



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

Additional Materials  
Item #3  
July 29, 2013

To: Commissioners  
From: Jonathan Wayne, Executive Director  
Date: July 26, 2013  
Re: Staff Comments on July 25, 2013 Letter from Maine Citizens for Clean Elections

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The Commission received late yesterday a letter from the Maine Citizens for Clean Elections (MCCE) that is sharply critical of the Commission staff's procedures for reviewing campaign finance reports (our "compliance reviews"). We do wish to provide additional information on our current procedures, so that you can consider the MCCE's suggestions within a more complete and accurate context.

**Do all contribution limit violations need to be brought to your attention for a finding of violation?**

The Commission's Rule requires the Commission staff to bring "substantial nonconformance" to your attention at public meetings. (Chapter 1, §4(2)(A) of the Commission Rules) Violations of the \$1,500 contribution limit or \$100 seed money limitation by gubernatorial campaigns are rare, but they do happen on a small scale. Most general election candidates for governor of both parties and independent candidates have had limited problems in this area. In past practice, when we have found a small number of over-the-limit contributions by gubernatorial campaigns that were accepted due to a variety of administrative errors,<sup>1</sup> we have addressed them at the staff level by requiring the candidates

- to return the excess amount, and
- report the return of contributions as a negative amount, so that the returned contribution is known to the public (See 2012 Guidebook for traditionally financed candidates, page 31).

If we were to see widespread over-the-limit contributions that indicated a serious lack of care or disregard by a campaign, we would view those as serious noncompliance and bring them to your attention in accordance with the Commission Rule.

If you would like us to adopt a different policy and bring all violations to your attention (including for a monetary penalty), the Commission staff would be happy to implement that policy.

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<sup>1</sup> For example, insufficient communication among campaign staff about who was keeping track of the contributions; acceptance of online contributions from donors who had already reached the maximum.

In this matter, we have received an explanation of the sources of the problem from a campaign treasurer, who was not involved in compliance for the 2010 LePage campaign (to the best of my recollection). His explanation for the acceptance of the over-the-limit (OTL) contributions in late 2012 is much more relevant than errors by the 2010 campaign to which the MCCE refers. It is also relevant that this incident occurred very early in the campaign in time to be rectified, and the candidate did not ultimately receive an unfair benefit from accepting the OTL contributions.

### **Compliance Review of Campaign Finance Reports**

For your information in reviewing staff's procedures:

- On most filing deadlines, our staff's two or three Candidate Registrars review the campaign finance reports filed by **over 500 candidates**. Each report can contain dozens of contributions and expenditures. Across the hundreds of reports being reviewed, there can be *many* omissions and mistakes noticed by the Candidate Registrars. The MCCE is not aware of how many issues need to be corrected by campaigns through education, persuasion and pressure by the Candidate Registrars. The Candidate Registrars need to make on-the-spot judgment calls concerning the seriousness of the potential noncompliance and what degree of follow-up to devote to particular issues. With limited supervision, the Candidate Registrars use their own discretion in prioritizing the non-compliance issues to be addressed. They are aware that serious potential violations need to be brought to the attention of the Assistant Director or Executive Director, particularly if they are not promptly remedied by the campaigns. That is the general practice, as I explained to Ann Luther and John Brautigam of the MCCE when I met with them recently to discuss this matter. *It is factually incorrect* for the MCCE to assert on page 3 in its letter that "there was no protocol for further action."
- In January 2013, one of our Candidate Registrars had recently left our employment. Our two remaining Candidate Registrars were performing duties in addition to conducting compliance reviews. These include addressing reporting errors of Maine Clean Election Act candidates, which impacted the amounts of public funds that candidates need to return.
- Over-the-limit violations are very rare. Most candidates successfully avoid them. Sometimes, candidates make data entry mistakes suggesting, on paper, that they have accepted more than the allowed amount from a donor, when in fact the amount was within the limit. (Sometimes contributions are entered twice. In 2010, candidates were permitted to accept general election contributions before the primary election, and they sometimes make mistakes in our e-filing system when allocating the contributions between the primary and general elections.) So, the first step in reviewing an apparent OTL contribution is finding out how much money the candidate accepted in order to determine whether the issue is a reporting error or the acceptance of a contribution that

actually exceeds the limits. That is what the Candidate Registrar in this matter was attempting to ascertain, but the campaign did not respond effectively.

