



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

**Agenda**

**Meeting of August 23, 2013, at 1:00 p.m.**

Commission Office, 45 Memorial Circle, 2<sup>nd</sup> Floor, Augusta, Maine

**1. Campaign Spending to Influence 2012 Election for Maine House of Representatives, District 1**

The Commission will decide whether to accept a proposed written determination concerning campaign spending to influence the 2012 general election for Maine House of Representatives, District 1. The Commission will also consider whether to assess a civil penalty against Rep. Michael Nadeau for his acceptance of a contribution in violation of the Maine Clean Election Act.

**Other Business**

**EXECUTIVE SESSION**

If necessary.

**ADJOURNMENT**



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To: Commissioners  
From: Jonathan Wayne, Executive Director  
Date: August 19, 2013  
Re: Revised Draft of District 1 Determination

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Thank you for your consideration of the draft of the written determination concerning campaign spending to influence House District 1 in the 2012 general election, which the staff circulated to you on August 8, 2013.

Revised Draft for Your Consideration

We have enclosed a revised draft with possible changes for your consideration at your August 23 meeting. The insertions and deletions are highlighted in gray.

Commissioners McKee and Matheson expressed their approval of the August 8 draft as written. Commissioner Amero responded that she had no objections to the August 8 draft. The Commission received proposed changes from Commissioner Healy through the attached e-mail dated August 9, 2013, and the attached comments from Commissioner Duchette.

The Commission also received recommendations for specific changes from Timothy C. Woodcock, Esq., counsel for Rep. Michael Nadeau, through a letter dated August 15, 2013. The Commission staff, in consultation with the Commission Counsel, incorporated the suggestions from Mr. Woodcock that seemed appropriate and supported by the record. The attached document is a determination by the Commission, so we suggest that you review Mr. Woodcock's recommendations and decide whether any additional changes are necessary.

Sources of \$1,500 for House District 1 Mailing (pages 8-10)

The Commission unanimously approved a motion by the Chair that there was insufficient evidence to determine that Rep. Nadeau was the source of the funds used for the mailing. The motion can be heard at 3 hours, 2 minutes, 52 seconds in Part 2 of the audio for the July 29 meeting posted at [www.maine.gov/ethics/meetings](http://www.maine.gov/ethics/meetings).

In keeping with that motion, the draft determination contains a factual finding that “[t]he evidence ... is inclusive” concerning the sources of \$1,500 received by Mr. Soucy to reimburse him for the mailing. (page 9, start of first full paragraph) The draft determination includes proposed factual findings on the topic (pages 8-10), based on the testimonial and documentary evidence received by the Commission during the investigation.

Assessment of Penalties

I have attached my August 8, 2013 cover memo, which discusses the topic of assessing a penalty against Rep. Nadeau for accepting a contribution in violation of the Maine Clean Election Act.

Unavailability of Commissioner Duchette

In scheduling your next meeting, the Commission staff could not find a date prior to very late in September when all five Commissioners were available. In the interest of concluding this matter sooner, Commissioner Duchette consented to a meeting date of August 23, although he could not attend the meeting due to vacation plans.

Thank you for your consideration of the revised draft determination.



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To: Commissioners  
Cc: Counsel for Respondents and Maine Democratic Party  
James Majka  
From: Jonathan Wayne, Executive Director  
Date: August 8, 2013  
Re: Draft of Commission Determination - for Your Review

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In accordance with your request, expressed at the conclusion of deliberations on this matter at the July 29, 2013 meeting, I have attached a proposed draft of the Commission Determination for your review. It has been drafted in consultation with the Commission's Counsel and reflects the motions you made at the July 29, 2013 meeting. We have inserted references to specific statutes to your motions (please see pages 10-11).

#### **Opportunity to Comment**

If you – or anyone copied on this memo – wish to comment on or suggest revisions to this draft Determination, please send the comments or suggested revisions to both [Paul.Lavin@maine.gov](mailto:Paul.Lavin@maine.gov) and [Benjamin.P.Dyer@maine.gov](mailto:Benjamin.P.Dyer@maine.gov) no later than 4:00 p.m. on Thursday, August 15. All of your suggestions or directions to the Commission staff are public documents. I will be out of the office for a family vacation during the week of August 12.

The Commission staff will consult with Counsel and prepare a subsequent draft for your consideration at the meeting on August 23, 2013. Not knowing whether all Commissioners will agree with a suggestion from a single Commissioner, we may indicate proposed insertions or deletions with underlining or strike-outs. The staff would like to facilitate a final document that accurately reflects your determinations and that all Commissioners find acceptable. Thank you for your consideration of the staff's role in these procedures. We will aim to distribute the next draft by the close of business on August 19, 2013.

OFFICE LOCATED AT: 45 MEMORIAL CIRCLE, AUGUSTA, MAINE  
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### **Assessment of Penalties**

On the agenda for the upcoming meeting on August 23 will be consideration of whether to assess a civil penalty against Rep. Nadeau for his acceptance of a contribution. Under 21-A M.R.S.A. § 1127(1), the Commission has the discretion to assess a civil penalty against a candidate who violates a provision of the Maine Clean Election Act. The maximum penalty is \$10,000, but the Commission's penalties have tended to be considerably less than the maximum. Penalties are generally viewed by the Commission as a means of deterring non-compliance and encouraging candidates to be diligent in following the requirements of the program.

At the July 29, 2013 meeting, four members of the Commission (Commissioners McKee, Duchette, Matheson, and Healy) determined that Rep. Nadeau accepted a contribution pursuant to 21-A M.R.S.A. § 1015(5), because James Majka was an agent for the candidate when he purchased the advertisement in the Fiddlehead Focus. Three members (Commissioners McKee, Duchette, and Matheson) also determined that James Majka purchased the advertisement at the request or suggestion of Rep. Nadeau, which also made it a contribution to the candidate. As a Maine Clean Election Act candidate, Rep. Nadeau was prohibited from accepting any contributions unless specifically authorized by the Commission. (21-A M.R.S.A. § 1125(6)) That is one of the "terms of participation" set out in Section 1125 of the Act. Rep. Nadeau's acceptance of a contribution through the Fiddlehead Focus advertisement thus violated 21-A M.R.S.A. § 1125(6).

### **Conclusion D as it Relates to James Majka**

In the proposed conclusion D on page 12 of the draft determination, we suggest a written conclusion that does not characterize Mr. Majka's expenditure as a legal violation *by him*. Rather, we suggest describing the expenditure as a violation by the candidate only. The principal reason for this recommendation is that the "Terms of Participation" set out in 21-A M.R.S.A. § 1125 regulate the conduct of *candidates* (including a prohibition in subsection 6 against accepting contributions). While section 1125(6) prohibits candidates from accepting contributions, that subsection does not explicitly prohibit *donors* from making contributions.

The portions of Title 21-A governing traditionally financed campaigns make clear that donors “may not make contributions to a candidate” in excess of the contribution limits, but there is no parallel provision in the Maine Clean Election Act.

The second reason for this recommendation is that Mr. Majka did not receive the Notice of Hearing for July 29, 2013 meeting and was not present at the meeting. Although he and others were the subject of the investigation, Mr. Majka was not expressly put on notice that he could be found in violation of the provisions of Title 21-A at the July 29, 2013 meeting. For these reasons, the proposed draft avoids a conclusion that Mr. Majka violated the Maine Clean Election Act. I have attached letters from Timothy C. Woodcock, Esq. and Mr. Majka on this subject.

