Agenda Item #3

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

To: Commissioners

From: Jonathan Wayne, Executive Director

Date: October 18, 2010

Re: Car Provided by Marden's to Gubernatorial Candidate Paul LePage

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Request by Maine Democratic Party

The Maine Democratic Party has filed a request that the Ethics Commission investigate whether the 2010 gubernatorial campaign of Paul LePage has received an in-kind contribution in the form of a company car which Marden's Surplus and Salvage has provided to the candidate. Mr. LePage is the general manager of Marden's.

The request raises two compliance questions:

(1) Does the car constitute an in-kind contribution to the LePage campaign which violates the $750 limit?

(2) Did Mr. LePage make a material misrepresentation in his campaign finance reports concerning the campaign's travel-related reimbursements?

Relevant Law

Definition of Contribution

In the Election Law, a contribution to a candidate is defined as:

> A gift, subscription, loan, advance or deposit of money or anything of value <u>made for the purpose of influencing the nomination or election</u> of any person to state, county or municipal office .... (21-A M.R.S.A. § 1012(2)(A)(1)) (emphasis added)

The Commission's rules describe in-kind contributions as:

> Unless specifically exempted under Title 21-A M.R.S.A. §§ 1012 and 1052 or this section, the provision of any goods or services without charge or at a charge that is less than the usual and customary charge for such goods or services is an in-kind contribution. E xamples of such goods and services include, but are not

> limited to: equipment, facilities, supplies, personnel, advertising, and campaign literature. If goods or services are provided at less than the usual and customary charge, the amount of the in-kind contribution is the difference between the usual and customary charge and the amount charged the candidate or political committee. (Commission Rules, Chapter 1, Section 6(4))

Expenditures by Outside Groups Coordinated with a Candidate

If a candidate cooperates with a person or organization other than his campaign concerning an expenditure to promote the candidate's election, the candidate has received an in-kind contribution:

> 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. (21-A M.R.S.A. § 1015(5))

$750 Contribution Limit

Candidates for the office of governor may accept contributions of no more than $750 per election from any source under 21-A M.R.S.A. §§ 1015(1) & (2), except that the candidate and spouse or domestic partner may contribute an unlimited amount.

Campaign's Reimbursements to Candidate and Staff for Travel

Campaigns may choose to reimburse the candidate, volunteers, or paid staff for their travel, but it is not required. The statutory definition of a campaign contribution contains an exception for payments for travel made by the candidate and his spouse or domestic partner:

> (4-A) Any unreimbursed campaign-related travel expenses incurred and paid for by the candidate or the candidate's spouse or domestic partner;

(21-A M.R.S.A. § 1012(2)(B)(4-A)) Under this exception, candidates may make unlimited payments for travel during a campaign without asking their campaigns for reimbursement. They can seek a reimbursement or not – whichever they prefer.

If the campaign of a traditionally financed candidate chooses to reimburse the candidate or others for travel, there are no restrictions on how to calculate the reimbursement. The campaign may reimburse the individual for their actual travel payments (fuel, tolls, etc.), or their may reimburse the individual based on the number of miles traveled.[1] That is a decision for the campaign to make and is not regulated by the state.

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[1] In contrast, the Commission has an established policy for Maine Clean Election Act campaigns who reimburse for travel. The person traveling must keep a document of the miles traveled for campaign purposes, and the amounts of the reimbursement may not exceed the reimbursement rate paid by the state to its employees for employment-related travel (currently $0.44 per mile).

Restrictions on Campaign Expenditures for a Traditionally Financed Candidate

Candidates who are financing their campaigns through accepting campaign contributions have very little legal restrictions on how they spend their campaign funds, provided that the expenditures are disclosed accurately. In practice, candidates overwhelmingly use their campaign funds only for purchases which promote their nomination or election. Nevertheless, this is not a legal requirement.

Allegations by Maine Democratic Party

In-Kind Contribution

In their counsel's letter, the Maine Democratic Party states that Paul LePage drives a "company car" provided by Marden's (a 2007 Toyota Avalon). The party obtained a record of the car from the Secretary of State, which is attached to the letter. The party states that it has reason to believe that "Mr. LePage was provided with the vehicle by Marden's in anticipation of his gubernatorial campaign" and it may "constitute an unlawful campaign contribution."

When the party's counsel delivered the request, I raised the issue that the car could be a part of the candidate's compensation that pre-dated Mr. LePage's campaign. Even if the car was provided some time ago, counsel argued, Marden's continuing to provide the car when Mr. LePage is spending a majority of his time campaigning constitutes a decision by Marden's to provide a car knowing that it will be used for campaign purposes. Thus, according to the party, the car may constitute a contribution as something of value given to Mr. LePage to promote his campaign (§ 1012(2)(A)(1)) or as an expenditure that is coordinated with the candidate (§ 1015(5)).

