

Agenda

Item #4



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

To: Commission Members
From: Jonathan Wayne, Executive Director
Date: March 29, 2007
Re: Director's Recommendations - Audit of Campaign of S. Peter Mills

Audits of Candidates

As you are aware, the Ethics Commission staff has undertaken audits of all of the candidates for Governor who received Maine Clean Election Act (MCEA) funding and 20% of the publicly funded legislative candidates. This is the first election year in which the Commission has conducted audits, and it has raised some new issues for the Commission.

Campaign-Related Purposes

The Maine Clean Election Act (subsection §1125(6)) requires that: "All revenues distributed to a [MCEA] candidate from the fund must be used for campaign-related purposes." The Act requires the Commission to publish guidelines for permissible expenditures of MCEA funds.

Required Documentation

MCEA candidates are required to keep two documents for each expenditure over \$50:

- a vendor invoice stating the particular goods or services purchased for every expenditure of \$50 or more; and
- a record proving that a vendor received payment for every expenditure of \$50 or more in the form of a cancelled check, receipt from the vendor or bank or credit card statement identifying the vendor as the payee.

There are additional documentation requirements for using MCEA funds to reimburse expenses for car travel.

Commission Action when Documentation is Missing

One policy question that has arisen in the audits is what action should the Commission take when a candidate is unable to produce the records required by the state for MCEA

candidates. In the attached memo dated January 10, 2007, the staff discussed three alternative actions the Commission could take:

- note the failure to obtain required documentation as a violation in the audit report;
- disallow the expenditure, which would require the candidate to repay the amount of the expenditure to the Maine Clean Election Fund; or
- assess a civil penalty for failure to keep required documentation.

The final audit reports for Sen. Mills and Rep. Cressey which you will consider at the April 5 meeting contains standard language suggesting that the Commission consider whether to disallow expenditures or whether to assess a civil penalty. Please be aware that the Commission has not previously disallowed expenditures of 2006 candidates based on inadequate documentation, or decided upon on a general policy.

Audit of Sen. Peter Mills

Sen. Peter Mills was a candidate for Governor in the 2006 Republican primary election. He received \$200,000 in Maine Clean Election Act funds. He ran against David Emery and Senator Chandler Woodcock, who became the Republican nominee.

Commission auditor Vincent Dinan audited Senator Mills' campaign. As part of the audit, Sen. Mills was invited to respond to a draft audit report. **Please read his January 29, 2007 letter which responds to each of the audit findings.** On February 2, 2007, the Commission staff issued a final audit report.

This memo is intended to supplement the February 2, 2007 audit report with my own recommendations.

Finding #1 – Reimbursement for Money Order Transaction Fees

On June 2, 2006, the Mills campaign used Maine Clean Election Act funds to reimburse the candidate \$722.20 for a large number of \$0.46 fees incurred in buying money orders to qualify for public funding. The campaign's reimbursement to Sen. Mills involved two errors: the campaign was not allowed to use MCEA funds for this purpose and the reimbursement was in the wrong amount.

As described in my letter dated March 29, I recommend finding the Mills campaign committee in violation of violating the seed money restrictions and assessing a civil penalty of \$253 against the campaign.

Finding #2 – Reimbursement of \$501.40 to Campaign Manager James Cote for Cell Phone Use

Campaign manager James Cote used his personal cell phone for campaign business. The campaign agreed to reimburse him for half of his total cell phone charges. The campaign reimbursed Mr. Cote a total of \$501.48 for his cell phone costs over six months.

As a general policy matter, reimbursing campaign staff with MCEA funds for their use of their personal cell phones raises the concern that MCEA funds could unintentionally be used to pay for personal phone calls. In this particular case, because Mr. Cote was the manager of a statewide campaign and the candidate has offered a credible explanation of the reimbursement, I recommend accepting that the \$501.40 was for campaign-related purposes and not disallowing the expenditure.

In the summer, the Commission staff will suggest changes to the Commission's expenditure guidelines. The Commission may adopt a new policy in this area, for example: if a campaign uses more than \$25 in MCEA funds to reimburse a candidate or supporter for use of their personal cell phone costs, the candidate or supporter should open a separate cell phone account for this purpose and should use the phone exclusively for campaign use.

Finding #3 – Reimbursement to Campaign Workers for Car Travel

Requirements for Reimbursing Car Travel Expenses

Candidates who are funded by the Maine Clean Election Act may choose to reimburse themselves or their supporters for car travel. The Commission's rules contain special provisions for reimbursing car travel to ensure that public funds are not paid for personal travel.

When campaigns use MCEA funds to reimburse the candidate or volunteers for travel, they may do so at the rate of \$0.36 per mile – the rate of reimbursement the state pays to its employees for car travel. The campaigns are also required to keep a travel log that shows each campaign trip which has been reimbursed, the purpose of the trip, the origin and destination, and number of miles traveled.

In auditing 2006 candidates, the Commission staff has found that many candidates were unaware that they were required to keep a travel log if they reimbursed themselves or staff for travel. The Commission staff has accepted some alternative explanations or documentation for reimbursed car travel. For the 2008 elections, the staff is recommending that it distribute sample travel logs to all MCEA candidates, educate them on the requirement to fill out the log if they wish to reimburse the candidate or staff for travel with public funds, and adopt a policy disallowing travel reimbursements if the campaign did not keep a log.

Mills Campaign

The Commission auditor has found a few problems with the Mills campaign's reimbursements for car travel: no travel log in some cases; the amounts of some reimbursements were for the actual cost of gas purchased rather than at the rate of \$0.36 per mile; and reimbursements to one campaign worker, Eben Bouchard, at rates of \$0.40 and \$0.445 which are above the rate in the Commission's rule.

My recommendation is to accept travel reimbursements made by the Mills campaign that are less than or equal to \$0.36 per mile and to accept the \$71.00 in travel expenditures for which there is no adequate documentation.

With regard to the campaign's payments in excess of \$0.36 per mile, the Commission may wish to consider asking the campaign to repay the "overpayments" – that is, the difference between the amounts paid to Eben Bouchard at the rate of \$0.40 and \$0.445 and the \$0.36 rate permitted by the Commission rule. The Commission's auditor calculated this amount to be \$242.21. Alternatively, because Mr. Bouchard was a volunteer during this phase of the campaign you could choose to categorize part of the payments to him as compensation rather than reimbursement for car travel.

Finding #4 – Reimbursement for Expenses of Public Relations Volunteer

Sen. Mills invited Bill Johnson, a former Maine news anchor and public relations consultant, to come to Maine to volunteer for the campaign for two weeks leading up to the primary election. The campaign agreed to pay his expenses but not to pay him compensation. He was paid \$374.50 for food, travel, toiletries, and laundry.

The expenditure guidelines state that "MCEA funds may not be spent on personal expenses ... such as [d]ay-to-day household food items and supplies." This was presumably drafted for candidates or volunteers who were in Maine already for which there was no good reason to make reimbursements for day-to-day expenses.

You may wish to conclude that it is incompatible with the MCEA expenditure guidelines to use MCEA funds to pay for any personal expenses such as food, toiletries, and laundry. On the other hand, you may conclude it is acceptable in this case because the expenses of Mr. Johnson were not his normal day-to-day expenses and were only incurred because he was in Maine to volunteer for Sen. Mills' campaign. One possible accommodation would be to consider the payments to be compensation to Mr. Johnson, and to ask Sen. Mills to describe them as such in his campaign finance reports.

When the Commission reviews its expenditure guidelines this summer, the staff suggests revisiting this issue to make sure the Commission adopts the best policy for gubernatorial campaigns that balances safeguarding public funds with permitting reasonable payment arrangements with consultants or staff who travel statewide.