Thank you for considering the enclosed draft determination.

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135 STATE HOUSE STATION  
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In Re: Campaign Spending in )  
Maine House of Representatives, )  
District 1 )

COMMISSION DETERMINATION

I. Introduction and Procedural History

In the 2012 general election, Allen Michael Nadeau of Fort Kent challenged the incumbent, John Martin, to represent District 1 in the Maine House of Representatives. His treasurer was L. Philip Soucy, also of Fort Kent. (1/17/2013 Transcript at 118) Rep. Nadeau won the 2012 general election, held on November 6, 2012.

On Friday, November 2, 2012, a group of persons calling themselves Citizens for Effective Government filed Independent Expenditure Report #205 with the Commission. (Exhibit 28) The report indicated that the group had paid \$1,475.16 to a print shop in Fort Kent for a mailing in support of Rep. Nadeau. The cover sheet of the report and the required affidavit (second page) were signed by Philip Soucy, the treasurer of Mr. Nadeau's campaign. (Id.)

After business hours on November 2, 2012, the Maine Democratic Party filed a request for investigation with the Commission (Exhibit 1) contending that Rep. Nadeau had received a contribution because his treasurer – an agent of the campaign – cooperated with the expenditure:

As Treasurer of Mr. Nadeau's campaign – he is clearly an "agent" of the campaign and as such, is prohibited from coordinating with any outside organization on expenditures (let alone an organization he controls). As a result, the \$1,475.16 expenditure made by CEG to support Candidate Nadeau is an illegal contribution to the campaign.

(Exhibit 1, at 2) As a Maine Clean Election Act candidate, Rep. Nadeau is not permitted to accept campaign contributions.

The Commission met at 3:00 p.m. on Monday, November 5, 2012, the day before the election. Rep. Nadeau received notice of the meeting by telephone and electronic mail, but ~~declined to~~ did not participate. Mr. Soucy participated in the November 5, 2012 meeting by telephone. His attorney, William Logan, appeared before the Commission in person. After hearing presentations from Mr. Logan and from the Maine Democratic Party, the Commission made initial findings that:

- (1) a coordinated expenditure (*i.e.*, one made “in cooperation, consultation or concert with, or at the request or suggestion of, a candidate, a candidate’s political committee or their agents”) occurred under Title 21-A, section 1015(5) as a result of the involvement of treasurer L. Philip Soucy in the Mike Nadeau campaign and Citizens for Effective Government, and
- (2) the coordinated expenditure constituted a campaign contribution to the Mike Nadeau campaign which is not allowed under the Maine Clean Election Act.

(11/5/2012 Transcript at 69-70) The Commission then directed its staff to continue an investigation into the factual issues concerning: 1) the expenditure by Citizens for Effective Government, 2) whether Citizens for Effective Government should have registered as a political action committee, and 3) the sworn statement by L. Philip Soucy that there was no coordination between the Nadeau campaign and Citizens for Effective Government regarding the expenditure for the communication. (*Id.* at 70-71) The staff prepared a written determination confirming this following the meeting. (Exhibit 9)

The Commission held an investigative hearing on January 17, 2013, and received sworn testimony from Rep. Nadeau; a friend of the candidate who was an active campaign worker, James Majka; campaign volunteer, Dana Saucier; and two employees of the Fiddlehead Focus newspaper (Julie Daigle and Dennis Michaud). Mr. Soucy was present for the hearing but

declined to answer questions from the Commission, asserting his Fifth Amendment privilege against self-incrimination.

At the conclusion of the January 17, 2013 hearing, the Commission indicated that the investigation would continue and that staff should have an opportunity to consider what additional information and/or testimony might be necessary to resolve the remaining unanswered questions – particularly in light of Mr. Soucy’s decision to invoke his Fifth Amendment privilege. (1/17/13 Transcript at 159-168)

On February 14 and March 8, 2013, the Commission served subpoenas on four financial institutions seeking records for four accounts belonging to Rep. Nadeau and James Majka, and requesting a record of deposit by Philip Soucy. Initially, Rep. Nadeau and Jim Majka objected to the subpoenas, but they withdrew their objections shortly before the Commission’s April 5, 2013 meeting. The Office of the Maine Attorney General provided assistance to the Commission, pursuant to 21-A M.R.S.A. § 1003(4), by assigning an investigator to conduct interviews of witnesses in Fort Kent, Maine and in Connecticut. During the first week of June, the Commission staff and counsel reviewed the evidence and advised the Chair of the staff’s view that the investigation could be concluded with one final evidentiary hearing in July.

A Notice of Hearing was issued on June 21, 2013 and distributed to counsel for the respondents, Michael Nadeau and Philip Soucy, as well as the Maine Democratic Party. The Notice provided a detailed listing of the factual and legal issues that the Commission was likely to consider at the hearing and in its deliberations following presentation of evidence and argument. A staff memorandum was also distributed to these participants and to Commissioners in advance of the hearing. Although the Notice included a staff recommendation that the Commission defer any findings regarding whether Philip Soucy had made a material false statement in Independent Expenditure Report #205, counsel for Mr. Soucy subsequently urged the Commission to make a final determination with regard to Mr. Soucy at the July 29 meeting. (Letter from William Logan, Esq., dated July 23, 2013)

At the hearing held on July 29, 2013, the Commission received sworn testimony by video conference from Norman Nadeau, a brother of Rep. Nadeau; Ronaldo Thibeault, Rep. Nadeau's step-father; Alicia Nadeau, Rep. Nadeau's daughter-in-law and bookkeeper for his business, Mike's & Sons; Steve Daigle, former owner and operator of Paper Signs Ink; Sen. Andre Cushing; and Marge Berkovich, a detective with the Maine Office of the Attorney General. Rep. Nadeau attended the hearing in person and was represented by his attorney, Timothy C. Woodcock. Mr. Soucy did not attend the hearing, but was represented by his attorney, William P. Logan. The Maine Democratic Party was represented by its attorney Katherine R. Knox. The Commission also received into the record certain documents labeled as Exhibits 34-50.<sup>1</sup> After hearing the evidence, arguments by counsel and a presentation from the Commission staff, the Commission began deliberations and voted on a series of motions to reflect its factual findings and legal conclusions as set forth below. The Commission elected to defer the consideration and imposition of penalties until a subsequent meeting and directed staff to prepare a draft determination for its consideration at that meeting.

## **II. Findings of Fact**

### **A. Fiddlehead Focus Ad**

The Fiddlehead Focus is a print and online community newspaper based in Fort Kent, Maine. (1/17/2013 Transcript at 5) Its print edition is published weekly on Wednesdays. (Id.) For October 31, 2012, it published a special section in its print edition, which was an opportunity for the paper to sell election-related advertising. (Id. at 7)

In the last two weeks of the campaign, Mr. Nadeau considered buying an advertisement in the October 31 special section to promote his political campaign. (Id. at 8-9) He talked to a newspaper employee, Julie Daigle, about placing a political ad. (Id.) On the Thursday or Friday before publication, they met in person and discussed different options for prices and sizes of the ad. (Id.) The candidate took notes on a pricing sheet provided by Ms. Daigle. (Id. at 9)

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<sup>1</sup> Exhibits 1-33 were admitted into evidence at the hearing on January 17, 2013.

