

Agenda

Item #4



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

July 31, 2007

Audit Report No. 2006-HR032

**Candidate: Representative Glenn Cummings
House District 115**

Background

Representative Glenn Cummings, Speaker of the Maine House of Representatives, was re-elected to the District 115 seat in the 2006 general election. Rep. Cummings was certified by the Commission as a Maine Clean Election Act (MCEA) candidate on April 21, 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 candidate contribution and expenditure transactions occurring during the following campaign reporting periods:

- Seed Money
- Six Day Pre-Primary
- 42 Day Post-Primary
- Six Day Pre-General
- 42 Day Post-General

Transactions subject to review were those recorded in the candidate's accounting records and reported to the Commission. The audit's purpose was to determine if the identified receipts and payments (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 disbursement documentation; and (3) complied in all material respects with the requirements of the Maine Clean Election Act and the Commission's rules.

Audit Findings and Recommendations

Missing Documentation and Misreporting Campaign Expenditures - The Cummings campaign reported that Rep. Cummings was reimbursed for postage costs in the amount of \$335.00 on December 11, 2006. Although a copy of the reimbursement check was on file, the actual purchase of the postage and payment to USPS were undocumented. The examination disclosed that the reimbursement actually covered three campaign expenditures:

- \$145.00 for postage used for campaign mailings, but originally purchased for personal use by Rep. Cummings. The auditor was informed that the records of purchase and payment were not on file.
- \$60.00 for envelopes used in campaign mailings, but originally purchased for personal use. Rep. Cummings was unable to provide proof of purchase or payment for the envelopes.

OFFICE LOCATED AT: 242 STATE STREET, AUGUSTA, MAINE
WEBSITE: WWW.MAINE.GOV/ETHICS

Campaign Audit
Candidate: Rep. Glenn Cummings
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- \$130.00 for a sign stencil. The candidate's legal counsel informed the auditor that later investigation showed that Rep. Cummings' check in payment for the stencil was never cashed, and in fact, the stencil was never fabricated. Rep. Cummings has indicated that he will repay the Maine Clean Election Fund for the amount of the over-reimbursement.

The reporting issues summarized above are described in detail in Attorney Daniel Walker's letter to the auditor dated July 27, 2007, which is included as Exhibit I to this report.

In the auditor's opinion, the Cummings campaign mis-reported the types and amounts of the expenditures discussed above. With respect to the missing proof of purchase and proof of payment for the postage and envelopes, in the absence of vendor invoices and cancelled checks, we would have preferred to see a contemporaneous memo in the candidate's campaign records which supported the costs for stamps and envelopes. Such a memo would document the basis for charging the campaign \$145 and \$60, respectively. Nonetheless, we find Rep. Cummings' explanation credible, and do not believe that the lack of formal expenditure documentation in this case rises to the level of a violation.

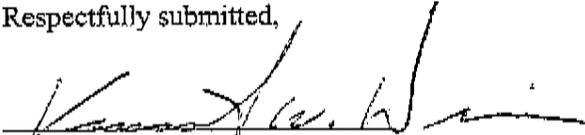
Criteria: 21-A M.R.S.A. § 1016 (4) states that "... a treasurer shall obtain and keep a receipted bill, stating the particulars, for every expenditure in excess of \$50 made by or on behalf of ... a candidate.... The Maine Clean Election Act permits the Commission to assess a penalty of up to \$10,000 for any violation of the MCEA. 21-A M.R.S.A. §1125 (12) states "...participating and certified candidates shall report any money collected, all expenditures, obligations and related activities to the commission according to procedures developed by the commission."

Recommendation: the Commission staff recommends that the Commission find the candidate in violation of 21-A M.R.S.A. §1125 (12) for not accurately reporting the three expenditures, but the staff does not recommend assessment of a penalty. The staff also recommends that the Commission direct Rep. Cummings to amend his 42 Day Post-General campaign finance report to accurately reflect the expenditure transactions made during the reporting period, and also direct him to promptly repay \$130 to the Maine Clean Election Fund for the sign stencil that was never produced.

