



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

ADDITIONAL MATERIALS

Items #4

October 31, 2012

To: Commissioners  
From: Jonathan Wayne, Executive Director  
Date: October 30, 2012  
Re: Further Information Concerning Duty to Report Debt for TV Production by Sen. Thomas Martin

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This memo is intended to supplement my October 24 memo on the issue of whether Senator Thomas Martin was required to include an unpaid debt to Strategy Maine for the production cost of a campaign video in the campaign finance report he filed on September 25, 2012. His attorney, William P. Logan, submitted the attached letter today. Also, in his report filed on October 26, 2012 (attached), Sen. Martin disclosed that he paid \$850 to Strategy Maine for "TV & Radio Ads Production." As the cost has now been reported to the public, the only compliance issue is whether he was required to disclose the cost as an *unpaid debt* in his September 25, 2012 report.

As I explain on pages 9-10 of my October 24 memo, it is not uncommon for candidates to omit a contribution, expenditure, or obligation from a campaign finance report. So, regardless how you determine whether a debt should have been disclosed, the Commission staff recommends no assessment of a civil penalty.

The Commission staff finds it believable that Sen. Martin asked Strategy Maine to make changes to the campaign video, and that – as of September 18 – he was unsure how much money (if any) he would spend on advertising time to broadcast it. On the day that the Democratic Party filed its complaint (September 27), Sen. Martin sent me the attached e-mail indicating that he was still trying to decide how much to spend on advertising time on broadcast stations and that he had requested changes to the video.

The relevant factual question is whether he had made an express or implied promise to pay Strategy Maine for the costs of production, as of September 18. William Logan, as Sen. Martin's attorney contends: "There was no obligation to pay Strategy Maine until Senator Martin had finally approved the video."

The staff understands that occasionally some vendors (*e.g.*, a mailhouse or print shop) may engage in a limited amount of labor to create a sample or mock-up of a printed product – before the customer has entered into any obligation to purchase the product. This seems a little less plausible when the product is a professional-quality video.

So, the staff tends toward the view that a promise, contract, or agreement *did* occur prior to September 18 and that Sen. Martin *was* required to report a debt under Chapter 1, Section 7(3) of the Commission's Rules. Having said that, if you believe that the facts are insufficiently clear to reach that determination, the Commission staff sees no harm in taking no further action on the complaint as it relates to Sen. Martin. In any case, for the reasons expressed on pages 9-10 of my October 24 memo, we suggest no civil penalty be assessed against Sen. Martin for incomplete reporting.

Thank you for your consideration of this memo.

**IRWIN  
&  
TARDY  
MORRIS**

William P. Logan  
wlogan@itmlaw.com

159 Main Street  
P.O. Box 476  
Newport, Maine 04953

207.368.2828 T  
207.368.2822 F

October 30, 2012

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

Re: **Supplemental Response of Sen. Thomas Martin**  
*Request for Investigation by Maine Democratic Party*

Dear Jonathan:

Please accept this letter as a supplement to my previous response dated October 19, 2012. You requested answers to the following three questions.

1. *What is the earliest date on which Sen. Martin made a promise or agreement to pay Strategy Maine for the costs of producing any video? (this would include an implied agreement.)*
2. *When did Sen. Martin place an order for a campaign video (i.e. authorize Strategy Maine to produce a video)? If he ordered the video without making a promise to pay for it, please feel free to explain the arrangement further.*
3. *Could you please review the dates that are highlighted with arrows in the enclosure and provide any further information that would help us sort out when the video was viewable to the public?*

**RESPONSE:** On or about September 10, 2012, Senator Martin and Strategy Maine engaged in discussion regarding a video for the campaign. As a part of those discussions, Strategy Maine agreed to produce a video and then provide the draft communication to Senator Martin for his review. There was no obligation to pay Strategy Maine until Senator Martin had finally approved the video. The obligation to pay was contingent on Strategy Maine's ability to produce an acceptable video.

Strategy Maine utilized the following procedure. They produced a draft video. To permit viewing for revision purposes, the video was uploaded onto a private YouTube channel. Strategy Maine then sent the url to Senator Martin in an e-mail so that he could access the video to review it.