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To: Commission Members and Counsel

From: Jonathan Wayne, Executive Director

Date: January 10, 2007

Re: Remedies for Inadequate Documentation of Candidates' Expenditures
of Maine Clean Election Act Funds

As you are aware, the Commission staff has embarked on a new program of auditing 20% of legislative candidates receiving Maine Clean Election Act (MCEA) funds and all four MCEA candidates for governor. While the Commission has always reviewed all expenditures as reported to the Commission, this is the first time we have systematically reviewed the underlying documentation for the expenditures. The Commission's auditor, Vincent W. Dinan, has found a very high rate of compliance with the requirement that MCEA funds be spent on campaign-related expenditures. In most cases, he has found only minor reporting problems which he has directed that the candidates fix through amending their campaign finance reports.

We believe these audits are valuable in that they educate candidates about the responsibilities for MCEA candidates and because they reassure the Legislature and the taxpayers that the public funds paid to candidates are kept accountable. These audits were not performed in the 2000, 2002, and 2004 elections.

Records Required to be Kept by MCEA Candidates

The MCEA requires candidates to keep an invoice or other document from the vendor stating the particular goods and services purchased, for every expenditure in excess of \$50. The campaigns are also required to keep proof of payment to the vendor, such as a cancelled check, credit card statement, or a receipt from the vendor. The MCEA does not require that all participating candidates submit these documents to the Commission. Rather, all MCEA candidates are required to obtain and keep these records for two years after the final campaign finance report for the election.

Vincent has completed about one-half of the audits of the legislative candidates. He discovered that a minority of them did not obtain the required records at the time the expenditures were made or misplaced the records. In almost all cases, during the audit process the candidate or treasurer has been able to obtain acceptable documentation after-the-fact. Sometimes this has required multiple requests and patient explanations by Vincent.

Choice of Remedies

The candidates' failure to keep records has raised a question of how the Commission and its staff should proceed if a candidate cannot provide the documentation required by the Election Law. The question is difficult when – as in most cases – the expenditures are properly reported and the Commission staff has no evidence that the MCEA funds were misspent. In the view of the Commission staff, these cases should be brought to your attention at a public meeting. In February and March, we are intending to bring 2 - 3 examples.

The Commission staff sees three options for the Commission and its staff:

(1) Finding of violation in audit report. If the undocumented expenditure was properly reported and there's no reason to believe the expenditure was misspent (not campaign-related), the staff – or the Commission at a public meeting - could accept the expenditure and take no action other than to find the candidate in violation for failing to document the expenditure in the audit report. Under this option, the State would, in effect, be trusting candidates that they reported expenditures on the campaign-related expenditures that were disclosed in campaign finance reports. If necessary, the Commission could require testimony at a public meeting regarding how the funds were spent.

(2) Disallow the expenditure. The Commission could “disallow” the expenditure and request that the candidate repay the amount of the expenditure to the Commission. Vincent has drafted the short attached memo discussing that option. Disallowing the expenditure would be analogous to what occurs in many governmental settings when a firm or person requesting reimbursement from a public agency lacks sufficient documentation. For example:

- Most governmental agencies would presumably be unwilling to reimburse a contractor for equipment purchased in the performance of providing services to the agency if the contractor is unable to produce the required receipt or invoice of goods or services purchased.
- Many employers – public and private - will not reimburse an employee for travel or meal costs if the employee is not able to produce a bill or receipt showing the goods or services purchased.

While these standards may not be exactly appropriate for candidates participating in the Maine Clean Election Act, they may be instructive to consider.

The downside of disallowing an expenditure is that many observers would consider it too harsh to impose a repayment obligation on a candidate, particularly when there was no evidence that the public funds were misspent. One alternative is to adopt a more lenient standard for 2006 candidates on the theory that

candidates are not aware of the importance of the record-keeping requirements, and to apply a stricter approach in the 2008 elections.

(3) Civil penalty. If the Commission or staff believes that the candidate has spent MCEA funds on reported expenditures that were campaign-related but not properly documented, it may seem more appropriate to assess a penalty for failing to obtain the required documentation. The Commission could, for example, use a sliding scale of \$100 to \$2,500 for these violations. The penalty would function as a sanction against candidates who did not keep the required documentation.

In addition, on a case-by-case basis the Commission may wish to consider a combination of options 2 (disallowance) and 3 (penalty).

Policy on Undocumented Reimbursements for Travel Expenses

Maine Clean Election Act candidates may choose to pay for travel expenses themselves or to have their campaigns reimburse them. Campaign workers are eligible to pay up to \$100 of travel expenses from their personal funds in the course of volunteering for a MCEA campaign. After that, they must seek reimbursement from the Commission.

If a MCEA candidate chooses to use MCEA funds to reimburse themselves or others for car travel, they are required to keep specific records. Because of the personal nature of car use, these records are important in proving to the state that public funds have been spent for campaign – rather than personal – purposes.

Current Reimbursement Methods

The method of calculating the amount of the reimbursement is very specific under the Commission's current rules, and the candidate may pick one of two methods. The campaign may reimburse the candidate or others at the rate of 36 cents per mile (the current rate of reimbursement by the State of Maine to its employees for its expenses). Alternatively, the candidate may calculate total expenditures for gas, insurance, depreciation, etc. for a period of time and pro-rate them so that only campaign-related travel is reimbursed with public funds.

Current Requirement to Keep Records

Whether the candidate chooses to reimburse at the rate of 36 cents per mile or based on the pro-rated method, the Commission's rule requires candidates to keep a record (such as a log) that includes the date of travel, number of miles traveled, origin, destination, purpose of travel, and total amount claimed for reimbursement.

Staff Findings regarding 2006 Candidates

In conducting reviews of reported expenditures and in conducting audits, the Commission's auditor Vincent W. Dinan has found widespread non-compliance with both the rate of reimbursement and the requirement to keep a log.

Policy for 2006 Candidates and Going Forward

The staff would like to recommend leniency for 2006 candidates who may not have understood the reimbursement rates and the importance of the record-keeping requirements. We recommend a stricter approach in 2008 – perhaps disallowing all travel expenditures which were not properly documented.

We propose that any policy you adopt on these issues be included in the Chapter 3 rules of the Commission, which would be submitted to the Legislature for its approval. As a result, the policy that would be in effect in 2008 would be known in advance by the Legislature and would have met its approval. I have attached a proposed rule.

DOCUMENTATION STANDARDS REQUIRED TO SUPPORT CAMPAIGN EXPENDITURES

By Vincent W. Dinan, Staff Auditor

Typically in most financial control systems found in government and industry, expenditures of organizational funds are supported by several documents:

- A purchase requisition which establishes the authority for the acquisition.
- A purchase order or contract issued by an authorized individual that sets forth the materials /services being purchased, the terms and conditions of the sale, and the price of the acquisition.
- A vendor invoice setting forth the materials/services provided and the costs.
- Payment document verifiable through a third party, e.g., bank, credit card company, cash receipt.
- Receiving report providing proof of receipt of the materials purchased.

In the area of "clean election" funding and in order to prove that materials and services have been bought for an allowable campaign purpose, the following documentation at a minimum is key and should be required: (1) a vendor invoice or closely related record that identifies the items purchased and the amount charged, and (2) documentation of payment. Payment documentation should be independently verifiable, and may include cancelled checks, debit card and credit card bank documentation, and cash receipts.

Determination of Allowability

The Commission's auditor examines expenditures reported by candidates on their campaign finance reports. The auditor traces selected expenditures from the campaign finance reports back to source documentation, which may include original vendor invoices, cancelled checks, cash receipts, and credit and debit card transaction documentation. The purpose of the examination is to verify that MCEA funds have been paid to the vendor as reported, and that such funds have been expended for a purpose permitted under the Maine Clean Election Act and the Commission's rules governing campaign expenditures.