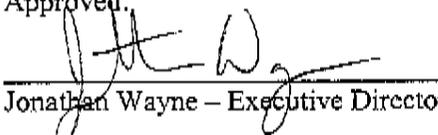
Candidate's Comments:

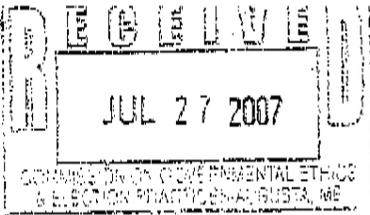
The comments of Attorney Daniel Walker, legal counsel to Rep. Cummings, appear as Exhibit I.

Respectfully submitted,


Vincent W. Dinan - Staff Auditor

Approved:


Jonathan Wayne - Executive Director

PretiFlaherty**Campaign Audit**
Rep. Glenn Cummings
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Direct Dial: (207) 791-3281

July 27, 2007

VIA HAND DELIVERY

Mr. Vincent W. Dinan, Staff Auditor
Maine Commission on Governmental Ethics and Election Practices
135 State House Station
Augusta, Maine 04333

RE: Audit Report No. 2006-HR032

Dear Mr. Dinan:

The following letter is in response to your findings regarding Audit Report No. 2006-HR032 for the campaign of Speaker Glenn Cummings, House District 115, and is intended to clarify the \$335.00 reimbursement to him dated December 11, 2006, which was identified in the report to "reimburse postage." The \$335.00 reimbursement was in actuality a reimbursement for three separate expenditures.

1. \$145.00 Reimbursement for Postage

The first part of the reimbursement was for \$145.00 worth of postage purchased by Speaker Cummings or his wife, Leslie Appelbaum, for personal use that was used to mail out absentee ballots. Unfortunately, Speaker Cummings did not retain a receipt and thorough searches of both his debit card statements and cleared checks at his credit union have shown no record of the purchase. Rather than use the postage without claiming the expenditure, and thereby possibly exceed the limit on expenditures for clean elections, Speaker Cummings felt it would be more honest to claim the value.

2. \$60.00 Reimbursement for Envelopes

The second part of the reimbursement was for \$60.00 worth of personal envelopes purchased by Speaker Cummings or his wife, Leslie Appelbaum, used during the course of the campaign. The envelopes were a few years old and rather than use them without claiming the expenditure, and thereby possibly exceed the limit on expenditures for clean elections, Speaker Cummings felt it would be more honest to claim the value. Because the personal envelopes were a few years old, Speaker Cummings did not retain a receipt for them.

3. \$130.00 Reimbursement for Sign Stencil

The third part of the reimbursement expenditure was for \$130.00 for a wooden sign stencil and several signs, which were to be produced by Mr. James Trott of Portland. Speaker Cummings requested these services from Mr. Trott during the campaign via telephone call and handwritten note. However, Mr. Trott never performed the work on the stencil. Thinking Mr.

Preti Flaherty Beliveau & Pachios LLP Attorneys at Law

45 Memorial Circle | Augusta, ME 04330 | Tel: 207.623.5300 | Fax: 207.623.7814 | Mailing address: P.O. Box 1058 | Augusta, ME 04332-1058

Augusta Bath Boston Concord Portland

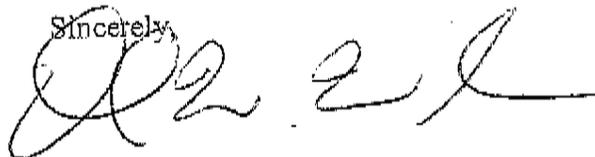
PRETI FLAHERTY
Mr. Vincent W. Dinan, Staff Auditor
July 27, 2007
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Trott had cashed or would cash the check, Speaker Cummings asked to be reimbursed for the \$130.00. However, recent communications with Mr. Trott have demonstrated that Mr. Trott never cashed the check because he never performed the work. Attached as Exhibit A, please find a letter from Mr. Trott supporting this assertion, a copy of the uncashed check of \$130.00 from Speaker Cummings to Mr. Trott, and a copy of a hand-written note from Speaker Cummings to Mr. Trott that accompanied the check, requesting the work. To further verify this information, Mr. Trott can be contacted at his home at 207-775-4363.

As a result of discovering that Mr. Trott never cashed this check, Speaker Cummings will reimburse the Maine Clean Elections Fund for \$130.00.

Please do not hesitate to contact me with any questions regarding this response to your Audit Report No. 2006-HR032.

