

Agenda

Item #6



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

July 11, 2007

Audit Report No. 2006-HR025

**Candidate: David C. Feeney
House District 124**

Background

David C. Feeney was a candidate for the Maine House of Representatives, District 124, in the 2006 general election. Mr. Feeney 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

Finding No. 1 – Commingling Funds: The Commission disbursed \$13,598 in MCEA funds to the candidate, including \$4,874 in initial payments for the primary and general elections, and \$8,724 in matching funds for the general election. The auditors found that the monies disbursed to the candidate by the Commission were deposited into bank accounts he held jointly with his wife, and were commingled with the candidate's personal funds. The candidate made his campaign expenditures from a *Capital One* credit card account. Each time he made a campaign-related payment, he created additional credit card debt. No MCEA funds were deposited into the *Capital One* account. As discussed in the following finding, the commingling resulted in the use of MCEA funds for the candidate's personal expenses.

Criterion: 21-A M.R.S.A. § 1125(7-A) requires candidates to deposit MCEA funds into a campaign account at a bank or other financial institution, and further prohibits commingling of campaign funds with any other funds.

Finding No. 2 – Use of Public Funds for Personal Expenditures: The examination also determined that the candidate used MCEA funds for personal expenses. Mr. Feeney maintained his personal bank accounts with the *Town & Country Federal Credit Union*. The auditor's review of relevant banking documentation, including the candidate's own handwritten instructions to the bank on the MCEA checks, disclosed that Mr. Feeney deposited \$719 of MCEA funds into personal accounts which were never used for any campaign purpose. Although the deposit records are a little ambiguous, it appears that the \$719 reflects two \$10 deposits of MCEA funds into a "Christmas Club" account, \$100 deposited into his primary savings account, \$125 deposited into a "VIP Club" account (according to the credit union, a special type of savings account), \$250 deposited into an account labeled S79, and \$224 apparently taken out in cash from the matching funds payment which was not reflected in reported campaign expenditures.

More troublingly, Mr. Feeney deposited most of his MCEA funds into his primary checking account (S71) and used a significant portion of those funds to pay for personal expenses. He deposited the following amounts in his checking account:

<i>Date</i>	<i>Type</i>	<i>Amount of MCEA Payment</i>	<i>Deposited into Personal Checking</i>
6/24/06	Primary Payment	\$512	\$400
7/31/06	General Payment	\$4,362	\$4,000
10/23/06	General Matching Funds	\$8,724	\$8,500

The use of MCEA funds for personal expenses is evident by focusing on the checking account balance during August 2006 – before Mr. Feeney's campaign made its first campaign expenditure on September 15, 2006. Although a total of \$4,400 in MCEA funds was deposited into the account on June 24 and July 31, the balance in the account during August decreased to its lowest point of \$3,168.72 on August 18, 2006. This demonstrates that during the period of June 24 - August 18, at least \$1,231.28 in MCEA funds (\$4,400.00 - \$3,168.72) was used for personal expenses. This was before Mr. Feeney had made any campaign expenditures.

A chart is attached as Exhibit I showing the actual balance in Mr. Feeney's personal checking account (the dark line) compared to the balance of MCEA funds that would have been in the account if they had not been used for personal expenses (the shaded region). At any point in time when the dark line is within the shaded region, the gap is the amount of MCEA funds in Mr. Feeney's checking account that were used for personal expenses. (The chart does not include the \$719 in MCEA funds which Mr. Feeney deposited in other accounts or apparently used as cash.)

For purposes of preparing this chart, the only payments from the account which the Commission staff could identify as possibly being campaign-related were an October 2, 2006 payment of \$300.00 to *Capital One* and an October 30, 2006 payment of \$1,725.00 to *Capital One*. The staff is prepared to amend its views if Mr. Feeney responds to the audit by documenting that more payments from this account were campaign-related.

It is important to note that Mr. Feeney returned to the state the correct amount of MCEA funds that were not spent for campaign purposes. Nevertheless, a significant portion of MCEA funds were used by him in the short-term to finance personal expenses from his checking account.

Criteria: 21-A M.R.S.A. § 1125(7-A) requires candidates to deposit MCEA funds into a campaign account at a bank or other financial institution, and further prohibits commingling of campaign funds with any other funds. 21-A M.R.S.A. § 1125(6), "All revenues distributed to a certified candidate from the fund must be used for campaign-related purposes." Commission Rules, Chapter 3, Section 6(3), "A certified candidate must use revenues distributed from the Fund only for campaign-related purposes as outlined in guidelines published by the Commission, and not for personal or any other use."

