



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

Agenda - AMENDED

November 28, 2018, at 9:00 a.m.

Commission Office, 45 Memorial Circle, 2nd Floor, Augusta, Maine

1. Ratification of Minutes of October 31, 2018 Meeting

2. Request for Waiver of Late-Filing Penalty – Hon. Dana Dow

On Saturday, October 27, 2018, Mr. Dow paid \$5,796.45 to Spectrum Marketing for mailhouse services. Accordingly, he was required to file a 24-Hour Report on Sunday, October 28. His treasurer filed the report one day late on October 29. The preliminary penalty is \$115.93. Sen. Dow requests a waiver due to the inexperience of his treasurer in filing 24-Hour Reports. *Staff recommendation: because the preliminary penalty is below the typical penalty for this type of violation, the Commission staff recommends no reduction.*

3. Complaint Alleging Disclaimer Violation – Hon. Patricia Hymanson

Bradley S. Moulton filed a complaint concerning a campaign flyer distributed by Rep. Patricia Hymanson describing her voting record. The flyer did not include a statement of who paid for the flyer and whether it was authorized by the candidate. Rep. Hymanson responds that because the flyer was folded lengthwise within a brochure containing the required disclosure statement, she assumed that no separate statement was required on the flyer. *Staff recommendation: the Commission staff recommends that you find no violation.*

4. Complaint of Anonymous Flyers – Catherine Weeks, Waterville City Council

Catherine Weeks, a candidate for Waterville City Council has requested an investigation into an anonymous flyer hand-delivered to households two evenings before the November 6, 2018 general election. The flyer did not state who paid for it. While electioneering communications must generally state who paid for them, the law contains exceptions for handbills, internet and email communications, and signs costing less than \$100 created by persons independently of a candidate or party committee.

5. Request to Investigate Receipt of Sign Materials – Hon. Seth A. Berry

Alex Titcomb filed a request to investigate whether Rep. Seth Berry received an impermissible contribution of sign materials in support of his re-election.

Other Business

EXECUTIVE SESSION

If necessary.

ADJOURNMENT



Minutes of the October 31, 2018 Meeting of the
Commission on Governmental Ethics and Election Practices
45 Memorial Circle, Augusta, Maine

Present: William A. Lee III, Esq., Chair; Hon. Richard A. Nass; Meri N. Lowry, Esq.; Bradford A. Pattershall, Esq.

Staff: Jonathan Wayne, Executive Director; Phyllis Gardiner, Counsel

Mr. Lee convened the meeting at 9:02 a.m.

1. Ratification of Minutes of August 16, August 29 and September 26, 2018 Meetings

Mr. Lee moved to adopt the minutes of the August 16th, August 29th, and September 26th meetings. Mr. Pattershall seconded. Mr. Nass suggested changing the word “of” to “over” in first paragraph on page 3 of the August 16th minutes. Mr. Lee accepted a friendly amendment to his motion. The other Commissioners agreed. Mr. Lee restated the motion: To adopt the minutes of all three meetings as amended. The motion passed (4-0).

2. Request to Rebut Presumption of Independent Expenditure – New England Citizens for Right to Work

Mr. Wayne said this issue arose last week. It relates to a mailing done by New England Citizens for Right to Work (NECRW), which advocates for the passage of right to work laws. NECRW is based in New Hampshire. The question presented is whether the mailing is an independent expenditure for which NECRW should have filed a report. The mailing is presumed to be an independent expenditure if it is disseminated after Labor Day and names or depicts a clearly identified candidate. The person who made the expenditure may attempt to rebut the presumption by filing a statement with the Commission stating the expenditure was not made for the purpose of influencing the election and submitting evidence to support the statement. NECRW filed rebuttal statements on October 23rd. Mr. Wayne said that he could only recall three examples of rebuttal statements being filed with the Commission in the 15 years this law has been in place.

Ms. Lowry asked whether, if NECRW was not successful in rebutting the presumption, the staff would proceed with its usual late-filing penalty procedures. Mr. Wayne said that, barring any contrary direction from the Commission, this would be handled in the same way any late-filed independent expenditure report would be handled.

Mr. Lee said the threshold question is whether the communication fits within the definition of “voter guide” and is, therefore, not an independent expenditure, regardless of the amount spent per candidate. Ms. Gardiner agreed.

Mr. Lee clarified that the 48-hour period for submitting a rebuttal statement with the Commission begins at the time the expenditure for the communication is made, not the time or date the communication is disseminated. He asked whether the broad definition of “expenditure” in the Commission’s rules would apply in this instance. Mr. Wayne confirmed that it would. However, he cautioned that political activists and candidates may not be thinking that placing an order would trigger a reporting requirement.

Mr. Lee asked whether, if a rebuttal statement is not filed within the 48-hour period, the presumption becomes irrebuttable. Ms. Gardiner confirmed the Commission determined the presumption would be irrebuttable under those circumstances during its deliberations on the matter of a mailing by the New England Opportunity Project during the 2016 general election.

In response to a question posed by Mr. Pattershall, Ms. Gardiner said the statute creates a presumption. The person making the independent expenditure may choose to rebut the presumption or the person could also simply accept the presumption and file a report if one is required. Mr. Pattershall then asked whether the statute is being interpreted to mean that the only way for a communication, which did not fit within one of the exclusions, to avoid being subject to the independent expenditure statute is for the person to submit a rebuttal statement within 48 hours and that the Commission cannot look at the totality of the circumstances to make a determination. Ms. Gardiner and Mr. Lee confirmed that is how the statute was interpreted in the recent case involving the New England Opportunity Project.

McKayne Boedeker, the executive director of NECRW, appeared before the Commission. He said the purpose of NECRW’s candidate survey program is to educate supporters and the general public about the importance of the right to work issue and inform them about their candidates’ positions on the issue and to encourage NECRW’s members to lobby their candidates. He said that was the sole purpose of the mailing. He said he was requesting the Commission find that the

mailings fall under the exclusion for voter guides or, in the alternative, to find that the mailings are not independent expenditures because their purpose was not to influence an election.

The Commissioners discussed the sequence that its review should take. Mr. Lee said the Commission should first determine whether the voter guide exclusion would apply to the mailings. If it does, the matter is settled. If not, the Commission should then take up the question of the timing of the expenditure and the rebuttal statement.

Mr. Lee said it struck him that the majority of the communication was not a voter guide but was primarily advocating in support of an issue. He asked Mr. Boedeker to explain how the communication could fit within the statutory exclusion for voter guides.

Mr. Boedeker said the communication contained the candidates' responses and the survey itself.

Mr. Lee pointed to several statements in the communication which he said did not appear to be candidate responses as much as advocacy for a particular position. He said when looking at the whole communication, it seemed that most of it was advocating in support of an issue rather than informing the reader about the candidates' responses.

Mr. Boedeker said that many voters who are not engaged in the political process might not know what right to work is and need an explanation.

Mr. Pattershall pointed out that NECRW took the effort to submit the rebuttal statements and voluntarily included the disclaimer statement on the communication and asked Mr. Boedeker why the group decided not to file an independent expenditure report since it would have been about the same level of effort.

Mr. Boedeker said NECRW wants to continue to engage in grass roots activity about this issue and is seeking some clarity about whether it was necessary to go through the reporting process.

Mr. Lee said the first question before the Commission was whether the communication qualified as a voter guide under the statutory definition: Does the communication consist primarily of candidates' responses to surveys and questionnaires and contain no advocacy for or against any candidate? He said he did not think the communication passed the first prong of the test because it is not primarily a collation of candidates' responses to surveys or questionnaires. It is a strong advocacy piece for a particular position. If the Commissioners agree with him on that point, then the communication does not fit within the voter guide exclusion. If not, then the next step is to consider whether the communication advocates for or against a candidate.

Ms. Lowry said she also did not think the communication was a voter guide because it did not primarily consist of candidates' responses to questionnaires and surveys.

Mr. Pattershall said he thought the communication did meet the criteria for a voter guide. He said the entire thrust of the communication was to tell voters what the positions of the candidates were on the issue based on the survey results and to encourage voters to lobby their candidates to support right to work laws.

Mr. Nass said the Legislature created this exception for voter guides but there is little guidance on how to determine if something is a voter guide. He was reluctant to try to force these kinds of communications into a formula. Mr. Nass said he favored issuing an advisory opinion to provide some guidance to this group and others going forward.

Mr. Lee said the analysis is a balancing test and to be a voter guide the communication must be primarily candidates' responses to surveys and that meant that more than 50% of the communication had to be about those responses. This communication was primarily arguing for a position on the right to work issue and drew upon academic studies and job reports from other states and statements about the impact of right to work laws. In his view, most of the contents were not based on the results of candidate surveys. The candidates' responses were almost incidental. Mr. Lee said someone could disseminate a treatise on a particular issue and tack on some candidate survey results and call it a voter guide. He said there is nothing stopping a person from doing that, but if they do, it is not really a voter guide and they should file a report if one is necessary.

Mr. Pattershall said the communication does not advocate for the election or defeat of a candidate. It encouraged voters to contact candidates and to advocate for the candidates' support for the issue.

Ms. Lowry said she viewed the communication to be advocating for or against candidates. Certain candidates are featured in a more positive light because of their support for right to work laws.

Mr. Nass said he considered the communications to be voter guides.

Mr. Lee asked Ms. Gardiner what the next steps would be if the Commission's vote was deadlocked on the issue of whether the communication was a voter guide. Ms. Gardiner responded that may be as far as the Commission could go and the question would be unresolved.

If the Commission was deadlocked on the issue of whether the communication met the criteria for an exclusion, there would be no finding of a violation because there would be no determination that there was any reportable activity.

Mr. Lee asked if the analysis of whether a communication met the criteria for an exclusion should precede the rebuttal presumption analysis. Ms. Gardiner said the exclusions would apply whether the communication contains express advocacy (21-A M.R.S. § 1019-B(1)(A)) or whether the communication was disseminated after Labor Day and named a clearly identified candidate without any express advocacy (21-A M.R.S. § 1019-B(1)(B)). If the communication met the criteria for an exclusion, it would be removed from further analysis.

Mr. Lee moved that the voter guide exclusion under the independent expenditure statute does not apply because the mailing did not consist primarily of candidates' responses to surveys and questionnaires. Ms. Lowry seconded.

The motion failed. Mr. Lee and Ms. Lowry in favor; Mr. Nass and Mr. Pattershall opposed.

Mr. Pattershall moved that the exclusion in § 1019-B(5)(D) applies and removes the mailing from the definition of independent expenditure because it does not advocate for or against any candidate. Mr. Nass seconded.

Mr. Pattershall said the communication included postcards to send to candidates, encouraged voters to lobby their candidates, and did not have any explicitly negative message about any candidates.

The motion passed (3-1; Ms. Lowry opposed).

Mr. Lee said that to be covered by the exclusion, a communication had to meet both prongs and the Commission found that this communication only met one.

Ms. Gardiner said since the Commission is deadlocked on the question of whether the communication is a voter guide, it does not seem to make sense to move on to a rebuttable presumption analysis.

Mr. Lee asked if the person making the expenditure has the burden to show that a communication is covered by an exclusion. Ms. Gardiner responded that there is nothing in the language of the statutes or rules that indicates where the burden lies to show if an exclusion applies. In contrast, the independent expenditure statute is clear that the person attempting to

rebut the presumption has the burden of proof to show the expenditure was not made to influence an election.

The Commissioners discussed how the rebuttable presumption provision and the exclusions provision of the independent expenditure statute interacted with each other and what the potential impact of a deadlocked vote would mean in determining whether a communication should be treated as an independent expenditure. They agreed it would be beneficial if Commission counsel could look further into the issue and provide the Commission with her assessment at a later meeting.

Mr. Pattershall said that if, as a result of counsel's research, it may be possible that there are additional steps for the Commission to take in determining whether NECRW has to file a report or whether the NECRW successfully rebutted the presumption. However, for the purpose of calculating any potential penalty, the clock would stop as of the date of this meeting. The other Commissioners agreed.

Mr. Wayne said the staff had raised a question about whether NECRW complied with the PAC registration requirement. Based on the Commission's discussion and vote on whether the communication contained advocacy for or against any candidate, the staff will not be pursuing further inquiry into that matter.

Mr. Nass moved to adjourn. Mr. Pattershall seconded. The motion passed.

The meeting adjourned at 11:33 a.m.

Respectfully submitted,
/s/ Jonathan Wayne
Jonathan Wayne, Executive Director



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

To: Commissioners
From: Tim Goodhue, Candidate Registrar
Date: November 16, 2018
Re: Request for Waiver of Late-Filing Penalty by Hon. Dana L. Dow

In the November 6, 2018 election, Dana L. Dow was a Maine Clean Election Act candidate for re-election to the Maine Senate, District 13. He won the general election. During the 13 days prior to an election, legislative candidates who receive a contribution or make an expenditure of \$1,000 or more are required to file a supplemental campaign finance report within twenty-four hours of receiving the contribution or making the expenditure.

On Saturday, October 27, 2018, Sen. Dow paid \$5,796.45 to Spectrum Marketing for mailhouse campaign marketing. Accordingly, he was required to file a 24-Hour Report on Sunday, October 28. His treasurer filed the report one day late on Monday, October 29, 2018, which made the report 1 day late. The preliminary penalty is \$115.93, and Sen. Dow requests a waiver.

LEGAL REQUIREMENTS

Candidates are required to file 24-Hour Reports with the Commission during the 13 days prior to an election if they receive a contribution or make an expenditure of \$1,000 or more. (21-A M.R.S.A. § 1017(3-A)(C)) If the candidate is late in filing a 24-Hour Report, the amount of the penalty is set by a formula which takes into consideration a percentage of the total contributions or expenditures, whichever is greater, the number of prior violations within a two-year period, and the number of days the report is late. (21-A M.R.S.A. § 1020-A(4-A))

DISCUSSION

The campaign finance reports for Sen. Dow's 2018 campaign have been filed by his treasurer, Bruce Metrick. This is the third election in which Mr. Metrick has served as treasurer for Sen. Dow.

The candidate paid \$5,796.45 to Spectrum Marketing on Saturday, October 27, requiring a 24-Hour Report by the end of Sunday, October 28. Mr. Metrick filed the 24-Hour Report one day late on October 29, 2018. The Commission staff is unsure what prompted the treasurer to file the report. For your reference, I have attached an "Event Log" from the Commission's efilings system, showing logins by Mr. Metrick that weekend.

Based on the statutory formula for calculating late-filing penalties, the preliminary penalty is \$115.93.

Report	Due Date	Financial Activity	Penalty Rate	Days Late	Preliminary Penalty
24-Hour Report	10/28/2018	\$5,796.45	2%	1	\$115.93

Mr. Dow drafted a handwritten letter dated November 13, 2018 requesting a waiver, because Mr. Metrick had not had to file a 24-Hour Report before. He adds that the campaign had no intention of misleading the Commission. Mr. Metrick submitted an email on November 14 stating that he assumed the October 27 expenditure would be included in the 42-day post-election report and did not see any messages prompting him to file the 24-Hour Report before the election.

STAFF COMMENTS

24-Hour Reports play a valuable role in informing the electorate about how money is being spent to influence voters in the critical days just before an election. A penalty is appropriate to reinforce that filing pre-election reports is a legal requirement.