Martin Response  
October 30, 2012  
Page 2 of 2

Senator Martin received the e-mail and reviewed the video. We believe the September 12, 2012 view from a mobile device would be the campaign reviewing the draft video. What appears to have occurred next, is that a third party somehow got a hold of the e-mail containing the url. The url was then embedded by someone on a Facebook page on September 14, 2012. On that same date, it appears an unidentified person embedded a link to the video on the discussion forums of [asmainegoes.com](http://asmainegoes.com). The video had not been made publicly available to YouTube at this point, however anyone who had obtained access to the url could embed that code to create a link to the video from another website, such as Facebook or As Maine Goes. While this was occurring, Senator Martin was requesting that Strategy Maine revise the video. Revisions were ongoing and a final version of the video was made publicly available on September 24, 2012.

We submit that the foregoing, considered in connection with the previous submission on behalf of Senator Martin, shows that as of the close of the reporting period, there was no debt to be reported. In the event that the Commission determines otherwise, I submit that no penalty should be assessed for the various reasons set forth in the Staff's recommendation including the lack of any harm to the public, the Commission's past practice of not assessing civil penalties in such circumstances, and the issue of proportionality.

I will be happy to address any further questions the Commissioners may have at the October 31, 2012 meeting.

Sincerely,



William P. Logan, Esq.

cc: Sen. Thomas Martin



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](http://www.maine.gov/ethics)

Phone: 207-287-4179

Fax: 207-287-6775

## 2012 CAMPAIGN FINANCE REPORT

### FOR MCEA CANDIDATES

CANDIDATE		
THOMAS H. MARTIN 1308 CLINTON AVE BENTON, ME 04901 OFFICE SOUGHT: SENATE	DISTRICT: 25	TEL: (207)453-2484 FAX: (207)453-4774 E-MAIL: <a href="mailto:nitram@roadrunner.com">nitram@roadrunner.com</a>
TREASURER		
RONALD GAULIN 23 MAPLE ST WATERVILLE, ME 04901		TEL: (207)649-5992 FAX: (207)453-4774 E-MAIL: <a href="mailto:ron@nitramexc.com">ron@nitramexc.com</a>
TYPE OF REPORT	DUE DATE	REPORTING PERIOD
11-DAY PRE-GENERAL	10/26/2012	9/19/2012 - 10/23/2012
NO FINANCIAL ACTIVITY IN THIS REPORTING PERIOD FOR SCHEDULES A, D, E		
CERTIFICATION		
I, THOMAS H. MARTIN, CERTIFY THAT THE INFORMATION CONTAINED IN THIS REPORT IS TRUE, ACCURATE AND COMPLETE TO THE BEST OF MY KNOWLEDGE.		
REPORT FILED BY: THOMAS H. MARTIN		
REPORT FILED ON: 10/26/2012		
IF THIS REPORT IS FILED BY AN AUTHORIZED AGENT OF THE CANDIDATE, THE CANDIDATE, TREASURER AND AGENT ARE LIABLE FOR ANY VIOLATIONS OF MAINE CAMPAIGN FINANCE LAW (21-A M.R.S.A. CHAPTER 13) AND THE COMMISSION'S RULES THAT MAY RESULT FROM THE FILING OF A FALSE OR INACCURATE REPORT.		

UNSWORN FALSIFICATION IS A CLASS D CRIME (17-A M.R.S.A. § 453).

**SCHEDULE B  
EXPENDITURES**

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	

*Only these expenditure types require a remark: CNS, EQP, FND, OTH, PRO, SAL, TRV.*

DATE OF EXPENDITURE	PAYEE	REMARK	TYPE	AMOUNT
10/08/2012	STRADEGY MAINE	TV & Radio Ads	TVN	\$6,250.00
09/24/2012	COLORGRAPHICS		LIT	\$2,828.70
10/20/2012	COLORGRAPHICS		LIT	\$283.40
10/20/2012	MAJORITY STRADEGIES		MHS	\$4,752.72
10/08/2012	STRADEGY MAINE	TV & Radio Ads Production	PRO	\$850.00
09/24/2012	DOWS WOOD PRODUCTS	sign posts	OTH	\$98.50
<b>TOTAL EXPENDITURES</b>			⇔	\$15,063.32