Julie Daigle checked back with Mr. Nadeau on the morning of Monday, October 29 (two days before the publication date). (Id. at 10) He indicated that he was going to submit the ad to the newspaper for publication. (Id. at 11) She expected it by e-mail. (Id. at 12) She gave him a deadline of mid-afternoon by which she would need to receive the ad. (Id. at 11) She testified that the deadline might have been 2:30 p.m., but that she could not remember the exact time. (Id.) Mr. Nadeau never e-mailed the ad and never contacted her to say that he was not providing an ad. (Id. at 12)

James Majka was a campaign worker who was in charge of the candidate's campaign website (www.mikenadeau.net) and Facebook page. The campaign paid him \$350 for his work in August, and, thereafter, he provided updates to the website. He also did other work for the campaign, ~~apparently~~ as a volunteer. (1/17/2013 Transcript at 41). At the January 17, 2013 hearing, Mr. Majka testified that he would "see Mike" and update the campaign website "on a daily basis or every two or three days, or once a week." (1/17/2013 Transcript at 52) Rep. Nadeau testified that "I would see Jim sometimes every day, sometimes two or three days." (Id. at 130) Mr. Majka was the only one who placed material on the web for the candidate. (Id. at 61-62, 66, 150) He had both express and implied authority from the candidate to do so.

On the afternoon of October 29, 2012, Mr. Majka arrived at the newspaper office with three \$100 bills in hand and indicated that he wanted to purchase an ad in support of Rep. Nadeau. (Id. at 17, 21-22) He met with another newspaper employee, Dennis Michaud, to place the order for the ad. (Id. at 17) Mr. Majka arrived at the office with a sheet of lined paper (Exhibit 22) containing the handwritten text for the ad, which he gave to Mr. Michaud. (1/17/2013 Transcript at 18-19) The handwriting on Exhibit 22 also contained the notation "Fiddlehead ad By 3 oClock" at the top of the page. At the January 17, 2013 hearing, Rep. Nadeau confirmed that he personally wrote the language at the bottom of Exhibit 22 (the text that was later published as the ad) and that he wrote the notation "Fiddlehead ad by 3 oClock" at the top of the page. (Id. at 146-47)

~~Mr. Majka testified that he discussed the ad with the candidate, but he could not remember if he did so before or after he placed the ad. (Id. at 48-49) Although Rep. Nadeau~~

testified that he did not know that Mr. Majka was going to place the advertisement in the Fiddlehead Focus newspaper, his alternative explanation that the text was intended for the web site was not well-supported. Rep. Nadeau originally intended to use the handwritten text for an ad in the Fiddlehead Focus to be paid with campaign funds. However, he decided not to purchase the ad because he lacked the funds. (Id. at 148) He testified that he then gave the paper with the handwritten text to Mr. Majka to place on Rep. Nadeau's campaign website. (Id. at 147) When asked to provide a screen shot of the web site showing this content, Rep. Nadeau was unable to do so, and the staff was unable to find any evidence that the text ever appeared on the web site.

During Mr. Majka's first visit to the newspaper office on the afternoon of Oct. 29, 2012, Mr. Majka paid \$300 to the Fiddlehead Focus. He paid with the three \$100 bills that he had in his hand when he walked into the office. (Id. at 17, 21) On his second visit the following day, Mr. Majka paid another \$120 in cash to have the ad printed in color, for a total of \$420. (Id. at 27; see also Exhibit 23)

Mr. Majka testified that he discussed the ad with the candidate, but he could not remember if he did so before or after he placed the ad. (Id. at 48-49) Rep. Nadeau testified that he did not know that Mr. Majka was going to place the advertisement in the Fiddlehead Focus newspaper. (Id. at 154)

At the January 17, 2013 hearing, Mr. Majka testified that he paid for the ad himself. (Id. at 55) He denied that anyone gave him the cash or reimbursed him for the ad. (Id.) He said that he paid for it with cash that he keeps at home. (Id.)

The ad appeared in the Oct. 31, 2012 special section of the Fiddlehead Focus with the attribution statement "paid for by Jim Majka." (Exhibit 21) The ad did not include a disclaimer statement indicating whether it was authorized by any candidate.

## B. Mailing to District 1 Voters

On Thursday, November 1, 2012, Mr. Soucy used his personal credit card to pay \$1,475.16 to a Fort Kent print shop (Paper Signs Ink) for a mailing to support Michael Nadeau. (Exhibit 33) Later that afternoon, he deposited \$1,500 in cash into his personal account at a credit union to reimburse himself. (Exhibits 34 and 35)

According to testimony received at the January 17, 2013 hearing, on Wednesday, October 31, 2012, Jim Majka and Dana Saucier (another campaign volunteer) were with the candidate in the candidate's campaign headquarters reviewing the campaign advertising for other candidates in the two weekly newspapers serving the area. (1/17/2013 Transcript at 79-81) Mr. Saucier testified that he cannot remember any specific observations or reactions by the candidate but that the group "took exception to certain verbiage" in the advertisements. (Id. at 81)

According to Mr. Saucier, after he and Jim Majka left the building, they discussed how they could respond to the newspaper advertisements while they were leaning up against their trucks outside. (Id. at 80) They came up with the idea of a mailing that would go into every household in the community by the Saturday before the election. (Id. at 78-80) Mr. Saucier testified that the idea of the mailing did not come up within campaign headquarters when Mr. Nadeau was present. (Id. at 81) Insertion suggested by Mr. Healy: Rep. Nadeau testified that he was not aware of the mailing until he received it in the mail. (Id. at 133)]

Mr. Saucier went home, conducted some research, and put together a first draft of the mailing, which he e-mailed to Jim Majka. (Id. at 82-83) Mr. Majka polished it up, shortened it, and provided the graphics. They exchanged additional drafts. (Id.) All of this happened during the day and evening on Wednesday, October 31<sup>st</sup> and early morning on Thursday, November 1<sup>st</sup>. (Id.) Jim Majka submitted it to the print shop "for costing and printing." (Id. at 83-84)

Mr. Saucier knew that Philip Soucy was the treasurer of the campaign, and he also remembered that Philip Soucy had previously "said that he had money to be able to do these kinds of mailers." (Id. at 92) Mr. Saucier proceeded on the premise that money was still available. (Id. at 97) Mr. Saucier left a voicemail message on the evening of October 31,

requesting that Mr. Soucy meet Mr. Saucier at the printer's office the following morning, Thursday November 1. -(Id. at 91-92)

According to Mr. Saucier, "someone" had told him "that if you wanted to do this kind of thing, that you had to fill out some paperwork for the Ethics Committee or Commission ..." (Id. at 97) Mr. Saucier contacted Charlie Webster, the chair of the Maine Republican Party, to find out "the particulars," and Mr. Webster said someone would call him back. (Id. at 85, 97) Two or three hours later, then-Rep. Andre Cushing called Mr. Saucier and sent him a link for the independent expenditure reporting form on the Commission's website. (Id. at 85) Sen. Cushing instructed Mr. Saucier that the cost "had to be under \$1,500." (Id. at 84) Mr. Saucier recalled "It it had something to do with otherwise filing as a lobbyist or some kind of other entity beyond what we were." (Id. at 86)