In 2018, the Commission provided notice to candidates and treasurers of the 24-Hour reporting requirement through a number of educational materials and communications

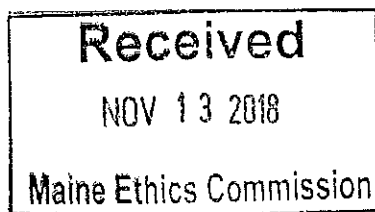
prepared by the Commission. On October 24, 2018, Tim Goodhue sent the attached email to candidates (including Sen. Dow and Mr. Metrick) concerning the 24-hour reporting requirement. The requirement is also described in the 2018 candidate filing schedule (attached). The requirement is discussed in other educational materials of the Commission, including the Quick Guide (distributed to all candidates) and the Candidate Guidebook (available online and on request).

In addition, the Commission's e-filing system contained messages alerting candidates and treasurers of the 24-hour reporting requirement. During the last 13 days before the general election, the top of each candidate's home page featured a red box with a message in red font alerting candidates of the need to file a 24-Hour Report if the candidate received any contribution or made any expenditure of \$1,000 or more. After Mr. Metrick entered the \$5,796.45 expenditure, a temporary message in white text over a black background would have alerted him to file a 24-Hour Report. The candidate's home page would have contained an "Immediate To Do" notification urging him to file a 24-Hour Report.

Consistent with the 2015 citizen initiative and your April 2018 direction, the Commission staff is generally doubling its penalty recommendations for the 2018 election cycle. We are recommending penalties in the range of \$300 - \$400 for the late filing of 24-Hour Reports by legislative and county candidates. We recognize that Mr. Metrick had good intentions to file the correct reports on time. Nevertheless, because the preliminary penalty of \$115.93 is already below this range, we recommend not reducing the penalty.

Thank you for your consideration of this memo.

128th Legislature
Senate of
Maine
Senate District 13



Senator Dana L. Dow
3 State House Station
Augusta, ME 04333-0003
(207) 287-1505 - State House
(207) 832-4658 - Home

Chair, Taxation Committee

11-13-18

Ethics Commission

This is to notify you of an appeal of the notice of violation on a 24 hour report. My treasurer never having filed a report of this type before attempted to file on a weekend but did so incorrectly.

I will get him to send a short note on what he did and what really happened. This note should arrive by e-mail.

Thank you

Dana L. Dow

Wayne, Jonathan

From: Bruce Metrick <bruce.metrick@yahoo.com>
Sent: Wednesday, November 14, 2018 12:08 PM
To: Goodhue, Timothy A
Cc: Dow, Dana
Subject: [EXTERNAL SENDER] Re: Requesting Violation Waiver

Hello Tim,

With regard to the subject 24 hr violation;

This was the first time in 3 cycles of serving as a Treasurer that I needed to file a 24 hr report.

When I filed the expenditure on time, I saw the expenditure accepted/logged notice and thought I was complete. I did not notice the notice in black on the bottom of the screen. My error in not seeing that.

I did not notice any warning or question prompt related to the separate report. I had thought that the filings were picked up on the post election report (which they are) so I wasn't looking for a separate report with each filing.

Sorry for my omission.

Regards,
Bruce Metrick

[Sent from Yahoo Mail for iPhone](#)

On Friday, November 9, 2018, 11:22 AM, Goodhue, Timothy A <Timothy.A.Goodhue@maine.gov> wrote:

Thank you for taking the time to let me know you intend to request a waiver for the penalty assessed for the 24-Hour report. If you could please provide the waiver request, via **e-mail, fax, or post** as soon as possible I would appreciate it. Email is often the quickest and easiest.

We would like to add your waiver request to the **November 28** meeting, and the sooner I receive your materials, the easier this will be to accomplish.

Thanks again,

Tim Goodhue ☯

Candidate Registrar

☎ [207-287-4709](tel:207-287-4709)

[7 207-287-6775](tel:207-287-6775)





Commission on Governmental Ethics and Election Practices
Mail: 135 State House Station, Augusta, Maine 04333
Office: 45 Memorial Circle, Augusta, Maine
Website: www.maine.gov/ethics
Phone: 207-287-4179
Fax: 207-287-6775

24-HOUR REPORT OF CONTRIBUTIONS AND EXPENDITURES

2018 CAMPAIGN YEAR

COMMITTEE		TREASURER
Hon. Dana L Dow 30 Kalers Pond Road Waldoboro, ME, 04572 PHONE:(207) 832-4658 EMAIL: danadow2050@gmail.com		Bruce R Metrick 111 ICE POND ROAD WALDOBORO, ME, 04572 PHONE:(207) 215-9253 EMAIL: bruce.metrick@yahoo.com
REPORT	DUE DATE	REPORTING PERIOD
24 Hour Report of Contributions and Expenditures	10/28/2018	10/27/2018-10/27/2018

FINANCIAL ACTIVITY SUMMARY

CONTRIBUTIONS AND EXPENDITURES	
1. TOTAL CONTRIBUTIONS / LOANS	\$0.00
2. TOTAL EXPENDITURES	\$5,796.45
3. TOTAL DEBTS	\$0.00

I, Bruce R Metrick, CERTIFY THAT THE INFORMATION CONTAINED IN THIS REPORT IS TRUE, ACCURATE, AND COMPLETE TO THE BEST OF MY KNOWLEDGE.

REPORT FILED BY: Bruce R Metrick
REPORT FILED ON: 10/29/2018 9:46:41 AM
LAST MODIFIED: 10/29/2018 9:46:41 AM
COMMITTEE ID: 5674

24-HOUR EXPENDITURE AND PAYEE INFORMATION

EXPENDITURE TYPES				
CNS	Campaign consultants	POL	Polling and survey research	
CON	Contribution to other candidate, party, committee	POS	Postage for U.S. Mail and mail box fees	
EQP	Equipment (office machines, furniture, cell phones, etc.)	PRO	Other professional services	
FND	Fundraising events	PRT	Print media ads only (newspapers, magazines, etc.)	
FOD	Food for campaign events, volunteers	RAD	Radio ads, production costs	
LIT	Print and graphics (flyers, signs, palmcards, t-shirts, etc.)	SAL	Campaign workers' salaries and personnel costs	
MHS	Mail house (all services purchased)	TRV	Travel (fuel, mileage, lodging, etc.)	
OFF	Office rent, utilities, phone and internet services, supplies	TVN	TV or cable ads, production costs	
OTH	Other	WEB	Website design, registration, hosting, maintenance, etc.	
PHO	Phone banks, automated telephone calls			
DATE OF EXPENDITURE	PAYEE	REMARK	TYPE	AMOUNT
10/27/2018	Spectrum marketing companies 95 EDDY RD SUITE 101 MANCHESTER, NH, 03102	Mailer and mailing		\$5,796.45
TOTAL EXPENDITURES FOR CANDIDATE:				\$5,796.45

October 29, 2018

Dana Dow
30 Kalers Pond Road
Waldoboro, Maine 04572

Re: Notice of Violation and Penalty for Late-Filed 24-Hour Report Report

Dear Rep. Dow:

You were required to file a 24-Hour Report Report on October 28, 2018 by 11:59 p.m., but the report was not filed until October 29, 2018. Under the Commission's statutes (21-A M.R.S.A. § 1020-A(4-A)), the late filing of a report triggers an enforcement process. The Commission staff has made a preliminary finding of violation and determined that the preliminary penalty for filing the report late is \$115.93. Please see the next page for the penalty calculation.

You may request that the Commission waive the penalty in whole or in part or find that there was no violation. The request must be made within 14 calendar days of your receipt of this notice. The request must be in writing and contain a full explanation of the reasons the report was filed late. Upon receiving your request, the Commission staff will schedule your request to be heard at an upcoming Commission meeting. You or your designee will have an opportunity to be heard at the meeting or you may submit a sworn statement to the Commission explaining the mitigating circumstances for its consideration.

The Commission may waive or reduce the penalty or find that there was no violation if it determines that the report was late due to mitigating circumstances, which are defined as (1) a valid emergency; (2) an error made by the Commission staff; or (3) relevant evidence that a bona fide effort was made to file the report on time. The Commission may also consider whether the penalty is disproportionate to the size of the candidate's campaign, the level of experience of the candidate, treasurer or campaign staff, or the harm to the public caused by the late disclosure.

The staff requests that you pay the preliminary penalty within 14 days of the date of your receipt of this notice if you do not intend to request a waiver. Please use the payment statement on the next page when paying by mail. You may also make a payment online at www.maine.gov/ethics by clicking the "Penalty Payment" link. Please contact me at (207) 287-4709 or timothy.a.goodhue@maine.gov if you have any questions.

Sincerely,

Timothy Goodhue
Candidate Registrar

cc:

Penalty Calculation

The penalty for filing a campaign finance report late is based on a percentage of the total contributions or expenditures for the reporting period, whichever is greater, multiplied by the number of days late. The percentage is based on your history of past violations: 2% for the first violation, 4% for the second violation, and 6% for the third and each subsequent violation. Violations for late-filed reports accumulate in the two-year period beginning on January 1st of each even-numbered year. A penalty accrues daily beginning on the day following the filing due date. Any penalty of less than \$10 is automatically waived.

How Your Penalty Was Calculated

Filer: Dana Dow			
Late-Filed Report: 24-Hour Report			
Contributions	\$0	Penalty Base Amount	\$115.93
Expenditures	\$5,796.45	Percentage	2%
Due Date	October 28, 2018	Daily Accrual Rate	\$115.93
Date Filed	October 29, 2018	Days Late	1
Previous Violations	0	Your Total Penalty	\$115.93

Payment Statement and Payment Options

From: Dana Dow

Penalty Amount: \$115.93

Amount Enclosed: _____

Check/M.O. #: _____

BY MAIL: Enclose this payment statement with your payment.

Please make check or money order payable to: Treasurer, State of Maine

Mail to: Maine Ethics Commission
135 State House Station
Augusta, Maine 04333-0135

ONLINE: Go to www.maine.gov/online/ethics/penalties.

Wayne, Jonathan

From: Goodhue, Timothy A
Sent: Wednesday, October 24, 2018 9:55 AM
Subject: 24-Hour reporting period

Hello there!

The election is less than two weeks away which can only mean one thing – we've now entered the

24-Hour reporting period!



The **DETAILS:**



- The 24-Hour reporting period runs from October 24 (today!) through November 5 (the day before the election).
- You must report any **single contribution or loan of \$1,000 or more**, or any **single debt or expenditure of \$1,000 or more** within **twenty-four hours** of the transaction. This includes weekends and holidays!

The **HOW-TO:**

- To file a 24-Hour Report, go to www.mainecampaignfinance.com and sign in. Add the transaction(s) that need to go in a 24-Hour Report, and then file the 24-Hour Report the efilings system just created for you. Remember – you *must file* the 24-Hour Report, not just add the transaction into the system.

The **FINE PRINT:**

- Debts and debt payments need to be reported in 24-Hour Reports, too! You have incurred a debt if you have placed an order, or made an agreement for an order, but have not paid for the order yet. If you have a debt that's \$1,000 or more during the 24-hour reporting period, you must file a 24-Hour Report.
- Transactions of \$1,000 or more that occur on November 5 must be filed on the same day or on November 6, Election Day.

Need HELP? Call me at 287-4709 or email me!

Tim Goodhue ☺
Candidate Registrar

☎ 207-287-4709

📠 207-287-6775





2018 FILING SCHEDULE

For Maine Clean Election Act Legislative Candidates

PRIMARY ELECTION: JUNE 12, 2018

GENERAL ELECTION: NOVEMBER 6, 2018

TYPE OF REPORT	FILING DEADLINE (BY 11:59 P.M.)	REPORT PERIOD
Seed Money Report*	April 20, 2018	Date of first seed money contribution – date of certification request <u>For candidates who filed a Semiannual Report*:</u> January 1, 2018 – date of certification request

11-Day Pre-Primary	June 1, 2018	End of Seed Money Report — May 29, 2018
42-Day Post-Primary	July 24, 2018	May 30 — July 17, 2018

42-Day Pre-General	September 25, 2018	July 18 — September 18, 2018
11-Day Pre-General	October 26, 2018	September 19 — October 23, 2018
42-Day Post-General	December 18, 2018	October 24 — December 11, 2018

*PLEASE NOTE: Candidates collecting more than \$500 in seed money contributions in 2017 must file a 2018 January Semiannual campaign finance report by 11:59 p.m. on January 16, 2018 showing all seed money contributions and expenditures through December 31, 2017.

24-HOUR REPORTS

24-HOUR REPORTING PERIODS (13 DAYS BEFORE THE ELECTION)	WHAT TO REPORT	WHEN TO FILE
Primary: May 30 – June 11, 2018 General: October 24 – November 5, 2018	Any single expenditure of \$1,000 or more. Orders placed with or obligations made to vendors for goods or services are considered expenditures at the time the obligations are made.	<u>Within 24 hours</u> , including weekends and holidays, of making the expenditure, incurring the obligation, or placing the order.

HOW TO FILE REPORTS

Using the Commission's Website. Candidates who receive or expect to receive at least \$1,500 for their campaigns must file reports electronically on the Commission's website. Candidates or treasurers must enter the required information and the treasurer must click "File Report" by 11:59 p.m. on the filing deadline. Candidates who lack access to the technology or the technological ability to file reports on the internet may request a waiver by April 17, 2018. The Commission will grant all reasonable requests.

Using Paper Forms. For candidates who are not required to file electronically, each original campaign finance report signed by the candidate and treasurer must be properly filed with the Commission by the filing deadline, except in two circumstances. A properly signed report may be faxed to the Commission office at (207) 287-6775 by 11:59 p.m. on the deadline, provided that the Commission receives the original report within 5 calendar days. A report mailed to the Commission by certified or registered mail and postmarked at least 2 days before the filing deadline will not be considered late, even if it is received after the deadline.

Commission staff will be available until 5:00 p.m. on filing deadlines to offer assistance to candidates and campaign staff.

Maine Ethics Commission: LobbyistMaine news, sports, politics and eTicket Itinerary and Receipt forContact Us | Contact Customer |united airlines 16 year old travelCampaign Finance

https://www.mainecampaignfinance.com/regis.../administration

AppsStatutesMaine Ethics CommissionUAT NG JWAYNE ME:CVR (jwayne-NatewaQC - AdminSharepoint NGQC Public REAL SITELobbyist Monthly ReLearner DashboardSandboxAdvantageQuest - UAT (jwayneDemo SFI JWAYNE TLogin

Administrative Notes

Event Log

24 Hour Report Filed	Metrick, Bruce R	10.29.2018 5:32:59 PM
User Login User BMETRICK10172 logged in.	Metrick, Bruce R	10.29.2018 5:29:06 PM
User Login User BMETRICK10172 logged in.	Metrick, Bruce R	10.29.2018 5:24:24 PM
24 Hour Report Filed	Metrick, Bruce R	10.29.2018 9:46:42 AM
User Login User BMETRICK10172 logged in.	Metrick, Bruce R	10.29.2018 9:46:20 AM
User Login User BMETRICK10172 logged in.	Metrick, Bruce R	10.27.2018 2:10:21 PM
Report Amended - 11-DAY PRE-GENERAL REPORT	Metrick, Bruce R	10.27.2018 9:07:58 AM
User Login User BMETRICK10172 logged in.	Metrick, Bruce R	10.27.2018 9:00:56 AM

JONATHAN WAYNE
for Dana L Dow

SEE MORE

Candidate Information

Date Filed with Secretary of State - 03/07/2018
Exempt - NO
Exemption Revoked - NO
Withdrawn - NO
Replacement - NO
Write-In Candidate - NO
Paper Filer - NO
Gender - Male
Incumbent Status -INCUMBENT
Fair Campaign Practices - NO
Declaration of Intent - YES
Declaration of Intent Date - 09/26/2017
Reporting Exemption - NO
Voluntary Spending Limits - NO

Officers

Bruce R Metrick
Treasurer
(207) 215-9253
bruce.metrick@yahoo.com
111 ICE POND ROAD,
WALDOBORO, ME, 04572

Dana L Dow
Candidate
(207) 832-4658
danadow2050@gmail.com
30 Kalers Pond Road,
Waldoboro, ME, 04572

Vendor Users

+ ADD VENDOR

10:56 AM
11/16/2018

year. These reports must include all contributions made to and all expenditures made or authorized by or on behalf of the candidate or the treasurer of the candidate as of the end of the preceding month, except those covered by a previous report.