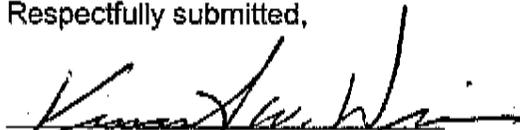
Recommendations

The Commission staff recommends that the Commission find Mr. Feeney in violation of 21-A M.R.S.A. § 1125(7-A) for not depositing MCEA funds in a campaign account and for commingling his MCEA funds with his personal funds, and assessing a penalty of \$250 for this violation. The staff also recommends that the Commission find Mr. Feeney in violation of 21-A M.R.S.A. § 1125(6) for spending MCEA funds for purposes that were not related to his campaign, and assessing a penalty of \$600 for this violation. The total recommended penalty is \$850.

Candidate's Comments

Mr. Feeney's comments on the audit findings and recommendations are attached.

Respectfully submitted,



Vincent W. Dinah - Staff Auditor

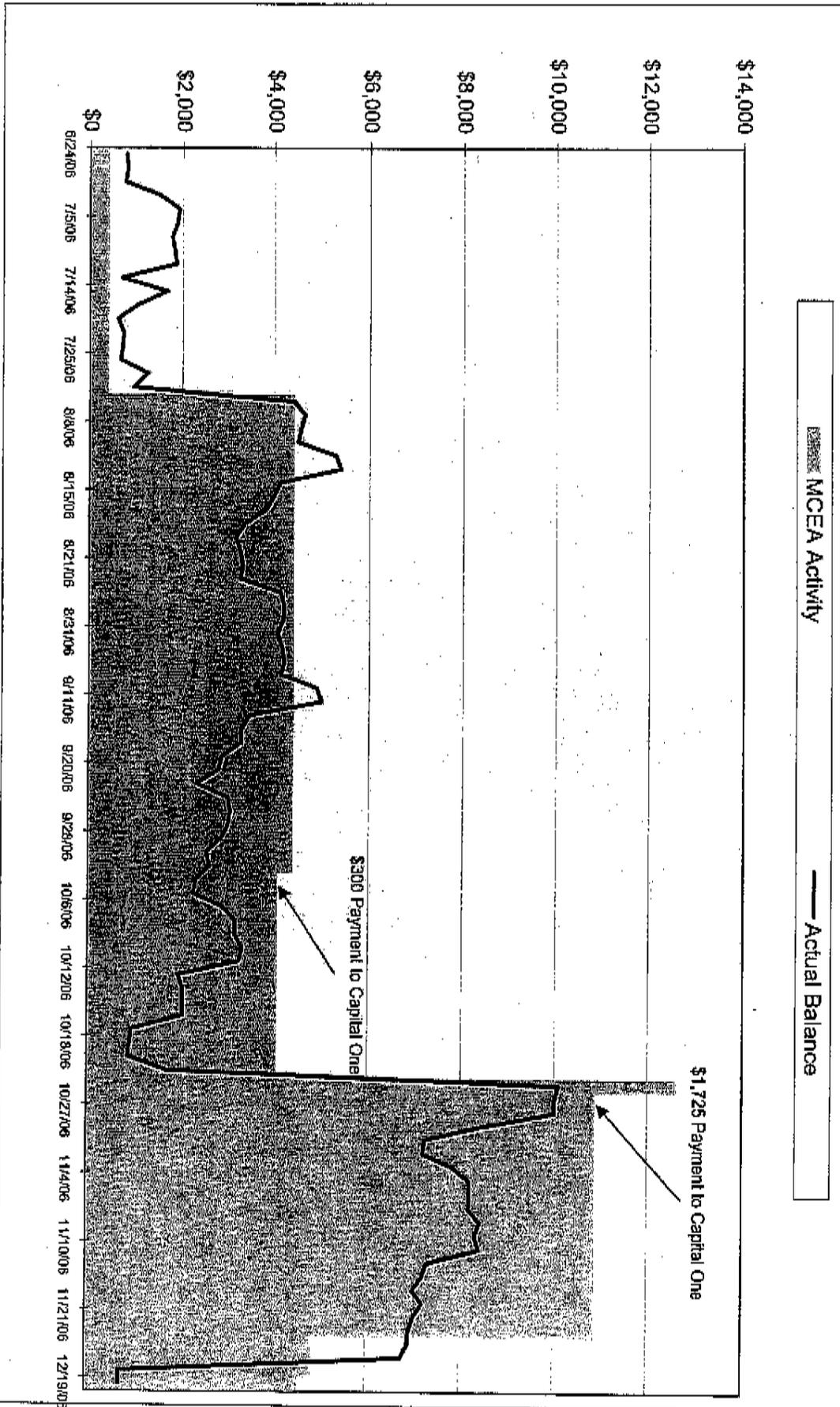
Approved:



Jonathan Wayne - Executive Director

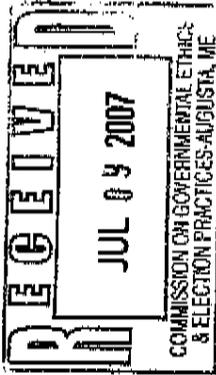
Exhibit I

**Feeney Checking Account: Actual Balance Compared to MCEA Activity
(does not include \$719 in MCEA funds deposited in other accounts)**



ATTACHMENT
Campaign Audit
Comments of David C. Feeney

Att:
Vincent DiMar



7/7/07

I take total blame for my
campaign practices and will take
total blame for putting funds
into my personal account. I hope
the commission will accept my
admission of fault.

I would like to again say
I'm sorry and hope we can
put this issue behind us after
the August commission hearing

Thank you!
David Feeney



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

July 20, 2007

David Feeney
54 Granby Road
South Portland, ME 04106

Dear Mr. Feeney:

This is to notify you that the next meeting of the Maine Commission on Governmental Ethics and Election Practices will be on August 13 at 9:00 a.m. The Ethics Commission staff requests that you attend the meeting to respond to the audit findings. Although the meeting begins at 9:00 a.m., the Commission may not consider your matter until later in the meeting. Please give me or Cyndi Phillips a call between August 6 and 13 to discuss what time to arrive. Thank you very much for your cooperation with the audit.

Sincerely,

Jonathan Wayne
Executive Director

cp
cc: Vincent Dinan

Title 21-A, §1125, Terms of participation

5. Certification of Maine Clean Election Act candidates. Upon receipt of a final submittal of qualifying contributions by a participating candidate, the commission shall determine whether or not the candidate has:

- A. Signed and filed a declaration of intent to participate in this Act; [IB 1995, c. 1, §17 (new).]
- B. Submitted the appropriate number of valid qualifying contributions; [IB 1995, c. 1, §17 (new).]
- C. Qualified as a candidate by petition or other means; [IB 1995, c. 1, §17 (new).]
- D. Not accepted contributions, except for seed money contributions, and otherwise complied with seed money restrictions; [2003, c. 270, §1 (amd).]
- D-1. Not run for the same office as a nonparticipating candidate in a primary election in the same election year; and [2003, c. 270, §2 (new).]
- E. Otherwise met the requirements for participation in this Act. [IB 1995, c. 1, §17 (new).]

The commission shall certify a candidate complying with the requirements of this section as a Maine Clean Election Act candidate as soon as possible and no later than 3 business days after final submittal of qualifying contributions.

Upon certification, a candidate must transfer to the fund any unspent seed money contributions. A certified candidate must comply with all requirements of this Act after certification and throughout the primary and general election periods. Failure to do so is a violation of this chapter.

[2005, c. 301, §30 (amd).]

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

[2005, c. 542, §3 (amd).]

7. Timing of fund distribution. The commission shall distribute to certified candidates revenues from the fund in amounts determined under subsection 8 in the following manner.

- A. Within 3 days after certification, for candidates certified prior to March 15th of the election year, revenues from the fund must be distributed as if the candidates are in an uncontested primary election. [2001, c. 465, §4 (amd).]
- B. Within 3 days after certification, for all candidates certified between March 15th and April 15th of the election year, revenues from the fund must be distributed according to whether the candidate is in a contested or uncontested primary election. [2001, c. 465, §4 (amd).]
- B-1. For candidates in contested primary elections receiving a distribution under paragraph A, additional revenues from the fund must be distributed within 3 days of March 15th of the election year. [2001, c. 465, §4 (new).]
- C. Within 3 days after the primary election results are certified, for general election certified candidates, revenues from the fund must be distributed according to whether the candidate is in a contested or uncontested general election. [2001, c. 465, §4 (amd).]

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

[2001, c. 465, §4 (amd).]

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

[2005, c. 542, §4 (new).]