Sincerely,



Daniel W. Walker

cc: Jonathan Wayne, Executive Director
Speaker Glenn Cummings

EXHIBIT A

Portland, Maine 04103

July 25, 2007

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

Re: Audit Report No. 2006-HR032

Dear Mr. Wayne:

Please consider this letter as an explanation for Speaker Glenn Cummings' reimbursement of \$130.00 for "sign stencils," as part of his audit response. I have been a volunteer with many campaigns over the years and have worked primarily on large roadside signs and stencils.

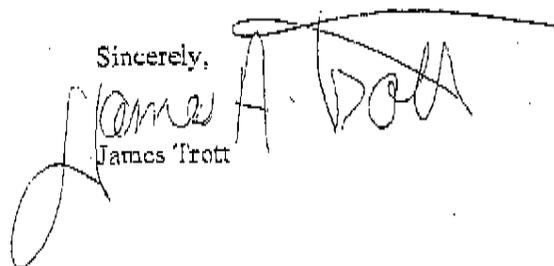
Early in the 2006 General Election, Speaker Cummings approached me about providing a stencil for large roadside signs for his campaign. I informed Speaker Cummings that this would cost him about \$130.00 to cover the cost of materials to produce the stencil. Speaker Cummings sent me a check for \$130.00 and asked me to provide him with the stencil. Unfortunately, shortly after receiving the check for materials, I accepted what I thought would be a two week, out of state, work assignment. This assignment proved to be several months in duration, and I did not return to Maine until after the fall elections were over.

The stencil that I offered to produce for Speaker Cummings was never produced and I never deposited the check, which sat on my desk for many months as a reminder to call Speaker Cummings with an apology and explanation as to my seemingly lack of follow through regarding the stencil.

Because I never provided any services to Speaker Cummings, I never cashed or deposited the check for \$130.00. However, I also never returned the check to Speaker Cummings. Attached please find a copy of the original check and note from Speaker Cummings requesting my services and the original envelope.

Hopefully, this explanation is sufficient for the Commission's purposes. Please contact me if you have any further questions regarding this event.

Sincerely,


James Trott

08/06/2007 15:40

2072876775

ETHICS COMMISSION

PAGE 08/14

26 Jul 07 22:08

Trott, J & Family

EXHIBIT I

Campaign Audit

Rep. Glenn Cummings

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GLENN A. CUMMINGS LESLIE J. APPELBAUM 24 NEVENS ST. 207-775-2855 PORTLAND, ME 04103		5516 <small>62-87092112</small>
Pay to the Order of	<i>Mr. Jim Trott</i>	Date <i>9/6/05</i> \$ <i>130</i>
	<i>One Hundred & Thirty</i>	Dollars
CUMBERLAND COUNTY TEACHERS FEDERAL CREDIT UNION <small>181 BRAT ROAD HALLOWELL, MAINE 04105</small>		
For	<i>Glenn Cummings</i>	



