to register as a lobbyist if he or she spends more than 8 hours in any calendar month engaging in lobbying and if that person is compensated by an employer for the time spent lobbying. Activities on the lobbyist's personal time do not constitute lobbying.

This memo is intended to offer consistent guidance to lobbyists and employers in determining when the 8-hour threshold has been met and what activities must be included in the lobbyist's monthly reports. The guidance is not binding -- only statutes and rules are legally enforceable -- but it reflects the Commission's interpretation of the statutes governing lobbying in Maine and may be relied upon by the Commission in considering specific complaints or questions that may arise in the future. In the past, the Commission held a broader interpretation of the law, but has decided that a narrow approach is more appropriate.

All lobbyists and employers are encouraged to read the statute carefully (3 M.R.S.A. §§ 311 - 326), in particular the definitions in §312-A, and to adhere to its provisions. If a lobbyist or employer has questions regarding disclosure procedures, they are urged to contact Commission staff at 287-4179 prior to filing a report.

Does lobbying include...	
...sitting and waiting for an opportunity to communicate with Legislators?	No. Only direct communication is considered lobbying.
...monitoring legislation?	No. Attending a hearing or work session to monitor the progress of legislation is not lobbying, as long as the lobbyist does not communicate with a Legislator.
...travel time to the State House or other event for the purpose of communicating with Legislators?	No.
...speaking to a Legislator about general issues of interest to the employer?	As long as the communication with the Legislator is not intended to influence the drafting or consideration of a specific legislative action, the communication is not considered lobbying.
...educational seminars for Legislators?	No, provided the seminar is to educate Legislators about the employer's business or general issues of interest and not specific legislation as outlined above.
...communicating with the employer regarding a specific LD?	If the communication is part of preparing a proposal, testimony, or analysis concerning a legislative action, the communication is lobbying. If it is for another purpose (e.g., reporting to the client on the progress of legislation), the communication is not lobbying.
...research for a specific LD?	Yes, if the research will be used for a proposal, testimony, or analysis concerning a legislative action. Otherwise, the research is not lobbying.
...communicating with staff of the Legislature?	Yes. If the communication deals with specific matters as outlined above.

Maine Revised Statutes

- §151 PDF
- §151 WORD/RTF
- STATUTE SEARCH
- CH. 3 CONTENTS
- TITLE 39-A CONTENTS
- LIST OF TITLES
- DISCLAIMER
- MAINE LAW
- REVISOR'S OFFICE
- MAINE LEGISLATURE

§113 Title 39-A: WORKERS' §151-A
COMPENSATION ENACTED BY PL 1991, C. 885, PT. A,
§8

Part 1: MAINE WORKERS' COMPENSATION ACT OF 1992
ENACTED BY PL 1991, C. 885, PT. A, §8
Chapter 3: WORKERS' COMPENSATION BOARD ENACTED
BY PL 1991, C. 885, PT. A, §8

§151. Workers' Compensation Board

1. Board established. Pursuant to Title 5, section 12004-G, subsection 35,

the Workers' Compensation Board is established as an independent board composed of 7 members. The members of the board, including the executive director, must be appointed by the Governor within 30 days after a new board member is authorized or a vacancy occurs, subject to review by the joint standing committee of the Legislature having jurisdiction over labor matters and confirmation by the Legislature. Notwithstanding the provisions of Title 3, section 157, the designated committee shall complete its review of the appointments of the Governor within 15 days of the Governor's written notice of appointment and the vote of the Legislature must be taken no later than 7 days after the vote of the designated committee.

The board consists of 3 representatives of management, 3 representatives of labor and the executive director appointed pursuant to subsection 1-A. All management representatives must be appointed from a list provided by the Maine Chamber of Commerce and Industry or other bona fide organization or association of employers. All labor representatives must be from a list provided by the Executive Board of the Maine AFL-CIO or other bona fide labor organization or association of employees representing at least 10% of the Maine work force. Any list submitted to the Governor must have at least 4 times the number of names as there are vacancies for the group represented by the vacancies.

A member of the board is not liable in a civil action for any act performed in good faith in the execution of duties as a board member.

A member of the board may not be a lobbyist required to be registered with the Commission on Governmental Ethics and Election Practices, a service provider to the workers' compensation system or a representative of a service provider to the workers' compensation system.

Members of the board representing management and labor hold office for staggered terms of 4 years, commencing and expiring on February 1st, except for initial appointees and members appointed to fill unexpired terms. A member representing management or labor may not serve for more than 2 full terms.

[2003, c. 608, §5 (AMD) .]

1-A. Executive director. The Governor shall appoint an executive director, who is the chair and chief executive officer of the board. The executive director

**Statement by Nominee Ginette M. Rivard
Workers' Compensation Board
Joint Committee on Labor
March 18, 2009**

Senator Jackson, Representative Tuttle, members of the Joint Standing Committee on Labor.

My name is Ginette Rivard. I am a resident of Caribou and I am honored to be considered for service to the workers and employers who depend on the Workers Compensation system in our state. I believe I have the skills and experience necessary to exercise sound judgment and forward thinking that can benefit this system.

On a daily basis I am responsible to ensure compliance with a section of MaineCare policies as they relate to a service delivery component. This is a responsibility which I take seriously, both from the standpoint of ensuring integrity of the service and meeting the needs of those eligible for these same services.

I also draw from past experience as Chair of a Zoning board of Appeals in a small community that happened to have a great deal of water front properties at a time when new setback regulations were being implemented. The people who came before us were often our neighbors, friends, even our children's teachers. This required close scrutiny of the applicable regulations as well as the ability to explain how decisions were arrived at to people who were often not very happy with that very decision. These are some of the skills I bring to this role.

I understand that questions have been raised about my being listed as a 'lobbyist associate' and I want to take a moment to address this issue. A review of the list of individuals listed as such for MSEA has indicated that we have been very conservative in identifying individuals who might potentially engage in lobbying activities. As a result, it is my understanding that this list is being revised and that my name is among those who will be removed.

Those who know me know that I commit to any task 100% and then some and I look forward to serving in this capacity. Thank you for your consideration.