Mr. Soucy showed up at the print shop (Paper Signs Ink) around 9:00 a.m. on the morning of November 1. (Id. at 92) When Mr. Saucier talked to the print shop, he requested that the cost of the job be under \$1,500, even if it meant cutting out some of the smaller communities in the district. (Id. at 87)

Mr. Saucier filled out all of the sections of the independent expenditure reporting form, except for the mailing address and the signature lines. (Id. at 88) He came up with the name of Citizens for Effective Government, which he considered to be himself, James Majka, and Philip Soucy. (Id. at 91) After leaving the print shop, Mr. Saucier went to the Fort Kent town office with Mr. Soucy to get Mr. Soucy's signature on the affidavit notarized. (Id. at 88, 91)

**C. Sources of Money for House District 1 Mailing by Citizens for Effective Government**

At the November 5, 2012 meeting, the Commission directed its staff to investigate whether the financial activities of Mr. Soucy's group (Citizens for Effective Government) required it to register as a political action committee (PAC). Mr. Soucy paid for the mailing with

a personal credit card on November 1, 2012. That afternoon, he deposited \$1,500 in hundred dollar bills into his personal credit union account to reimburse himself for the mailing.

The evidence concerning the sources of that \$1,500 is inconclusive. Mr. Soucy gave three conflicting statements regarding the sources of these funds in the days immediately following the expenditure. His final explanation, offered by telephone at the Commission's November 5, 2012 meeting, was that he had received \$500 in cash from each of three of Rep. Nadeau's relatives: his brothers Norman and Kenneth Nadeau, and his step-father, Ronaldo Thibeault. This explanation is not substantiated by any documentation received by the Commission (e.g., withdrawal slip, bank statement, check or bookkeeping entry). Mr. Soucy's explanation that the funds were raised after a decision was made to proceed with a mailing is inconsistent with testimony received at the January 17, 2013 hearing that the mailing was conceived, prepared, and purchased within 24 hours.

The Commission received weak corroboration from the individuals identified by Mr. Soucy as contributors. Norman Nadeau did not personally make a contribution by check or cash, and he had only a vague recollection of discussing a possible contribution with his brother, Kenneth Nadeau (who died shortly after the November, 2012 election). He does not know if his brother Kenneth, who handled their business's bookkeeping, made a contribution on his behalf. Despite a specific request by Commission staff, Norman Nadeau did not make any attempt to locate records from the business or elsewhere to substantiate that any contribution was made. He also offered no explanation for how a cash contribution could have made it to Fort Kent, Maine from Connecticut.

Ronaldo Thibeault's July 29, 2013 testimony did not resolve unanswered questions concerning how and when a cash contribution could have been received by Mr. Soucy's group. Mr. Thibeault recalled that he gave \$500 in cash to his step-son Kenneth Nadeau, while Mr. Thibeault was staying in Connecticut for one week in late October, 2012, in the course of traveling to Florida for the winter. However, when Mr. Thibeault was interviewed two months earlier on May 24, 2013 by an investigator for the Attorney General's office (AG), he could not remember where or when he gave the contribution. When he was specifically asked by the AG

investigator whether he made a contribution in Connecticut on his way to Florida, Mr. Thibeault responded that he could not remember.

In October and November of 2012, Rep. Nadeau withdrew a total of \$7,000 in cash from his business, Mike's & Sons, on four occasions for a total of \$7,000, including \$2,000 on November 1, 2012. (Exhibit 45) The bookkeeper for the business was told by Rep. Nadeau that the cash was to repay a loan to the business from an inheritance Rep. Nadeau had received. In addition, there were a number of other occasions between September 2012 and June 2013 when Rep. Nadeau withdrew cash from his business and instructed Alicia Nadeau, the bookkeeper for the business, to record these withdrawals as repayments of a loan to the business from an inheritance that Rep. Nadeau received. However, the bookkeeper Ms. Nadeau has no direct knowledge of how Rep. Nadeau used the cash after she gave it to him.

On October 31, 2012 (the day that Dana Saucier and James Majka were preparing the mailing to House District 1 voters), Rep. Nadeau contacted Sen. Andre Cushing, whose Respect Maine PAC, was spending heavily in the House District 1 race. They spoke for six minutes. Rep. Nadeau mentioned that some people were interested in doing things to assist his campaign, and Sen. Cushing was led to believe that these activities might require the expenditure of funds. Sen. Cushing recommended that Rep. Nadeau telephone the Commission to receive advice, because of the potential that Rep. Nadeau would be inappropriately coordinating with others on expenditures. Sen. Cushing also sent Dana Saucier an electronic mail message on Thursday, November 1, 2012 containing a hyperlink to the form on the Commission website for reporting an independent expenditure.

While the information received by the Commission in the course of the investigation does not does not substantiate Mr. Soucy's story regarding the source of the funds, it also does not provide direct evidence that Rep. Nadeau was the source of the funds for the Citizens for Effective Government mailing.

**D. Agency of James Majka and Philip Soucy**

[Insertion suggested by Mr. Healy: In order to determine whether the mailing or Fiddlehead Focus advertisement constitute coordinated expenditures under 21-A M.R.S.A. § 1015(5), the Commission had to determine if Mr. Majka and Mr. Soucy were agents of Rep. Nadeau or part of his political committee. Maine's campaign finance laws do not define "agent." The statutes also do not define a treasurer, or campaign worker such as Mr. Majka, as an agent of the candidate as a matter of law. In order to find Rep. Nadeau responsible for the acts of either Mr. Majka or Mr. Soucy as agents, the evidence must establish an agency relationship between them and Rep. Nadeau. That means that the evidence must establish that Rep. Nadeau made an agreement with one or the other that they could act for him (consent) and were subject to his control. At common law, consent and control are required elements of an agency relationship. (Page v. Boone's Transport, Ltd., 1998 ME 105, Restatement Second of Agency 1.1 [1958])] Also at common law, an agent's actual authority is created by manifestations of consent (express or implied) by the principal to the agent. Such manifestations may by words or other conduct, including acquiescence. Restatement (Second) of Agency 7, 26 (1958).

When Rep. Nadeau registered as a candidate on March 14, 2012, he identified Philip Soucy as his treasurer. (Exhibit 29) Rep. Nadeau did not complete section 4 of the registration form designating a political committee.

~~Testimony provided to the Commission suggests that~~ Mr. Soucy's role in the campaign was limited. Although he had certain statutory duties as treasurer, he was given no other authority or responsibility by the candidate. -(11/5/12 Transcript at 18) The campaign filed two campaign finance reports with the Commission using paper forms, which Mr. Soucy signed as treasurer, certifying that the reports were true, correct and complete. (Exhibits 30 and 31) His other responsibilities for the campaign were limited to receiving communications from the Commission and forwarding them to Rep. Nadeau. (11/5/2012 Transcript at 19) Rep. Nadeau prepared all of the campaign finance reports, and only had Mr. Soucy sign the completed documents when they were filed in paper form. (1/17/2013 Transcript at 120-121) Mr. Soucy had no signing authority on the campaign checking account. (Id.) Mr. Soucy rarely helped with

campaign activities, and he and Rep. Nadeau never discussed campaign strategy. (*Id.* at 124)

[Insertion suggested by Mr. Healy: Rep. Nadeau testified that he did appoint Mr. Soucy as his campaign treasurer, but did not authorize him to act as his agent in any capacity.]