B. Reports must be filed no later than 11:59 p.m. on the 11th day before the date on which an election is held and must be complete as of the 14th day before that date. If a report was not filed under paragraph A, the report required under this paragraph must cover all contributions and expenditures through the 14th day before the election.

C. Any single contribution of \$1,000 or more received or any single expenditure of \$1,000 or more made after the 14th day before any election and more than 24 hours before 11:59 p.m. on the day of any election must be reported within 24 hours of that contribution or expenditure. The candidate or treasurer is not required to include in this report expenditures for overhead expenses or compensation paid to an employee or other member of the campaign staff who has received payments at regular intervals that have been disclosed in previously filed campaign finance reports. As used in this paragraph, "overhead expenses" includes, but is not limited to, rent, utility payments, taxes, insurance premiums or similar administrative expenses.

D. Reports must be filed no later than 11:59 p.m. on the 42nd day after the date on which an election is held and must be complete for the filing period as of the 35th day after that date.

D-1. Reports must be filed no later than 11:59 p.m. on the 42nd day before the date on which a general election is held and must be complete as of the 49th day before that date, except that this report is not required for candidates for municipal office.

E. Unless further reports will be filed in relation to a later election in the same calendar year, the disposition of any surplus or deficit in excess of \$100 shown in the reports described in paragraph D must be reported as provided by this paragraph. The treasurer of a candidate with a surplus or deficit in excess of \$100 shall file reports semiannually with the commission within 15 days following the end of the 2nd and 4th quarters of the State's fiscal year, complete as of the last day of the quarter, until the surplus is disposed of or the deficit is liquidated. The first report under this paragraph is not required until the 15th day of the period beginning at least 90 days from the date of the election. The reports will be considered timely if filed electronically or in person with the commission on that date or postmarked on that date. The reports must set forth any contributions for the purpose of liquidating the deficit, in the same manner as contributions are set forth in other reports required in this section.

F. Reports with respect to a candidate who seeks nomination by petition must be filed on the same dates that reports must be filed by a candidate for the same office who seeks that nomination by primary election.

3-B. Accelerated reporting schedule. (REPEALED)

4. New candidate or nominee. A candidate for nomination or a nominee chosen to fill a vacancy under Chapter 5, subchapter 3 is subject to section 1013-A, subsection 1, except that the candidate shall register the name of a treasurer or political committee and all other information required in section 1013-A, subsection 1, paragraphs A and B within 7 days after the candidate's appointment or at least 6 days before the election, whichever is earlier. The commission shall send notification of this registration requirement and report forms and schedules to the candidate



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: November 15, 2018
Re: Voting Record Flyer by Rep. Patricia Hymanson

On November 8, 2018, the Commission received a complaint concerning a one-page flyer distributed by State Representative Patricia Hymanson with the heading "Representative Patty Hymanson/My Voting Record." The flyer briefly describes her voting record on five bills, which she described as representative of her thinking as a Legislator. According to Rep. Hymanson, she distributed the flyer when going door-to-door to meet voters. If no one was home, she would leave the flyer folded lengthwise inside a commercially printed brochure, which was also included in the complaint.

The complaint was filed by her general election opponent, former State Rep. Bradley S. Moulton. Mr. Moulton complains that Rep. Hymanson violated 21-A M.R.S.A. § 1014, because the one-page voting record flyer did not state who paid for it and whether Rep. Hymanson had authorized it.

Applicable Law

Under 21-A M.R.S.A. § 1014(1), when a candidate makes an expenditure for a communication that expressly advocates for the candidate's election, the communication is required to state that the candidate paid for and authorized the communication. Under subsection 1014(2-A), other communications distributed to voters during the 35 days before a general election that name a candidate (even if not containing express advocacy) must identify who paid for the communication and whether the candidate authorized the communication.

The Commission may assess a penalty for a violation of these requirements up to the amount of the expenditure for the communication. (21-A M.R.S.A. § 1014(4))

Response by Rep. Hymanson

Rep. Hymanson has responded to the complaint by stating that the flyer in question was always distributed with the brochure. The flyer was folded in half and inserted into the brochure. As she knocked on doors in her district, if no one came to the door, she would leave the brochure with the flyer inside. She states that she never distributed the flyer on its own, without the brochure. She assumed that the disclosure statement on the brochure was sufficient. She reproduced the flyer by paying Edison Press and Infinite Imaging, and both payments were included in campaign finance reports.

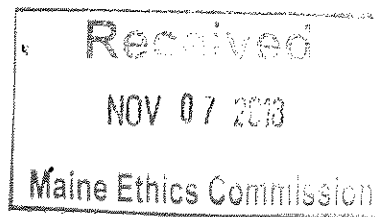
Comments by Commission Staff

The Commission staff recommends that you take no further action on this item or find that there was no violation. The Commission has not adopted a policy that a multi-page communication must contain the “paid for” message on every sheet. The staff has not wanted to take that step for fear of unnecessary over-regulation of candidate communications.

Given the nature of distribution described by Rep. Hymanson (that she personally distributed both pieces together, one folded in the other), we believe there was little or no harm to the public. The language of the flyer is clearly a message from a State Representative to her constituents, indicating that she authorized the flyer. Most constituents receiving the literature would probably infer that Rep. Hymanson paid for both pieces of literature.

If, however, you arrive at the conclusion that the flyer should have included a “paid for” and authorization statement and wish to find a violation, the Commission staff recommends assessing no penalty, based on the good faith of the candidate.

Thank you for your consideration of this memo.



Bradley S. Moulton
P. O. Box 35
Cape Neddick, ME 03902

November 5, 2018

Jonathan Wayne, Executive Director
Maine Ethics Commission
135 State House Station
Augusta, Maine 04333

Executive Director Wayne:

When I was in contact with an Ogunquit resident last month, she passed on to me two pieces of literature she found in her door, copies attached. The first is a typical handbill. The second identifies the candidate and encourages the reader to vote for Ms. Hymanson on November 6th. I have the originals of both pieces of literature.

Pursuant to M.R.S.A. 21-A Sec. 1014(1), a candidate distributing literature which he or she has prepared and advocating for his or her election must clearly and conspicuously state that the communication is authorized by the candidate and identifies who made or financed the expenditure. I have attached a copy of the pertinent section of Statute.

As part of my campaign, I have used both a handbill and double-sided paper comparing our respective bills which we sponsored while in office. Both of my handouts contained the standard disclosure statement. Since my opponent has used for a newspaper ad a list of bills which she supported in the Legislature, it is fair to assume that the handout is a similar communication which she used while canvassing in Ogunquit and other parts of the House 4 District.

It is my complaint that Patricia Hymanson is in violation of the above-referenced provision of statute in not making the mandatory disclosure on the additional page which she provided to members of the public and district voters. I have waited to make my complaint until after the time to vote has elapsed.

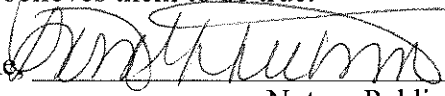
Respectfully submitted,


Bradley S. Moulton

STATE OF MAINE, York, ss.

November 5, 2018

Personally appeared the above-named Bradley S. Moulton, who signed the statement and made oath that the above facts of his statement are true and of his own personal knowledge and belief, and if not of his personal knowledge and belief, he believes them to be true.

Before me, 
Notary Public

Print name: LISA G. AUBIN
Notary Public, Maine
My Commission Expires July 6, 2019

Re-Elect

VOTE NOVEMBER 6TH

PATTY HYMANSON

STATE REPRESENTATIVE

Parts of York, Sanford, Wells, all of Ogunquit

*"The thoughtfulness, effectiveness,
and compassion of the Maine House
goes up with Patty in it."*

*- Peter Bowman, former State Senator and
Portsmouth Naval Shipyard Commander*



LISTENING TO OUR CONCERNS. REPRESENTING OUR VALUES.

Phone: (207) 363-8353

Email: patty.hymanson@aol.com

 Patty Hymanson

PATTYHYMANSON.ORG

Authorized by the candidate and
paid for by Bob Brisebois, treasurer.

Re-Elect

VOTE NOVEMBER 6TH

PATTY HYMANSON

STATE REPRESENTATIVE

VOTE NOVEMBER 6TH

COMMONSENSE SOLUTIONS:

This image shows a full page of dot grid paper. The background is a very light gray, and it is covered with a dense, regular pattern of small, dark gray dots. The dots are arranged in a precise square grid across the entire surface. There are no margins, text, or other markings present.

[illegible]

Representative Patty Hymanson

My Voting Record

In the 4 years I have been your Representative, I have voted on more than 1200 bills! Here are 5 to represent my thinking. Please contact me for ask about how I voted on other bills. I am going door-to-door so I can better represent you, my constituents.

A vote for local control:

Against LD 748 An act to Require at Least a 30-minute Lunch Period for Students
While this is a good idea, it is up to the local school districts to decide, not the state.

A vote for our at-risk young children so they start life on more solid footing:

For LD 230 An Act to Increase Access to Head Start

A vote to save lives so people with opiate addiction can live to get treatment:

For LD 324 An Act to Allow Corrections Officers to Administer Naloxone

A vote that carefully evaluated if a tax credit would really bring jobs and local revenue (it wouldn't)

Against LD 1450 An Act to Promote Workforce Development and Provide an Economic Stimulus for Maine -based Filmmakers and Supporting Businesses

A vote that says youths' brains are more easily changed toward nicotine addiction so make it harder to buy cigarettes under age 21:

For LD 1170 An Act to Reduce Youth Access to Tobacco Products

Vote November 6, 2018

**Maine Revised Statutes
Title 21-A: ELECTIONS**

Chapter 13: CAMPAIGN REPORTS AND FINANCES

§1014. PUBLICATION OR DISTRIBUTION OF POLITICAL COMMUNICATIONS

1. Authorized by candidate. Whenever a person makes an expenditure to finance a communication expressly advocating the election or defeat of a clearly identified candidate through broadcasting stations, cable television systems, newspapers, magazines, campaign signs or other outdoor advertising facilities, publicly accessible sites on the Internet, direct mails or other similar types of general public political advertising or through flyers, handbills, bumper stickers and other nonperiodical publications, the communication, if authorized by a candidate, a candidate's authorized political committee or their agents, must clearly and conspicuously state that the communication has been so authorized and must clearly state the name and address of the person who made or financed the expenditure for the communication. A communication financed by a candidate or the candidate's committee is not required to state the address of the candidate or committee that financed the communication. If a communication that is financed by someone other than the candidate or the candidate's authorized committee is broadcast by radio, only the city and state of the address of the person who financed the communication must be stated.

[2013, c. 494, §1 (AMD) .]

2. Not authorized by candidate. If the communication described in subsection 1 is not authorized by a candidate, a candidate's authorized political committee or their agents, the communication must clearly and conspicuously state that the communication is not authorized by any candidate and state the name and address of the person who made or financed the expenditure for the communication, except that a communication broadcast by radio is only required to state the city and state of the address of the person that financed the communication. If the communication is in written form, the communication must contain at the bottom of the communication in print that is no smaller in size than 12-point bold print, Times New Roman font, the words "NOT PAID FOR OR AUTHORIZED BY ANY CANDIDATE."

[2013, c. 362, §2 (AMD) .]

2-A. Other communications. Whenever a person makes an expenditure to finance a communication that names or depicts a clearly identified candidate and that is disseminated during the 21 days before a primary election or 35 days before a general election through the media described in subsection 1, the communication must state the name and address of the person who made or financed the communication and a statement that the communication was or was not authorized by the candidate, except that a communication broadcast by radio is only required to state the city and state of the address of the person that financed the communication. The disclosure is not required if the communication was not made for the purpose of influencing the candidate's nomination for election or election.

[2013, c. 362, §3 (AMD) .]

2-B. Top 3 funders; independent expenditures. A communication that is funded by an entity making an independent expenditure as defined in section 1019-B, subsection 1 must conspicuously include the following statement:

"The top 3 funders of (name of entity that made the independent expenditure) are (names of top 3 funders)."

The information required by this subsection may appear simultaneously with any statement required by subsection 2 or 2-A. A communication that contains a visual aspect must include the statement in written text. A communication that does not contain a visual aspect must include an audible statement. This statement is required only for communications made through broadcast or cable television, broadcast radio, Internet-audio programming, direct mail or newspaper or other periodical publications.

A cable television or broadcast television communication must include both an audible and a written statement. For a cable television or broadcast television communication 30 seconds or less in duration, the audible statement may be modified to include only the single top funder.

The top funders named in the required statement consist of the funders providing the highest dollar amount of funding to the entity making the independent expenditure since the day following the most recent general election day.

A. For purposes of this subsection, "funder" includes:

(1) Any entity that has made a contribution as defined in section 1052, subsection 3 to the entity making the independent expenditure since the day following the most recent general election day; and

(2) Any entity that has given a gift, subscription, loan, advance or deposit of money or anything of value, including a promise or agreement to provide money or anything of value whether or not legally enforceable, except for transactions in which a fair value is given in return, since the day following the most recent general election day. [2015, c. 1, §3 (NEW).]

B. If funders have given equal amounts, creating a tie in the ranking of the top 3 funders, the tie must be broken by naming the tying funders in chronological order of the receipt of funding until 3 funders are included in the statement. If the chronological order cannot be discerned, the entity making the independent expenditure may choose which of the tying funders to include in the statement. In no case may a communication be required to include the names of more than 3 funders. [2015, c. 1, §3 (NEW).]

C. The statement required under this subsection is not required to include the name of any funder who has provided less than \$1,000 to the entity making the independent expenditure since the day following the most recent general election day. [2015, c. 1, §3 (NEW).]

D. If only one or 2 funders must be included pursuant to this subsection, the communication must identify the number of funders as "top funder" or "top 2 funders" as appropriate. If there are no funders required to be included under this subsection, no statement is required. [2015, c. 1, §3 (NEW).]

E. When compiling the list of top funders, an entity making an independent expenditure may disregard any funds that the entity can show were used for purposes unrelated to the candidate mentioned in the communication on the basis that funds were either spent in the order received or were strictly segregated in other accounts. [2015, c. 1, §3 (NEW).]

F. In any communication consisting of an audio broadcast of 30 seconds or less or a print communication of 20 square inches or less, the requirements of this subsection are satisfied by including the name of the single highest funder only. [2015, c. 1, §3 (NEW).]

G. If the list of funders changes during the period in which a recurring communication is aired or published, the statement appearing in the communication must be updated at the time that any additional payments are made for that communication. [2015, c. 1, §3 (NEW).]

H. The commission may establish by routine technical rule, adopted in accordance with Title 5, chapter 375, subchapter 2-A, forms and procedures for ensuring compliance with this subsection. Rules adopted pursuant to this paragraph must ensure that the information required by this subsection is effectively conveyed for a sufficient duration and in a sufficient font size or screen size where applicable without undue burden on the ability of the entity to make the communication. The rules must also provide an exemption for types of communications for which the required statement would be impossible or impose an unusual hardship due to the unique format or medium of the communication. [2015, c. 1, §3 (NEW).]