Material Misrepresentation

The Maine Democratic Party alleges that Mr. LePage has included in his campaign finance reports material misrepresentations concerning the campaign's reimbursements for travel expenses. As I understand it, the alleged misstatement is that the purpose of the campaign's payments is reimbursement for mileage, when in fact Mr. LePage is owed no reimbursement for wear and tear on the vehicle because it is owned by Marden's.

Response by LePage Campaign

The LePage campaign has submitted a response, which consists of answers to five questions I e-mailed to LePage communications staff director, Dan Demeritt. The campaign states that the car is part of Mr. LePage's compensation and that Marden's first provided a car to Mr. LePage in 1999. The campaign has also provided a letter from Marden's.

Recommendation by Commission Staff

The staff cannot make a final recommendation at this time because we have not had a full opportunity to confer internally and with counsel on the LePage campaign's response. Also, we would appreciate hearing any additional thoughts from the Maine Democratic Party.

In-Kind Contribution

On the issue of whether the campaign has accepted an in-kind contribution from Marden's, we suggest that you only find that there was a contribution if there is fairly clear evidence that Marden's purpose in providing the car was to promote Mr. LePage's election. Mr. LePage has presented a plausible alternative purpose: that the company has provided a car for business reasons beginning in 1999.

The Commission staff is willing and able to gather any other factual information you believe would be relevant.

Material Misrepresentation

On the issue of material misrepresentation, the staff recommends taking no action on the allegation. We believe a finding of material misrepresentation should be reserved for an affirmative statement in a campaign finance report or other requested document that is false or that contains a material misrepresentation. Even if the Maine Democratic Party were correct that Mr. LePage were seeking reimbursement for more than his personal costs, the use of the expenditure code for travel, or the remarks of "numerous trips" or "Mileage" do not appear to constitute a false statement.

Thank you.

Travel Payments to Individuals by LePage Campaign (10/18/10)

Date	Payee	Remark	Amount
5/5/2010	Paul R. LePage	Numerous trips around the state to meet w/volunteers and contributors	$1,220.31
6/1/2010	Paul R. LePage	Travel Expenses	$741.14
6/26/2010	Paul R. LePage	Meals during travel	$219.41
6/26/2010	Paul R. LePage	Mileage	$275.33
7/20/2010	Paul R. LePage	mileage	$258.88
8/25/2010	Paul R. LePage	Lodging	$271.04
9/14/2010	Paul R. LePage	Food	$106.58
9/14/2010	Paul R. LePage	Fuel Expenses	$499.87
6/25/2010	Brent Littlefield	Reimbursed to Brent Littlefield on 7/2/10	$1,115.36
7/28/2010	Gil Pelletier	mileage	$125.00
8/25/2010	Gil Pelletier	mileage	$162.50
6/3/2010	Jed Profeta	Mileage	$180.00
9/14/2010	John McGough	Mileage	$56.50
7/1/2010	John Morris	327 Miles @ $.50 mile Reimbursed on 7/2/10	$163.50
7/12/2010	John Morris	milage	$78.50
7/22/2010	John Morris	travel	$129.25
8/25/2010	John Morris	Mileage	$105.24
8/31/2010	John Morris	182 miles	$91.00
7/12/2010	Kim Lindlof	milage	$71.50
7/21/2010	Kim Lindlof	milage, food	$65.00
8/10/2010	Kim Lindlof	travel expenses	$270.25
9/14/2010	Kim Lindlof	Mileage Reimbursement	$170.20
6/2/2010	Mitch McLaughlin	Milage reimbursement	$244.33
6/8/2010	Mitch McLaughlin	Mileage	$206.85
8/23/2010	Scott VanOrman	Mileage	$170.00
9/14/2010	Scott VanOrman	Mileage and tolls	$210.00

PretiFlaherty

DANIEL W. WALKER
dwalker@preti.com

RECEIVED
OCT 13 2010
Maine Ethics Commission

October 13, 2010

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

RE: Request for Investigation into the Committee to Elect Paul LePage Governor

Dear Jonathan,

On behalf of the Maine Democratic Party, I respectfully request that the Commission investigate the registration status and reported expenses surrounding the vehicle used by Paul LePage in his campaign. The Maine Democratic Party has reason to believe that use of this vehicle may constitute an unlawful campaign contribution, and Mr. LePage has accepted unlawful expenditures associated with the vehicle's use.