Unlike Mr. Soucy, Mr. Majka had no official title with the campaign. However, he served a much more substantial role in the day-to-day operations of the campaign. Mr. Majka was paid \$350 by Rep. Nadeau for his work setting up the website and thereafter was a very active volunteer in support of Michael Nadeau's election. He had frequent personal contact with the candidate and received personal direction from the candidate – sometimes on a daily basis. Mr. Majka would speak with Rep. Nadeau and update the campaign website on an almost daily basis. (*Id.* at 52, 130) Mr. Majka was in charge of the candidate's campaign website ([www.mikenadeau.net](http://www.mikenadeau.net)) and Facebook page. (*Id.* at 125) He was the only campaign worker who placed material on the web for Rep. Nadeau. (*Id.* at 61-62, 66, 150)

### III. Conclusions of Law<sup>2</sup>

Based on the above findings of fact, and consideration of all legal arguments presented, the Commission concludes that:

A. There is insufficient evidence to determine that the candidate, Allen Michael Nadeau, provided the funds to pay for the Citizens for Effective Government mailing (which would have constituted a contribution to his campaign in violation of the Maine Clean Election Act).

[Insertion suggested by Mr. Healy: Therefore, on this record, we conclude that he did not.]

B. There was no “candidate’s political committee” for purposes of 21-A M.R.S.A. § 1015(5) -and no political committee authorized by the candidate in this case as it relates to the expenditure of \$1,475 on the Citizens for Effective Government mailing.

<sup>2</sup> Three of the legal conclusions (A, C, and F), were unanimously approved by the full Commission, consisting of Commissioners Walter F. McKee (Chair), Andre G. Duchette, Margaret E. Matheson, Michael T. Healy, and Jane A. Amero. Conclusion B was approved by a vote of four to one (Commissioner Matheson opposed). Conclusion D was approved by a vote of four to one (Commissioner Amero opposed). Conclusion E was approved by a vote of three to two (Commissioners Healy and Amero opposed).

C. The treasurer, L. Philip Soucy, was not an agent of the candidate for purposes of 21-A M.R.S.A. § 1015(5) with respect to making the expenditure of \$1,475 on the Citizens for Effective Government mailing.

D. James Majka was an agent of the candidate for purposes of 21-A M.R.S.A. § 1015(5) with respect to making the expenditure of \$420 for the Fiddlehead Focus ad, and Mr. Nadeau thereby received a \$420 contribution pursuant to 21-A M.R.S.A. § 1015(5), in violation of 21-A M.R.S.A. § 1125(6).

E. James Majka purchased the Fiddlehead Focus ad at the request or suggestion of the candidate, Mr. Nadeau, which resulted in a \$420 contribution to the candidate pursuant to 21-A M.R.S.A. § 1015(5), in violation of 21-A M.R.S.A. § 1125(6).

F. Because L. Philip Soucy was not an agent of the candidate for purposes of 21-A M.R.S.A. § 1015(5) with respect to making the expenditure of \$1,475 on the Citizens for Effective Government mailing, he did not make a material false statement prohibited by 21-A M.R.S.A. § 1004-A(5) when he signed the affidavit in the Independent Expenditure Report #205, filed on November 1, 2012 on behalf of Citizens for Effective Government.

#### IV. Order

For violating 21-A M.R.S.A. § 1125(6) as set forth in Conclusions D and E, Rep. Nadeau is directed to pay a penalty of \_\_\_\_\_ dollars (\$ \_\_\_\_\_.00).

Dated at Augusta, Maine this \_\_\_\_ day of August, 2013

---

Walter F. McKee, Chair  
Commission on Governmental Ethics  
and Election Practices

## Wayne, Jonathan

---

**From:** Healy, Michael <mhealy@verrilldana.com>  
**Sent:** Friday, August 09, 2013 11:32 AM  
**To:** Wayne, Jonathan; Walter McKee (wmckee@mckeebillings.com); Andre Duchette (aduchette@tmfattorneys.com); Meg Matheson [REDACTED]; Jane Amero [REDACTED]  
**Cc:** Gardiner, Phyllis; Lavin, Paul; Dyer, Benjamin P  
**Subject:** RE: Draft Determination - For Your Review

Jon , Thank you for the draft decision . I have the following suggestions for your consideration. 1. At pg.7 at the end of the second paragraph add " Mr. Nadeau was not aware of the mailing until it arrived in the mail. [ ]. 2. At pg.9 last paragraph end of first sentence " These withdrawals were a routine business practice made by the bookkeeper on Mr. Nadeau's instructions. 3. At pg. 10 add under section D . "The Commission had to determine if either Mr. Majka or Mr. Soucy was an agent of Mr. Nadeau. The Maine Clean Election Act does not define "agent" and does not make either Mr. Majka or Mr. Soucy Mr. Nadeau's agent as a matter of law. In order to find Mr. Nadeau responsible for the acts of either Mr. Majka or Mr. Soucy as agents the evidence must establish an agency relationship between them and Mr. Nadeau. That means the evidence must establish that Mr. Nadeau made an agreement with one or the other that they could act for him [consent] and subject to his control. Consent and control are required elements of an agency relationship. Page v. Boone's Transport, LTD 1998 ME 105 , Restatement[Second of Agency & 1.1 {1958}. 4. At pg.11 at end of the first sentence " Mr. Nadeau did not make Mr. Soucy his agent. { }. " 5. AT pg.11 at the end 111. {A} Therefore on this record we conclude that he did not." If you have any questions please call me. Mike

### Michael Healy, Counsel

One Portland Square  
Portland, ME 04112-0586  
Office: (207) 774-4000  
Bio: [verrilldana.com/mhealy](http://verrilldana.com/mhealy)

**Verrill Dana**<sub>LLC</sub>

Attorneys at Law



---

**From:** Wayne, Jonathan [<mailto:Jonathan.Wayne@maine.gov>]  
**Sent:** Thursday, August 08, 2013 3:21 PM  
**To:** Walter McKee (wmckee@mckeebillings.com); Andre Duchette (aduchette@tmfattorneys.com); Meg Matheson (megfrank@roadrunner.com); Healy, Michael; Jane Amero (janeamero@hotmail.com)  
**Cc:** Gardiner, Phyllis; Lavin, Paul; Dyer, Benjamin P  
**Subject:** Draft Determination - For Your Review

Commissioners,

In consultation with the Commission Counsel, the staff has prepared a draft of a determination in the District 1/Nadeau matter.

If you would like to make any comments or suggest any revisions, it would be helpful if you could please e-mail them to Assistant Director Paul Lavin and Candidate Registrar Benjamin Dyer by 4:00 p.m. on Thursday, August 15, 2013 (one week from today). Paul and Ben are copied on this e-mail. Any comments or revisions suggested by you will be public records.

The staff will prepare a subsequent draft for your consideration at the August 23 meeting. We are aiming to send the next draft to you on Monday, August 19.

We apologize for the short turnaround time, but we wanted to complete the District 1 item before Commissioner Healy leaves on August 27.

I will be on a family vacation next week, so Paul and Ben will be working with your proposed changes.

Thank you.