Generally accepted auditing standards established to guide the practice of auditing require that the auditor make an objective compliance determination of cost allowability based on unimpeachable documentation. Accordingly, if a campaign expenditure is supported by a vendor invoice that describes the item purchased, the quantity purchased,

Documentation Standards for Campaign Expenditures
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and the price charged, and payment from campaign funds is clearly documented, e.g., cancelled check drawn on the campaign bank account, and the expenditure is for goods or services permitted under the Act or the Commission's rules, then, the expenditure should be deemed allowable. If on the other hand, one or more components of required expenditure documentation are absent, the allowability of the expenditure is called into question. Audit techniques are designed to facilitate objective judgments about demonstrated facts; therefore, if a candidate cannot provide acceptable documentary support for his or her campaign expenditures, the Commission should disallow the expenditure and require the candidate to re-pay the campaign fund for the amount of the disallowance. Adherence to established auditing standards that have evolved in both government and industry over the decades promotes system integrity and confidence in the Commission's decision-making apparatus. A more relaxed approach focusing more on subjective opinion will only erode trust in and support for the "clean elections" process.



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March 29, 2007

By E-Mail and Regular Mail

Hon. S. Peter Mills
P.O. Box 9
Skowhegan, ME 04976

Dear Senator Mills:

This is to inform you that the Ethics Commission is scheduled to consider the staff's audit of your 2006 campaign at its meeting on Thursday, April 5, 2007 at 9:00 a.m., and would appreciate your presence to provide any factual information needed by the Commission. We will schedule it as the first item on the April 5 agenda so that you can return to legislative business as quickly as possible.

I also wish to inform you of the staff's recommendation on the first finding of the audit, so that you have an adequate opportunity to respond. On June 2, 2006, your campaign reimbursed you \$722.20 for your purchase of money orders from Wal-Mart to be used in qualifying for Maine Clean Election Act (MCEA) funding. Our review of campaign documents indicates that you bought 830 money orders from Wal-Mart, but only around 550 were submitted to the Commission for the purposes of qualifying for public funding. The fees for the 550 money orders totaled \$253.00. You have stated that you are willing to return the \$722.20 upon the Commission's request.

The Commission staff accepts that you were acting in complete good faith in directing the campaign to reimburse you, and that your campaign workers were acting under considerable time pressure with the 2006 Republican primary election only five days away. Nevertheless, the Commission staff will recommend the following actions with regard to finding #1A:

- the Commission should find that your campaign committee violated 21-A M.R.S.A. §§1122(9) and 1125(3) by paying for \$253 in money order fees through funds other than seed money contributions; and
- the Commission should assess a monetary penalty of \$253 against your campaign committee for the violation, in addition to asking you to return the \$722.20.

The rationale for the recommendation is that the campaign should have understood that money order fees must be paid for with seed money and that the campaign worker should have shown greater care in reimbursing you in the correct amount. The staff believes the Commission should treat violations in a way that encourages candidates (particularly

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Hon. S. Peter Mills

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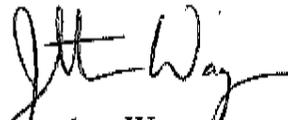
March 29, 2007

legislative candidates) to show greater care in accounting for qualifying expenses and in making reimbursements to the candidate in the proper amount. The Commission assessed a penalty against another candidate for Governor for using MCEA funds to pay for qualifying expenses, although that violation involved compensation to campaign workers that was worth far more than \$253. The amount of the recommended penalty is intended to reflect that you and your campaign acted in good faith; that this is a technical violation; and that once you return the \$720.00 you will be "out of pocket" for both the money order purchase as well as your gas expenses.

With regard to the other findings in the audit report, the staff will explain the findings to the Commission and provide them with information necessary to take any action that they wish. Most of the issues are new policy questions for the Commission because it has not systematically audited candidates before 2006.

Thank you for your cooperation with the audit.

Sincerely,



Jonathan Wayne
Executive Director



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February 2, 2007

The Honorable S. Peter Mills
P. O. Box 9
Skowhegan, ME 04976

Dear Sen. Mills:

Enclosed please find a copy of our final audit report concerning the examination of the receipts and expenditures listed on your 2006 gubernatorial campaign finance reports.

As you know, the report includes four findings of non-compliance with the Maine Clean Election Act and the Commission's rules, along with related recommendations. We anticipate submitting the report to the Members of the Commission at their March, 2007 meeting. At that time, you will be afforded the opportunity to appear before the Commission to discuss the issues identified in the audit. Jonathan Wayne, Executive Director, will contact you in advance of the meeting to schedule your appearance.

Thank you for your cooperation and assistance during the audit process. Please contact me at (207) 287-4727 if you have any questions or concerns regarding the report.

Sincerely,

A handwritten signature in black ink, appearing to read "Vincent W. Dinan".

Vincent W. Dinan
Commission Auditor

Enclosure

Cc: Davida Barter, Campaign Treasurer
Jonathan Wayne
Paul Lavin
Nathaniel Brown



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135 STATE HOUSE STATION
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04333-0135

February 2, 2007

Audit Report No. 2006-GV001

**Candidate: Senator S. Peter Mills
Gubernatorial Candidate – 2006 Republican Primary**

Background

Senator S. Peter Mills was a candidate for Governor of the State of Maine in the 2006 Republican primary election. His final campaign finance report was filed with the Commission on July 25, 2006.

Sen. Mills was certified by the Commission as an MCEA candidate on April 19, 2006. MCEA candidates are required under the Act to submit reports of their receipts, expenditures, outstanding campaign debt, and equipment purchases and dispositions for specified periods during the election cycle.

Audit Scope

Examination of selected contribution and expenditure transactions occurring in the January 2006 semi-annual reporting period (1/1 through 12/31/2005); the MCEA qualifying period (1/1/2006 through 4/18/2006); between April 19 – June 1, 2006 (Six Day Pre-Primary Report), and June 2 – July 18, 2006 (42 Day Post-Primary Report), as recorded in the candidate's accounting records, and as reported to the Commission, to determine if the identified transactions (1) were properly approved by the candidate or his authorized representative(s); (2) were adequately documented as evidenced by original vendor invoices and cancelled checks or other acceptable disbursement documentation; and (3) complied in all material respects with the requirements of the Maine Clean Election Act and the Commission's rules.

The auditor examined documentation supporting three percent of contributions, and 73 percent of the aggregate total expenditures of \$250,000 reported by Senator Mills.

Audit Findings and Recommendations

Finding No. 1A - Sen. Mills was reimbursed on 6/2/2006 for money order transaction fees in the amount of \$722.20. Documentation provided by the campaign disclosed that the money orders were purchased at WalMart on November 1, 2005, for the purpose of facilitating the collection and remittance of five dollar cash contributions to assist the candidate to qualify for MCEA funding. Sen. Mills did qualify as an MCEA candidate in April, 2006.

The auditor determined that the reimbursement was in violation of the MCEA and the Commission's rules for the following reasons:

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- Use of MCEA funds to pay for the costs of goods and services incurred during the qualifying period is not permitted under 21-A M.R.S.A. §1122(9). The use of MCEA funds to pay the fees of money orders used to qualify for public funding constitutes a violation of the seed money restrictions under §1122(9).
- Sen. Mills purchased the money orders in November, 2005. He could have reimbursed himself from Seed Money funds any time up through April 18, 2006, but did not do so. Under 21-A M.R.S.A. §1125(3), “[a]ny money order fees paid by a participating candidate must be paid for with seed money and reported in accordance with commission rules.” Failure to reimburse the candidate for the expenditure within the qualifying period resulted in an unallowable in-kind contribution to his campaign.
- It appears that some portion of the \$722.20 payment reimbursed Sen. Mills for fees for money orders that were not used as part of the qualification process and were not used as part of the candidate’s re-election campaign. This seems to be a violation of 21-A M.R.S.A. §1125(6), which requires that “[a]ll revenues distributed to certified candidates from the fund must be used for campaign-related purpose.”

Criteria - the MCEA requires participating candidates to accurately report campaign expenditures according to procedures developed by the Commission. (21-A M.R.S.A. §1125(12)).

