

June 10, 2016
Jonathan Wayne
Maine Ethics Commission

Dear Mr. Wayne,

Please consider this a formal request for an investigation into, and sanction of, a violation committed by Diane Russell's campaign for the District 27 State Senate primary.

The specific questions and activities I would like to see addressed as part of this investigation are bolded and highlighted throughout this document:

- What is the value of the email list used by the Diane Russell campaign to raise in excess of \$87,000 for this primary?

Diane Russell has publicly stated that her email list is about 200,000 names long, with emails throughout Maine, the United States and even abroad.

According to email marketing company Inbox Interactive, the value of an email list can be calculated as follows:

“For consumer email lists, prices run about \$100 to \$150 CPM (that’s “cost per mille,” which is fancy-talk for “cost per thousand”). So, that’s 10 to 15 cents apiece for a one-time rental of the email address. And if you have very specific “selects,” then the price can go up quickly.”

At the lower figure of 10 cents per name, Diane Russell’s email list is worth approximately \$20,000 for a one-time use. However, Diane Russell uses her email list repeatedly, often several times each week.

In the above example, the term “selects” refers to targeting of the email addresses. Diane’s list is highly targeted to individuals who support the legalization of marijuana, support the candidacy of Bernie Sanders, or support other liberal causes.

This suggests that the value of the targeted list is even higher than estimated here.

- Where did the email list come from?

In Diane Russell’s campaign finance reports, among copious listings of individual contributions, there is no contribution of an email list to be found anywhere.

There is no indication that the list was donated as an in-kind contribution from a third party. In any case, the limit for in-kind contributions is \$375, and the email list is worth far more than that amount.

There is no expenditure indicating that the list was purchased or rented from a third party.

There is also no expenditure indicating that individuals were paid to build the list. In any event, building a list of the size described would be nearly impossible for a campaign with limited resources and time.

- **Does the email list constitute an illegal contribution to the campaign?**

I contend that the email list was built by Diane Russell herself, over the past few years, as part of the activities of her so-called “Working Families PAC.”

Working Families PAC has paid Diane Russell \$7,747 for “online organizing,” which in all likelihood was email list building.

As described in an earlier complaint of mine, the Working Families PAC operates under a misleading (and possibly fraudulent) “mission statement,” which is to help elect Democrats win seats in the Maine State House. Meanwhile, Diane uses the PAC to pay herself and personal expenses like food, entertainment and travel.

If it did come from the Working Families PAC, there is no filing from either Working Families PAC, or the Diane Russell campaign, to indicate this.

Regardless of where the list came from, it clearly came from somewhere. However, there is no indication anywhere in her campaign filings to suggest the source of this very valuable list. This suggests the contribution of something of very high value to the campaign, with no acknowledgment of its source.

It is important to note that the campaign could not operate at its current level without the funds raised from the aforementioned email list.

- **If failing to report the value of the email list is a violation, I ask that you find Diane Russell in violation, and assess the proper penalty.**

- Does misrepresenting the employment status of individual contributors constitute a false or fraudulent filing?

In the 11-day pre-primary report from Diane Russell's campaign, \$14,711 of the identified donations (ones for more than \$50 each) came from individuals listed as "not currently employed."

Since unemployed people tend not to spend money unnecessarily, this seems like a suspiciously large amount of money.

Indeed, a cursory Google search of names and addresses quickly finds that at least some of these individuals are in fact employed. If so, why are they listed as unemployed?

I request that the Maine Ethics Commission investigate and resolve these questions, and any other relevant questions that may arise from them, before the primary election takes place on Tuesday, June 14th.

Thank you.

Sincerely,

A handwritten signature in black ink, appearing to be 'MH' with a stylized flourish.