Jonathan Wayne  
Executive Director  
Maine Ethics Commission  
135 SHS  
Augusta, ME 04333  
287-4179

Treasury Regulations require us to notify you that any tax advice in this communication (including any attachment) is not intended or written to be used, and cannot be used, for the purpose of avoiding tax penalties, and may not be referred to in any marketing or promotional materials.

This email and any attachment was sent from the law firm Verrill Dana, LLP. It may contain information that is privileged and confidential. If you suspect that you were not intended to receive it, please delete it and notify us as soon as possible. Thank you.

## Wayne, Jonathan

---

**From:** Andre Duchette <aduchette@tmfattorneys.com>  
**Sent:** Monday, August 12, 2013 5:01 PM  
**To:** Healy, Michael; Wayne, Jonathan; wmckee@mckeebillings.com; meg [REDACTED]  
janeamero [REDACTED]  
**Cc:** Gardiner, Phyllis; Lavin, Paul; Dyer, Benjamin P  
**Subject:** RE: Draft Determination - For Your Review

I like the draft and have no objection to Mike's comments below. However, if we are going to make that statement with respect to agency as it applies to Mr. Soucy, we should state that the facts did give rise to an agency relationship as it relates to Mr. Majka.

-Andre

---

**From:** Healy, Michael [<mailto:mhealy@verrilldana.com>]  
**Sent:** Friday, August 09, 2013 11:32 AM  
**To:** 'Wayne, Jonathan'; Walter McKee([wmckee@mckeebillings.com](mailto:wmckee@mckeebillings.com)); Andre Duchette; Meg Matheson([megfrank@roadrunner.com](mailto:megfrank@roadrunner.com)); Jane Amero([janeamero@hotmail.com](mailto:janeamero@hotmail.com))  
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**Subject:** RE: Draft Determination - For Your Review

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**Michael Healy, Counsel**  
One Portland Square  
Portland, ME 04112-0586  
Office: (207) 774-4000  
Bio: [verrilldana.com/mhealy](http://verrilldana.com/mhealy)

**Verrill Dana**<sub>LLP</sub>

Attorneys at Law



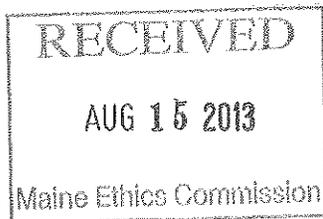
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**From:** Wayne, Jonathan [<mailto:Jonathan.Wayne@maine.gov>]  
**Sent:** Thursday, August 08, 2013 3:21 PM  
**To:** Walter McKee ([wmckee@mckeebillings.com](mailto:wmckee@mckeebillings.com)); Andre Duchette ([aduchette@tmfattorneys.com](mailto:aduchette@tmfattorneys.com)); Meg Matheson ([megfrank@roadrunner.com](mailto:megfrank@roadrunner.com)); Healy, Michael; Jane Amero ([janeamero@hotmail.com](mailto:janeamero@hotmail.com))

Eaton  
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www.eatonpeabody.com



August 15, 2013

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

Re: House District 1, A Michael Nadeau

Dear Jonathan:

Enclosed please find comments for A. Michael Nadeau on the proposed summary and findings of the Commission on Governmental Ethics and Election Practices. I would appreciate your filing this in ordinary manner.

If you have any questions, please don't hesitate to let me know.

Sincerely,

A handwritten signature in black ink, appearing to read "Tim Woodcock".

Timothy C. Woodcock

CC: Phyllis Gardiner, Assistant Attorney General  
William Logan, Esq.  
Kate Knox, Esq.

**Comment of A. Michael Nadeau on Proposed Findings and Decision of  
Commission on Governmental Ethics and Election Practices.**

**Page 2, First Paragraph:**

The representation that candidate Nadeau “declined to participate” should be changed to “did not participate.”

**Reason for Recommendation.** There is no evidence that A. Michael Nadeau “declined” to participate. The hearing was held the day before Election Day and it may be assumed that candidate Nadeau was busy that day. However that may be, there is no evidence in the record as to why he did not participate in the November 5 hearing.

**Page 3, Third Paragraph:**

“The Office of the Maine Attorney General provided assistance to the Commission pursuant to 21-A MRSA §1003(4), by assigning an investigator to conduct interviews...” should be changed to read: “The Office of the Maine Attorney General provided assistance to Commission staff pursuant to a request from Commission staff by assigning an investigator to conduct interviews...”

**Reason for Recommendation.** Section 1003(4) empowers the Commission to ask the Attorney General’s Office for investigatory assistance; it does not so empower the staff. The Commission never asked the Attorney General’s Office for assistance pursuant to Section 1003(4) and the Commission’s summary of this should be clear on this point.

**Page 5, Second Paragraph:**

“He also did other work for the campaign, apparently as a volunteer” should read, “He also did other work for the campaign as a volunteer.”

**Reason for Recommendation:** There is no evidence that James Majka did any work for the Nadeau campaign for remuneration, aside from setting up the website. All the evidence in the record is that, aside from this task, he was a volunteer. The Commission findings should not imply otherwise.

**Page 5, Second Paragraph:**

“He had both express and implied authority from the candidate to do so” Should read, “He had express authority from the candidate to do so.”

**Reason for Recommendation:** There is no evidence in the record that James Majka put anything on the campaign website or the campaign’s Facebook page without first checking with candidate Nadeau. The evidence is that candidate Nadeau very tightly controlled his campaign.

**Page 5, last paragraph, onto Page 6:**

“Mr. Majka testified that he discussed the ad with the candidate, but he could not remember if he did so before or after he placed the ad” should be enlarged to read, “Mr. Majka testified that candidate Nadeau ‘probably found out about [the ad] after’ but could not remember. When Mr. Majka was interviewed on November 16, 2012, he said that he did the ad ‘on his own’ and that candidate Nadeau ‘did not know about the ad.’ When Michael Nadeau was asked about the advertisement, he said that he did not know about it before it appeared.” (Transcript 1/17/13 at 48-49, 145, Memorandum of Jonathan Wayne dated November 16, 2012).

**Reason for Recommendation:** This provides a more complete account of James Majka’s testimony and interview on the point in question.

**Page 6, First Paragraph, continued from Page 5:**

“...his alternative explanation that the text was intended for the web site was not well supported,” should read, “candidate Nadeau said that the text had been prepared for use as an advertisement and as a possible web posting. When he ruled out the advertisement, posting on the web site remained an option. He gave the text to James Majka who was the only person who posted such items on the website. James Majka took the text to the Fiddlehead Focus and had it turned into an advertisement.”

**Reason for Recommendation.** The summary implies that candidate Nadeau has an “explanation” for the text ending up as an advertisement. He doesn’t. In this regard, the following comment of the staff director of the Commission on Governmental Ethic and Election Practices is noted: “We understand we’re asking about events that happened in the middle of a campaign and that they may have more significance now than you attached in the past to it.” (Transcript 1/17/13 at 49).

**Page 9, First Full Paragraph:**

“The Commission received weak corroboration form the individuals identified by Mr. Soucy as contributors...” should read. “In this Commission’s hearing of November 5, 2012, Mr. Soucy identified Kenneth Nadeau, Norman Nadeau, and Ronaldo Thibeault as the sources of the \$1,500. A short time after the election, Kenneth Nadeau died unexpectedly. Therefore, at the time Mr. Soucy identified Kenneth Nadeau as a source of the money, he had no reason to believe that Kenneth Nadeau would not be available to corroborate his account. Both Mr. Thibeault and Norman Nadeau identified Kenneth Nadeau as the one who solicited the money from them and assumed that he made arrangements for the money to be delivered. On January 17, 2013, Mr. Soucy invoked his Fifth Amendment right against self-incrimination. That the two persons with the most knowledge about this source of money, could not be questioned about it.”