Finding 1B – the auditor determined that in addition to the issues discussed above, the Mills campaign reported the costs of the money orders incorrectly:

- In response to an inquiry from the Commission staff, the campaign explained the \$772.20 payment as a reimbursement based on the purchase of 1,570 money orders with a transaction fee of \$.46 each, totaling \$722.20. Documentation provided by the Mills campaign substantiated a purchase of only 830 money orders which at \$.46 each would have yielded a total of \$381.80. The basis for the erroneous explanation for \$722.20 is uncertain and may have been unintentional, but the campaign should have shown greater care in responding to the audit.
- Commission staff analyzed Sen. Mills’s submittal of qualifying contributions, and determined that only 550 WalMart money orders were used to remit qualifying contributions; accordingly there was a major discrepancy between the number of money orders paid for by the campaign (830) and the number actually constituting legitimate campaign expenditures (550).

Criteria - the MCEA requires participating candidates to accurately report campaign expenditures according to procedures developed by the Commission. (21-A M.R.S.A. §1125(12)).

Recommendations - the Commission staff recommends that the Commission take the following actions concerning Finding 1A:

- Require Sen. Mills to re-pay \$722.20, the amount of the unallowable expenditure, to the Maine Clean Election Fund.

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Candidate: Sen. S. Peter Mills
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- Direct the Mills campaign to amend the campaign report for the 42 Day Post-Primary period as necessary to correctly report campaign expenditures.
- Consider whether to assess a penalty against Sen. Mills for violating the seed money restrictions of §1122(9) by paying for money order fees from a source other than cash seed money received or a reported in-kind seed money contribution by Sen. Mills. (The MCEA permits the Commission to assess a penalty of up to \$10,000 for any violation of the MCEA under 21-A M.R.S.A. §1127(1)).
- Consider whether to assess a penalty against Sen. Mills for spending a portion of the \$772.20 payment for money order fees that were not campaign-related.

Finding No. 2 – The audit disclosed that one of the Mills campaign volunteers was reimbursed for the use of his personal cellular telephone while conducting campaign business. Over a period of six months, this volunteer was reimbursed a total of \$501.40 out of \$1,170.18 billed to the individual during the same period by the cellular telephone company. The examination found no agreement stipulating terms and conditions of the reimbursement. In addition, the volunteer was not required to maintain a log of campaign-related calls to support his claims for reimbursement. According to Sen. Mills, the agreement to reimburse was verbal, and made because the volunteer was functioning in a campaign management capacity, and used his personal cellular telephone extensively to conduct campaign business. The auditor believes the reimbursements described above are unallowable because although the campaign was able to provide call detail reports associated with the bills to the volunteer, there is no objective and reliable way, after the fact, to determine which calls were personal and which were campaign-related.

Criteria - the MCEA requires participating candidates to report campaign expenditures according to procedures developed by the Commission. (21-A M.R.S.A. §1125 (12) and 21-A M.R.S.A. §1125 (12-A)).

Recommendation – the Commission staff recommends that the Commission consider whether to disallow the reimbursement of \$501.40 in cellular telephone expenses by the Mills campaign based on the candidate's failure to maintain documentation that calls reimbursed were for campaign purposes.

Finding No. 3 – the Mills campaign – in common with the campaigns of many other candidates – reimbursed campaign workers for vehicle travel costs incurred on behalf of the candidate. Under the Commission's rules, "[c]andidates may elect to have the campaign reimburse them for vehicle travel at the reimbursement rate that is applicable to state employees or for amounts actually paid for fuel and repairs (pro-rated to reflect only campaign-related usage). (Chapter 3, Section 7(1)(C)) Candidates should keep a record for each trip that includes: date of travel, number of miles traveled, origination, destination, and purpose of travel." The state mileage reimbursement rate during the campaign period was \$.36 a mile. The auditor found that in most cases, the candidate's reimbursement practices did not comply with the Commission's rules regarding travel costs. Instead, the campaign reimbursed on the following bases:

- Campaign workers were paid for the fuel they used for travel on campaign business, but the amounts of the payments were not calculated according to Chapter 3, Section 7, para. 1(C) and proper documentation for these reimbursements were not kept.

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- A cash advance was made by the campaign in anticipation of a future claim for reimbursement.
- Reimbursement at the rate of \$.40 per mile for miles reported by the worker but not substantiated by the required logbook.
- Reimbursement at the rate of \$.445 per mile for miles reported by the worker but not substantiated by the required logbook.

The campaign treasurer informed us that no logbook was maintained, but she was aware of what travel was performed, where campaign workers traveled to, and that the individuals usually reported the number of miles traveled. Based on the records the campaign made available, it appeared that in most cases the amount reimbursed to the traveler was less than it would have been if paid at the rate of \$.36 per mile.

Criteria - the MCEA requires participating candidates to report campaign expenditures according to procedures developed by the Commission. (21-A M.R.S.A. §1125(12)), and the Commission's rules, Chapter 3, Section 7, para. (1)(C).

Recommendations - the Commission staff recommends that the Commission take the following actions regarding Finding No. 3:

- Accept travel reimbursements made by the Mills campaign that constructively are less than or equal to \$.36 per mile.
- Consider whether to direct the candidate to repay amounts reimbursed by the campaign in excess of \$.36 per mile during the 2006 campaign. The auditor has determined that amount to be \$242.21.
- Consider whether to direct the candidate to repay amounts for which there is apparently no supporting documentation. The auditor has determined that amount to be \$71.00 (includes \$31.00 from Finding No. 4 below).
- Direct the candidate to amend all campaign finance reports impacted by the repayment of excess mileage rates.

Auditor's Advisory Note: Our 100 percent review of campaign finance reports over the past two reporting cycles has indicated that many candidates are out of compliance with the travel reimbursement rules discussed above. Although the rules were published in the *2006 Candidate's Guide*, and a special advisory concerning the issue was sent to all candidates during the election season, noncompliance continues to be widespread. The Mills campaign is not uncharacteristic in the way they treated travel reimbursement. Accordingly, we believe that the Commission should accept travel reimbursements made by all candidates during the 2006 election period, as long as such reimbursements are constructively less than or equal to \$.36 per mile. Acceptance would be for mileage reimbursement claims occurring during the 2006 campaign only. We also believe that the Commission should re-visit the matter of travel reimbursement and consider implementing revised rules that would encourage compliance by MCEA candidates.

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Candidate: Sen. S. Peter Mills
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Finding No. 4 – Sen. Mills enlisted the assistance of a public relations expert from Florida as a campaign volunteer during the primary election period. According to Sen. Mills, the volunteer was not compensated for his work on the Mills campaign. The campaign did report, however, reimbursements -- \$177.50 on 5/30/2006 and \$197.00 on 6/5/2006 – for food, gas, toiletries, and laundry made to the volunteer. The *2006 Candidate's Guide* states that “[c]andidates may spend a reasonable amount of MCEA funds on food for campaign events or to feed volunteers while they are working.” The Commission’s 2006 expenditure guidelines state that: “MCEA funds may not be spent on personal expenses ... such as [d]ay-to-day household food items and supplies”

The Commission staff consistently interprets this provision to mean that candidates may make occasional and incidental food expenditures for volunteers engaged in campaign tasks or at campaign events. While we understand that campaigns might be inclined to reimburse an out-of-state worker who volunteers his time for personal expenses that they would not otherwise purchase, the food, toiletries and laundry reimbursements do not seem consistent with the 2006 guidelines. Accordingly, we believe that the subject reimbursements are not allowable.

Criteria - 21-A M.R.S.A. §1125 (12), 21-A M.R.S.A. §1125 (12-A), and Commission Rules, Chapter 3, Section 7, (1) (c), and *Commission Guidelines on Permissible Expenditures of MCEA Funds*.