[2015, c. 1, §3 (NEW) .]

3. Broadcasting prohibited without disclosure. No person operating a broadcasting station or cable television system within this State may broadcast any communication, as described in subsections 1 to 2-A, without an oral or written visual announcement of the disclosure required by this section.

[2011, c. 389, §11 (AMD) .]

3-A. In-kind contributions of printed materials. A candidate, political committee or political action committee shall report on the campaign finance report as a contribution to the candidate, political committee or political action committee any contributions of in-kind printed materials to be used in the support of a candidate or in the support or defeat of a ballot question. Any in-kind contributions of printed materials used or distributed by a candidate, political committee or political action committee must include the name or title of that candidate, political committee or political action committee as the authorizing agent for the printing and distribution of the in-kind contribution.

[2009, c. 190, Pt. A, §3 (AMD) .]

3-B. Newspapers. A newspaper may not publish a communication described in subsections 1 to 2-A without including the disclosure required by this section. For purposes of this subsection, "newspaper" includes any printed material intended for general circulation or to be read by the general public, including a version of the newspaper displayed on a website owned or operated by the newspaper. When necessary, a newspaper may seek the advice of the commission regarding whether or not the communication requires the disclosure.

[2007, c. 443, Pt. A, §9 (AMD) .]

4. Enforcement. A violation of this section may result in a civil penalty of no more than 100% of the amount of the expenditure in violation, except that an expenditure for yard signs lacking the required information may result in a maximum civil penalty of \$200. In assessing a civil penalty, the commission shall consider, among other things, how widely the communication was disseminated, whether the violation was intentional, whether the violation occurred as the result of an error by a printer or other paid vendor and whether the communication conceals or misrepresents the identity of the person who financed it. If the person who financed the communication or who committed the violation corrects the violation within 10 days after receiving notification of the violation from the commission by adding the missing information to the communication, the commission may decide to assess no civil penalty.

[2015, c. 1, §4 (AMD) .]

5. Telephone calls. Prerecorded automated telephone calls and scripted live telephone communications that name a clearly identified candidate during the 21 days before a primary election or the 35 days before a general election must clearly state the name of the person who made or financed the expenditure for the communication, except for prerecorded automated telephone calls paid for by the candidate that use the candidate's voice in the telephone call and that are made in support of that candidate. Telephone calls made for the purposes of researching the views of voters are not required to include the disclosure.

[2007, c. 443, Pt. A, §9 (AMD) .]

6. Exclusions. The requirements of this section do not apply to:

A. Handbills or other literature produced and distributed at a cost not exceeding \$100 and prepared by one or more individuals who are not required to register or file campaign finance reports with the commission and who are acting independently of and without authorization by a candidate, candidate's authorized campaign committee, party committee, political action committee or ballot question committee or an agent of a candidate, candidate's authorized campaign committee, party committee, political action committee or ballot question committee; [2011, c. 389, §13 (NEW) .]

B. Campaign signs produced and distributed at a cost not exceeding \$100, paid for by one or more individuals who are not required to register or file campaign finance reports with the commission and who are acting independently of and without authorization by a candidate, candidate's authorized campaign committee, party committee, political action committee or ballot question committee or an agent of a candidate, candidate's authorized campaign committee, party committee, political action committee or ballot question committee; [2013, c. 494, §2 (AMD) .]

C. Internet and e-mail activities costing less than \$100, as excluded by rule of the commission, paid for by one or more individuals who are not required to register or file campaign finance reports with the commission and who are acting independently of and without authorization by a candidate, candidate's authorized campaign committee, party committee, political action committee or ballot question committee or an agent of a candidate, candidate's authorized campaign committee, party committee, political action committee or ballot question committee; [2013, c. 494, §2 (AMD).]

D. Communications in which the name or address of the person who made or authorized the expenditure for the communication would be so small as to be illegible or infeasible, including communications on items such as ashtrays, badges and badge holders, balloons, campaign buttons, clothing, coasters, combs, emery boards, envelopes, erasers, glasses, key rings, letter openers, matchbooks, nail files, noisemakers, paper and plastic cups, pencils, pens, plastic tableware, 12-inch or shorter rulers, swizzle sticks, tickets to fund-raisers and similar items determined by the commission to be too small and unnecessary for the disclosures required by this section and in electronic media advertisements where compliance with this section would be impractical due to size or character limitations; and [2013, c. 494, §3 (NEW).]

E. Campaign signs that are financed by the candidate or candidate's authorized committee and that clearly identify the name of the candidate and are lettered or printed individually by hand. [2013, c. 494, §3 (NEW).]

[2013, c. 494, §§2, 3 (AMD) .]

SECTION HISTORY

1985, c. 161, §6 (NEW). 1987, c. 188, §17 (AMD). 1989, c. 504, §§5, 6, 31 (AMD). 1991, c. 466, §37 (AMD). 1991, c. 839, §§8-10 (AMD). 1995, c. 483, §6 (AMD). 2003, c. 302, §1 (AMD). 2003, c. 510, §F1 (AMD). 2003, c. 510, §F2 (AFF). 2003, c. 599, §15 (AFF). 2005, c. 301, §§10-12 (AMD). 2005, c. 308, §1 (AMD). 2005, c. 542, §1 (AMD). 2007, c. 443, Pt. A, §9 (AMD). 2009, c. 183, §1 (AMD). 2009, c. 190, Pt. A, §§2, 3 (AMD). 2009, c. 652, Pt. A, §20 (AMD). 2011, c. 360, §1 (AMD). 2011, c. 389, §§10-13 (AMD). 2013, c. 362, §§1-3 (AMD). 2013, c. 494, §§1-3 (AMD). IB 2015, c. 1, §§3, 4 (AMD).

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

November 9, 2018

By Email and Regular Mail

Hon. Patricia Hymanson
34 High Pine Road
North Anson, Maine 04958

Dear Rep. Hymanson:

As we discussed yesterday, Bradley S. Moulton submitted the attached correspondence concerning a flyer entitled "My Voting Record" and a campaign brochure, which were received by a resident of Ogunquit. Mr. Moulton requests that the Commission consider whether the flyer violated the requirements of 21-A M.R.S.A. § 1014, because the flyer did not state who paid for it and whether you had authorized it.

Applicable Law

Under 21-A M.R.S.A. § 1014(1), when a candidate makes an expenditure for a communication that expressly advocates for the candidate's election, the communication is required to state that the candidate paid for and authorized the communication. Under subsection 1014(2-A), other communications distributed to voters during the 35 days before a general election that name a candidate (even if not containing express advocacy) must identify who paid for the communication and whether the candidate authorized the communication.

The Commission may assess a penalty for a violation of these requirements up to the amount of the expenditure for the communication. (21-A M.R.S.A. § 1014(4))

Opportunity to Respond

Mr. Moulton's request is scheduled for consideration by the Commission at its next meeting on Wednesday, November 28, 2018, at 9:00 a.m. at the Commission's office at 45 Memorial Circle, Augusta, Maine. We recommend that you attend the meeting to respond to Mr. Moulton's request and to answer any questions from the Commission members.

Also, it would be helpful if you could please submit an email or a letter providing whatever information you believe the Commissioners would need to know

Hon. Patricia Hymanson

Page 2

November 9, 2018

about this matter. In particular:

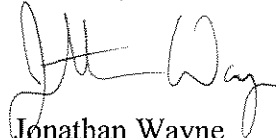
- Please identify all expenditures made in connection with the flyer.
- If possible, please confirm how the flyer was distributed to the Ogunquit resident, and whether it was distributed with the campaign brochure.
- To the best that you can recall, on *other* occasions did you always distribute the flyer with the brochure, or did you sometimes distribute the flyer on its own?

At the November 28 meeting, the members of the Commission will take your response and comments into consideration, and decide whether the flyer was in violation and whether to assess any monetary penalty.

Please be aware that the Commission's November 28 meeting will not be an adversarial proceeding. As the person who made the request, the Commission would typically allow Mr. Moulton to make some comments at the meeting, but he is not considered "a party" in this matter.

If you have any questions concerning the Commission's consideration of this matter, please email me or call me at 287-4179. Thank you.

Sincerely,

A handwritten signature in dark ink, appearing to read "Jonathan Wayne". The signature is fluid and cursive, with the first name "Jonathan" and last name "Wayne" clearly distinguishable.

Jonathan Wayne
Executive Director

cc: Hon. Bradley S. Moulton (by email and regular mail)

34 High Pine Rd
York, ME 03909
November 9, 2018
(207) 251-8777 cell

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

Dear Members of the Commission,

The flyer in question was always distributed with the brochure. It was folded in half lengthwise and inserted into the brochure referenced and depicted by Mr Moulton in the attachments to his correspondence to you dated November 5, 2018. As I knocked on the doors of constituents in my district 4, if no one came to the door, I would leave the brochure with the flyer inside, write a hand-written note and leave it in the door. As you can see from the text of the flyer, it references that I am going door-to-door. The flyer was not distributed anywhere else except under the circumstances I just described. The flyer was never distributed on its own. Because the flyer and the brochure were always together, I assumed the authorization and payment phrase required by law, 21-A MRSA paragraph 1014(4), that was on the brochure that held the flyer fulfilled the law requirement. I am well-aware of this requirement, having run 3 campaigns as a Clean Elections candidate with Mr Moulton as my opponent each time and I was careful to put the correct phrase on my lawn signs and print ads.

Please see the expenditures associated with the flyer which all reflect copying fees and were submitted to you as paid by my treasurer, Robert Brisebois.

Please allow me to answer additional questions you might have. If I can not attend the 11/28 meeting at 9am, I will be available by cell phone, 207 251 8777.

Sincerely,

Patricia Hymanson



Commission on Governmental Ethics and Election Practices
Mail: 135 State House Station, Augusta, Maine 04333
Office: 45 Memorial Circle, Augusta, Maine
Website: www.maine.gov/ethics
Phone: 207-287-4179
Fax: 207-287-6775

2018 CAMPAIGN FINANCE REPORT

FOR MCEA CANDIDATES

COMMITTEE		TREASURER
Patricia Hymanson 34 High Pine Rd York, ME, 03909 PHONE:(207) 363-8353 EMAIL: patty.hymanson@aol.com		Robert Brisbois 24 HIGH PINE RD YORK, ME, 03909 PHONE:(207) 251-9226 EMAIL: bob0326@aol.com
REPORT	DUE DATE	REPORTING PERIOD
11-DAY PRE-GENERAL REPORT	10/26/2018	09/19/2018 - 10/23/2018

FINANCIAL ACTIVITY SUMMARY

CASH ACTIVITY		
	TOTAL FOR PERIOD	TOTAL FOR CAMPAIGN
1. CASH BALANCE FROM LAST REPORT	\$6,807.55	
2. SEED MONEY CONTRIBUTIONS	\$0.00	\$270.00
3. MAINE CLEAN ELECTION ACT PAYMENTS & AUTHORIZATIONS	\$0.00	\$6,845.00
4. SALE OF CAMPAIGN PROPERTY (SCHEDULE E, PART 2)	\$0.00	\$0.00
5. OTHER CASH RECEIPTS (INTEREST, ETC.,)	\$0.00	\$0.00
6. MINUS EXPENDITURES (SCHEDULE B)	\$5,924.82	\$6,232.27
7. CASH BALANCE AT CLOSE OF PERIOD	\$882.73	
OTHER ACTIVITY		
8. IN-KIND SEED MONEY CONTRIBUTIONS	\$0.00	\$0.00
9. TOTAL UNPAID DEBTS AT CLOSE OF PERIOD (SCHEDULE D)	\$0.00	

I, Robert Brisbois, CERTIFY THAT THE INFORMATION CONTAINED IN THIS REPORT IS TRUE, ACCURATE, AND COMPLETE TO THE BEST OF MY KNOWLEDGE.

REPORT FILED BY: Robert Brisbois
REPORT FILED ON: 10/23/2018 3:33:42 PM
LAST MODIFIED:
COMMITTEE ID: 5937

**SCHEDULE B
EXPENDITURES**

EXPENDITURE TYPES				
CNS	Campaign consultants	CON	Contribution to other candidate, party, committee	
EQP	Equipment (office machines, furniture, cell phones, etc.)	FND	Fundraising events	
FOD	Food for campaign events, volunteers	LIT	Printing and graphics (flyers, signs, palmcards, t-shirts, etc.)	
MHS	Mail house (all services purchased)	OFF	Office supplies, phone and internet services, rent and utilities	
OTH	Other (bank fees, entrance fees, small tools, wood, etc.)	PHO	Phone banks, automated telephone calls	
POL	Polling and survey research	POS	Postage for U.S. Mail and mail box fees	
PRO	Other professional services	PRT	Print media ads only (newspapers, magazines, etc.)	
RAD	Radio ads, production costs	SAL	Campaign workers' salaries and personnel costs	
TRV	Travel (fuel, mileage, lodging, etc.)	TVN	TV or cable ads, production costs	
WEB	Online advertising, website design, maintenance, hosting, etc.			
DATE OF EXPENDITURE	PAYEE	REMARK	TYPE	AMOUNT
9/20/2018	Edison Press 2066 MAIN STREET SANFORD, ME, 04073	photocopying	LIT	\$21.10
9/20/2018	MACH3MEDIA 126 FRANCES STREET PORTLAND, ME, 04102	Palm and Clincher Cards	LIT	\$217.00
9/20/2018	MACH3MEDIA 126 FRANCES STREET PORTLAND, ME, 04102	House Direct Mail	MHS	\$4,398.00
9/21/2018	Patricia Hymanson 34 HIGH PINE ROAD YORK, ME, 03909	Reimbursement for cost of Web domain name.	WEB	\$89.64
10/3/2018	Infinite Imaging 470 US ROUTE ONE YORK, ME, 03909	Printing Flyers	LIT	\$27.43
10/5/2018	The Weekly Sentinel 952 Post Road, Suite 10 Wells, ME, 04090	Newspaper Ad	PRT	\$303.00
10/12/2018	Infinite Imaging 470 US ROUTE ONE YORK, ME, 03909	Flyers	LIT	\$28.65
10/12/2018	The Weekly Sentinel 952 Post Road, Suite 10 Wells, ME, 04090	Newspaper Ad	PRT	\$420.00
10/22/2018	The Weekly Sentinel 952 Post Road, Suite 10 Wells, ME, 04090	Newspaper Ad	PRT	\$420.00
TOTAL EXPENDITURES FOR CANDIDATE:				\$5,924.82



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

To: Commission
From: Jonathan Wayne, Executive Director
Date: November 16, 2018
Re: Introductory Memo – Anonymous Flyer against Catherine Weeks

The Commission received a request from Catherine Weeks of Waterville to investigate an anonymous flyer advocating against her election to the Waterville City Council for Ward 1. The attached staff memo by Political Committee and Lobbyist Registrar Benjamin Dyer describes the applicable law. This supplementary memo explains how this item was filed with the Commission and summarizes my interview of Ms. Weeks. She will be at your November 28 meeting and can answer any questions that you have.

Ms. Weeks first contacted the Commission staff through a November 8, 2018 email (attached) asking how to file an elections complaint. I advised her to submit it to the Waterville City Clerk, and the Commission would consider it properly filed with our office if the City Clerk referred it to us as a substantial violation.

On the next day, the Waterville Morning Sentinel published a news article about the flyer and Ms. Weeks' intention of requesting an investigation. (attached) In the article, her opponent, Michael Morris, was quoted as saying that he had nothing to do with the flyer, did not condone it, and did not know who distributed or paid for it.

