



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

To: Commissioners
From: Jonathan Wayne, Executive Director
Date: June 26, 2018
Re: Agenda Item #1: Insufficient Allotment to Make Supplemental Payments

The State of Maine is on the verge of significant mismanagement of the 2018 candidate elections, because of the refusal by elected officials

- to increase the Commission's allotment (spending authority) in the fourth quarter of FY 2018 to allow our office to make Maine Clean Election Act (MCEA) payments to candidates who are owed them under the Election Law, and
- to remedy a confusing 2017 budget law which advanced \$3,000,000 in revenue seven months early to make the Maine Clean Election Act program functional this year, but unintentionally eliminated the Commission's ability to release those funds to MCEA candidates after July 1, 2018.

This memo explains the first issue. One gubernatorial candidate and roughly 200 legislative candidates in the general election voluntarily participated in the MCEA program this year. Of those, 120 candidates have qualified to receive supplemental payments (a higher level of campaign funding) by collecting additional \$5 qualifying contributions this year. (Some have collected hundreds or thousands of these small contributions from their constituents.) Even though the Maine Clean Election Fund¹ has sufficient cash in the account to make these payments, the Commission has insufficient "allotment" (spending authority) for the fourth quarter of this fiscal year to make the full payments owed to the candidates. Our office can pay only around 28% of the total owed.

¹ The Maine Clean Election Fund is a special revenue account created in section 1124 of the Election Law, from which the Ethics Commission pays candidates in Maine's public campaign financing program, the MCEA.

As explained below, our routine requests to the Governor to increase our fourth quarter allotment have been rebuffed.

The term “allotment” refers to the amount that a department of state government is permitted to spend in each quarter of a fiscal year. Separate allotments are established for the categories of Personal Services (salaries, wages and benefits), All Other (operational expenses), and Capital Expenditures.² The allotment operates as a spending limit for that quarter. At the beginning of each fiscal year, the department assigns to each quarter a portion of the total annual “allocation” set by the Legislature for the entire fiscal year. The State Controller records these quarterly allotments in the State’s general ledger, and they serve as the basis on which the State Controller authorizes expenditures.

As the department makes expenditures during the quarter, those expenses are subtracted from the department’s available allotment for that quarter. Once the available allotment falls to zero, the department may not make any more expenditures from that category of expenses (*e.g.*, Personal Services or All Other).

Currently Available Allotment for Fourth Quarter is \$389,958

Last week, the Commission released the initial general election payments to roughly 200 legislative candidates and one candidate for Governor who is participating in the MCEA program (State Treasurer Terry Hayes). After these disbursements, the remaining All Other allotment in the Maine Clean Election Fund for the fourth quarter is \$389,958. That means that – in the next four days – the Commission may spend a maximum of \$389,958 from the account for non-personnel expenditures.

If you would like to discuss why the allotment for the fourth quarter is too low, the Commission staff can provide a longer, technical explanation at your June 27th meeting. In a nutshell, it results from an allocation for FY 2018 (set by the Legislature) that was

² MCEA payments to candidates are All Other expenses.

too low compared to our actual expenditures, and the refusal by the Governor to sign two financial orders this spring (discussed below), once our full spending needs were known.

Supplemental Payments Owed by the State to MCEA Candidates

Based on changes to the MCEA that were approved by Maine voters in 2015, candidates for Governor and the Legislature may qualify to receive up to eight supplemental payments of public campaign funding by collecting additional qualifying contributions (AQC) of \$5. Legislative candidates and Terry Hayes have been actively collecting AQC and submitting them to the Commission to request supplemental payments. The Commission staff is still reviewing the large number of AQC submitted last week. As of today, the Commission staff estimates that candidates have qualified to receive the following amounts in supplemental payments:

Office	# of Candidates	# of Supplemental Payments	Amount of Each Payment	Total Owed to Candidates
Governor	1	2	\$175,000	\$350,000
Senate	37	138	\$5,075	\$700,350
Representative	82	257	\$1,275	\$327,675
			Total	\$1,378,025

The staff expects that Terry Hayes will have qualified for two supplemental payments for a total of \$350,000, although her submission of AQC is still under review. We have attached a more detailed chart of the legislative candidates who have qualified for supplemental payments, and the number of qualifying contributions (QC) and AQC they have collected.³ (For every 15 AQC submitted to the Commission, a House candidate may receive a supplemental payment of \$1,275. For every 45 AQC submitted, a Senate candidate may receive a supplemental payment of \$5,075.)