The Candidate Registrar who reviewed the LePage campaign's report in January is a very dedicated employee who has been instrumental in improving the professionalism of the Commission's procedures for eight years. It is ironic that the MCCE accuses her of aiding a campaign in "eras[ing]" violations. She is a highly motivated employee who is keenly aware of the public interest served by transparent and accurate campaign finance reporting. She has been personally responsible for significantly improving our compliance review procedures, often spending many hours on assigned tasks in order to prod candidates to fix problems or to analyze moderate or serious violations for my attention. For the MCCE to suggest that this employee in particular or the staff in general would send a message that compliance with campaign finance law is optional or that sets a low bar for compliance shows a disregard of the staff's successful track record in ensuring a high degree of compliance with campaign finance law.

In this matter, the Candidate Registrar had direct personal experience with the *prior* treasurer for the LePage campaign and had worked with him to correct certain data entry mistakes. That experience led her to the preliminary (mistaken) assessment that this was most likely another instance of misreporting that could be fixed by amending the report. She was waiting for the current campaign treasurer for a response, and talked to him twice after the filing deadline about this issue, but received no explanation from the campaign. Her assessment that this was a reporting error by the campaign influenced the degree of follow-up she gave to this matter. It was not a matter of lax compliance standards, as the MCCE would have the Commission believe.

#### **Follow-Up Procedures in the Future for Contribution Limit Violations**

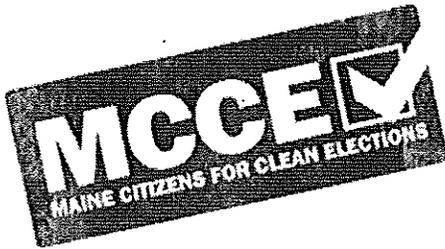
Earlier this month, I met with the leadership of MCCE and explained that I would be personally involved in training the Candidate Registrars who would be conducting 2014 compliance reviews (two of them yet to be hired) in how to handle potential OTL violations. I will instruct them that – when prioritizing among issues found in compliance reviews – transactions that are potential contribution limit violations need to be given a very high priority similar to serious violations such as misuse of public campaign funds. If the campaigns are not fully responsive (as in this case), the Candidate Registrar will follow up with the Assistant Director or me within two weeks to seek remediation by the campaign and consideration of whether the potential violation needs to be brought to your attention at a public meeting based on the actual facts of the situation.

### **Handling of MCCE's Concerns**

If I may address one more mis-statement in the MCCE's letter concerning the Commission staff's procedures, the MCCE's timeline (last page) states that on June 6, 2013, the "Commission staff decline[d] to investigate further unless MCCE request[ed] in investigation." In fact, just the opposite is true. On June 6, I sent a letter to the LePage campaign requesting more information in order to determine the seriousness of the problem. That letter is among your materials.

The MCCE is referring to a conversation I had with Andrew Bossie on June 6. What I told Mr. Bossie on June 6 is that the staff would proceed with its fact-finding at the staff level and, until we had ascertained the seriousness of the issue, we would not necessarily bring this matter to your attention at a public meeting. The MCCE was not satisfied with that response. On the next day, June 7<sup>th</sup>, the MCCE filed a complaint to be considered at a public meeting and issued a press release about its complaint. This complaint was filed in the context of Maine Legislature completing legislation on campaign finance issues.

Thank you for your consideration of this memo.



July 25, 2013

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

RE: Complaint against Governor LePage Campaign on Over-the-limit Contributions

Dear Commissioners:

We appreciate the opportunity to address the Commission on an issue of importance to MCCE and to the general public.

The campaign finance regulatory system administered by the Commission serves a vital public interest. These are not mere bookkeeping requirements for the convenience of campaigns, but enforceable obligations that go to the integrity of our democratic process. The public has a right to assume that the information reported to the Commission is accurate. It is surely among the highest roles of the Commission to protect that trust.