On Nov. 9, Ms. Weeks wrote a signed letter to the Waterville City Clerk requesting an investigation by this office. The City Clerk referred it to our office for enforcement through a letter dated Nov. 9, which we received two days ago on November 14, 2018 (see attached correspondence).

After receiving a scheduling notice from me, Ms. Weeks telephoned me today and consented to a short telephone interview. She told me the following:

- The flyer was delivered by hand on the evening of Sunday, November 4th. She believes the distribution occurred after 7 pm.
- She originally thought the flyer was delivered on her block only, but now believes it was delivered to “the whole neighborhood.” She suspects that the distribution covered most of Ward 1. She believes that would require more than one or two people to deliver the flyer.
- The November 6, 2018 election for Waterville City Council was a partisan election. She was nominated by the Republican party at a caucus. Mr. Morris was the Democratic nominee. There is an active town Democratic committee in Waterville.
- Ms. Weeks says that the flyer falsely attributes statements to her that she never made by taking her comments at public meetings out of context. Because the flyer was distributed two evenings before the election, she did not have an opportunity to respond to Ward 1 voters to correct the misleading descriptions. She believes the flyer cost her election because she lost by only two votes.

This item raises questions concerning whether a State department should investigate political speech when a statutory exception *may* apply that is intended to allow persons to prepare and distribute low-cost communications about candidates without identifying themselves. (The exception applies if the communication was prepared by one or more individuals acting independently of and without authorization by a candidate, the candidate’s authorized committee, a party committee or their agents, and the communication cost no more than \$100). Due to post-election responsibilities of both offices, the Commission staff has not had an opportunity to confer with agency counsel.

Thank you for your consideration of this memo.



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

To: Commissioners
From: Benjamin P. Dyer, Political Committee and Lobbyist Registrar
Date: November 16, 2018
Re: Request for Investigation of Anonymous Flyer in Waterville Municipal Election

INTRODUCTION

This matter is a request by Catherine Weeks to investigate whether a person or persons responsible for an anonymous, low-cost handbill advocating against her election to the Waterville City Council and distributed on or about November 4, 2018 failed to comply with the disclosure requirements for such communications. Ms. Weeks, a candidate in Ward 1, lost the election to Michael Morris by a very narrow margin. Beginning November 8, 2018, Ms. Weeks initiated a complaint regarding, among other things, the lack of a “paid for” disclosure on the handbill.

RELEVANT LAW

Applicability of Campaign Finance Reporting Laws in Municipal Elections. Maine’s campaign finance disclosure requirements are set out in Title 21-A, Chapter 13. These requirements apply in candidate elections for state and county office, as well as for ballot question elections.

The disclosure requirements also apply to candidates who are running for municipal office in towns and cities with a population of 15,000 or more (such as Waterville).¹ (30-A M.R.S.A. § 2502(1) and 21-A M.R.S.A. § 1011 (first sentence))

¹ Municipal referendum elections in these larger communities are also subject to Title 21-A, Chapter 13, but are not at issue in this case.

Standards for Initiating Investigations Upon Request. In a municipality covered by Maine’s campaign finance disclosure laws, the town or city clerk stands in the place of the Commission staff, receiving committee registrations, campaign finance reports, and complaints of violations of Title 21-A, Chapter 13. (21-A M.R.S.A. §§ 1011(3), 1020-A(3) & 1053-A) A complaint regarding a violation of Title 21-A, Chapter 13 occurring in a covered municipality (such as Waterville) must first be made to the city clerk. Subsection 1011(3-A) permits municipal clerks to refer to the Commission potential violations which the clerk considers to be “substantial.” The Commission has the discretion to conduct investigations and assess penalties related to municipal elections. (21-A M.R.S.A. § 1011(3))

Regardless of the manner in which they are received by the Commission, all complaints must conform to the statutes and rules regarding requests for investigation. The Commission’s Rules require that a request for investigation must be in writing, signed, and “[set] forth such facts with sufficient details as are necessary to specify the alleged violation” from personal knowledge. (Comm. Rules, Ch. 1, §4(2)(C)) The Commission “shall” undertake the investigation if “the reasons stated in the request show sufficient grounds for believing that a violation may have occurred.” (21-A M.R.S.A. § 1003(2))

“Paid for” Disclosure Statement. With certain exceptions, under 21-A M.R.S.A. § 1014(1) & (2), paid communications to voters that expressly advocate for the election or defeat of a candidate must include the name and address of the person who made or financed the expenditure for the communication, and whether the candidate authorized the communication. Among the exceptions are handbills or other campaign literature produced and disseminated by one or more individuals acting independently of candidates, political parties, and other political organizations and which cost \$100 or less:

Handbills or other literature produced and distributed at a cost not exceeding \$100 and prepared by one or more individuals who are not required to register or file campaign finance reports with the commission and who are acting independently of and without authorization by a candidate, candidate's authorized campaign committee, party committee, political

action committee or ballot question committee or an agent of a candidate, candidate's authorized campaign committee, party committee, political action committee or ballot question committee

(21-A M.R.S.A. § 1014(6)(A))

Potential Penalty for Violation. A violation of the “paid for” disclosure requirement may result in a civil penalty of no more than 100% of the expenditures for the communication.

(21-A M.R.S.A. § 1014(4))

COMPLAINT BY CATHERINE WEEKS

Catherine Weeks was a candidate for the Waterville City Council for Ward 1.² On November 14, 2018 the Waterville City Clerk Patty Dubois forwarded to the Commission Ms. Weeks’ complaint.³ Ms. Weeks writes that a flyer or handbill containing “very false and unethical information” and urging “Vote No on Catherine Weeks” was distributed “to the neighborhood in Ward 1” under “cover of night” on November 4, 2018.

COMMENTS AND RECOMMENDATIONS OF COMMISSION STAFF

The vast majority of communications to influence Maine candidate elections are required by statute to contain information about who paid for them and whether they were made in coordination with a candidate. This is because Maine’s campaign communication disclosure laws generally follow the principle reiterated in *Citizens United v. FEC* that “transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages.” (130 S. Ct. 876, 916 (2010)) However, in the mid-1990s, the U.S. Supreme Court acknowledged a long tradition of anonymous political speech:

Under our Constitution, anonymous pamphleteering is not a pernicious, fraudulent practice, but an honorable tradition of advocacy and of dissent. Anonymity is a shield from the tyranny of the majority. . . It thus exemplifies the purpose behind the Bill of Rights, and of the First

² According to press reports, a recount of the vote was conducted on November 15 and resulted in a two-vote margin in favor of Mr. Morris (347-345).

³ The Commission had previously received an email from Ms. Weeks on November 8, 2018. Commission staff directed her to follow the proper procedure for a complaint regarding a municipal campaign disclosure law violation. The November 8th email contains additional information missing from the formal November 14th complaint and Commission staff are considering the two communications together for purposes of the requirements of 21-A M.R.S.A. § 1003(2) and Comm. Rules, Ch. 1, §4(2)(C).

Amendment in particular: to protect unpopular individuals from retaliation -and their ideas from suppression- at the hand of an intolerant society. The right to remain anonymous may be abused when it shields fraudulent conduct. But political speech by its nature will sometimes have unpalatable consequences, and, in general, our society accords greater weight to the value of free speech than to the dangers of its misuse.

McIntyre v. Ohio Elections Comm’n, 514 U.S. 334, 357 (1995).⁴ Maine Election Law balances these two seemingly incongruous traditions by creating a limited space for anonymous campaign speech found in the exceptions to the “paid for” disclosure requirement in 21-A M.R.S.A. § 1014(6) for low-cost handbills, campaign signs, and internet and email communications prepared independently of candidates, party committees and other political committees.

The question presented to the Commission by this case is whether Ms. Weeks’ request for investigation shows sufficient grounds for believing a violation of 21-A M.R.S.A. § 1014(2) may have occurred. To determine that a handbill violated 21-A M.R.S.A. § 1014(2), the Commission would have to find that the following elements were met:

- (1) The handbill was produced and distributed as a result of an expenditure, as that term is defined in 21-A M.R.S.A. § 1012(3).
- (2) The handbill expressly advocated for or against a candidate.
- (3) The handbill did not include both the name and address of the individual or individuals who made or financed the material and the “NOT PAID FOR OR AUTHORIZED BY ANY CANDIDATE” disclaimer.
- (4) The handbill was not covered by the exception in 21-A M.R.S.A. § 1014(6)(A), either because the persons who prepared the handbill were acting in coordination with the candidate, his campaign committee, or a party committee, or because the handbill cost more than \$100.

⁴ The case involved an Ohio resident, Margaret McIntyre, who prepared leaflets opposing a proposed school tax levy on her home computer and had them copied through a commercial printer. She, along with her son and a friend, distributed the leaflets to persons attending a public meeting at the town middle school by handing them out and putting them on car windshields. She did not identify herself in the leaflet. Rather, they were signed as the views of "Concerned Parents and Tax Payers." Ms. McIntyre was subsequently fined \$100 for violating Section 3599.09(A) of the Ohio Elections Commission Code prohibiting the distribution of campaign literature that does not contain the name and address of the person or campaign official issuing the literature.

While at this juncture the Commission is simply considering whether to authorize an investigation, keeping in mind the ultimate questions is important to making a prudent decision on the advisability and feasibility of attempting to gather the information required to answer them.

As noted above, anonymous political speech concerning political candidates is not verboten in Maine. While the space for anonymous political speech is limited, Ms. Weeks has supplied no facts, based upon personal knowledge, or reasonable inferences, which contribute to a reasonable, articulable suspicion that this handbill cost more than \$100 or that it was done in coordination with any other candidates or political parties, or their agents.⁵ Some may argue that Ms. Weeks is unable on her own to determine the facts necessary to support her claim, and that upon her claim the Commission should conduct an investigation to determine those facts, to the extent it can. The Commission staff recommends against this view. Legally, a bare assertion of misconduct cannot meet the requirement in 21-A M.R.S.A. § 1003(2) that a request for investigation “show sufficient grounds for believing a violation may have occurred,” if that standard is to have any meaning. As a policy, feeling compelled to investigate every unsupported claim would open the Commission to becoming a tool in the political gamesmanship that can develop when campaigns become heated, which could damage the Commission’s moral authority.

Indeed, the rationale for requiring a complainant to allege sufficient facts, which, if taken as true, show a violation may have occurred helps ensure the feasibility of a subsequent investigation. Ms. Weeks has provided only that she believes the handbill was created and distributed by “the other side.” Without something more specific about who created

⁵ Commission Staff’s limited review of black-and-white printing services supplied by a major office supply retailer in the Waterville area suggest that 1,000 single-sheet handbills could be printed for \$100. While it is possible this one-page, black-and-white handbill cost more than \$100 to design and disseminate, by all appearances, this cost less. Indeed, someone with access to office paper and a copier through work or school could have prepared and photocopied the handbill with no expenditure – in which case no “paid for” disclosure would be required in the flyer.

In addition, the handbill does contain a statement that it was “not paid for by any candidate or committee.” The inclusion of this statement suggests two things: First, if we take the author or authors at their word, the handbill was not paid for by any candidate or committee. Second, the phrasing demonstrates some familiarity with Maine campaign communications disclosure laws.

and distributed these handbills, or even a trail of evidence that may lead to the person or persons responsible, should the Commission authorize an investigation, Commission Staff would be left to simply contact politically active individuals or committees who might have wanted to see Ms. Weeks lose the election, her opponent win, or disagreed with Ms. Weeks politically, or even personally. Unfortunately, casting such a wide net would inevitably bring governmental intrusion, however small or fleeting, into the lives of people based on suspicions unsupported by facts or reasonable inferences.

Others may argue, and not without merit, that most communications advocating for or against candidates are required to disclose who paid for them and thus it is sufficient to trigger an investigation for Ms. Weeks to simply present this handbill, which is without the “paid for” disclosure, and say it is improper. While it is true that *most* proper communications to influence campaigns require the “paid for” disclosure statement, *not all* are required to. It is completely proper for a communication falling within the exceptions of 21-A M.R.S.A. § 1014(6) to not contain the “paid for” disclosure, and the mere presentation of any communication without that disclosure does not make a *prima facie* case for a violation of 21-A M.R.S.A. § 1014(2). It is Ms. Weeks’ burden, as the complainant, to “show sufficient grounds for believing a violation may have occurred.” To do otherwise would turn an exception in statute into a rebuttable presumption, which is not how the statute was written. Indeed, to treat the exception at issue here as a rebuttable presumption would produce an absurd result: requiring a person or persons seeking, and allowed, anonymity to put themselves forward to claim it.

Finally, Ms. Weeks may present a convincing and heartfelt emotion reason for feeling wronged by this handbill. As Commission Staff understand it, she lost the election by two votes. She asserts this handbill contained untrue statements about her and made the difference in her election. She may be right. No one will ever know. While we often assume only expensive communications are effective at influencing elections, this is not always the case. Regardless, the truthfulness and effectiveness of a communication are not among the criteria under Maine law for determining whether it must contain a disclosure statement and should not weigh in your decision.

It may feel unsatisfying, but the campaign finance disclosure laws we operate under do allow some small space for anonymity; some freedom for people to contribute their views (even if unpopular) to the political discourse without identifying themselves; some freedom for voters to decide for themselves how to evaluate an unattributed message; and, ultimately, some small space for uncertainty. An investigation of this handbill, an anonymous communication that, on its face, is permissible, based on a mere claim of impropriety, unsupported by facts or reasonable inferences, is simultaneously, from a policy perspective inadvisable, and from a practical perspective infeasible. For these reasons Commission Staff recommends the Commission not vote for an investigation into Ms. Weeks complaint.

Thank you for your consideration of this memo.

From: Jon Weeks [<mailto:cathyweeks3@gmail.com>]
Sent: Thursday, November 8, 2018 9:02 PM
To: Commission, Ethics <Ethics.Commission@maine.gov>
Subject: Need Information On How To File a Voting Ethics Problem

Good Morning,

I am requesting to file an official ethics complaint as I am a Ward 1 City of Waterville candidate where my entire street received under the cover of darkness a unauthorized not stating who paid for the flier which contained very false and unethical information about myself as the candidate for Ward I.

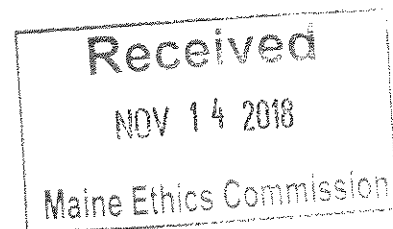
I have issued a copy to the Waterville City Clerk - Patti Dubois but have been told I need to file an official complaint with your commission. Please advise what the correct steps are so investigation can take place.

Thank you,

Catherine Weeks
207-872-9917



Office of the
City Clerk



November 9, 2018

Jonathan Wayne
State of Maine Ethics Commission
135 State House Station
Augusta, ME 04333-0135

Dear Mr. Wayne,

I have received a formal complaint from candidate Catherine Weeks, a local citizen who ran for Waterville City Council in Ward 1. Ms. Weeks is requesting a formal investigation of possible campaign finance reporting violations.

Ms. Weeks has shared a flyer that was placed in mailboxes regarding her as a candidate. Those flyers do not contain the required disclaimer indicating which individual or entity paid for and authorized the material. In fact, they have a statement at the bottom margin indicating that they were not paid for by any candidate or committee. Clearly, this is a substantial violation of campaign finance reporting requirements.