³ Under the terminology of the MCEA, candidates collect QC to receive a basic level of public campaign funding. If they want to receive supplemental payments, they go on to collect additional qualifying contributions (AQC).

The Commission staff has advised candidates that because of a spending limit for the fourth quarter, we will need to significantly reduce supplemental payments made this month. Candidates are understandably frustrated that they entered into an agreement with the State of Maine that if they collected sufficient numbers of QCs and AQCs, they would receive certain levels of MCEA funding. As you can see from the attached charts, most of the Senate candidates collected hundreds of AQCs and Terry Hayes has collected more than 2,000 AQCs (in addition to the 3,200 QCs required to receive any MCEA funding).

The Governor has Declined (Twice) to Increase the Fourth Quarter Allotment

When a department of State government needs to adjust an allotment in its budget, it may request a financial order from the Governor. (5 M.R.S.A. § 1585) Large departments regularly request financial orders for various reasons. One routine reason for requesting a financial order is that the department has not used all of the cash in a special revenue account during a fiscal year. Under 5 M.R.S.A. § 1667-B, the department may request a financial order from the Governor to carry forward the unused allocation (spending authorization) to the *next fiscal year*, so that the department may use the unspent cash for allowable purposes in the subsequent fiscal year.⁴

Because revenue flows to the Maine Clean Election Fund every year but its largest expenditures occur every two years (payments to legislative candidates) and four years (gubernatorial candidates), the Fund frequently has a cash balance of more than \$1,000,000 or \$2,000,000 at the end of each fiscal year. Consequently, the Commission has regularly requested financial orders from Governors John Baldacci and Paul LePage to carry forward unused allocation from one fiscal year to the next. These financial orders have been routinely granted to operate the MCEA program. Based on past practice, the Commission staff has presumed that if the legislatively determined

⁴ This type of financial order (carrying forward an unencumbered allocation balance from one fiscal year to the next) occurs so regularly that it is listed as the fourth type of financial order on the Financial Order Transactions guidance page of the Bureau of the Budget (attached, and available at <https://www.maine.gov/budget/financialorders/fortransactions.htm>).

allocation for the Maine Clean Election Fund for FY 2018 or 2019 were insufficient to make required payments to 2018 candidates, the Commission would turn to Governor LePage for a financial order to increase our allotment, which would be granted.

Unfortunately, this spring Governor LePage declined to sign two financial orders to increase the fourth quarter allotment in the Maine Clean Election Fund. By March 2018, the Commission recognized that the allocation for FY 2018 would be insufficient to make payments owed to candidates this fiscal year. In April, the Commission staff requested a financial order to increase the fourth quarter allotment by carrying forward \$1,935,444 of unused allocation from FY 2017. In other words, the Commission staff proposed an increase in the department's authorized expenditures for FY 2018 to reflect the large amount of money in the Fund that the Commission had remaining after the 2016 elections. On April 19, 2018, the Governor declined to sign this financial order, for reasons that remain unclear to us.

After conferring with the DAFS financial analyst who assists the Commission on financial matters, we submitted a financial order in May to increase the fourth quarter All Other allotment in the Maine Clean Election Fund by \$986,014, in order to bring the allotment in line with revenue already included in the Commission's budget for FY 2018. The analyst advised us that this was also a routine rationale for requesting a financial order. The Governor declined to sign this financial order on May 31st, 2018.