**SCHEDULE F  
 SUMMARY SECTION  
 (MAINE CLEAN ELECTION ACT CANDIDATES)**

<b>CASH ACTIVITY</b>		
	<b>TOTAL FOR THIS PERIOD</b>	<b>TOTAL FOR CAMPAIGN</b>
<b>1. CASH BALANCE FROM LAST REPORT</b>	\$17,355.33	
<b>2. SEED MONEY CONTRIBUTIONS</b>		\$1,500.00
<b>3. MAINE CLEAN ELECTION ACT PAYMENTS &amp; AUTHORIZATIONS</b>	\$0.00	\$19,954.85
<b>4. SALE OF CAMPAIGN PROPERTY (Schedule E, Part 2)</b>	\$0.00	\$0.00
<b>5. OTHER CASH RECEIPTS (interest, etc.)</b>	\$0.00	\$0.00
<b>6. MINUS EXPENDITURES (Schedule B)</b>	\$15,063.32	\$19,162.84
<b>7. CASH BALANCE AT CLOSE OF PERIOD (lines 1 + 3 + 4 + 5 - 6)</b>	\$2,292.01	

<b>OTHER ACTIVITY</b>		
<b>8. IN-KIND SEED MONEY CONTRIBUTIONS</b>		\$0.00
<b>9. TOTAL UNPAID DEBTS AT CLOSE OF PERIOD (Schedule D)</b>	\$0.00	

## Wayne, Jonathan

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**From:** Tom Martin [REDACTED]  
**Sent:** Thursday, September 27, 2012 6:25 PM  
**To:** Wayne, Jonathan  
**Subject:** RE: Complaint concerning Web Video

Thanks Jonathan,

I didn't realize I was in violation. My ad was sent to me for review and I sent back a response that I wanted to change some pictures which have been done now. I was sent some options on media buys this week which I have not pulled the trigger on. I am trying to decide what ratio of Tv/Radio I should do vs. Mailers. So does that still make me in violation?

I will call Tyler tomorrow to discuss.

Thank You

Tom

Senator Thomas Martin  
District #25  
Representing Albion, Benton, Clinton, Detroit, Pittsfield,  
Waterville, Winslow and Unity Township.

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**From:** Wayne, Jonathan [<mailto:Jonathan.Wayne@maine.gov>]  
**Sent:** Thursday, September 27, 2012 11:58 AM  
**To:** [REDACTED]  
**Cc:** Backus, Tyler; Lavin, Paul  
**Subject:** Complaint concerning Web Video

Senator Martin,

I have attached the complaint from the Maine Democratic Party that I mentioned in my voicemail message. It asks the Commission to look into whether your campaign finance reports are incomplete because they do not mention a payment to Strategy Maine for a web video. I will probably be sending you a letter tomorrow asking for some basic information about the cost of the video.

In the meantime, if the campaign made an expenditure that needs to be added to a report, please amend the report as soon as you can. Candidate Registrar Tyler Backus can offer you advice on how to do that, if necessary.

If you have any questions about how our office will be handling the complaint, please call me at 287-4179.

Thank you very much.

Jonathan Wayne  
Executive Director  
Maine Ethics Commission  
135 SHS

Augusta, ME 04333  
287-4179

**From:** Janet Davis [<mailto:jdavis@bernsteinshur.com>]  
**Sent:** Thursday, September 27, 2012 11:09 AM  
**To:** Wayne, Jonathan  
**Cc:** Kate Knox  
**Subject:** Request for Investigations

Sent on behalf of Kate R. Knox

Per Kate Knox's request, please find attached a request for investigations.

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Janet Davis, Legal Assistant to Robert J. Crawford, F. Paul Frinsko, Kate Knox, Dan Riley and Brita Forssberg

Bernstein Shur  
100 Middle Street  
PO Box 9729  
Portland, ME 04104-5029  
207 774-1200 main  
207 774-1127 facsimile  
[jdavis@bernsteinshur.com](mailto:jdavis@bernsteinshur.com)  
[www.bernsteinshur.com](http://www.bernsteinshur.com)

Portland, ME | Augusta, ME | Manchester, NH

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