We acknowledge that mistakes happen during campaigns. We believe that reporting mistakes can and should be corrected within three business days absent extraordinary circumstances. Violations of the contribution limits are more serious and fall in a separate category from reporting errors. Nonetheless, even these violations can be readily addressed by any campaign that is seriously committed to compliance. The legislature has established a penalty for such violations. See 21-A MRSA 1004-A(2). This penalty is limited to the amount of the excess contribution – hardly a draconian punishment.

Although we are troubled to see a pattern of violations by an experienced gubernatorial campaign, we are equally concerned that the Commission's handling of this matter sends the wrong message to campaigns and to the public in general. We have seen the Commission conduct aggressive investigations and pursue rigorous enforcement on other matters, and we believe that Commission staff are professional, knowledgeable, and experienced. However, our overall conclusion from this case is that the process by which the Commission staff assists campaigns with their reporting and compliance obligations is flawed. We respectfully submit that the Commission should take this opportunity to reexamine how it enforces similar cases under Title 21-A and the Commission's own regulations.

If handled differently, this case would have been readily resolved. Instead, both the LePage campaign and the Commission's staff have not handled this case correctly.

The campaign failed to learn from its 2010 violation, failed to institute measures to prevent problems from recurring, and failed to address the violations until a complaint was filed and the media began to report on this situation. The campaign's approach has fueled mistrust of the system and has compromised the public's access to information.

By the same token, Commission staff have not rigorously enforced the law. They have not made a clear distinction between reporting errors and violations of the statutory contribution limits. Helping campaigns understand the law and reporting requirements is a good and useful service for Ethics Commission staff. Helping campaigns erase the record of campaign contribution limit violations after they have occurred is not an appropriate role.

MCCE does not aspire to serve as a watchdog over campaigns, and we did not lightly pursue this particular case. Nonetheless, we must ask the Commission to reject the staff recommendation and consider a more appropriate response. Candidates up and down the ballot need to understand that compliance is not optional and that violations of contribution limits, reporting requirements, and other elements of campaign finance laws will not be tolerated. Setting the bar too low could undermine our laws, the commission's ability to deal with those who violate them, and public confidence in the commission itself.

#### Specific Concerns

We draw the commission's attention to four specific concerns arising from this case. A timeline is attached to this letter for the Commission's convenience.

1. The excess contributions should not have been treated as reporting errors in the initial staff review.

As of the January 2013 semi-annual report, the 2014 LePage Campaign had reported at least 20 contributors who gave the statutory maximum of \$3,000. These were correctly reported as a \$1,500 primary election contribution and a \$1,500 general election contribution. Nonetheless, in the case of Cianbro, Fairpoint and Maine Beer & Wine Wholesalers, commission staff concluded that these were "duplicate" reports of the same contributions. Staff instructed the campaign to "delete" those duplicates. We now know that they were not, in fact, duplicates. Given the LePage campaign's systematic reporting of "double max" contributors, there was no reason to conclude that these were "duplicates" and every reason to conclude that in fact they were accurately reported, which the campaign has since confirmed. Since they were accurately reported, the subsequent contributions of these three contributors should have been recognized for what they were – contributions exceeding the statutory limit. Commission staff should not have instructed the LePage campaign to delete them.

2. The excess contributions should have been placed on the agenda of the April 2013 meeting pursuant to Commission rules.

We commend Commission staff for quickly identifying the excess contributions and notifying the campaign. From that point, however, it seems that there was no protocol for further action. If the campaign had attended to this matter when it first arose and refunded the excess contributions when they were first informed of them, perhaps no escalation would have been required. However, given that they didn't, the proper – indeed, legally required – handling of this case would have been to place it on the agenda for the first Commission meeting after the January semi-annual report was reviewed. Commission rules require that “any apparent violations or occurrences of substantial nonconformance with the requirements of the law will be placed on the agenda of the next meeting.” 94-271 Chapter 1, Section 4(2)(A). In addition, under Title 21-A, “The commission shall refer any apparent violations of this chapter to the Attorney General for prosecution.” 21-A MRSA 1003(4). No such referral occurred here, and the case languished for months.

3. The dates on which the excess contributions were refunded are not correctly reported in the amended report filed on June 21, 2013.

