

Agenda

Item #5



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: November 17, 2011  
Re: Recommended Finding of Violation and Civil Penalty against Former  
Representative Sean Flaherty

---

This memo is to convey that I have received no response from former Representative Sean Flaherty concerning the proposed finding of violation and penalty for commingling personal funds and campaign funds in his 2010 campaign. The Commission staff mailed the final audit report and notice of recommended penalties to him on November 7. I e-mailed him twice concerning the matter. I tried calling him, but did not speak to him. At this point, I am not sure whether Mr. Flaherty is intending to be present at the Commission meeting to provide a response.

Thank you for your consideration of this item.



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

November 7, 2011

Hon. Sean Flaherty  
P.O. Box 6998  
Scarborough, Maine 04070

**Notice of Commission Meeting and Recommended Penalty**

Dear Mr. Flaherty:

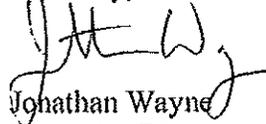
Thank you for your cooperation with the audit of your 2010 campaign. This letter is to inform you that the Commission will be meeting on Wednesday, November 30, 2011. At the meeting, the Commission's auditor will be presenting the final audit report (attached), which was previously mailed to you on October 31, 2011. As you know, the only finding in the audit was that the campaign commingled \$216.29 of personal funds with your Maine Clean Election Act (MCEA) funds.

At the November 30 meeting, the Commission auditor will recommend that the Commissioners find that the 2010 campaign violated 21-A M.R.S.A. § 1125(7-A) and assess a penalty of \$100. Under 21-A M.R.S.A. § 1127(1), the Commission may assess a penalty of up to \$10,000 for any violation of the Maine Clean Election Act.

If you wish to respond to the proposed finding of violation or \$100 penalty, you are welcome to attend the meeting or submit anything in writing that you would like. The meeting will be at 9:00 a.m. at the Commission's office at 45 Memorial Circle. If I receive any written response by Wednesday, November 16, 2011, I will include it in a packet of materials that I mail to the Commissioners on November 18, 2011. If I receive a written response later, I will forward it to the Commissioners electronically.

Thank you again for your cooperation during the audit. If you have any questions, please call me at 287-4179.

Sincerely,

  
Jonathan Wayne  
Executive Director

OFFICE LOCATED AT: 45 MEMORIAL CIRCLE, AUGUSTA, MAINE  
WEBSITE: WWW.MAINE.GOV/ETHICS

PHONE: (207) 287-4179

FAX: (207) 287-6775



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

October 31, 2011

Audit Report No. 2010-HR033

Candidate: Sean Flaherty  
House District 127

Background

Former Representative Sean Flaherty was a candidate for re-election to the Maine House of Representatives, District 127, in the 2010 general election. Mr. Flaherty was certified by the Commission as a Maine Clean Election Act (MCEA) candidate on May 5, 2010. MCEA candidates are required under the Act to submit reports of their contributions received, expenditures, outstanding campaign debt, and equipment purchases and dispositions for specified periods during the election cycle.

Audit Scope

The auditor examined selected contributions made to the campaign, and certain expenditures made during the following reporting periods:

- Seed Money (11/05/2008 through May 5, 2010)
- Eleven Day Pre-Primary (5/06/2010 through 5/25/2010)
- 42 Day Post-Primary (5/26/2010 through 7/13/2010)
- 42 Day Pre-General (7/14/2010 through 9/14/2010)
- 11 Day Pre-General (9/15/2010 through 10/19/2010)
- 42 Day Post-General (10/21/2010 through 12/7/2010)

The transactions examined were recorded in the campaign's accounting and banking records. The audit's purpose was to determine if the identified contributions and expenditures (1) were properly approved by the candidate or his authorized representative; (2) were adequately documented as evidenced by original vendor invoices and cancelled checks or other acceptable third party disbursement documentation; (3) was properly reported to the Commission; and (4) complied in all material respects with the requirements of the Maine Clean Election Act and the Commission's rules.

Audit Findings and Recommendations

**Finding No. 1 – Commingling of Funds**

The Flaherty Campaign utilized a bank account that pre-dated the 2010 election period. The balance in the account at the inception of the 2010 campaign was \$216.29, an amount that had been in the account for at least a year before the campaign started. The candidate speculated that the balance on hand was attributable to a past deposit error or a check that was never cashed.