Recommendations – the Commission staff recommends that the Commission take the following actions regarding Finding No. 4:

- Determine whether the non-fuel expenditures listed above may be considered as “compensation”. If it is determined that the referenced expenditures may be treated as compensation, the Commission may offer the candidate one of two options: (a) re-classify the non-fuel expenditures from FOD to SAL (salary); or (b) accept the FOD claim as unallowable and refund the amounts of the reimbursements to the Maine Clean Election Fund.
- Alternatively, the Commission may choose to disallow a total of \$336.00, the amount of the two reimbursements for food, toiletries, and laundry.
- Consider whether to accept Sen. Mills’ explanation of \$31.00 in reimbursements for fuel costs (\$10.00 claimed on 5/30/2006 and \$21.00 claimed on 6/5/2006) or to disallow them because neither of the expenditures was supported by any documentation. Both amounts are included in the recommendation for Finding No. 3, above.
- Direct the candidate to amend all campaign finance reports as necessary to reflect the adjustments made for unallowable expenditures.

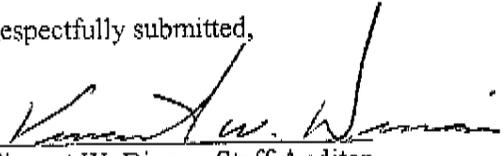
Administrative Issues:

On 7/18/2006, the Mills campaign recovered \$45.81, the remainder of a prepaid deposit for postage from the U.S. Post Office. The recovery was posted to Schedule E of the 42 Day Post-Primary report in error. The campaign should re-classify the recovered amount as “Other Cash Receipts”, and amend the referenced report to reflect the change.

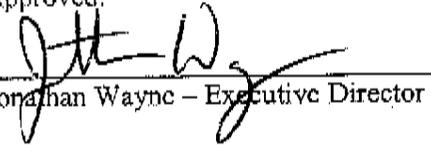
Candidate's Comments on the Audit Report

Senator Mills' comments on the audit findings and recommendations are attached.

Respectfully submitted,


Vincent W. Dinan - Staff Auditor

Approved:


Jonathan Wayne - Executive Director

ATTACHMENT
Response to Audit Findings
Senator S. Peter Mills
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Peter Mills
POB 9
Skowhegan, Maine 04976
January 29, 2007

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

Re: Comments on Draft Audit Report No. 2006-GV001

To the Commission:

Finding No. 1A and 1B (Money order fees):

Early in the qualifying period, I bought a number of money orders through Wal-Mart where they were available at 46¢ apiece as opposed to 90¢ from the Post Office. After the qualifying period ended on April 18, I directed one of our campaign workers to determine what the campaign owed me for the purchase of money orders actually used, a calculation that would have been difficult to make before donor acknowledgement forms had all been received at the end of the qualifying period. On June 2, 2006, a campaign check was issued to me for \$722.20.

I do not recall who was asked to do the calculation (It was neither the treasurer, nor the assistant). Whoever did it appears to have totalled up the sheer number of transactions (1570) from a portion of those purchased at Wal-Mart on November 1, 2005, and then multiplied by 46¢. Wal-Mart entered two transactions for each money order purchased, one for the \$5 amount and the other for the 46¢ fee.

This calculation resulted in an overpayment for two reasons: First, it was not based on the number of money orders actually used; and second, it doubled the cost of those counted.

When this compound error came to light during the audit, it was also apparent that the overriding mistake was how the reimbursement was made in the first place -- from the wrong source and at the wrong time (21A MRSA §1125(3)(C)), i.e., not from seed money and beyond the end of the qualifying period. Because the whole sum of \$722.20 must be returned to the Commission, it made little sense to spend the substantial time necessary to review 2800 acknowledgement forms to calculate the exact amount of the underlying mathematical errors after we had already determined their apparent genesis.

Given everything else that we did in response to the audit, we would gladly have worked this issue up in greater detail (and would still do so) if there were a point to it.

This is the only audit finding that approaches materiality. Even still, it represents less than 3 tenths of 1% of the \$250,000 in funds entrusted to us and a much smaller portion of the total value of human effort that was mustered from the hundreds of volunteers and underpaid workers who devoted themselves to our campaign.

The error occurred toward the end of a close and highly contested three-way campaign at a time when I was significantly preoccupied.

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Response to Audit Findings
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Mills Comments on Audit

The primary purpose of the Clean Election law is to force candidates to limit spending and to rely instead on volunteers or others willing to work for low wages. There is substantial pressure to conserve all available cash for TV, radio and direct mail.

As permitted by law, I received no personal reimbursement for mileage or meals despite having driven about 70,000 miles during 11 months of campaigning. Had I submitted a voucher for only 2006 miles at 36¢ per mile, the sum of \$722.20 could have been paid to me properly from Clean Election funds. The transaction of June 2 was a mistake and not the product of any personal venality. In fact, I had every motivation to put our limited public funds to much better use.

Finding No. 2 (Cell phone expense for James Cote):

From December of 2005 through early June of 2006, James Cote worked full time - and then some - on the campaign, first as a volunteer and then as an underpaid manager. Because his personal cell phone was used so extensively for campaign contact during that time, we agreed to reimburse him for up to half the cost. The campaign paid James \$501.40 against his total phone charges of \$1170.18 summarized as follows:

Statement Date	Statement Amount	Campaign Payment Date	Amount Reimbursed
Jan 8	\$227.60	Jan 27	\$113.80
Feb 8	\$289.86	Mar 3	\$144.00
Mar 8	\$218.72	Apr 11	\$106.00
Apr 8	\$ 94.89		
May 8	\$189.75		
Jun 8	\$149.36	Jun 8	\$137.60
Total	\$1170.18	Total	\$501.40

These six phone bills, which we have provided to the Commission, are over 100 pages long. They record more than 5000 calls made to and from Cote's phone during the six months covered by the partial reimbursements.

Although we can easily identify many phone numbers that reflect campaign use, it is impossible to ferret out the exact number of campaign calls. Many entries simply reflect incoming calls from unidentified sources or calls by Cote to his own number for messages.

While there is no practical way to calculate what proportion of the phone use was for campaign versus personal purposes, there is no reason to doubt our estimate that as many as half of them were connected with the campaign. It makes no sense to suggest that we should have kept a log on these 5000 calls to document charges worth only pennies per entry.

If we had issued Mr. Cote a separate phone for the campaign, there still would have been no practical way to track whether he used the phone for personal calls - or the extent to which someone else might have made personal calls to him at that number.

Statewide campaigns run on cell phones. People are constantly on the road travelling in different directions at all hours of the day and night. Cell phones are the only way to stay in touch. Because the campaign's reliance on Mr. Cote's personal phone went beyond the incidental, we felt it appropriate to reimburse him part of the cost.

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January 29, 2007
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We paid Mr. Cote an amount that clearly did not exceed the actual use of his phone for campaign purposes. This was not a misuse of public funds.

Finding No. 3 (Mileage):

We provided the Auditor a spread sheet outlining the amounts paid for travel, except for \$51 paid to Bill Johnson whose expenses are dealt with under Finding 4 below.

For many transactions, we paid the actual cost of buying gasoline. In most such cases, we were able to identify the destination either because of notes recorded on the slips or by reference to the campaign schedule. When calculating these travel expenses at 36¢ per mile, the mileage entitlement nearly always exceeds the amount actually reimbursed for gas alone.

Exceptions include the entries for Eben Bouchard on February 17 and for Allison Saviello on June 7. On those occasions they were each paid \$20 for gas. In February, Eben was a volunteer doing signature validations all over the state. In June, Allison was putting up signs in remote areas of the state. They both traveled extensively for the campaign.

Eben Bouchard began working early in the campaign as a volunteer. Neither Eben nor Alison was paid for time until near the end. In lieu of paying Eben for his time, we agreed to reimburse him 40¢ a mile for his travel expenses. On one occasion (Feb 23, 2006), we paid the maximum allowed federal rate of 44.5¢.

Eben's destinations were not always noted on his slips; however, he did much of the traveling necessary to certify petition signatures and \$5 check signatures in scores of town offices all over the state. Both he and Allison traveled extensively at the end to put up signs. Their mileage claims were conservatively estimated. They traveled far more than what they billed for. Both of these young people provided services whose value greatly exceeded any amounts of money provided to them.

