

**IRWIN  
&  
TARDY  
MORRIS**

*Joshua A. Tardy  
&  
Robert W. Weaver*

*183 Middle Street, Fourth Floor  
P.O. Box 7030  
Portland, Maine 04112-7030*

*207.772.0303 T  
207.253.8099 F*

October 10, 2014

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

RE: *The Maine Democratic Party's Complaint and Request for Investigation*

Dear Mr. Wayne:

I am in receipt of your letter dated October 8, 2014, regarding an investigation request submitted to the Commission by the Maine Democratic Party (hereinafter referred to as the "MDP"). As you know, the Committee to Re-Elect Governor Paul LePage retained our firm to represent it in this matter. Please accept this letter as the Committee's preliminary written response.

*JURISDICTION*

Pursuant to 1 M.R.S. § 1008, the Commission on Governmental Ethics and Election Practices is vested with the duty to investigate: (1) violations of legislative ethics, and (2) violations of the State's campaign finance laws. *See* 1 M.R.S. § 1008(1),(2); *see also* 21-A M.R.S. § 1003(1). We agree with your determination, as stated in your October 8<sup>th</sup> letter, that the Commission is not authorized to investigate or enforce any alleged violations of the "improper use of state equipment or employees for campaign purposes." Therefore, the MDP's request that the Commission investigate allegations of misuse of state resources is not properly before this body. The Commission should summarily dismiss those portions of the MDP's complaint.

*ALLEGATIONS OF UNREPORTED CAMPAIGN CONTRIBUTIONS*

In its complaint, the MDP erroneously asserts that the Committee to Re-Elect Governor Paul LePage violated applicable contribution reporting laws because it did not report as a contribution three rides that the spokesman for the campaign took with the Governor in the State Police vehicle that is part of the Governor's security detail. The assertion that the rides should be listed as a "contribution" on the Committee's campaign finance report is meritless.

Pursuant to Title 21-A M.R.S. §1017(2), the treasurer of a candidate for the office of Governor shall file campaign finance reports with the Commission. Those reports must contain an itemized

account of all contributions. *See id.* 1017(5). The term “contribution” is defined as “a gift . . . of money or anything of value made for the purposes of influencing the nomination or election of any person to state, county or municipal office . . . .” 21-A M.R.S. § 1012(2)(A)(1). A “contribution” does not include the “use of offices, telephones, computers and similar equipment *when that use does not result in additional cost to the provider . . . .*” *Id.* at § 1012(2)(B)(9) (emphasis added).

Here, the allegations made against the Committee to Re-Elect Governor Paul LePage are that the Committee did not report the three rides that the campaign’s spokesman took in the vehicle used in Governor LePage’s security detail. Under state law these rides are not contributions for two reasons: (1) they have no “value,” and (2) even if they did have some undetermined “value,” they would fall under the exemption for use of equipment when the use does not result in any additional cost to the provider. First, there was no value given to the campaign in this instance that was made for the purposes of influencing the election for Governor. Second, even if the Commission found that the ride somehow conferred some value to the campaign, that undetermined value falls within the contribution exclusion set forth in § 1012(2)(B)(9), because the vehicle was transporting the Governor to his pre-determined destination, regardless of whoever else was a passenger in the vehicle. Therefore, the use of the vehicle did not result in any *additional cost* to the provider and falls squarely within the exemption.

The Committee to Re-Elect Governor Paul LePage did not violate Maine’s campaign finance laws. *See* 21-A M.R.S. § 1004. Because there was no “contribution” made to the campaign, i.e. there was no value conferred, or alternatively, there was no additional cost to the provider of the vehicle, there was no contribution for the Committee to report.

#### ALLEGATIONS OF MISUSE OF STATE RESOURCES

The allegations related to the misuse of state resources are unfounded and completely without merit. We agree with your statement, made in your October 8, 2014, letter to me that the Ethics Commission does not have jurisdiction over allegations of improper use of state equipment or employees for campaign purposes.

Thank you for the opportunity to submit this preliminary response. We welcome any additional questions that the Commission may have.

Sincerely,

Joshua A. Tardy, Esq.

Robert W. Weaver, Esq.