“However, when Mr. Thibeault was interviewed...Mr. Thibeault responded by saying that he could not remember”, should be followed by, “This same investigator had difficulty saying whether, when she conducted her investigation, she was working for the Commission or the Attorney General’s Office of both. She admitted that as part of her investigation, she

questioned Alicia Nadeau, Michael Nadeau's daughter-in-law, about whether Michael Nadeau intended to run again for the House of Representatives in 2014 but, upon further questioning, acknowledged that that question had nothing to do with her investigation on behalf of either entity. The investigator did not explain why she included that question as part of her investigation of the 2012 campaign or who wanted to know the answer."

**Reason for Recommendation:** The summary leaves out the plain fact that Mr. Soucy's assertion about the source of \$1,500 could not be fully explored because of Kenneth Nadeau's untimely and unexpected death and Mr. Soucy's decision to invoke the Fifth Amendment. It was clear from Mr. Thibeault and Norman Nadeau that they did not know much about this and Kenneth Nadeau's request did not make an strong impression on them. The proposal that the corroboration of Mr. Soucy's assertion as "weak" is intended to be pejorative and to lend vitality to the Commission staff's theory that candidate Nadeau was the source of the money, a proposal rejected by the Commission.

The summary is intended to make Ronaldo Thibeault appear dishonest or addled. The additional information about the investigator illustrates her approach to witnesses. It will be remembered that she testified that Mr. Thibeault was so uncomfortable in her presence that he would not allow her into his house even though it was raining. It should be a source of great concern to the Commission that this investigator, ostensibly acting in the name of the Commission would incorporate into her official investigation a question about whether an elected official plans to run in the coming election.

**Page 9, Last Paragraph.**

"In October and November of 2012,...." This paragraph should be deleted in its entirety.

**Reason for Recommendation:** The Commission staff developed the theory that candidate Nadeau was the source of the money for the Citizens for Effective Government flyer. When candidate Nadeau's finances were placed in broader context, the bank activity in October and November 2012 did not look unusual and the Commission rejected the Commission's staff's theory as unsupported. The inclusion of this paragraph is intended to make an official record of the staff's theory and to perpetuate its vitality.

**Page 10, First Paragraph:**

This paragraph should be deleted.

**Reason for Recommendation.** With the Commission's decision that the Citizens for Effective Government flyer did not violate the Clean Election Act, this paragraph is irrelevant and appears to have been included to make a record of this theory.

**Page 11, First Full Paragraph:**

“Mr. Majka was in charge of the candidate’s campaign website...” should be changed to read, “Mr. Majka, under candidate Nadeau’s supervision, was responsible for posting materials on and updating the candidate’s campaign website...”

**Reason for Recommendation:** There is no evidence that James Majka had candidate Nadeau’s permission to post whatever he wanted on the campaign website. The evidence is that candidate Nadeau very tightly controlled his campaign.

### **III. Conclusions of Law:**

**Recommended Finding A:** The Commission finds that the flyer produced and distributed by Citizens for Effective Government was not a coordinated expenditure with candidate A. Michael Nadeau within the meaning of 21-A MRSA §1505(5).

**Reason for Recommendation.** There were many ways in which the Citizens for Effective Government flyer could have constituted a coordinated expenditure in violation of Section 1505(5). The proposed finding emphasizes the Commission staff’s theory that candidate Nadeau was the source of the funding for the flyer.

**Recommended Finding D:** Michael Nadeau agrees that, as phrased, Recommended Finding D represents the Commission’s decision. He notes only that he disagrees with the Commission’s determination on this point.

## 21-A §1015. LIMITATIONS ON CONTRIBUTIONS AND EXPENDITURES

[ . . . ]

→ 5. Other contributions and expenditures. Any expenditure made by any person in cooperation, consultation or concert with, or at the request or suggestion of, a candidate, a candidate's political committee or their agents is considered to be a contribution to that candidate.

→ The financing by any person of the dissemination, distribution or republication, in whole or in part, of any broadcast or any written or other campaign materials prepared by the candidate, the candidate's political committee or committees or their authorized agents is considered to be a contribution to that candidate.

[ 1989, c. 504, §§7, 31 (AMD) .]

[ . . . ]

### SECTION HISTORY

1985, c. 161, §6 (NEW). 1989, c. 504, §§7, 31 (AMD). 1991, c. 839, §11 (AMD). 1991, c. 839, §34 (AFF). IB 1995, c. 1, §11 (AMD). 1995, c. 384, §2 (AMD). 1999, c. 729, §§2, 3 (AMD). 2007, c. 443, Pt. A, §§10-14 (AMD). 2009, c. 286, §§2, 3 (AMD). 2011, c. 382, §§1, 2 (AMD). 2011, c. 389, §14 (AMD).

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21-A §1125. TERMS OF PARTICIPATION

21-A §1125. TERMS OF PARTICIPATION

[ . . . ]

5-A. Revocation of certification. The certification of a participating candidate may be revoked at any time if the commission determines that the candidate or an agent of the candidate:

A. Did not submit the required number of valid qualifying contributions; [2007, c. 443, Pt. B, §6 (NEW) .]

B. Failed to qualify as a candidate by petition or other means; [2007, c. 443, Pt. B, §6 (NEW) .]

C. Submitted any fraudulent qualifying contributions or qualifying contributions that were not made by the named contributor; [2007, c. 443, Pt. B, §6 (NEW) .]

D. Misrepresented to a contributor the purpose of the qualifying contribution or obtaining the contributor's signature on the receipt and acknowledgement form; [2007, c. 443, Pt. B, §6 (NEW) .]

E. Failed to fully comply with the seed money restrictions; [2007, c. 443, Pt. B, §6 (NEW) .]

F. Knowingly accepted any contributions, including any in-kind contributions, or used funds other than fund revenues distributed under this chapter to make campaign-related expenditures without the permission of the commission; [2007, c. 443, Pt. B, §6 (NEW) .]

G. Knowingly made a false statement or material misrepresentation in any report or other document required to be filed under this chapter or chapter 13; [2009, c. 363, §6 (AMD) .]

H. Otherwise substantially violated the provisions of this chapter or chapter 13; or [2009, c. 363, §6 (AMD) .]

I. As a gubernatorial candidate, failed to properly report seed money contributions as required by this section. [2009, c. 363, §6 (NEW) .]

The determination to revoke the certification of a candidate must be made by a vote of the members of the commission after an opportunity for a hearing. A candidate whose certification is revoked shall return all unspent funds to the commission within 3 days of the commission's decision and may be required to return all funds distributed to the candidate. In addition to the requirement to return funds, the candidate may be subject to a civil penalty under section 1127. The candidate may appeal the commission's decision to revoke certification in the same manner provided in subsection 14, paragraph C.

[ 2009, c. 363, §6 (AMD) .]