Were we to do this again, we would hand out log sheets and clipboards to campaign workers to improve on tracking their travel expenses. As it was, we still got good travel receipts from some of the workers, but not from all.

In any case, there was no misuse of public funds.

Finding No. 4 (Bill Johnson's expenses):

Bill Johnson, a semi-retired newsman who lives in Florida, was for many years the news anchor for Channel 6, Maine's largest TV news outlet. During a sabbatical from television in 1974, he worked as manager of Harry Richardson's governor campaign. After leaving TV, he served on the staff of Senator Bill Cohen and later in public relations for Fairchild Semi-conductor. In retirement, he now works part time doing public relations for FEMA in disaster areas around the country.

Bill came up from Florida to Maine to volunteer on my campaign from May 22 through June 4. Because he was so far from home, he asked that the campaign take care of his expenses, but he received no other compensation.

He is a highly experienced newsman whose consulting services and press releases were extraordinarily valuable. He devoted full time to the campaign while he was here and had no other business to accomplish in Maine.

Response to Audit Findings

Senator S. Peter Mills

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January 29, 2007

Mills Comments on Audit

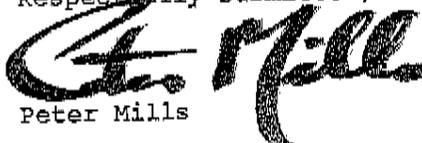
His submitted expenses totaled \$374.50 in two statements, one for \$177.50 and the other for \$197. Most of charges were modest amounts for food, meals and toiletries.

A total of \$51 was spent on gas, for driving borrowed automobiles on campaign business. On May 27, we drove round trip from Skowhegan to Dover-Foxcroft for a three-way candidates' debate. The distance was 90 miles which, at 36¢ per mile, equates to \$32.40. On June 1, we drove round trip from Skowhegan through Lewiston to Portland to attend four events, including two TV debates. The distance that day was over 200 miles. At 36¢, the charge would equate to \$72.

If we had paid Mr. Johnson a contract sum of \$375, this would have complied with Commission rules. To have reimbursed him his expenses was simply more convenient - and completely legal - from an income tax perspective.

There was no misuse of Clean Election funds.

Respectfully submitted,



Peter Mills

Title 21-A, §1125, Terms of participation

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§1125. Terms of participation

1. Declaration of intent. A participating candidate must file a declaration of intent to seek certification as a Maine Clean Election Act candidate and to comply with the requirements of this chapter. The declaration of intent must be filed with the commission prior to or during the qualifying period, except as provided in subsection 11, according to forms and procedures developed by the commission. A participating candidate must submit a declaration of intent within 5 business days of collecting qualifying contributions under this chapter, or the qualifying contributions collected before the declaration of intent has been filed will not be counted toward the eligibility requirement in subsection 3.

[2005, c. 301, §29 (amd).]

2. Restrictions on contributions for participating candidates. Subsequent to becoming a candidate as defined by section 1, subsection 5 and prior to certification, a participating candidate may not accept contributions, except for seed money contributions. A participating candidate must limit the candidate's seed money contributions to the following amounts:

- A. Fifty thousand dollars for a gubernatorial candidate; [IB 1995, c. 1, §17 (new).]
- B. One thousand five hundred dollars for a candidate for the State Senate; or [IB 1995, c. 1, §17 (new).]
- C. Five hundred dollars for a candidate for the State House of Representatives. [IB 1995, c. 1, §17 (new).]

The commission may, by rule, revise these amounts to ensure the effective implementation of this chapter.

[IB 1995, c. 1, §17 (new).]

3. Qualifying contributions. Participating candidates must obtain qualifying contributions during the qualifying period as follows:

- A. For a gubernatorial candidate, at least 2,500 verified registered voters of this State must support the candidacy by providing a qualifying contribution to that candidate; [IB 1995, c. 1, §17 (new).]
- B. For a candidate for the State Senate, at least 150 verified registered voters from the candidate's electoral division must support the candidacy by providing a qualifying contribution to that candidate; or [IB 1995, c. 1, §17 (new).]
- C. For a candidate for the State House of Representatives, at least 50 verified registered voters from the candidate's electoral division must support the candidacy by providing a qualifying contribution to that candidate. [IB 1995, c. 1, §17 (new).]

A payment, gift or anything of value may not be given in exchange for a qualifying contribution. A candidate may pay the fee for a money order in the amount of \$5, which is a qualifying contribution, as long as the donor making the qualifying contribution pays the \$5 amount reflected on the money order. Any money order fees paid by a participating candidate must be paid for with seed money and reported in accordance with commission rules.

[2001, c. 465, §4 (amd).]

4. Filing with commission. A participating candidate must submit qualifying contributions to the commission during the qualifying period according to procedures developed by the commission, except as provided under subsection 11.

[IB 1995, c. 1, §17 (new).]

Title 21-A, §1122, Definitions

A. For a gubernatorial participating candidate, the qualifying period begins November 1st immediately preceding the election year and ends at 5:00 p.m. on April 15th of the election year unless the candidate is unenrolled, in which case the period ends at 5:00 p.m. on June 2nd of the election year. [2001, c. 465, §3 (amd).]

B. For State Senate or State House of Representatives participating candidates, the qualifying period begins January 1st of the election year and ends at 5:00 p.m. on April 15th of that election year unless the candidate is unenrolled, in which case the period ends at 5:00 p.m. on June 2nd of the election year. [2001, c. 465, §3 (amd).]
[2001, c. 465, §3 (amd).]

* **9. Seed money contribution.** "Seed money contribution" means a contribution of no more than \$100 per individual made to a candidate, including a contribution from the candidate or the candidate's family. To be eligible for certification, a candidate may collect and spend only seed money contributions subsequent to becoming a candidate as defined by section 1, subsection 5 and throughout the qualifying period. A participating candidate who has accepted contributions or made expenditures that do not comply with the seed money restrictions under this chapter may petition the commission to remain eligible for certification as a Maine Clean Election Act candidate in accordance with rules of the commission, if the failure to comply was unintentional and does not constitute a significant infraction of these restrictions. Prior to certification, a candidate may obligate an amount greater than the seed money collected if the value of the goods and services received from a vendor does not exceed the amount paid to the vendor. A candidate may not collect or spend seed money contributions after certification as a Maine Clean Election Act candidate. A seed money contribution must be reported according to procedures developed by the commission.

[2005, c. 301, §28 (amd).]

IB 1995, Ch. 1, §17 (NEW).

PL 2001, Ch. 465, §3 (AMD).

PL 2005, Ch. 301, §28 (AMD).

Title 21-A, §1125, Terms of participation

12-A. Required records. The treasurer shall obtain and keep:

A. Bank or other account statements for the campaign account covering the duration of the campaign; [2005, c. 542, §5 (new).]

B. A vendor invoice stating the particular goods or services purchased for every expenditure of \$50 or more; and [2005, c. 542, §5 (new).]

C. A record proving that a vendor received payment for every expenditure of \$50 or more in the form of a cancelled check, receipt from the vendor or bank or credit card statement identifying the vendor as the payee. [2005, c. 542, §5 (new).]

The treasurer shall preserve the records for 2 years following the candidate's final campaign finance report for the election cycle. The candidate and treasurer shall submit photocopies of the records to the commission upon its request. [2005, c. 542, §5 (new).]

13. Distributions not to exceed amount in fund. The commission may not distribute revenues to certified candidates in excess of the total amount of money deposited in the fund as set forth in section 1124. Notwithstanding any other provisions of this chapter, if the commission determines that the revenues in the fund are insufficient to meet distributions under subsections 8 or 9, the commission may permit certified candidates to accept and spend contributions, reduced by any seed money contributions, aggregating no more than \$500 per donor per election for gubernatorial candidates and \$250 per donor per election for State Senate and State House candidates, up to the applicable amounts set forth in subsections 8 and 9 according to rules adopted by the commission. [IB 1995, c. 1, §17 (new).]