At a Waterville forum on September 21, Paul LePage told the crowd that he drives a "company car" which he described as a Toyota. Multiple witnesses have observed Mr. LePage utilizing a black Toyota Avalon license number 3083 PF at various campaign functions. This appears to be Mr. LePage's only vehicle. According to the Secretary of State's public record (attached), this vehicle is licensed to Mardens, Inc. On September 29th, the Lewiston Sun Journal reported that "[r]ecords show a registration for a 2000 red Pontiac Grand Am in [Paul LePage] and his wife's names expired in January." The Party has reason to believe that Mr. LePage was provided with the vehicle by Marden's in anticipation of his gubernatorial campaign.

Pursuant to 21-A M.R.S.A. § 1015(1) an individual "may not make contributions to a candidate in support of the candidacy of one person aggregating more than $750 in any election for a gubernatorial candidate." A contribution is defined in 21-A M.R.S.A. § 1012(2)(A) as a "gift, subscription, loan, advance or deposit of money or anything of value made for the purpose of influencing the nomination or election of any person to state [] office" or a "contract, promise or agreement, express or implied, whether or not legally enforceable, to make a contribution for such a purpose." Moreover, under 21-A M.R.S.A. § 1015(5) an "expenditure made by any person in cooperation, consultation or concert with, or at the request or suggestion of, a candidate…or their agents is considered to be a contribution to that candidate." 21-A M.R.S.A. § 1017(5) requires the candidate to report "itemized accounts of contributions…including the date a contribution was received, and the name, address, occupation, principal place of business, if any, and the amount of the contribution of each person who has made a contribution or contributions aggregating in excess of $50." In filing these reports, the candidate may not make a "material false statement" or they "may be assessed a penalty not to exceed $5,000." (21-A M.R.S.A. § 1004-A(5))

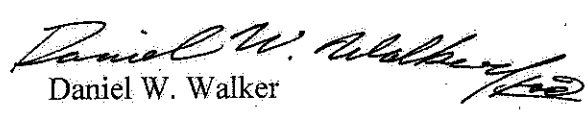
In the LePage campaign's 42-Day Pre-General Report, the candidate reported reimbursing himself for mileage accrued during the campaign while using the vehicle. On 7/20/2010, the campaign reported paying Paul LePage $258.88 for mileage. Similarly, in the campaign's 42-Day Post-Primary Report, on 6/26/2010, the campaign reported paying Paul LePage $275.33 for mileage. In the 11-Day Pre-Primary Report the campaign reported paying Paul LePage $1,220.31 for "[n]umerous trips around the state to meet w/volunteers and contributors" and coded the reimbursement for travel. It is unclear if this expense, like the other two, includes mileage reimbursement. Mileage reimbursement is intended to reimburse the recipient for the wear and tear on *their* vehicle – to accept mileage reimbursement for a vehicle other than one's own is a material misrepresentation to this Commission.

Given these facts, Marden's expenditures related to Mr. LePage's automobile were clearly made in coordination with Mr. LePage and his campaign, and therefore, pursuant to section 1015(5), they are considered to be contributions to the campaign. Additionally, it appears that the campaign never reported Marden's contribution of Mr. LePage's "company vehicle." Moreover, the reimbursements sought by Mr. LePage far exceed the $750 contribution cap. Finally, the reports contain materially false statements by Mr. LePage for accepting mileage reimbursement for someone else's vehicle.

Pursuant to the foregoing reasons, the Maine Democratic Party respectfully requests that the Commission investigate whether use of the "company vehicle" is an unlawful contribution and whether Mr. LePage has accepted unlawful expenditures from the campaign.

Thank you for your attention to this matter.

Sincerely,



Daniel W. Walker

DWW/jac

1919383.1

REGISTRATION RECORD Page:: of:
Class: PC PASSENGER CAR Plate: 3083PF Re-Reg (Y/N): yes
Status: A Processed: 06/08/2010 Effective: 02/01/2010 Expires: 02/28/2011
Vin: 4T1BK36B07U194539 Year: 2007 Make: TOYT Model: AVALON Color: BK
Style: 4D Axles: 0 Net: Gross: Fuel: G Receipt: 4013827
Fee: $ 35.00 EXEMPTIONS (Y/N): Reg Excise: no Fee: no
Company Name: MARDENS INC
SSN/Fed ID: 010373270 Unit #: Dot #:
Last Name: First: MI: Suffix:
Date-of-Birth: ID-Dup-Number: 00
Last Name: First: MI: Suffix:
Date-of-Birth: ID-Dup-Number:
Lessee: Lease (L/S):
Lessor:
DBA:
Add1: 184 COLLEGE AVE
Add2:
City: WATERVILLE State: ME Zip Code: 04901-
Legal Residence: WATERVILLE ME Code: 11240
Press F4 to exit display.