I have discussed the impact of the Governor's decisions on the proposed financial orders with his Chief of Staff and the State Budget Officer. Both are aware that the Commission is merely seeking an increase in our allotment to make payments to MCEA candidates. While we appreciate the constructive conversations with these officials, we have made no headway in convincing the Governor to sign these financial orders.

On May 24th, I sent a letter to the Governor (attached) asking if two Commissioners and I could meet with him in support of the latest proposed financial order. No meeting was scheduled and I was told by his staff that he continues to oppose the financial orders. A

meeting with the Governor probably is still possible, although the FY 2018 allotment problem will become final in just a few days.

Allocating \$389,958 among 120 Candidates owed \$1,378,025

At your June 27th meeting, the Commission staff wishes to receive guidance from the Commission on how to divide the \$389,958 allotment among the 120 candidates who are owed a total of \$1,378,025 in supplemental payments by the State of Maine. Because this is a consequential decision by the Commission, we invited written comments from Legislative leaders and independent candidates by 10:00 am tomorrow.

The option preliminarily favored by the Commission staff would be to pro-rate the payments uniformly across all candidates, but we are open to considering comments from the leaders and candidates. If payments were evenly pro-rated, each candidate would receive roughly 28% of the supplemental payments for which they have qualified. The Commission may wish consider other options, such as a larger supplemental payment to Terry Hayes. The initial payment for the general election that she received (\$600,000) would be insufficient to run a conventional campaign for Governor. If she cannot receive any supplemental payment after July 1st, she will be significantly harmed by the failure of the Legislature to address the 2017 budget law (agenda item #2)

Thank you for your consideration of this item.

Bureau of the Budget

Home → Financial Orders → Financial Order Transactions

Financial Order Transactions

Click here to view table in Excel format

	Effective Date of Financial Order			
	FUND			
Financial Order Transaction	010, 012	013, 015, Enterprise Funds	014 *, Internal Service Funds	016, 017, 018, 019
Increase allotment up to legislative authorization				
- current year work program	UA	UA	UA	UA
- unused balance of approp/alloc authorized to carry forward	UA	UA	UA	UA
Increase allotment above legislative authorization				
- new grant/money **	xxxxxx	UA	30 *	xxxxxx
- unencumbered balance forward	UA	UA	30 *	xxxxxx
Allotment Revision				
- increase current quarter by reducing future quarter ***	UA	UA	UA	UA
Intradepartmental transfers				
- transfers between accounts within an agency ****	30	//////////	//////////	xxxxxx
Line category transfer				
- transfers between line categories within an account ****	30	30	30	30



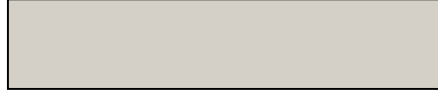
Key:	
UA	Upon Approval of the Governor
30	Effective 30 days after approved copy is delivered to OF&PR. In extraordinary situations, a waiver of the 30-day wait may be requested.
//////////	Should the situation arise, please consult with your budget analyst for guidance
xxxxxx	Transaction not permitted by financial order
*	Request considered only if failure to allot would have a detrimental impact on the current program
**	new grant/money:

	Federal - can allot by financial order for up to one year, after that must receive legislative authorization
	Other Special Revenue Funds - if there is currently no allocation in applicable program, must receive legislative authorization first
***	If there is an appearance of a trend (transfers resulting from trends that will cause financial commitments to exceed current appropriations or allocations), a 30-day wait would apply.
****	Requires explanation why funds are no longer needed for intended purpose
	<i>These rules apply unless otherwise authorized in statute.</i>

Credits

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State of Maine
Executive Department
FINANCIAL ORDER



ORDERED,

That the State Controller increase allotment in account 014-94E-0414-02, Clean Elections Act Chapter 1 Initiated Bill by \$1,935,444 in the All Other line category for the purpose of making payments to candidates; and,

Be it further ordered,
that the State Controller authorize the expenditure in accordance with the attached "Revision of the Work Program for Fiscal Year ending June 30, 2018", for which this shall be our sufficient warrant.