Michael Hiltz
45 Pleasant Avenue
Portland, ME 04103
(207) 615-7351



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

June 10, 2016

By Email

Katherine R. Knox, Esq.
Bernstein Shur
PO Box 9729
Portland, ME 04104-5029

Dear Ms. Knox:

As you are aware, the Ethics Commission received the enclosed request from Michael Hiltz that the Commission investigate whether Representative Diane Russell's campaign for State Senate received and failed to report a contribution of an email list used by the campaign to solicit campaign contributions, and whether the campaign also failed to accurately report the occupation and employment information for multiple contributors in its 11-Day Pre-Primary Report filed on June 3, 2016.

Relevant Law

Definition of contribution applicable to candidates. For candidates, the term "contribution" is defined as:

- (1) A gift, subscription, loan, advance or deposit of money or anything of value made for the purpose of influencing the nomination or election of any person to state...office...

- (4) The payment by any person other than a candidate or a political committee, of compensation for the personal services of other persons that are provided to the candidate or political committee without charge for any such purpose;

(21-A M.R.S.A. § 1012(2)(A)(1) & (4))

Definition of in-kind contribution. Commission rules define the term "in-kind contribution" 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

OFFICE LOCATED AT: 45 MEMORIAL CIRCLE, AUGUSTA, MAINE
WEBSITE: WWW.MAINE.GOV/ETHICS

PHONE: (207) 287-4179

FAX: (207) 287-6775

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))

Requirement to report all contributions received and the occupation and employer of contributors. State Election Law requires candidate campaign finance reports to include the following information about certain contributions received:

- (5) **Content.** A report required under this section must contain the itemized accounts of contributions received during that report filing period, including the date a contribution was received, and the name, address, occupation, principal place of business, if any, and the amount of the contribution of each person who has made a contribution or contributions aggregating in excess of \$50. [. . .]

(21-A M.R.S.A. § 1017(5))

Commission rules further require that candidates “must make a reasonable effort to obtain the employment information of the contributor when required by statute. The reasonable effort must include requesting the employment information and providing a convenient means for the donor to provide the information, such as a paper form to be submitted with a contribution or text fields to enter the information on an online fundraising screen. If a candidate or committee is unable to obtain the information from the contributor in response to a candidate’s or committee’s request, the candidate or committee shall indicate ‘information requested’ in the occupation and employer sections of the campaign finance report.”

(Comm. Rules, Ch. 1, Section 6(3))

Contribution limits on candidates. State Election Law sets a limit on contributions a candidate may receive from any source in an election. This contribution limit does not apply to contributions from the candidate and the candidate’s spouse or domestic partner, who may give unlimited amounts. The limit is adjusted for inflation every two years. For 2016, the contribution limit to legislative candidates is \$375 in each election.

Ms. Katherine R. Knox, Esq.
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(21-A M.R.S.A. § 1015(1) & (2))

Request for Response

Pursuant to 21-A M.R.S.A. § 1002(1), I am scheduling initial consideration of Mr. Hiltz's complaint by the Commissioners at a special meeting to be held on June 13 or 14, 2016 at the Commission's office at 45 Memorial Circle in Augusta, Maine. I will be in touch soon concerning the final scheduling. At that meeting, the Commissioners may decide whether or not to conduct further investigation or to request a further response from Rep. Russell.

Please submit a preliminary response on behalf of Rep. Russell to Mr. Hiltz's request. (I will indicate a requested deadline once the scheduling is final.) The Commission staff suggests including the following responses, which we believe would be helpful for the Commissioners:

- Please describe the email list used by Rep. Russell to solicit funds for her State Senate campaign, including an explanation of who owns the list.
- To the extent that the information is available, has Rep. Russell or Working Families PAC incurred expenses to develop the email list?
- A description of the efforts the campaign made to collect employer/occupation data from contributors.

We appreciate that responding to the request in such a short time period presents challenges for Rep. Russell and you. Thank you for your cooperation. Please let me know if you have any questions.

Sincerely,



Jonathan Wayne
Executive Director



cc: Michael Hiltz (by email only)