City: WATERVILLE State: ME Zip Code: 04901-
Legal Residence: WATERVILLE ME Code: 11240

Sticker Number:
Reel: I10 Frame: 0608

List Price: $ 31719.00 Sale Price: $ 0.00
Excise Amount: $ 317.19 Year: 0004

Booster Effective: Expires: New WT:
Receipt Number: Reel: Frame:

Note 1: INFORME 05/21/2008 03/24/2009 06/08/2010
Note 2:
Title Suspend: AGW Viol: Plate Surr:
Web Insurance: Expires: Shown:
Web Filing: Date: Shown:
Old Status: Suspension Program:
Suspend:
Restore: Fee:

FAX TRANSMITTAL

TO: Jonathan Wayne

FROM: John Morris, Chief of Staff

RE: Ethics Commission Review Requested by Democratic Party

DATE: October 18, 2010

Jonathan,

Attached please find responses to the questions regarding Paul's use of the Marden's company car. Also enclosed is a letter from Marden's CFO, Robert Poulin, outlining the company car as part of his compensation package, as well as the rules and regulations for using the corporate automobile.

Please feel free to contact me with any additional questions or concerns. I can be reached on my cell phone at (207) 751-5216.

Kind regards,

John Morris

P.O. Box 1788 • 185 Main Street Waterville, ME 04903 • Phone: 207.877.7616 • www.lepage2010.com

Authorized by the candidate and paid for by the committee to elect Paul LePage Governor.

From:

Sent:

To:

Cc:

Subject:

Wayne, Jonathan [Jonathan.Wayne@maine.gov]
Wednesday, October 13, 2010 1 :06 PM
ddemeritt@lepage2010.com

Lavin, Paul; jcashman@preti.com

Request by Maine Democratic Party

Dan Demeritt

Dan,

The staff of the Maine Ethics Commission has had a chance to review and discuss the request by the Maine Democratic Party concerning the Marden's company car. The request appears to be within the jurisdiction of the Commission. I will be in touch regarding scheduling a meeting of the Commission, after I have heard back from the Commissioners about their availability. Please check if a representative of the campaign could be available to respond at a Commission meeting on Friday, Monday, or Tuesday (Oct. 15, 18, or 19).

The Commission staff believes it would help the Commissioners' consideration of the request if the LePage campaign would submit a written response which the Commissioners could read in advance of the meeting. In addition to any other points the campaign would like to answer, the Commission staff believes it would be helpful if the campaign's response addresses the following:

• When did Marden's first provide a company car to Mr. LePage?
→ Company car was provided beginning on August 6, 1999
• What was Marden's purpose in providing him with the car?
→ Part of Mr. LePage's compensation package.
• Did Marden's provide the car to Mr. LePage in order to promote his nomination or election?
→ No
• The Maine Democratic Party is alleging that the decision by Marden's to continue providing the candidate with the car during 2010 - knowing that he was campaigning full-time and possibly on leave from his job - constituted an expenditure by Marden's to promote Mr. LePage's election. Please

respond. Mr. LePage is currently employed full-time at Marden's as General Manager and he is not on a leave of absence. He currently works while campaigning and if needed takes paid days off from his accumulated paid days off account.

• The Maine Democratic Party believes that when the campaign uses the remark of "mileage" on Schedule B (e.g., expenditures on 6/26/10 and 7/20/10), that indicates that the person reimbursed is being paid for wear-and-tear of the vehicle, rather than for fuel. Is that accurate? Please explain the basis for the campaign's reimbursements to the candidate for travel expenses.

When Mr. LePage uses the company car for personal reasons, he is required to supply the fuel for the car. The reimbursement claimed on the report is for fuel when he travels to campaign events.

Thank you for the campaign's cooperation with the Commission's consideration of this matter. Please give me a call if you have any questions.

Jonathan Wayne
Executive Director

Maine Ethics Commission
135 SHS

Augusta, ME 04333
287-4179

OCT-18-2010 11:06AM FROM-LePage For Gov.Head Qtrs. 207 861 9427 T-245 P.003/004 F-516

MARDEN'S
surplus & salvage

184 COLLEGE AVENUE, WATERVILLE, ME 04901 · (207) 873-6111

October 15, 2010

To whom it may concern,

As part of his compensation package, Mr. Paul Lepage is provided a company automobile. At this time, Mr. Lepage is driving a 2007 Toyota Avalon. Mardens does not pay for the cost of gasoline used for personal travel.

Also, as he has done in past years, Mr. Lepage will be required to report all personal miles put on the corporate automobile for calendar year 2010. As is customary, these personal miles will be reported as compensation according to IRS rules and regulations and reported on his 2010 W2.

Very truly yours,

Robert M. Poulin
CFO

OCT-18-2010 11:07AM FROM-LaPage For Gov.Head Qtrs. 207 861 9427 T-245 P.004/004 F-516