SO. MAINE F&DC 0410
05 SEP 2006 PM 3 T

Mr. Jim Trott
166 Murray Str.
Portland, ME

09102+4210 04/03
Handwritten barcode

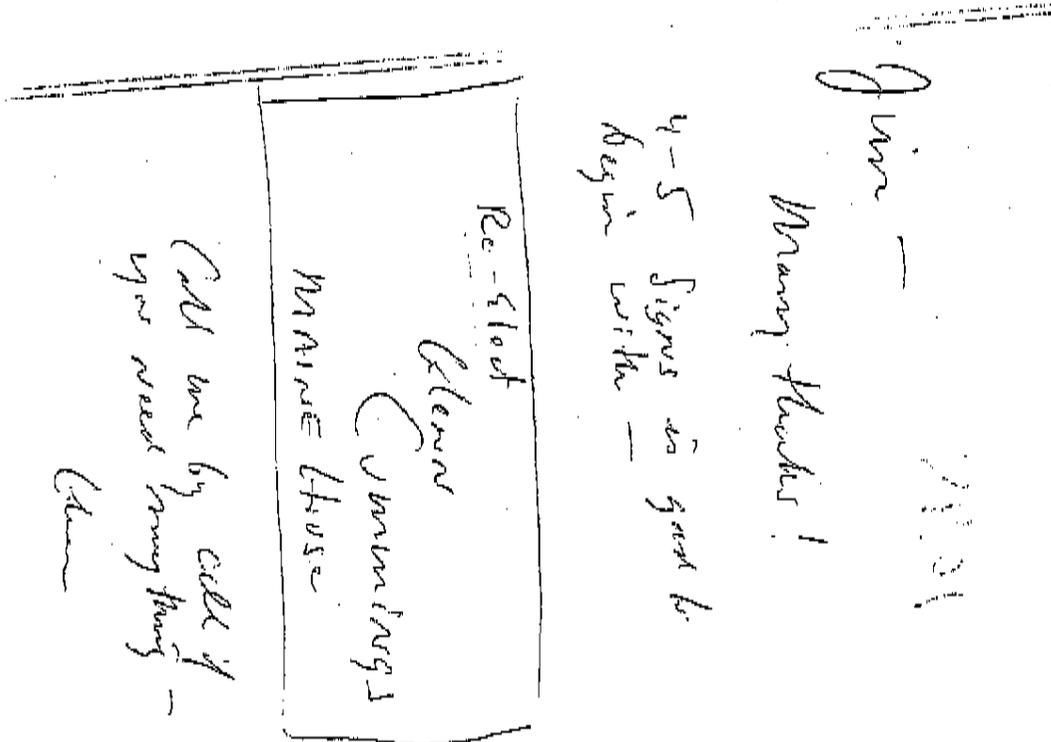
Appelbaum/Cummings
24 Nevens Street
Portland, Maine 04103

26 Jul 07 22:08

Trott, J & Family

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EXHIBIT I
Campaign Audit
Rep. Glenn Cummings
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Title 21-A, §1125, Terms of participation

8. 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 40% of the amount distributed to a participating candidate in a contested general election. [2003, c. 453, §1 (amd).]

E. For gubernatorial primary elections, the amount of revenues distributed is \$200,000 per candidate in the primary election. [2003, c. 453, §1 (new).]

F. For gubernatorial general elections, the amount of revenues distributed is \$400,000 per candidate in the general election. [2003, c. 453, §1 (new).]

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

[2003, c. 688, Pt. A, §21 (amd).]

9. Matching funds. When any campaign, finance or election report shows that the sum of a candidate's expenditures or obligations, or funds raised or borrowed, whichever is greater, alone or in conjunction with independent expenditures reported under section 1019-B, exceeds the distribution amount under subsection 8, the commission shall issue immediately to any opposing Maine Clean Election Act candidate an additional amount equivalent to the reported excess. Matching funds are limited to 2 times the amount originally distributed under subsection 8, paragraph A, C, E or F, whichever is applicable.

[2003, c. 688, Pt. A, §22 (rpr).]

10. Candidate not enrolled in a party. An unenrolled candidate certified by April 15th preceding the primary election is eligible for revenues from the fund in the same amounts and at the same time as an uncontested primary election candidate and a general election candidate as specified in subsections 7 and 8. For an unenrolled candidate not certified by April 15th at 5:00 p.m. the deadline for filing qualifying contributions is 5:00 p.m. on June 2nd preceding the general election. An unenrolled candidate certified after April 15th at 5:00 p.m. is eligible for revenues from the fund in the same amounts as a general election candidate, as specified in subsections 7 and 8.

[2001, c. 465, §6 (amd).]

11. Other procedures. The commission shall establish by rule procedures for qualification, certification, disbursement of fund revenues and return of unspent fund revenues for races involving special elections, recounts, vacancies, withdrawals or replacement candidates.

[IB 1995, c. 1, §17 (new).]

12. Reporting; unspent revenue. Notwithstanding any other provision of law, participating and certified candidates shall report any money collected, all campaign expenditures, obligations and related activities to the commission according to procedures developed by the commission. Upon the filing of a final report for any primary election in which the candidate was defeated and for all general elections that candidate shall return all unspent fund revenues to the commission. In developing these procedures, the commission shall utilize existing campaign reporting procedures whenever practicable. The commission shall ensure timely public access to campaign finance data and may utilize electronic means of reporting and storing information.

[IB 1995, c. 1, §17 (new).]

Title 21-A, §1017, Reports by candidates

- (1) A report filed not later than 5 p.m. on the 42nd day before the date on which an election is held and complete as of the 44th day before that date;
- (2) A report filed no later than 5 p.m. on the 21st day before the date on which an election is held and complete as of the 23rd day before that date; and
- (3) A report filed no later than 5 p.m. on the 12th day before the date on which an election is held and complete as of the 14th day before that date.