I am forwarding the request from Ms. Weeks to you for investigation, along with a copy of the flyer that was distributed. Should you have any questions, please contact me directly,

Sincerely,

Patti Dubois
City Clerk



City Hall, 1 Common Street, Waterville, ME 04901-6699
Phone: (207) 680-4210 | Fax: (207) 680-4249
pdubois@waterville-me.gov | www.waterville-me.gov

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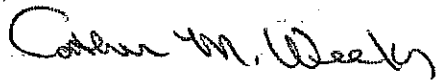
November 9, 2018

To: Waterville City Clerk: Patti Dubois

This is the official request I am making today to have the State of Maine Ethics Commission investigate the attached letter that was sent not only to one street, but to the neighborhood in Ward 1 creating fear and anger with the residents. Originally the thought was that only one street was targeted under the cover of night on November 4, 2018. Now it has been brought to our attention that it was the neighborhood.

I am requesting that the Ethics Commission performed a complete investigation regarding this issue that has caused the outcome of the Ward 1 election.

Sincerely,



Catherine M. Weeks

CATHERINE WEEKS wants to use YOUR tax dollars to pay an outsider to tell us how to run Waterville ¹

TELL CATHERINE WEEKS #OURCITY BELONGS TO US

CATHERINE WEEKS thinks divisiveness is the answer to our issues, calling for the recalls of all non-Republican city councilors. ²

TELL CATHERINE WEEKS ENOUGH IS ENOUGH AND IT'S TIME TO MOVE #OURCITY FORWARD

CATHERINE WEEKS says she wants to represent all residents, but she means only if you were born in Waterville ³

TELL CATHERINE WEEKS #OURCITY IS FOR EVERYONE WHO WANTS TO CALL IT HOME

CATHERINE WEEKS believes conspiracy theories and distrusts the media ⁴

TELL CATHERINE WEEKS #OURCITY NEEDS SENSIBLE GOVERNANCE

CATHERINE WEEKS has called Waterville "a disgrace" and "circus" ⁵

TELL CATHERINE WEEKS YOU'RE PROUD OF #OURCITY

**VOTE NO ON CATHERINE WEEKS
NOVEMBER 6TH 2018**

1 - City Council Meetings June 5, July 3, July 17 2 - City Council Meeting April 17 3 - City Council April 17, May 1, May 15, June 5, July 3, July 17, LTE April 26, June 22 4 - City Council June 5, June 19, LTE May 18 5 - City Council April 17, May 1

Waterville Ward 1 council candidate alleges ethics violation

cm centralmaine.com/2018/11/09/waterville-ward-1-council-candidate-alleges-ethics-violation/

By Rachel Ohm

November 9, 2018

WATERVILLE — A candidate for Ward 1 City Council who lost the race by four votes is asking the Maine Commission on Governmental Ethics and Election Practices to investigate an anonymously distributed flier that she says created “fear and anger with the residents” and unfairly influenced the election outcome.

Catherine Weeks, the Republican Ward 1 candidate, lost the race to Democrat Mike Morris and earlier this week requested a recount of the ballots. The tally was 346-342.

Michael Morris

Two days before the vote, Weeks said, she estimated “hundreds” of flyers were distributed in the ward, encouraging people to vote against her without any indication of who paid for or authorized the flyer.

“The attached letter was sent not only to one street, but to the neighborhood in Ward 1 creating fear and anger with the residents,” Weeks wrote in a letter Friday to City Clerk Patti Dubois, asking the ethics commission to look into the complaint. “Originally the thought was that only one street was targeted under the cover of night on November 4, 2018. Now it has been brought to our attention that it was the neighborhood.”

Dubois said the complaint will be forwarded to the commission. Its executive director, Jonathan Wayne, said Friday he had not received a copy of the complaint yet.

The commission has jurisdiction over campaign finance and the disclosure of who pays for and authorizes campaign materials, but it does not regulate content.

“Because of the First Amendment, the state does not have any role in judging the content of political campaign materials,” Wayne said. “People are free to express themselves as they wish.”

There are also some exceptions to the disclosure rules, including low-cost handbills distributed independently of the candidate that cost less than \$100, Wayne said.

The flyer in question includes a disclaimer that it was “not paid for by any candidate or committee” but does not indicate who paid for or distributed it.

Weeks said that was a problem to her, as was the content of the flyer, though she realizes that the the ethics commission cannot address the content.

“All of it (was a problem),” she said. “The content was total lies. The fact it was sent to houses in the dark of night with no identification as to who bought and paid for it – all of it.”

The flyer includes references to points made by Weeks at various City Council meetings over the past year. “Catherine Weeks has called Waterville a ‘disgrace’ and ‘circus,’” it says, referencing remarks she made in defense of Mayor Nick Isgro during an effort to recall him last spring.

Weeks acknowledged she did call Waterville a “circus” in response to former Councilor Lauren Lessing distributing flyers at the municipal pool last summer saying the mayor wanted to cut funding to the point the pool would be closed and in response to a viral news story about patrons of a local restaurant threatening violence over a decision to change the cut of the french fries there.

“I had people calling me from the Midwest and Western states saying, ‘What is going on with Waterville?’” Weeks said. “That’s when I said we’re in the middle of a circus and we need to focus on the residents and the residents’ concerns over tax increases.”

Weeks, a political newcomer who said she was inspired to run for council after attending meetings for more than two years, also has requested a recount of the Ward 1 election results after the race was decided by just four votes. The recount of the ballots is scheduled to take place Thursday.

Her opponent, Mike Morris, said Friday he had not heard about her request to have the ethics commission look at the flyer.

"It's not something I condone and it's not something I support," Morris said of the flyers, adding that he did not know who distributed or paid for them.

Weeks said she "absolutely" felt the flyer made a difference in the election's outcome, but Morris said that doesn't necessarily mean it benefited him.

"There's nothing to say I wasn't going to win by 75 votes and it cost me 71 because people didn't like the way it went out and they're assuming it was me," he said. "What can you do? There's nothing I can do except say I had nothing to do with it."

Dubois, the city clerk, said it's unlikely a review by the ethics commission would change the election result, though she said it could result in a fine if the commission is able to track the flyer's origin and find a violation occurred.

Meanwhile, Morris said he respects his opponent's right to ask for the recount and a review by the ethics commission. Regardless of who wins, he said, that person will have a lot of work to do.

"There's a lot of work left to do to unify the ward," he said. "At the end of the day, (the vote) was pretty much 50-50. I'm going to have to win people over, and that will be a tough job. There's a lot of divisiveness in the ward and the city."

Rachel Ohm — 612-2368

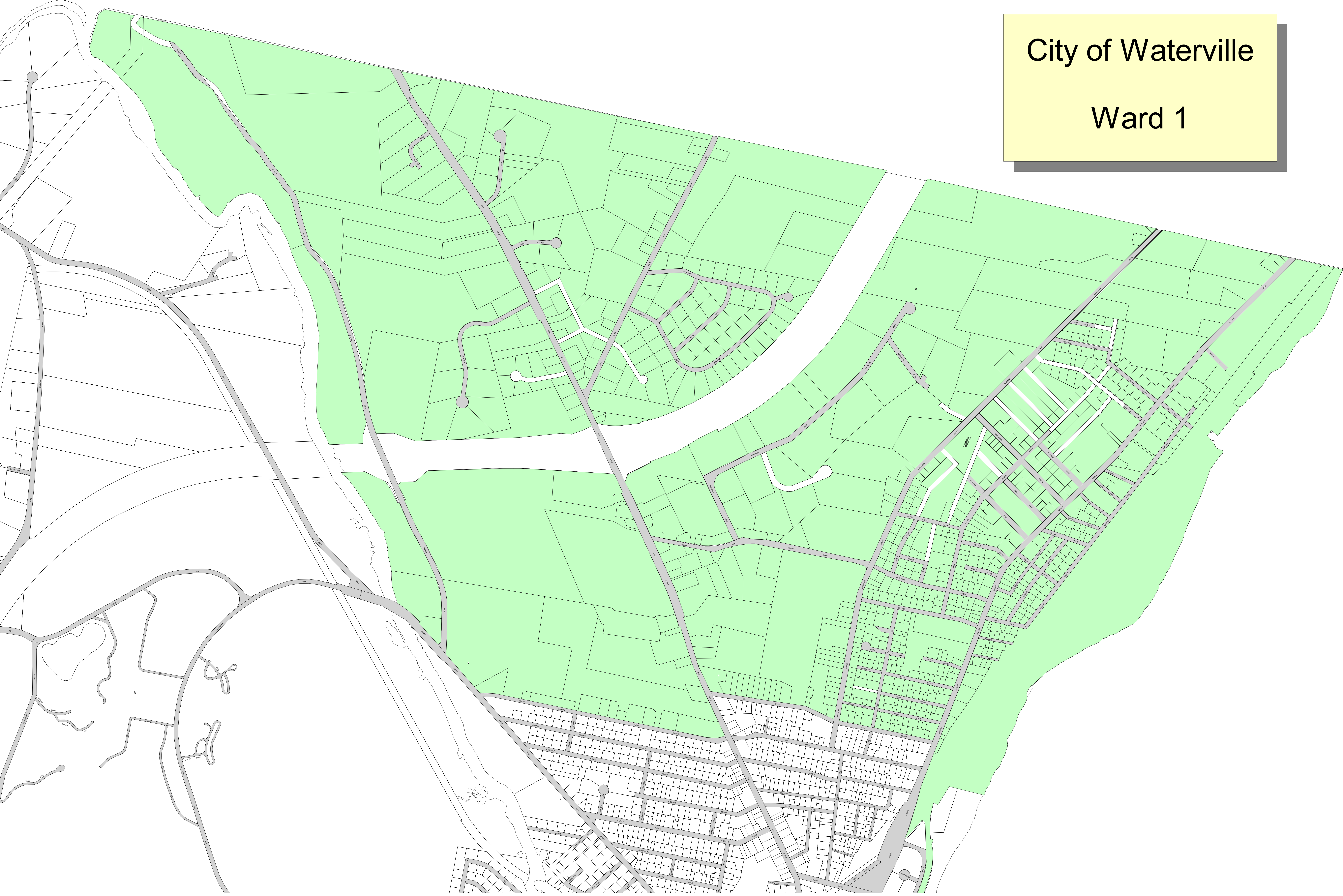
Twitter: @rachel_ohm

filed under:

election 2018, maine politics, Waterville Maine

City of Waterville

Ward 1



21-A MRSA § 1003. INVESTIGATIONS BY COMMISSION

1. Investigations. The commission may undertake audits and investigations to determine whether a person has violated this chapter, chapter 14 or the rules of the commission. For this purpose, the commission may subpoena witnesses and records whether located within or without the State and take evidence under oath. A person or entity that fails to obey the lawful subpoena of the commission or to testify before it under oath must be punished by the Superior Court for contempt upon application by the Attorney General on behalf of the commission. The Attorney General may apply on behalf of the commission to the Superior Court or to a court of another state to enforce compliance with a subpoena issued to a nonresident person. Service of any subpoena issued by the commission may be accomplished by:

A. Delivering a duly executed copy of the notice to the person to be served or to a partner or to any officer or agent authorized by appointment or by law to receive service of process on behalf of that person; [2013, c. 162, §1 (NEW).]

B. Delivering a duly executed copy of the notice to the principal place of business in this State of the person to be served; or [2013, c. 162, §1 (NEW).]

C. Mailing by registered or certified mail a duly executed copy of the notice, addressed to the person to be served, to the person's principal place of business. [2013, c. 162, §1 (NEW).]

[2013, c. 162, §1 (AMD) .]

2. Investigations requested. A person may apply in writing to the commission requesting an investigation as described in subsection 1. The commission shall review the application and shall make the investigation if the reasons stated for the request show sufficient grounds for believing that a violation may have occurred.

[2011, c. 389, §4 (AMD) .]

2-A. Confidentiality.

[2001, c. 535, §1 (RP) .]

3. State Auditor. The State Auditor shall assist the commission in making investigations and in other phases of the commission's duties under this chapter, as requested by the commission, and has all necessary powers to carry out these responsibilities.

[1999, c. 426, §31 (AMD) .]

3-A. Confidential records. Investigative working papers of the commission are confidential, except that the commission may disclose them to the subject of the audit or investigation, other entities as necessary for the conduct of an audit or investigation and law enforcement and other agencies for purposes of reporting, investigating or

prosecuting a criminal or civil violation. For purposes of this subsection, "investigative working papers" means documents, records and other printed or electronic information in the following limited categories that are acquired, prepared or maintained by the commission during the conduct of an audit, investigation or other enforcement matter:

A. Financial information not normally available to the public; [2007, c. 571, §6 (NEW).]

B. Information that, if disclosed, would reveal sensitive political or campaign information belonging to a party committee, political action committee, ballot question committee, candidate or candidate's political committee, or other person who is the subject of an audit, investigation or other enforcement matter, even if the information is in the possession of a vendor or 3rd party; [2013, c. 470, §1 (AMD).]

C. Information or records subject to a privilege against discovery or use as evidence; and [2007, c. 571, §6 (NEW).]

D. Intra-agency or interagency communications related to an audit or investigation, including any record of an interview, meeting or examination. [2013, c. 470, §1 (AMD).]

The commission may disclose investigative working papers or discuss them at a public meeting, except for the information or records subject to a privilege against discovery or use as evidence, if the information or record is materially relevant to a finding of fact, violation or other decision by the commission concerning an audit, investigation or other enforcement matter.

[2013, c. 470, §1 (AMD) .]

4. Attorney General. Upon the request of the commission, the Attorney General shall aid in any investigation, provide advice, examine any witnesses before the commission or otherwise assist the commission in the performance of its duties. The commission shall refer any apparent violations of this chapter to the Attorney General for prosecution.

[2001, c. 470, §5 (AMD) .]

21-A MRSA § 1011. APPLICATION

→ This subchapter applies to candidates for all state and county offices and to campaigns for their nomination and election. Candidates for municipal office as described in Title 30-A, section 2502, subsection 1 are also governed by this subchapter. The commission does not have jurisdiction over financial activities to influence the nomination or election of candidates for federal office. [2013, c. 334, §2 (AMD).]

1. Role of the municipal clerk; commission.

[2009, c. 366, §12 (AFF); 2009, c. 366, §1 (RP) .]

2. Exemptions.

[2009, c. 366, §12 (AFF); 2009, c. 366, §1 (RP) .]

3. Role of the municipal clerk; commission. For candidates for municipal office, the municipal clerk is responsible for any duty assigned to the commission in this subchapter related to the registration of candidates, receipt of reports and distribution of information or forms, unless otherwise provided. Notwithstanding any other deadline set forth in this chapter, candidates shall file their reports by the close of business on the day of the filing deadline established for the office of the municipal clerk. The commission retains the sole authority to prescribe the content of all reporting forms. The commission does not have responsibility to oversee the filing of registrations or campaign finance reports relating to municipal campaigns, except that the commission has the discretion to conduct investigations and assess penalties under subsection 3-A.

→ [2013, c. 334, §2 (AMD) .]

3-A. Enforcement by the commission. If a clerk of a town or city that is governed by this chapter pursuant to Title 30-A, section 2502 becomes aware of a potential violation of this chapter that the clerk considers to be substantial, the clerk may refer the matter to the commission for enforcement. Substantial violations include, but are not limited to, accepting contributions in excess of the limitations of section 1015 and failing to file a report that substantially complies with the disclosure requirements of section 1017. The commission has the discretion to conduct an investigation if the information referred by the municipal clerk shows sufficient grounds for believing that a violation may have occurred. After conducting the investigation, if the commission determines that a violation of this chapter has occurred, the commission may assess penalties provided in this chapter.

→ [2013, c. 334, §2 (NEW) .]

4. Exemptions. Exemptions for municipal candidates from the reporting requirements of this subchapter are governed by this subsection.