Statement of Fact

This financial order allots a portion of the unencumbered balance forward in account 014-94E-0414-02, Clean Elections Act Chapter 1 Initiated Bill, in the All Other line category. The increase is necessary to make required payments to Maine Clean Election Act candidates through June 30, 2018. Without these funds, the Ethics Commission would not be able to meet its obligations in the 2018 elections.

Signature of Department Head

JONATHAN WAYNE, DIRECTOR

Name and Title

FOR BUREAU OF THE BUDGET USE ONLY

Signature of State Budget Officer

Policy Area: 00 - Governmental Support and Operations

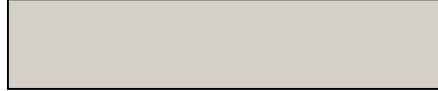
Umbrella: ETH00 - COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES

Agency Contact: RON LOOMAN

Agency Phone: (207) 624-7438

ETH00-0002

State of Maine
Executive Department
FINANCIAL ORDER



ORDERED,

That the State Controller increase allotment in account 014-94E-0414-02, Clean Elections Act Chapter 1 Initiated Bill by \$986,014 in the All Other line category for the purpose of providing allotment to match budgeted revenue; and,

Be it further ordered,
that the State Controller authorize the expenditure in accordance with the attached "Revision of the Work Program for Fiscal Year ending June 30, 2018", for which this shall be our sufficient warrant.

Statement of Fact

This financial order increase allotment in the Clean Elections Act Chapter 1 Initiated Bill account to provide allotment that matches budgeted revenue in the All Other line category. Budgeted revenues currently exceed budgeted expenses and the additional allotment will balance the state fiscal year 2018 budget for this account. Failure to approve this financial order will have a detrimental impact in that the Ethics Commission would not be able to meet its obligations in the 2018 elections.

Signature of Department Head

JONATHAN WAYNE, DIRECTOR

Name and Title

FOR BUREAU OF THE BUDGET USE ONLY

Signature of State Budget Officer

Policy Area: 00 - Governmental Support and Operations

Umbrella: ETH00 - COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES

Agency Contact: RON LOOMAN

Agency Phone: (207) 624-7438

ETH00-0003



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

May 24, 2018

By Hand

Hon. Paul R. LePage
Governor of the State of Maine
1 State House Station
Augusta, Maine 04333

Dear Governor LePage:

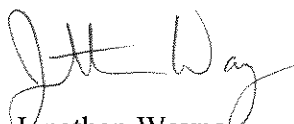
I am writing to ask if you would be available on May 30th, or another day convenient to you, to meet with the Ethics Commission Chair William A. Lee, Commissioner Richard A. Nass and me to discuss the Commission's spending authority (allotment) during the fourth quarter of this fiscal year.

This year, 220 candidates for the Legislature and three candidates for Governor have qualified to receive public campaign funds under the Maine Clean Election Act program. After the June 12th primary election, the Commission is obliged to make payments to most of these candidates to fund their general election campaigns. There is sufficient money in the Maine Clean Election Fund to make these payments in June, but the Commission's allotment for the fourth quarter is not high enough to permit the Commission to make all of the required payments.

To solve this problem, the Commission requested its DAFS financial analyst to submit a financial order to increase the Commission's spending authority by \$986,014, which would bring our allotment in line with available revenue. The financial order is scheduled for your consideration at the May 31st financial order meeting. The Commission is *not* asking for additional cash – merely the authorization to spend money that is currently in the account to meet its obligations.

Candidates participating in the program relied in good faith that, if they had met the program's requirements, the Commission would make the payments to fund their campaigns. The pending financial order is necessary for the Commission to perform its duties as expected by the candidates and required under law. The Commissioners will be in Augusta on May 30th for their monthly meeting and would be pleased for an opportunity to discuss this issue with you, if you are available. Thank you for your consideration.

Sincerely,


Jonathan Wayne
Executive Director