[2001, c. 589, §1 (amd).]

C. A candidate who is required to file a report under paragraph A must file with the commission an updated report that reports single expenditures in the following amounts that are made after the 14th day before an election and more than 24 hours before 5:00 p.m. on the date of that election:

- (1) For a candidate for Governor, a single expenditure of \$1,000;
- (2) For a candidate for the state Senate, a single expenditure of \$750; and
- (3) For a candidate for the state House of Representatives, a single expenditure of \$500.

A report filed pursuant to this paragraph must be filed within 24 hours of the expenditure. [2003, c. 628, Pt. B, §3 (amd).]

The commission shall provide forms to facilitate compliance with this subsection. The commission shall notify a candidate within 48 hours if an amount reported on any report under paragraph B exceeds 1% in excess of the primary or general election distribution amounts for a Maine Clean Election Act candidate in the same race and no report has been received under paragraph A.

[2003, c. 628, Pt. B, §3 (amd).]

4. New candidate or nominee. A candidate for nomination or a nominee chosen to fill a vacancy under chapter 5, subchapter III is subject to section 1013-A, subsection 1, except that the candidate shall register the name of a treasurer or political committee and all other information required in section 1013-A, subsection 1, paragraphs A and B within 7 days after the candidate's appointment or at least 6 days before the election, whichever is earlier. The person required to file a report under section 1013-A, subsection 1 shall file a campaign report under this section 15 days after the candidate's appointment or 6 days before the election, whichever is earlier. The report must include all contributions received and expenditures made through the completion date. The report must be complete as of 4 days before the report is due. Subsequent reports must be filed on the schedule set forth in this section. The commission shall send notification of this requirement and registration and report forms to the candidate and the candidate's treasurer immediately upon notice of the candidate's and treasurer's appointments.

[1991, c. 839, §16 (amd).]

5. Content. A report required under this section must contain the itemized accounts of contributions received during that report filing period, 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. The report must contain the itemized expenditures made or authorized during the report filing period, the date and purpose of each expenditure and the name of each payee and creditor. Total contributions with respect to an election of less than \$500 and total expenditures of less than \$500 need not be itemized. The report must contain a statement of any loan to a candidate by a financial institution in connection with that candidate's candidacy that is made during the period covered by the report, whether or not the loan is defined as a contribution under section 1012, subsection 2, paragraph A. Until December 31, 1992, the candidate is responsible for the timely and accurate filing of each required report. Beginning January 1, 1993, the candidate and the treasurer are jointly responsible for the timely and accurate filing of each required report.