[ . . . ]



6. Restrictions on contributions and expenditures for certified candidates. After certification, a candidate must limit the candidate's campaign expenditures and obligations, including outstanding obligations, to the revenues distributed to the candidate from the fund and may not accept any contributions unless specifically authorized by the commission. Candidates may also accept and spend interest earned on fund revenues in campaign bank accounts. All revenues distributed to a certified candidate from the fund must be used for campaign-related purposes. The candidate, the treasurer, the candidate's committee authorized pursuant to section 1013-A, subsection 1 or any agent of the candidate and committee may not use these revenues for any but campaign-related purposes. The commission shall publish guidelines outlining permissible campaign-related expenditures.

[ 2011, c. 389, §54 (AMD) .]

[ . . . ]

## 21-A §1127. VIOLATIONS

### 21-A §1127. VIOLATIONS



1. Civil fine. In addition to any other penalties that may be applicable, a person who violates any provision of this chapter or rules of the commission adopted pursuant to section 1126 is subject to a fine not to exceed \$10,000 per violation payable to the fund. In addition to any fine, for good cause shown, a candidate, treasurer, consultant or other agent of the candidate or the political committee authorized by the candidate pursuant to section 1013-A, subsection 1 found in violation of this chapter or rules of the commission may be required to return to the fund all amounts distributed to the candidate from the fund or any funds not used for campaign-related purposes. If the commission makes a determination that a violation of this chapter or rules of the commission has occurred, the commission shall assess a fine or transmit the finding to the Attorney General for prosecution. A final determination by the commission may be appealed to Superior Court in accordance with Title 5, chapter 375, subchapter 7 and the Maine Rules of Civil Procedure, Rule 80C. Fines assessed or orders for return of funds issued by the commission pursuant to this subsection that are not paid in full within 30 days after issuance of a notice of the final determination may be enforced in accordance with section 1004-B. Fines paid under this section must be deposited in the fund. In determining whether or not a candidate is in violation of the expenditure limits of this chapter, the commission may consider as a mitigating factor any circumstances out of the candidate's control.

[ 2011; c. 558, §10 (AMD) .]

[ . . . ]

#### SECTION HISTORY

IB 1995, c. 1, §17 (NEW) . 2003, c. 81, §1 (AMD) . 2005, c. 301, §33 (AMD) .  
2005, c. 542, §6 (AMD) . 2009, c. 302, §23 (AMD) . 2011, c. 558, §10 (AMD) .

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Eaton  
Peabody  
Attorneys at Law

Timothy C. Woodcock  
Direct Dial 207-992-4338  
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August 2, 2013

RECEIVED

AUG 5 2013

Maine Ethics Commission

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

BY E-MAIL AND U.S. MAIL

Re: House District 1, 2012 Election

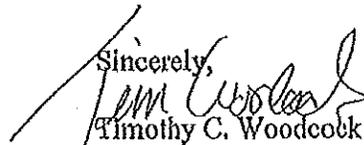
Dear Jonathan:

I am writing regarding the letter of July 31, 2013 from Jonathan Wayne, Executive Director, to James Majka regarding the August 23, 2013 meeting of the Commission on Governmental Ethics and Election Practices. I am writing this letter on behalf of Michael Nadeau with his knowledge and approval.

The letter advises James Majka that he has been found in violation of the Clean Election Act and that at the August 23 meeting, the Commission will consider whether a fine is in order and, if so, in what amount. The letter accurately reflects the Commission's oral deliberations on July 29, 2013.

My purpose in writing is simply to note that, as far as I am aware, at no point was Mr. Majka designated as a respondent in this proceeding and therefore he would not have been on notice that the Commission was considering finding him, as opposed to Michael Nadeau and Philip Soucy, in violation.

I offer this observation as something that the Commission may wish to consider at the August 23 meeting when it addresses Mr. Majka's situation. I appreciate your cooperation in bringing this to the Commission's attention. If I can be of any assistance, please don't hesitate to let me know.

Sincerely,  
  
Timothy C. Woodcock

CC: James Majka  
A. Michael Nadeau  
Kate Knox  
William Logan

Jonathan Wayne, Executive Director  
Commission on Governmental Ethics  
and Election Practices  
135 State House Station  
Augusta, ME 043330-135

August 2<sup>nd</sup>, 2013

**Re: Meeting of July 29<sup>th</sup>.**

Dear Members of the Maine Ethics Commission (and all who were involved in the meeting of Monday July 29<sup>th</sup>)

Imagine my surprise in today's mail about your continuing efforts to drag this on and on forever and ever... *and now you want to charge me as an agent!*

I would like to ask, with all due respect, sirs, how is it that I get this letter saying that you have found me acting as an agent in this matter? (Not as a volunteer, as I have clearly and openly stated I was from the beginning)? Legally you should have notified me in writing, prior to the hearing if I was a respondent? Right? *But you did not do so...*

**Instead I read it in the paper!**

I was never notified that I was a respondent to this matter and would like to know exactly why I was not notified. It has been several months since I have had any contact from your committee... so, based on your letter to me today, I will need clear and specific answers to the following questions so that even a "rube" like me can understand...

**What is the precise difference, sirs, between an "agent" and a "volunteer"?**

How can a volunteer be labeled an agent? *Please clarify in writing and point to the exact wording in the statutes or written laws that currently exist, and where I can read them for myself...* answers to the following questions:

- *If an unpaid campaign worker puts up lawn signs on the candidate's behalf, are they acting as an agent, or a volunteer?*
- *If an unpaid campaign worker knocks on doors on behalf of the candidate, are they acting as an agent, or a volunteer?*
- *If an unpaid campaign worker makes phone calls on behalf of the candidate, are they acting as an agent, or a volunteer?*
- *If an unpaid campaign worker acts as a treasurer, or does other administrative tasks, is he acting as an agent, or a volunteer?*
- *If an unpaid campaign worker places an advertisement in any form of his own volition, are they acting as an agent, or a volunteer?*

I find it quite amazing that your commission has spent all this time and money to get to this sole "finding" if you will, about an alleged illegal contribution, which cannot be explicitly defined nor easily explained. Instead, the Commission simply "voted themselves" a determination to describe me as an agent...

**How convenient!**

How much money has the committee spent on this investigation? *And did you not, in effect, use my own tax dollars against me?* Does this seem logical, to you?

I have tried my best to be patient, and to be objective in this entire affair, but I have no alternative conclusion to make other than to believe that the Maine Ethics Commission is at this point just trying to save face and find something – *ANYTHING* – that will result in a criminal verdict of someone (anyone!), to appease the Maine Democratic Party.

As you well know by now, I am not an attorney,

*I am just an every day citizen who took an active role as a volunteer in a local campaign and this is what I get in return.*

Please reply as requested and point me to the exact statutes and where I can read them for myself; as to how you can arrive at a "*finding via hand vote*" that I acted as an agent and not as a volunteer.

Having said all that above, my main objection is this:

I was never notified as a respondent – *EVER*. And I should have been. Instead, I found out about it the local newspaper that is heavily influenced by democratic operatives in and around the St. John Valley. And as a result of this, I believe the Maine Ethics Commission should issue NO penalty against me for any reason.

With all due respect sirs... Take this opportunity to END this once and for all so I can get on with my non political life

Sincerely frustrated with you all,

Jim Majka

**NOTE:** This communication will only be sent via email, unless otherwise instructed by you to re-send through regular US mail.