Unfortunately, the problem of excess contributions has now been compounded by reporting irregularities. The LePage campaign refunded the excess contributions on June 1, 2013, June 17, 2013 and June 19, 2013. The amended report of the campaign, however, states that the contributions were refunded on October 15, 2012, November 8, 2012 and December 5, 2012. (Photocopies of the checks as well as the amended report are included in the Commission's packet for Agenda item #3.) The amended report is therefore incorrect. In this context, the amended report could be considered a new, independent violation. When a campaign is given the opportunity to address a violation and fails to do so for nine months it should not be able to amend the public record to make it appear as though it acted immediately.

4. Failing to apply the statutory sanction in the case of a repeat violation by an experienced campaign for the highest office in Maine sends the wrong message.

Late in the 2010 campaign the LePage campaign was accused of accepting 28 contributions in excess of the contribution limits. The Commission ultimately found one excess contribution, with the remainder attributed to negligent reporting and incomplete recordkeeping. No sanction was imposed. During those proceedings the LePage campaign stressed the steps it was taking to ensure accurate reporting in the future. Since then, it is noteworthy that Governor LePage signed legislation to increase the contribution limits from \$750 per election to \$1,500 per election. In January 2013 another group of violations were brought to the attention of the campaign – violations that were similar to those alleged in 2010. Since these violations could be prosecuted as a Class E crime, one would expect the campaign to rapidly respond. In fact, nothing happened for several months and may not have happened without the complaint and subsequent investigation. The 2010 violation and reporting errors, together with the campaign's inattention

to the more recent violations, suggest that the campaign does not place much importance on full compliance. The statutory sanction is certainly merited in this case.

#### Conclusion

Commission staff does an excellent job assisting campaigns and encouraging compliance by educating, encouraging, and building awareness. Yet fair and firm enforcement is also important. The staff recommendation in this case would send a message to campaigns that they need not worry about strict compliance with the law or about timely remediation in the case of inadvertent error – the wrong message at this or any other time in a campaign. We believe the statutory penalty is the appropriate sanction in this case.

But that is not enough. To ensure public confidence going forward, we also ask the Commission to institute a review of its enforcement procedures and take the following additional steps: (1) mandatory audits of all gubernatorial campaigns; (2) adherence to Commission rules regarding placing a violation on the agenda; (3) mandatory review by the full Commission of any reporting irregularity not corrected within three business days; (4) clear separation of the Commission's educational role from its enforcement role in any case involving a possible violation; (5) adherence to current law requiring a mandatory referral to the Attorney General in the case of a violation; (6) firm policy on penalties especially in the case of repeated violations by the same campaign; and (7) clear guidance to campaigns regarding how to report refunded contributions whether in a current report or an amended report.

Thank you for considering our comments.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Andrew Bossie".

Andrew Bossie  
Executive Director

### Timeline – 2014 LePage Campaign Excess Contributions

June 21, 2013	LePage campaign files amended report
6/1/13 to 6/19/13	LePage campaign refunds excess contributions
June 7, 2013	MCCE requests an investigation
June 6, 2013	Commission staff declines to investigate further unless MCCE requests an investigation
June 5, 2013	MCCE brings violations to attention of Commission staff
May, 2013	no activity by campaign or commission staff
April 5, 2013	Commission regular meeting
April, 2013	no activity by campaign or commission staff
March, 2013	no activity by campaign or commission staff
February, 2013	no activity by campaign or commission staff
January 13 to 15, 2013	Three calls/emails from commission staff to LePage campaign regarding excess contributions <sup>1</sup>
January 15, 2013	Semi-annual report revealing excess contributions
10/15/12 to 12/5/12	Excess contributions received from Cianbro, Fairpoint and Maine Beer & Wine Wholesalers
12/17/11 to 12/22/11	Cianbro, Fairpoint, and Maine Beer & Wine Wholesalers each give the statutory maximum of \$3,000 to LePage campaign. Approximately 18 other contributors are also “double maxers.”
October 28, 2010	Commission reviews 28 excess contributions reported by the 2010 LePage campaign, finding that one exceeded the limits then in effect. The remainder were reporting errors. No sanction was imposed.

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<sup>1</sup> Commission staff called the LePage Campaign to discuss the reported contributions on January 13, 2013. See page 3 of Director Wayne’s memorandum. The report containing the violations, however, was not filed until January 15, 2013. We have not seen anything in the record that resolves this discrepancy.