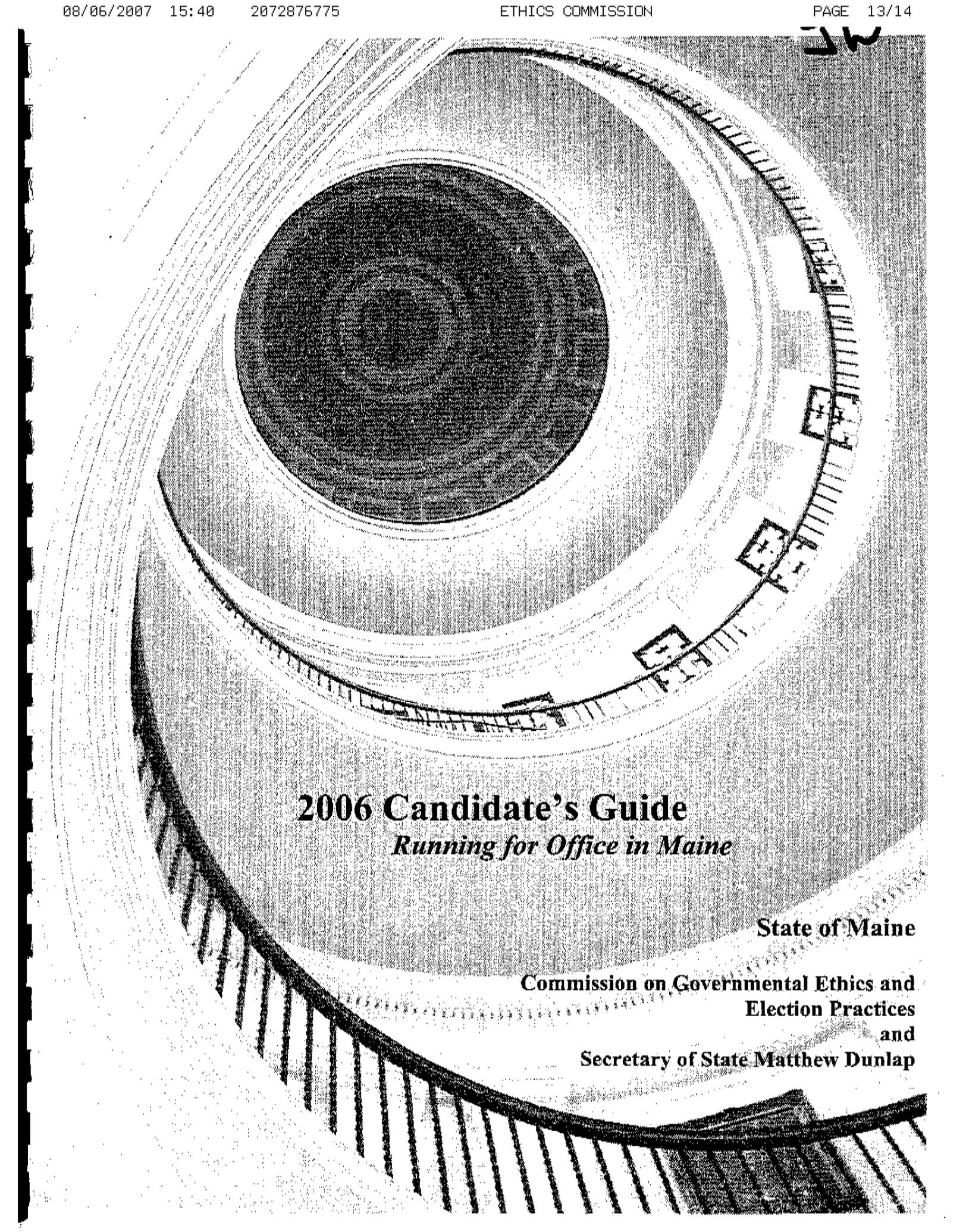
[1991, c. 839, §17 (amd).]

5-A. Valuation of contributions sold at auction. Any contribution received by a candidate that is later sold at auction shall be reported in the following manner.

A. If the contribution is sold at auction before the commencement of the appropriate reporting period specified in subsections 1 to 4, or during that period, the value of the contribution is deemed to be the amount of the purchase price paid at auction. [1987, c. 726, §2 (new).]

B. If the contribution is sold after the termination of the appropriate reporting period specified in subsections 1 to 4, the value of the contribution is the difference between the value of the contribution as originally reported by the treasurer and the amount of the

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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**

Reporting Reimbursements Made to the Candidate or Supporter

Many MCEA candidates ask if they or a supporter can use personal funds or a credit card to pay for campaign goods or services and later be reimbursed by the campaign. This is permissible as long as the campaign is careful to reimburse the candidate or supporter. If no reimbursement is made, the campaign has received an in-kind contribution of goods and services, which is not permitted for MCEA candidates.

If you or one of your supporters uses personal funds or a credit card to pay a vendor, report the vendor as the payee, and the date and amount of your or your supporter's payment to the vendor. Do not report the campaign's reimbursement to you or the supporter. The payment is reported in the reporting period in which the vendor received the payment, and the reimbursement must be made during the same reporting period. If the reimbursement is not made within the same reporting period, then you have received an in-kind contribution which is prohibited. *

Reporting Withdrawals of Cash

The Commission recommends paying for expenditures by writing checks and using debit cards for the campaign's bank account, so that as many expenditures as possible are made through the campaign's bank account. This will help the campaign keep track of the dates, amounts, and payees of all expenditures.

Because you, as a candidate, must report the date, amount, payee, and purpose of every expenditure, the Commission discourages the use of petty cash or the withdrawals of large amounts of cash to pay campaign workers.

If the campaign chooses to withdraw cash to use for petty expenses or campaign workers, do not report a payment to "cash." Instead, for each expenditure of the cash, keep a receipt or record which includes the date, amount, payee, and purpose of each expenditure, and include this information on your campaign finance reports.