A. At the time a municipal candidate registers under section 1013-A, the candidate may notify the municipal clerk in writing that the candidate will not accept contributions, make expenditures or incur financial obligations associated with that person's candidacy.

A candidate who provides this written notice is not required to appoint a treasurer or to meet the filing requirements of this section as long as the candidate complies with the commitment. [2011, c. 389, §5 (NEW); 2011, c. 389, §62 (AFF).]


B. The notice provided to the municipal clerk in paragraph A may be revoked. A written revocation must be presented to the municipal clerk before the candidate may accept contributions, make expenditures or incur obligations associated with that person's candidacy. A candidate who has filed a notice with the municipal clerk under paragraph A and accepts contributions, makes expenditures or incurs obligations associated with that person's candidacy prior to filing a revocation may be assessed a penalty of \$10 for each business day that the revocation is late, up to a maximum of \$500. This penalty may be imposed in addition to the penalties assessed under other sections of this Title. [2011, c. 389, §5 (NEW); 2011, c. 389, §62 (AFF).]

[2011, c. 389, §5 (NEW); 2011, c. 389, §62 (AFF) .]

21-A MRSA §1014. PUBLICATION OR DISTRIBUTION OF POLITICAL COMMUNICATIONS

1. Authorized by candidate. Whenever a person makes an expenditure to finance a communication expressly advocating the election or defeat of a clearly identified candidate through broadcasting stations, cable television systems, newspapers, magazines, campaign signs or other outdoor advertising facilities, publicly accessible sites on the Internet, direct mails or other similar types of general public political advertising or through flyers, handbills, bumper stickers and other nonperiodical publications, the communication, if authorized by a candidate, a candidate's authorized political committee or their agents, must clearly and conspicuously state that the communication has been so authorized and must clearly state the name and address of the person who made or financed the expenditure for the communication. A communication financed by a candidate or the candidate's committee is not required to state the address of the candidate or committee that financed the communication. If a communication that is financed by someone other than the candidate or the candidate's authorized committee is broadcast by radio, only the city and state of the address of the person who financed the communication must be stated.

[2013, c. 494, §1 (AMD) .]

 **2. Not authorized by candidate.** If the communication described in subsection 1 is not authorized by a candidate, a candidate's authorized political committee or their agents, the communication must clearly and conspicuously state that the communication is not authorized by any candidate and state the name and address of the person who made or financed the expenditure for the communication, except that a communication broadcast by radio is only required to state the city and state of the address of the person that financed the communication. If the communication is in written form, the communication must contain at the bottom of the communication in print that is no smaller in size than 12-point bold print, Times New Roman font, the words "NOT PAID FOR OR AUTHORIZED BY ANY CANDIDATE."

[2013, c. 362, §2 (AMD) .]

2-A. Other communications. Whenever a person makes an expenditure to finance a communication that names or depicts a clearly identified candidate and that is disseminated during the 21 days before a primary election or 35 days before a general election through the media described in subsection 1, the communication must state the name and address of the person who made or financed the communication and a statement that the communication was or was not authorized by the candidate, except that a communication broadcast by radio is only required to state the city and state of the address of the person that financed the communication. The disclosure is not required if the communication was not made for the purpose of influencing the candidate's nomination for election or election.

[2013, c. 362, §3 (AMD) .]

2-B. Top 3 funders; independent expenditures. A communication that is funded by an entity making an independent expenditure as defined in section 1019-B, subsection 1 must conspicuously include the following statement:

"The top 3 funders of (name of entity that made the independent expenditure) are (names of top 3 funders)."

The information required by this subsection may appear simultaneously with any statement required by subsection 2 or 2-A. A communication that contains a visual aspect must include the statement in written text. A communication that does not contain a visual aspect must include an audible statement. This statement is required only for communications made through broadcast or cable television, broadcast radio, Internet audio programming, direct mail or newspaper or other periodical publications.

A cable television or broadcast television communication must include both an audible and a written statement. For a cable television or broadcast television communication 30 seconds or less in duration, the audible statement may be modified to include only the single top funder.

The top funders named in the required statement consist of the funders providing the highest dollar amount of funding to the entity making the independent expenditure since the day following the most recent general election day.

A. For purposes of this subsection, "funder" includes:

(1) Any entity that has made a contribution as defined in section 1052, subsection 3 to the entity making the independent expenditure since the day following the most recent general election day; and

(2) Any entity that has given a gift, subscription, loan, advance or deposit of money or anything of value, including a promise or agreement to provide money or anything of value whether or not legally enforceable, except for transactions in which a fair value is given in return, since the day following the most recent general election day. [2015, c. 1, §3 (NEW).]

B. If funders have given equal amounts, creating a tie in the ranking of the top 3 funders, the tie must be broken by naming the tying funders in chronological order of the receipt of funding until 3 funders are included in the statement. If the chronological order cannot be discerned, the entity making the independent expenditure may choose which of the tying funders to include in the statement. In no case may a communication be required to include the names of more than 3 funders. [2015, c. 1, §3 (NEW).]

C. The statement required under this subsection is not required to include the name of any funder who has provided less than \$1,000 to the entity making the independent expenditure since the day following the most recent general election day. [2015, c. 1, §3 (NEW).]

D. If only one or 2 funders must be included pursuant to this subsection, the communication must identify the number of funders as "top funder" or "top 2 funders" as appropriate. If there are no funders required to be included under this subsection, no statement is required. [2015, c. 1, §3 (NEW).]

E. When compiling the list of top funders, an entity making an independent expenditure may disregard any funds that the entity can show were used for purposes unrelated to the candidate mentioned in the communication on the basis that funds were either spent in the order received or were strictly segregated in other accounts. [2015, c. 1, §3 (NEW).]

F. In any communication consisting of an audio broadcast of 30 seconds or less or a print communication of 20 square inches or less, the requirements of this subsection are satisfied by including the name of the single highest funder only. [2015, c. 1, §3 (NEW).]

G. If the list of funders changes during the period in which a recurring communication is aired or published, the statement appearing in the communication must be updated at the time that any additional payments are made for that communication. [2015, c. 1, §3 (NEW).]

H. The commission may establish by routine technical rule, adopted in accordance with Title 5, chapter 375, subchapter 2-A, forms and procedures for ensuring compliance with this subsection. Rules adopted pursuant to this paragraph must ensure that the information required by this subsection is effectively conveyed for a sufficient duration and in a sufficient font size or screen size where applicable without undue burden on the ability of the entity to make the communication. The rules must also provide an exemption for types of communications for which the required statement would be impossible or impose an unusual hardship due to the unique format or medium of the communication. [2015, c. 1, §3 (NEW).]

[2015, c. 1, §3 (NEW) .]

3. Broadcasting prohibited without disclosure. No person operating a broadcasting station or cable television system within this State may broadcast any communication, as described in subsections 1 to 2-A, without an oral or written visual announcement of the disclosure required by this section.

[2011, c. 389, §11 (AMD) .]

3-A. In-kind contributions of printed materials. A candidate, political committee or political action committee shall report on the campaign finance report as a contribution to the candidate, political committee or political action committee any contributions of in-kind printed materials to be used in the support of a candidate or in the support or defeat of a ballot question. Any in-kind contributions of printed materials used or distributed by a candidate, political committee or political action committee must include the name or title of that candidate, political committee or political action committee as the authorizing agent for the printing and distribution of the in-kind contribution.

[2009, c. 190, Pt. A, §3 (AMD) .]

3-B. Newspapers. A newspaper may not publish a communication described in subsections 1 to 2-A without including the disclosure required by this section. For purposes of this subsection, "newspaper" includes any printed material intended for general circulation or to be read by the general public, including a version of the newspaper displayed on a website owned or operated by the newspaper. When necessary,

a newspaper may seek the advice of the commission regarding whether or not the communication requires the disclosure.

[2007, c. 443, Pt. A, §9 (AMD) .]

→ **4. Enforcement.** A violation of this section may result in a civil penalty of no more than 100% of the amount of the expenditure in violation, except that an expenditure for yard signs lacking the required information may result in a maximum civil penalty of \$200. In assessing a civil penalty, the commission shall consider, among other things, how widely the communication was disseminated, whether the violation was intentional, whether the violation occurred as the result of an error by a printer or other paid vendor and whether the communication conceals or misrepresents the identity of the person who financed it. If the person who financed the communication or who committed the violation corrects the violation within 10 days after receiving notification of the violation from the commission by adding the missing information to the communication, the commission may decide to assess no civil penalty.

[2015, c. 1, §4 (AMD) .]

5. Telephone calls. Prerecorded automated telephone calls and scripted live telephone communications that name a clearly identified candidate during the 21 days before a primary election or the 35 days before a general election must clearly state the name of the person who made or financed the expenditure for the communication, except for prerecorded automated telephone calls paid for by the candidate that use the candidate's voice in the telephone call and that are made in support of that candidate. Telephone calls made for the purposes of researching the views of voters are not required to include the disclosure.

[2007, c. 443, Pt. A, §9 (AMD) .]

6. Exclusions. The requirements of this section do not apply to:

→ **A.** Handbills or other literature produced and distributed at a cost not exceeding \$100 and prepared by one or more individuals who are not required to register or file campaign finance reports with the commission and who are acting independently of and without authorization by a candidate, candidate's authorized campaign committee, party committee, political action committee or ballot question committee or an agent of a candidate, candidate's authorized campaign committee, party committee, political action committee or ballot question committee; [2011, c. 389, §13 (NEW).]

B. Campaign signs produced and distributed at a cost not exceeding \$100, paid for by one or more individuals who are not required to register or file campaign finance reports with the commission and who are acting independently of and without authorization by a candidate, candidate's authorized campaign committee, party committee, political action committee or ballot question committee or an agent of a candidate, candidate's authorized campaign committee, party committee, political action committee or ballot question committee; [2013, c. 494, §2 (AMD).]

C. Internet and e-mail activities costing less than \$100, as excluded by rule of the commission, paid for by one or more individuals who are not required to register or file

campaign finance reports with the commission and who are acting independently of and without authorization by a candidate, candidate's authorized campaign committee, party committee, political action committee or ballot question committee or an agent of a candidate, candidate's authorized campaign committee, party committee, political action committee or ballot question committee; [2013, c. 494, §2 (AMD).]

D. Communications in which the name or address of the person who made or authorized the expenditure for the communication would be so small as to be illegible or infeasible, including communications on items such as ashtrays, badges and badge holders, balloons, campaign buttons, clothing, coasters, combs, emery boards, envelopes, erasers, glasses, key rings, letter openers, matchbooks, nail files, noisemakers, paper and plastic cups, pencils, pens, plastic tableware, 12-inch or shorter rulers, swizzle sticks, tickets to fund-raisers and similar items determined by the commission to be too small and unnecessary for the disclosures required by this section and in electronic media advertisements where compliance with this section would be impractical due to size or character limitations; and [2013, c. 494, §3 (NEW).]

E. Campaign signs that are financed by the candidate or candidate's authorized committee and that clearly identify the name of the candidate and are lettered or printed individually by hand. [2013, c. 494, §3 (NEW).]

[2013, c. 494, §§2, 3 (AMD) .]

30-A MRSA §2502. CAMPAIGN REPORTS IN MUNICIPAL ELECTIONS

→ **1. Reports by candidates.** A candidate for municipal office of a town or city with a population of 15,000 or more is governed by Title 21-A, sections 1001 to 1020-A, except that registrations and campaign finance reports must be filed with the municipal clerk instead of the Commission on Governmental Ethics and Election Practices. A town or city with a population of less than 15,000 may choose to be governed by Title 21-A, sections 1001 to 1020-A by vote of its legislative body at least 90 days before an election for office. A town or city that votes to adopt those provisions may revoke that decision, but it must do so at least 90 days before an election subject to those sections.

A. [2009, c. 366, §12 (AFF); 2009, c. 366, §10 (RP).]

[2011, c. 389, §60 (AMD); 2011, c. 389, §62 (AFF) .]

2. Municipal referenda campaigns. Municipal referenda campaigns in towns or cities with a population of 15,000 or more are governed by Title 21-A, chapter 13, subchapter 4. The registrations and reports of political action committees and ballot question committees must be filed with the municipal clerk. A town or city with a population of less than 15,000 may choose to be governed by Title 21-A, chapter 13, subchapter 4 by vote of its legislative body at least 90 days before a referendum election. A town or city that votes to adopt those provisions may revoke that decision, but it must do so at least 90 days before an election subject to that subchapter.

[2011, c. 389, §60 (AMD); 2011, c. 389, §62 (AFF) .]

3. Public access to records. A town or city that receives registrations or reports pursuant to this section must keep them for 8 years.

[2011, c. 389, §60 (AMD); 2011, c. 389, §62 (AFF) .]

Commission Rules, Chapter 1, Section 4(2)

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

- A. **Compliance Review.** The Commission staff will review all campaign finance reports filed by candidates pursuant to 21-A M.R.S.A., chapters 13 and 14 to verify compliance with the financial disclosure and documentation requirements set by statute or rule. The staff will review a selection of other campaign finance reports filed by non-candidate committees with the Commission for compliance with legal requirements. Notice of any omission, error, or violation will be given to the filer by electronic mail or U.S. Mail. The Commission staff will establish a reasonable time period for the filer to remedy any omission or error. The Commission staff shall schedule any substantial violations for possible action by the Commissioners at a public meeting. If the filer fails to remedy minor violations, the Commission staff will use its discretion whether to take any further action. Minor violations include, but are not limited to, failing to report the employment information for a contributor or misusing an expenditure code to describe the purpose of an expenditure.
- 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; and
 - (6) Good faith effort of the filer to remedy the matter.
- C. Any person (as defined in 21-A M.R.S.A. §1001) may make an official complaint or request for a Commission investigation by filing a signed written request at the Commission's office, setting forth such facts with sufficient details as are necessary to specify the alleged violation. A copy of the signed request may be filed by facsimile or by electronic mail, provided that the original signed request is submitted to the Commission. 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. The Director may conduct preliminary fact finding to prepare a matter for presentation to the Commission. The Director, in consultation with Counsel, will prepare a summary of staff findings and recommendations for inclusion on the agenda.



- 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. 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.



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: November 26, 2018
Re: Hon. Seth A. Berry – Sign Materials

This memo is to provide you with some brief comments by the Ethics Commission staff concerning a request by Alex Titcomb to investigate whether Rep. Seth A. Berry received an impermissible in-kind contribution of sign-making materials to promote his re-election. Rep. Berry represents District 55, which includes Bowdoin, Bowdoinham and part of Richmond. He has served five terms in the Maine House of Representatives.

On the evening of Monday, November 5, 2018 (at about 7:06 pm), Mr. Titcomb attempted to file a complaint by sending me an email. The next day, I informed him that he would need to submit a signed letter to request an investigation.

On Friday, November 16, our office received Mr. Titcomb's signed complaint in the U.S. Mail. Rep. Berry submitted a written response on Tuesday, November 20, in order for this matter to be scheduled for your November 28 meeting.

Applicable Law

After they have qualified for public campaign financing, Maine Clean Election Act candidates may not receive contributions. (21-A M.R.S.A. § 1125(6)) An in-kind contribution is defined in the Commission's rules as:

Unless specifically exempted under Title 21-A M.R.S.A. §§ 1012 and 1052 or this section, the provision of any goods or services without charge or at a charge that is less than the usual and customary charge for such goods or services is an in-

kind contribution. Examples of such goods and services include, but are not limited to: equipment, facilities, supplies, personnel, advertising, and campaign literature. If goods or services are provided at less than the usual and customary charge, the amount of the in-kind contribution is the difference between the usual and customary charge and the amount charged the candidate or political committee. ...