14. Appeals. A candidate who has been denied certification as a Maine Clean Election Act candidate, the opponent of a candidate who has been granted certification as a Maine Clean Election Act candidate or other interested persons may challenge a certification decision by the commission as follows.

A. A challenger may appeal to the full commission within 7 days of the certification decision. The appeal must be in writing and must set forth the reasons for the appeal. [2005, c. 301, §32 (amd).]

B. Within 5 days after an appeal is properly made and after notice is given to the challenger and any opponent, the commission shall hold a hearing. The appellant has the burden of providing evidence to demonstrate that the commission decision was improper. The commission must rule on the appeal within 3 days after the completion of the hearing. [IB 1995, c. 1, §17 (new).]

C. A challenger may appeal the decision of the commission in paragraph B by commencing an action in Superior Court according to the procedure set forth in section 356, subsection 2, paragraphs D and E. [IB 1995, c. 1, §17 (new).]

D. A candidate whose certification by the commission as a Maine Clean Election Act candidate is revoked on appeal must return to the commission any unspent revenues distributed from the fund. If the commission or court find that an appeal was made frivolously or to cause delay or hardship, the commission or court may require the moving party to pay costs of the commission, court and opposing parties, if any. [IB 1995, c. 1, §17 (new).]

[2005, c. 301, §32 (amd).]

IB 1995, Ch. 1, §17 (NEW).

PL 2001, Ch. 465, §4-6 (AMD).

PL 2003, Ch. 270, §1,2 (AMD).

PL 2003, Ch. 448, §5 (AMD).

PL 2003, Ch. 453, §1,2 (AMD).

PL 2003, Ch. 688, §A21,22 (AMD).

PL 2005, Ch. 301, §29-32 (AMD).

PL 2005, Ch. 542, §3-5 (AMD).

Title 21-A, Chapter 14, THE MAINE CLEAN ELECTION ACT (HEADING: IB 1995, c. 1, §17 (new))

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[2005, c. 301, §32 (amd).]

IB 1995, Ch. 1, §17 (NEW).

PL 2001, Ch. 465, §4-6 (AMD).

PL 2003, Ch. 270, §1,2 (AMD).

PL 2003, Ch. 448, §5 (AMD).

PL 2003, Ch. 453, §1,2 (AMD).

PL 2003, Ch. 688, §21,22 (AMD).

PL 2005, Ch. 301, §29-32 (AMD).

PL 2005, Ch. 542, §3-5 (AMD).

§1126. Commission to adopt rules

The commission shall adopt rules to ensure effective administration of this chapter. These rules must include but must not be limited to procedures for obtaining qualifying contributions, certification as a Maine Clean Election Act candidate, circumstances involving special elections, vacancies, recounts, withdrawals or replacements, collection of revenues for the fund, distribution of fund revenue to certified candidates, return of unspent fund disbursements, disposition of equipment purchased with clean election funds and compliance with the Maine Clean Election Act. Rules of the commission required by this section are major substantive rules as defined in Title 5, chapter 375, subchapter II-A. [2001, c. 465, §7 (amd).]

IB 1995, Ch. 1, §17 (NEW).

PL 2001, Ch. 465, §7 (AMD).

§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. The commission may assess a fine of up to \$10,000 for a violation of the reporting requirements of sections 1017 and 1019-B if it determines that the failure to file a timely and accurate report resulted in the late payment of matching funds. This fine is recoverable in a civil action. In addition to any fine, for good cause shown, a candidate, treasurer, consultant or other agent of the candidate or the 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. 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.

[2005, c. 542, §6 (amd).]

5. not spend more than the following amounts of Fund revenues on post-election parties, thank you notes, or advertising to thank supporters or voters:

- A. \$250 for a candidate for the State House of Representatives;
- B. \$750 for a candidate for the State Senate; and
- C. \$2,500 by a gubernatorial candidate.

The candidate may also use his or her personal funds for these purposes; and

6. not use revenues distributed from the Fund for the payment of fines, forfeitures, or civil penalties, or for the defense of any enforcement action of the Commission.

SECTION 7. RECORD KEEPING AND REPORTING

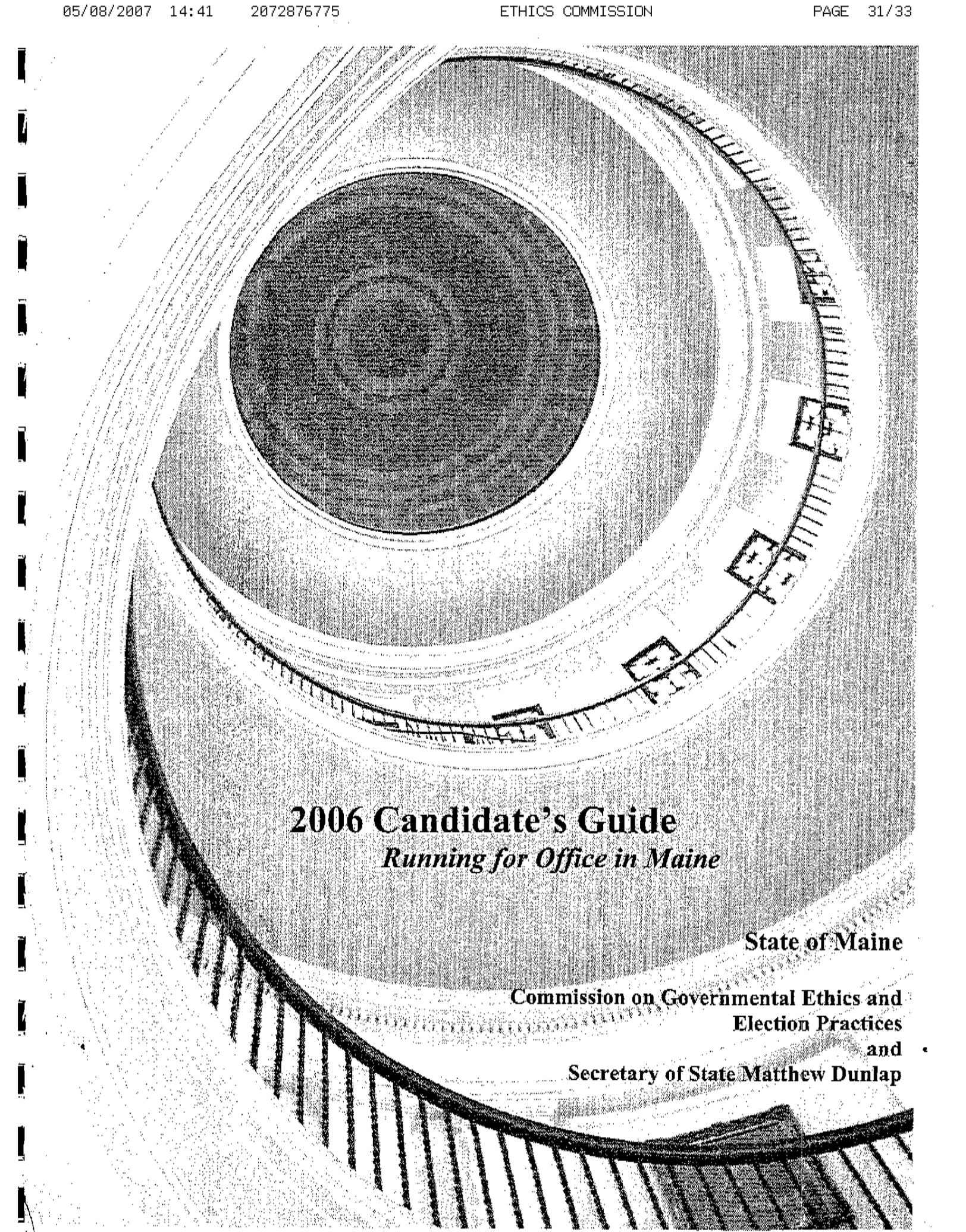
1. Record Keeping by Participating and Certified Candidates. Participating and certified candidates must comply with applicable record keeping requirements set forth in Title 21-A, chapter 13, subchapter II [§1016].
- A. Fiduciary Responsibility for Funds. All funds provided to a certified candidate or to a candidate's authorized political committee must be segregated from, and may not be commingled with, any other funds. Matching fund advance revenues for which no spending authorization has been issued must be deposited in a federally insured financial institution until the candidate receives authorization to spend those funds.
 - B. Meal Expenses. A candidate or treasurer must obtain and keep a record for each meal expenditure of more than \$50. The record must include itemized bills for the meals, the names of all participants in the meals, the relationship of each participant to the campaign, and the specific, campaign-related purpose of each meal.
 - C. Vehicle Travel Expenses. A candidate or treasurer must obtain and keep a record of vehicle travel expenses for which reimbursements are made from campaign funds. Reimbursement may be based using either the standard mileage rate or actual expenses. The candidate must use one method exclusively during an election campaign.
 - (1) Standard Mileage Rate. The standard mileage rate is a set rate per mile that a candidate may use to compute reimbursable vehicle travel expenses. Reimbursement should be calculated using the standard mileage rate currently prescribed for employees of the State of Maine. For each trip for which reimbursement is made, a record should be maintained showing the dates of travel, the number of miles traveled, the origination, destination and purpose of the travel, and the total amount claimed for reimbursement.