The initial balance of \$216.29 remained in the account during the qualifying period and on into the primary election period. Mr. Flaherty informed the auditor that in May, 2010, he realized that leaving these monies in the account was unallowable, and that the Commission would consider it to constitute commingling of funds. Accordingly, he wrote a check to himself for \$100 to at least partially resolve the problem; however, the remaining balance of \$116.29 was left on deposit through the general election period. By failing to disburse these funds, the candidate commingled personal and MCEA funds.

Standards - 21-A M.R.S.A. § 1125(7-A) states that "The candidate ... shall deposit all [MCEA] revenues from the fund ... in a campaign account with a bank or other financial institution. The campaign funds must be segregated from, and may not be commingled with, any other funds."

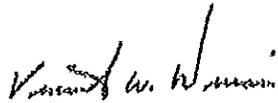
Recommendation - The staff recommends that the Commission

- find that Sean Flaherty violated 21-A M.R.S.A. § 1125(7-A) because the campaign commingled MCEA campaign funds with personal funds of the candidate; and
- assess a penalty of \$100.00 for this violation under 21-A M.R.S.A. § 1125(7-A).

Candidate's Comments on the Findings and Recommendations Contained in this Report

Mr. Flaherty chose not to comment on the audit finding and recommendations.

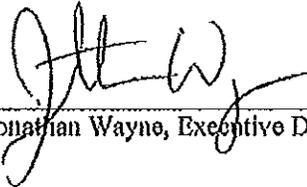
Respectfully submitted,



---

Vincent W. Dinn, Auditor

Approved:



---

Jonathan Wayne, Executive Director

election year. [2001, c. 465, §4 (NEW).]

C. No later than 3 days after the primary election results are certified, for general election certified candidates, revenues from the fund must be distributed according to whether the candidate is in a contested or uncontested general election. [2007, c. 443, Pt. B, §6 (AMD).]

Funds may be distributed to certified candidates under this section by any mechanism that is expeditious, ensures accountability and safeguards the integrity of the fund.

[ 2009, c. 302, §15 (AMD); 2009, c. 302, §24 (AFF); 2009, c. 363, §7 (AMD) .]

 **7-A. Deposit into account.** The candidate or committee authorized pursuant to section 1013-A, subsection 1 shall deposit all revenues from the fund and all seed money contributions in a campaign account with a bank or other financial institution. The campaign funds must be segregated from, and may not be commingled with, any other funds.

[ 2007, c. 443, Pt. B, §6 (AMD) .]

**8. (TEXT EFFECTIVE UNTIL 9/1/11) Amount of fund distribution.** By July 1, 1999 of the effective date of this Act, and at least every 4 years after that date, the commission shall determine the amount of funds to be distributed to participating candidates based on the type of election and office as follows.

A. For contested legislative primary elections, the amount of revenues to be distributed is the average amount of campaign expenditures made by each candidate during all contested primary election races for the immediately preceding 2 primary elections, as reported in the initial filing period subsequent to the primary election, for the respective offices of State Senate and State House of Representatives. [2003, c. 453, §1 (AMD).]

B. For uncontested legislative primary elections, the amount of revenues distributed is the average amount of campaign expenditures made by each candidate during all uncontested primary election races for the immediately preceding 2 primary elections, as reported in the initial filing period subsequent to the primary election, for the respective offices of State Senate and State House of Representatives. [2003, c. 453, §1 (AMD).]

C. For contested legislative general elections, the amount of revenues distributed is the average amount of campaign expenditures made by each candidate during all contested general election races for the immediately preceding 2 general elections, as reported in the initial filing period subsequent to the general election, for the respective offices of State Senate and State House of Representatives. [2003, c. 688, Pt. A, §21 (AMD).]

D. For uncontested legislative general elections, the amount of revenues to be distributed from the fund is 33% of the amount distributed to a participating candidate in a contested general election. [2009, c. 286, §8 (AMD).]

E. For contested gubernatorial primary elections, the amount of revenues distributed is \$400,000 per candidate in the primary election. [2009, c. 363, §8 (AMD).]

E-1. For uncontested gubernatorial primary elections, the amount of revenues distributed is \$200,000 per candidate in the primary election. [2009, c. 363, §9 (NEW).]

F. For gubernatorial general elections, the amount of revenues distributed is \$600,000 per candidate in the general election. [2007, c. 443, Pt. B, §6 (AMD).]

If the immediately preceding election cycles do not contain sufficient electoral data, the commission shall use information from the most recent applicable elections.

[ 2009, c. 363, §§8, 9 (AMD) .]