Comm. Rules, Ch. 1, Section 6(4))

The definition of “contribution” in Maine Election Law contains a number of exceptions, including:

Wood or other materials used for political signs that are found or contributed if not originally obtained by the candidate or contributor for campaign purposes; (21-A M.R.S.A. §1012(2)(B)(8-B)) If a candidate has received wood or materials in this category, it is *not* a contribution.

Response by Rep. Berry

In his November 20 response and in a short follow-up interview by me earlier today, Rep. Berry explained that in 2018 he had many signs left over from his five previous campaigns for office. On October 8 (Columbus Day), around two dozen hand-painted signs and over 80 paper signs were vandalized or stolen.

Rep. Barry states that in the next few weeks the campaign repaired or replaced the hand-painted signs using volunteer labor, scrap materials, leftover materials paid for by the campaign (ordered on 9/12/2018 from Hammond Lumber), and a smaller purchase of materials paid for by the campaign (ordered from Hammond Lumber on 10/9/2018).

Rep. Berry estimates that 10 or 12 homeowners made some kind of repair or replacement of a home-made sign, after the signs in their yards had been vandalized or removed on October 8, 2018. He acknowledges that he does not know the sources of wood used by these homeowners but that they generally appeared to be scrap materials.

2018 Campaign Purchases of Lumber and Supplies

Rep. Berry states that his 2018 campaign made exactly two purchases of materials for campaign signs:

- On 9/12/2018, his father, David Berry, ordered lumber and supplies from Hammond Lumber worth \$263.61. In his campaign finance reports, Rep. Berry originally reported the expenditure with the date of 10/3/2018, but has since amended the date to 9/12/2018 (when the materials were ordered). (*see attached reports*)
- On 10/9/2018, David Berry ordered more materials for \$82.41. The payment was made on 10/24/2018.

In today's follow-up interview, Rep. Berry specifically denied making any other purchases of lumber or paint during 2018 for making signs.

Donations of Lumber and Paint

Rep. Berry states that his 2018 campaign did not receive any donations of lumber or paint from any other source.

Signs from Former State Senate Candidate Jean-Marie Caterina

Rep. Berry states that after the October 8 vandalism, he had some leftover paper Berry signs but no wickets. To produce new signs, he stapled paper Berry signs to 50 signs and wickets of a former State Senate candidate, Jean-Marie Caterina.

Rep. Berry states that an active Democrat living in Topsham, Alice Elliott, had heard that his signs were stolen or damaged. She was aware of unused signs that Ms. Caterina wanted to get rid of. Seth Berry's father, David Berry, agreed to store the Caterina signs in his barn on behalf of the Bowdoinham Democrats, so that candidates could use them in future elections for a fee. The intention is to charge 25 cents per wicket, per season.¹ Rep. Berry said that he used only 50 of the Caterina signs and wickets, and that most of the truckload of Caterina signs were not used. On October 24, 2018, he paid a fee of \$12.50 for the use of these Caterina signs and wickets (50 x 25 cents per wicket). That fee will be disclosed in the post-election report due in December.

¹ For your information, from time to time the Commission staff receives questions from candidates who would like to use or purchase wickets, signs or materials from other candidates, local party committees or others. We advise that the candidate should pay a reasonable amount to the provider for the receipt or use of these materials if the candidate wishes to avoid receiving an in-kind contribution. We have avoided prescribing specific prices. To date, this advice has not resulted any complaints of under-valuing goods received.

Comments by Commission Staff

The standard for authorizing an investigation is whether Mr. Titcomb's "request shows sufficient grounds for believing that a violation may have occurred." 21-A M.R.S.A. § 1003(2). The Commission staff recommends *not* conducting an investigation into this matter, because the evidence of a violation is not strong. It is plausible that Rep. Berry had a large number of leftover signs from previous elections. Rep. Berry has specifically denied purchasing any sign-making materials (other than making the two reported expenditures from Hammond Lumber) or receiving any donation of lumber or paint from others. There is very little evidence available to contradict Rep. Berry's statements, other than Mr. Titcomb's personal observations about new vs. used wood. Rep. Berry's reimbursement for the use of 50 Caterina signs is consistent with the advice we have given to other candidates.

Thank you for your consideration of this memo.



Commission on Governmental Ethics and Election Practices
Mail: 135 State House Station, Augusta, Maine 04333
Office: 45 Memorial Circle, Augusta, Maine
Website: www.maine.gov/ethics
Phone: 207-287-4179
Fax: 207-287-6775

2018 CAMPAIGN FINANCE REPORT

FOR MCEA CANDIDATES

COMMITTEE		TREASURER
Mr. Seth A Berry 1245 River Rd Bowdoinham, ME, 04008 PHONE:(207) 522-1609 EMAIL: seth@sethberry.org		Elizabeth Steen 309 Bay Rd Bowdoinham, ME, 04008 PHONE:(207) 666-3468 EMAIL: bayviewess@comcast.net
REPORT	DUE DATE	REPORTING PERIOD
42-DAY PRE-GENERAL REPORT	09/25/2018	07/18/2018 - 09/18/2018

FINANCIAL ACTIVITY SUMMARY

CASH ACTIVITY		
	TOTAL FOR PERIOD	TOTAL FOR CAMPAIGN
1. CASH BALANCE FROM LAST REPORT	\$8,210.00	
2. SEED MONEY CONTRIBUTIONS	\$0.00	\$1,000.00
3. MAINE CLEAN ELECTION ACT PAYMENTS & AUTHORIZATIONS	\$7,560.00	\$15,775.00
4. SALE OF CAMPAIGN PROPERTY (SCHEDULE E, PART 2)	\$0.00	\$0.00
5. OTHER CASH RECEIPTS (INTEREST, ETC.,)	\$0.00	\$0.00
6. MINUS EXPENDITURES (SCHEDULE B)	\$1,310.41	\$2,315.41
7. CASH BALANCE AT CLOSE OF PERIOD	\$14,459.59	
OTHER ACTIVITY		
8. IN-KIND SEED MONEY CONTRIBUTIONS	\$0.00	\$0.00
9. TOTAL UNPAID DEBTS AT CLOSE OF PERIOD (SCHEDULE D)	\$105.65	

I, Elizabeth Steen, CERTIFY THAT THE INFORMATION CONTAINED IN THIS REPORT IS TRUE, ACCURATE, AND COMPLETE TO THE BEST OF MY KNOWLEDGE.

REPORT FILED BY: Elizabeth Steen
REPORT FILED ON: 9/25/2018 5:56:31 PM
LAST MODIFIED: 11/24/2018 6:25:10 PM
COMMITTEE ID: 6023

SCHEDULE A CASH CONTRIBUTIONS

- For contributors who gave more than \$50, the names, address, occupation, and employer must be reported. If "information requested" is listed instead of occupation and employer, the candidate is waiting to receive that information.
- Cash contributions of \$50 or less can be added together and reported as a lump sum.
- Contributor Types

1 = Individual

2 = Candidate/ Spouse/ Domestic Partner

3 = Commercial Source

4 = Nonprofit Organization

5 = Political Action Committee

6 = Political Party Committee

7 = Ballot Question Committee

8 = Other Candidate/ Candidate Committee

9 = Candidate / Candidate Committee

10 = General Treasury Transfer

11 = Transfer from Previous Campaign

12 = Contributors giving \$50 or less

13 = Contributors giving \$100 or less

14 = Contributors giving \$200 or less

15 = MCEA Payment

16 = Financial Institution

DATE RECEIVED	CONTRIBUTOR	EMPLOYER AND OCCUPATION	TYPE	AMOUNT
8/7/2018	MCEA Payment		15	\$7,560.00
TOTAL CASH CONTRIBUTIONS				\$7,560.00

**SCHEDULE B
EXPENDITURES**

EXPENDITURE TYPES				
CNS	Campaign consultants	CON	Contribution to other candidate, party, committee	
EQP	Equipment (office machines, furniture, cell phones, etc.)	FND	Fundraising events	
FOD	Food for campaign events, volunteers	LIT	Printing and graphics (flyers, signs, palmcards, t-shirts, etc.)	
MHS	Mail house (all services purchased)	OFF	Office supplies, phone and internet services, rent and utilities	
OTH	Other (bank fees, entrance fees, small tools, wood, etc.)	PHO	Phone banks, automated telephone calls	
POL	Polling and survey research	POS	Postage for U.S. Mail and mail box fees	
PRO	Other professional services	PRT	Print media ads only (newspapers, magazines, etc.)	
RAD	Radio ads, production costs	SAL	Campaign workers' salaries and personnel costs	
TRV	Travel (fuel, mileage, lodging, etc.)	TVN	TV or cable ads, production costs	
WEB	Online advertising, website design, maintenance, hosting, etc.			
DATE OF EXPENDITURE	PAYEE	REMARK	TYPE	AMOUNT
9/7/2018	Michael Mayo 323 MAIN ST THOMASTON, ME, 04861	lawn signs - Check #1158	LIT	\$133.80
9/10/2018	THE CRYER 135 MAIN ST #253 BRUNSWICK, ME, 04011	Check 1157 - ads	PRT	\$913.00
9/12/2018	Hammond Lumber 2 HAMMOND DR BELGRADE, ME, 04917	Lumber and painting supplies - Paid by David Berry, personal check; reimbursed w campaign check #1167	OTH	\$263.61
TOTAL EXPENDITURES FOR CANDIDATE:				\$1,310.41



**SCHEDULE D
UNPAID DEBTS AND OBLIGATIONS**

- A debt or obligation is incurred if a committee places an order for a good or service without making a payment; makes a promise or agreement to pay for a good or service; signs a contract for a good or service; or receives delivery of a good or service for which the committee has not paid.
- This schedule is a list of all debts and obligations of the committee as of the end of this reporting period.

DATE OF OBLIGATION	CREDITOR	DESCRIPTION	AMOUNT
9/18/2018	Facebook 1 HACKER WAY MENLO PARK, CA, 94025	Online advertising, website design, maintenance, hosting, etc. Sponsored posts FB, Instagram	\$105.65
TOTAL UNPAID DEBTS AND OBLIGATIONS			\$105.65



Commission on Governmental Ethics and Election Practices
Mail: 135 State House Station, Augusta, Maine 04333
Office: 45 Memorial Circle, Augusta, Maine
Website: www.maine.gov/ethics
Phone: 207-287-4179
Fax: 207-287-6775

2018 CAMPAIGN FINANCE REPORT

FOR MCEA CANDIDATES

COMMITTEE		TREASURER
Mr. Seth A Berry 1245 River Rd Bowdoinham, ME, 04008 PHONE:(207) 522-1609 EMAIL: seth@sethberry.org		Elizabeth Steen 309 Bay Rd Bowdoinham, ME, 04008 PHONE:(207) 666-3468 EMAIL: bayviewess@comcast.net
REPORT	DUE DATE	REPORTING PERIOD
11-DAY PRE-GENERAL REPORT	10/26/2018	09/19/2018 - 10/23/2018

FINANCIAL ACTIVITY SUMMARY

CASH ACTIVITY		
	TOTAL FOR PERIOD	TOTAL FOR CAMPAIGN
1. CASH BALANCE FROM LAST REPORT	\$14,459.59	
2. SEED MONEY CONTRIBUTIONS	\$0.00	\$1,000.00
3. MAINE CLEAN ELECTION ACT PAYMENTS & AUTHORIZATIONS	\$0.00	\$15,775.00
4. SALE OF CAMPAIGN PROPERTY (SCHEDULE E, PART 2)	\$0.00	\$0.00
5. OTHER CASH RECEIPTS (INTEREST, ETC.,)	\$0.00	\$0.00
6. MINUS EXPENDITURES (SCHEDULE B)	\$11,066.97	\$13,382.38
7. CASH BALANCE AT CLOSE OF PERIOD	\$3,392.62	
OTHER ACTIVITY		
8. IN-KIND SEED MONEY CONTRIBUTIONS	\$0.00	\$0.00
9. TOTAL UNPAID DEBTS AT CLOSE OF PERIOD (SCHEDULE D)	\$0.00	

I, Seth, A Berry, CERTIFY THAT THE INFORMATION CONTAINED IN THIS REPORT IS TRUE, ACCURATE, AND COMPLETE TO THE BEST OF MY KNOWLEDGE.

REPORT FILED BY: Seth, A Berry
REPORT FILED ON: 10/25/2018 6:42:34 PM
LAST MODIFIED: 10/25/2018 6:42:34 PM
COMMITTEE ID: 6023

SCHEDULE B EXPENDITURES

EXPENDITURE TYPES				
CNS	Campaign consultants	CON	Contribution to other candidate, party, committee	
EQP	Equipment (office machines, furniture, cell phones, etc.)	FND	Fundraising events	
FOD	Food for campaign events, volunteers	LIT	Printing and graphics (flyers, signs, palmcards, t-shirts, etc.)	
MHS	Mail house (all services purchased)	OFF	Office supplies, phone and internet services, rent and utilities	
OTH	Other (bank fees, entrance fees, small tools, wood, etc.)	PHO	Phone banks, automated telephone calls	
POL	Polling and survey research	POS	Postage for U.S. Mail and mail box fees	
PRO	Other professional services	PRT	Print media ads only (newspapers, magazines, etc.)	
RAD	Radio ads, production costs	SAL	Campaign workers' salaries and personnel costs	
TRV	Travel (fuel, mileage, lodging, etc.)	TVN	TV or cable ads, production costs	
WEB	Online advertising, website design, maintenance, hosting, etc.			
DATE OF EXPENDITURE	PAYEE	REMARK	TYPE	AMOUNT
9/19/2018	MACH3MEDIA 126 FRANCES ST PORTLAND, ME, 04102	mail, check #1162	MHS	\$8,671.00
9/20/2018	THE CRYER 135 MAIN ST #253 BRUNSWICK, ME, 04011	October ad and insert - Check #1163	PRT	\$538.00
9/25/2018	Facebook 1 HACKER WAY MENLO PARK, CA, 94025	Debt Payment Sponsored posts FB, Instagram	WEB	\$105.65
9/25/2018	Knox County Democratic Committee PO Box 452 Rockland , ME, 04841	wicket rental Check #1159	OTH	\$25.00
9/30/2018	Facebook 1 HACKER WAY MENLO PARK, CA, 94025	FB, Instagram sponsored posts; paid by campaign credit card	WEB	\$48.87
10/3/2018	Hammond Lumber 2 HAMMOND DR BELGRADE, ME, 04917	Lumber and painting supplies - Paid by David Berry, personal check; reimbursed w/ campaign check #1167	OTH	\$263.64
10/9/2018	Hammond Lumber 2 HAMMOND DR BELGRADE, ME, 04917	lumber for signs- paid by David Berry personal check, reimbursed by campaign check #1168	OTH	\$82.41
10/10/2018	MACH3MEDIA 126 FRANCES ST PORTLAND, ME, 04102	postcard design - paid Check #1165	LIT	\$135.00
10/11/2018	Quality Copy 4 NORTH ST HALLOWELL, ME, 04347	postcards - paid check #1164	LIT	\$368.81
10/12/2018	Staples ROUTE 24 - BATH RD BRUNSWICK, ME, 04011	office supplies - paid w campaign credit card	OFF	\$112.23

10/12/2018	US Postal Service 101 Main St Topsham, ME, 04086	stamps- paid Campaign credit card	POS	\$700.00
10/17/2018	US Postal Service 101 Main St Topsham, ME, 04086	stamps - paid w SB personal CC, reimbursed to SB Check #1166	POS	\$280.00
TOTAL EXPENDITURES FOR CANDIDATE:				\$11,066.97