Expenditures Made by a Consultant or Firm

If you hire a consultant or firm to assist your campaign, and the consultant or firm makes expenditures on behalf of you and your campaign, you must report those expenditures as though the campaign made them directly. It is your responsibility to find out about expenditures made by your consultants and to report those expenditures. You need to deduct those costs from the amounts you have reported on Schedule B that you paid to the consultant (so the costs are not double-reported), and you should note in the remarks column that the expenditures were made by the consultant.

Reporting Unpaid Debts and Obligations on Schedule D

On Schedule D, please report the date of any unpaid debt or obligation your campaign has incurred, along with the amount and purpose of the transaction, and the name of the creditor. If a debt or obligation remains unpaid in subsequent report periods, please include the debt or obligation on each report until full payment is made to the vendor. If only partial payment is made on the debt, continue to disclose the unpaid balance of that debt or

PretiFlaherty

DANIEL W. WALKER
dwalker@preti.com

August 9, 2007

VIA FACSIMILE

Mr. Vincent W. Dinan, Staff Auditor
Maine Commission on Governmental Ethics and Election Practices
135 State House Station
Augusta, Maine 04333

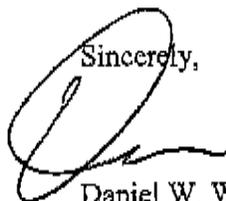
RE: Supplemental Response to Audit Report No. 2006-HR032

Dear Mr. Dinan:

Please consider this letter and attachments as further support of the July 27, 2007 response from Speaker Glenn Cummings to the Ethics Commission Audit Report No. 2006-HR032. Attached are two checks from October of 2006 which total \$144.79. These check copies support Speaker Cummings' reimbursement for postage of \$145.00.

Please do not hesitate to contact me with any questions or concerns regarding these checks.

Sincerely,



Daniel W. Walker

DWW/ryp
Attachments

cc: Jonathan Wayne, Excc. Dir.
Speaker Glenn Cummings

Check 5527

Page 1 of 1

Check Image

Check: 5527 Account Number: [REDACTED] Amount: 97.50 FRB-ABA: [REDACTED]

GLENN A. CUMMINGS
LESLIE J. APPELBAUM
 24 NEVENS ST. 207-775-2855
 PORTLAND, ME 04103

5527
 52-8769/2112

Date 10/13/06

Pay to the Order of USIO/Per of [REDACTED] \$ 97.50
Ninety-Seven and 50/100 Dollars

CUMBERLAND COUNTY TEACHERS
 FEDERAL CREDIT UNION
 101 GRAY ROAD
 FALMOUTH, MAINE 04105

For [REDACTED]

[Signature]

GUARDIAN SAFETY BLUE INK

10182006
 0111-0048-1
 ENT=2101 TRC=2101
 0731889410

#213-5527-1
 10182006
 ENT-3057 TRC-2572 PER-AL

10182006 0330 02759

0213000774
 KEYBANK N.A. 5318
 ALBANY, NY 12245

For Deposit Only
 HSP Finance 226900 Unit 10 0102
 PORTLAND, Maine
 Clerk 18
 Account# 350001058857
 Date 10/13/2006

Check 5661

Check image

Check: 5661 Account Number: [REDACTED] Amount: 47.29 FRB-ABA: [REDACTED]

GLENN A. CUMMINGS
LESLIE J. APPELBAUM
 24 NEVENS ST. 207-775-2855
 PORTLAND, ME 04103

5661
52-8769/2112

Date 10/2/06

Pay to the Order of: Postmaster Portland \$ 47.29

forty-seven + $\frac{29}{100}$ Dollars

CUMBERLAND COUNTY
 Federal Credit Union
 181 GREAT ROAD
 FALMOUTH, MAINE 04103

For: [REDACTED] *Leslie J. Appelbaum*

GUARDIAN SAFETY BLUE WDL

6213-0500-1
 10332666
 ENT-9828 TRC-5436 FR-64

10062006 0533 06108

0213000774
 NEWARK, N.J. 07102
 ALBANY, NY 12208

For Deposit Only
 USPS Finance 226900 Unit ID 0102
 PORTLAND, Maine
 Clerk# 07
 Account# 35001059857
 Date 10/02/2006

08415 51147

10062006
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