*

- (2) **Actual Expenses.** Actual expenses include the pro rata, campaign-related share of vehicle depreciation or lease payments, maintenance and repairs, gasoline (including gasoline taxes), oil, insurance, and vehicle registration fees, etc. For reimbursement using this method, the candidate must maintain detailed records reflecting use of the vehicle for campaign-related purposes. The records must include the dates the vehicle was used for campaign-related purposes, the total mileage the vehicle was used for campaign-related purposes, the total mileage the vehicle was used for all purposes during the period for which reimbursement is made, and the percentage of total vehicle usage that the vehicle was used for campaign-related purposes.

2. Reporting by Participating and Certified Candidates.

- A. **General.** Participating and certified candidates must comply with applicable reporting requirements set forth in Title 21-A, chapter 13, subchapter II [§ 1017].
- B. **Return of Matching Fund Advances and Unspent Fund Revenues.** Matching Fund advance revenues that have not been authorized for spending and unspent Fund revenues shall be returned to the Fund as follows:
 - (1) **Unauthorized Matching Funds.** Candidates must return all Matching Fund advance revenues for which no spending authorization was issued prior to an election to the Commission by check or money order payable to the Fund within 2 weeks following the date of the election.
 - (2) **Unspent Fund Revenues for Unsuccessful Primary Election Candidates.** Upon the filing of the 42-day post-primary election report for a primary election in which a certified candidate was defeated, that candidate must return all unspent Fund revenues to the Commission by check or money order payable to the Fund.
 - (3) **Unspent Fund Revenues for All General and Special Election Candidates.** Upon the filing of the 42-day post-election report for a general or special election, all candidates must return all unspent Fund revenues to the Commission by check or money order payable to the Fund.
- C. **Liquidation of Property and Equipment.** Property and equipment that is not exclusive to use in a campaign (e.g., computers and associated equipment, etc.) that has been purchased with Maine Clean Election Act funds loses its campaign-related purpose following the election. Such property and equipment must be liquidated at its fair market value and the proceeds thereof reimbursed to the Maine Clean Election Fund as unspent fund revenues in accordance with the schedule in paragraph B above.
 - (1) The liquidation of campaign property and equipment may be done by sale to another person or purchase by the candidate.
 - (2) Liquidation must be at the fair market value of the property or equipment at the time of disposition. Fair market value is determined by what is fair,



2006 Candidate's Guide
Running for Office in Maine

State of Maine

**Commission on Governmental Ethics and
Election Practices
and
Secretary of State Matthew Dunlap**

Commission's Guidelines on Permissible Expenditures of MCEA Funds

- Expenditures for "campaign-related purposes" are those which are traditionally accepted as necessary to promote the election of a candidate to political office. Candidates using MCEA funds must also take into account the public nature of the funds, the underlying objectives of the MCEA, and the reasonableness of the expenditures under the circumstances. In Maine, traditional campaign expenses have included:
 - Printing and mailing costs;
 - Political advertising expenses;
 - Campaign communications such as signs, bumper stickers, T-shirts, or caps with campaign slogans, etc.;
 - Office supplies;
 - Campaign events (e.g., food, rent of tent or hall, etc.);
 - Campaign staff expenses; and
 - Campaign travel expenses, such as fuel and tolls.

- MCEA funds may not be spent on personal expenses. Those expenses are for goods and services that the candidate would otherwise purchase independently of the campaign, such as:
 - Day-to-day household food items and supplies;
 - Vehicle and transportation expenses unrelated to the campaign;
 - Mortgage, rent, or utility payments for the candidate's personal residence, even if part of the residence is being used by the campaign; and
 - Clothing, including attire for political functions such as business suits or shoes.

- Maine Clean Election Act funds may not be spent to:
 - make independent expenditures supporting or opposing any candidate, ballot measure, or political committee;
 - assist in any way the campaign of any candidate other than the candidate for whom the funds were originally designated;
 - contribute to another candidate, a political committee, or a party committee, other than in exchange for goods and services;
 - pay a consultant, vendor, or campaign staff, other than in exchange for campaign goods or services;
 - compensate the candidate for services provided by the candidate;
 - pay an entry fee for an event organized by a party committee, charity, or community organization or to place an ad in an event publication, unless the expenditure benefits the candidate's campaign;
 - make a donation to a charity or a community organization, other than in exchange for campaign goods or services;
 - promote political or social positions or causes other than the candidate's campaign;

- pay civil penalties, fines, or forfeitures to the Commission, or defend the candidate in enforcement proceedings brought by the Commission; or
- assist the candidate in a recount of an election.

■ Guidelines on Selected Issues

- *Electronics and Other Personal Property.* Goods purchased with MCEA funds that could be converted to personal use after the campaign (e.g., computers, fax machines, and cellular telephones) must be reported on Schedule E of the campaign reporting form. No later than 42 days after the general election, the goods must be sold at fair market value and the proceeds returned to the Maine Clean Election Fund. Candidates are welcome to lease electronic and other equipment.
- *Food.* Candidates may spend a reasonable amount of MCEA funds on food for campaign events or to feed volunteers while they are working. Legislative candidates should not use MCEA funds to purchase food that is consumed only by the candidate and/or the candidate's spouse. Gubernatorial candidates may use MCEA funds to purchase meals for the candidate and/or candidate's spouse if associated with travel for campaign purposes.
- *Vehicle Travel.* Candidates may elect to have the campaign reimburse them for vehicle travel at the reimbursement rate that is applicable to state government employees or for amounts actually paid for fuel and repairs (pro-rated to reflect only campaign-related usage). Candidates should keep a record for each trip that includes: date of travel, number of miles traveled, origination, destination, and purpose of travel.
- *Lodging.* Candidates may use MCEA funds to pay for lodging if necessary for campaign purposes, but must keep lodging expenses reasonable.
- *Post-Election Notes and Parties.* Candidates may spend up to the following maximum amounts of MCEA funds on post-election parties, thank you notes, or advertising to thank supporters or voters: \$250 for State Representative candidates, \$500 for State Senate candidates, \$2,500 for gubernatorial candidates. Candidates may also use personal funds for these purposes.
- *Campaign Training.* Candidates may use Maine Clean Election Act funds for tuition or registration costs to receive training on campaigning or policy issues.
- *Salary and Compensation.* Candidates may use MCEA funds to pay for campaign-related services by staff or consultants, provided that compensation is made at or below fair market value and sufficient