

Agenda

Item #1



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

Minutes of the October 30, 2007 Meeting of the
Commission on Governmental Ethics and Election Practices
Held in the Commission's Meeting Room,
PUC Building, 242 State Street, Augusta, Maine

Present: Michael Friedman, Esq., Chair; Hon. Mavourneen Thompson; Hon. David Shiah; Hon. Francis C. Marsano; Hon. Edward M. Youngblood. Staff: Executive Director Jonathan Wayne; Phyllis Gardiner, Counsel.

At 9:04 A.M., Chair Michael Friedman convened the meeting.

The Commission considered the following items:

Agenda Item #1 Ratification of Minutes: September 21, 2007 Meeting

Mr. Shiah moved, Mr. Marsano seconded, that the Commission ratify the minutes of the September 21 meeting as printed. The motion passed by a vote of 5-0.

Agenda Item #2 Audit of 2006 Candidate Pat LaMarche

Staff Auditor Vincent Dinan explained that this was the last gubernatorial audit from the 2006 election. He reported the audit found that the campaign was compliant overall, but did not obtain and keep records for some purchases from the campaign's media vendor, Message Strategy Group (MSG). Mr. Dinan noted that the media expenditures were audited very heavily on all campaigns, due to the amount of money paid to these vendors. He said the campaign received \$1,076,000, of which \$476,000 was matching funds. Mr. Dinan said that the campaign spent 61% of its funds on services provided by MSG. The audit resulted in three findings. He stated the first finding has two sections: one questioned a cost of \$28,735 to the media vendor due to lack of documentation of an invoice from the vendor, and the other was a missing invoice for the services provided by the campaign's communication director who was an employee of MSG. That amount was over \$58,000. Mr. Dinan said that Finding #2 concerned irregularities in billings from MSG: duplicate billings in

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the amount of \$770, a credit received by MSG from a media vendor but that was not passed on to the campaign, and a small discrepancy in the amount paid to media vendors and the amount supported by documentation. The staff recommended that the campaign return \$1,717.75 to the Clean Election Fund. Finding #3 concerned a small unreported expenditure amount during the qualifying period which would have had an impact on the amount initially distributed to the candidate. Mr. Dinan said that the Commission may want to consider a policy on food expenditures for candidates. The LaMarche campaign spent more and had many more expenditures for food than the other gubernatorial candidates had. The audit found no problems with the documentation of those expenditures. Mr. Dinan concluded by saying that Mrs. Savage, the campaign's treasurer, did an excellent job in maintaining the records of the campaign.

Mr. Friedman asked what the food expenditures in comparison with other gubernatorial candidates looked like.

Mr. Dinan said that all MCEA gubernatorial candidates had food expenditures but that, in comparison, the others had far fewer than the LaMarche campaign.

Ms. LaMarche passed out a prepared written statement for the Commission. She stated her support for the Clean Election Act and complimented the staff at the Commission on their helpfulness and professionalism. Ms. LaMarche said she was not aware of the requirement of producing an "ultimate invoice" from campaign consultants. She said that her understanding was that the campaign would have to support the expenditures it made for consulting services but not the expenditures that the consultants made. She said that since media ads need to be paid up front, the campaign found it difficult if not impossible to receive an invoice after the fact. The statutes do not mention this particular requirement of "ultimate invoice" documentation. Ms. LaMarche pointed to several other consultants hired by the campaign but for which the campaign was not asked to document how those consultants spent the funds the campaign paid them. She further recommended that the Ethics Commission submit legislation that would require media consultants and vendors to comply with audit procedures or face a penalty. Another option she suggested was to have the media outlets bill the State directly through the Clean Election Fund.

Ms. LaMarche also spoke to the issue of food expenditures. She said that she believed that the food expenditures were legitimate for the candidate and for campaign volunteers. Ms. LaMarche spoke of her hands on approach to her campaign and her attention to detail. She stated she was not aware of the requirement to have the “ultimate invoice” from media vendors. She further stated it should be required for all expenditures and not just media because large amounts of MCEA funds are spent in other areas besides the media.

Mr. Friedman asked Ms. LaMarche for her response to each individual audit finding.

Ms. LaMarche said that Finding #1A had to do with a transactions with media outlets which required payment in advance (“time order buy”). There was no way of knowing in advance what the actual amount charged would be. The campaign paid on MSG’s invoice, not the media outlet’s invoice which could only be produced after the fact. The salary for the consultant was included in the amount because she was not aware it had to be separated out. She could not get the requested documentation from several of the media vendors after months of trying to do so.

Ms. LaMarche said Finding #1B was salary for the press secretary who was an employee of MSG. Ms. LaMarche said that she was not aware that the press secretary’s income would have to be broken out from and documented separately from the invoice for MSG’s services.

Ms. LaMarche said the duplicate billing in Finding #2A occurred because of an error the media vendor made. She also stated that she considered that amount to be income that MSG received and not something that needed to be returned to the Fund. She considered Finding #2B and #2C to be similar situations and should be considered income received by MSG.

Ms. LaMarche said Finding #3 was a percentage paid for online processing fee, the amount of which they did not know at the time of reporting and she believes Mrs. Savage, her treasurer, estimated the amount but the March statement was not available when she made out the April report. Ms. Savage does recall her first report being off by approximately \$2. Ms. Savage has an email from Sandy Thompson regarding this error and the checkbook did not balance. Mrs. Savage could not say for sure how the discrepancy occurred.

Ms. Thompson asked if Ms. LaMarche's comments and recommendations are from her own perspective or from speaking with the other candidates. Ms. LaMarche said these were her own opinions and ideas.

Mr. Friedman stated that the Commission recognizes that the LaMarche campaign was compliant with the process and commended her for that.

Mr. Friedman asked if there was confusion within the statute regarding media buys. Ms. Gardiner said the statutes do not get into that level of detail.

Mr. Wayne read the statute regarding vendor invoice requirements. Mr. Wayne said that traditional audit standards require the invoices from the vendor who provided the service, which would be the TV station. Mr. Wayne stated that he agrees with Ms. LaMarche regarding providing communication about reporting requirements in advance. He also noted that the Commission plans to have a complete audit standard document for gubernatorial candidates in 2010 as well as a meeting with all gubernatorial candidates seeking MCEA funds to provide direction on exactly what accounting and reporting systems they will need to set up in advance of their campaigns. He also recognized that all the gubernatorial candidates have had problems in this area, trying to get documentation from media vendors for TV ads that were run during their campaigns.

Ms. Thompson asked if there currently is an audit process. Mr. Wayne stated that the Commission has been very clear with what it requires and what the law states for record keeping.

Mr. Dinan stated that the law is very clear, it states exactly what the candidate has to provide in support of spending tax payers' money. He said when public money is disbursed, the candidate has the responsibility of accounting for that money with documentation. He further stated the Commission has been very consistent and clear from the beginning about what documentation was needed. He said the Commission is following the current law.

Ms. LaMarche informed the Commission that her campaign did have documentation that it believed was sufficient, a time order buy which was a prediction of the amount. These were not used by the Commission; however she thought these would be sufficient.

Mr. Dinan said time order buys do not stand in the place of a vendor's invoice which gives the exact amount that was expended because the time order buys do not provide the final, ultimate billed amount.

Mr. Friedman asked if it was up to the candidate to go to the media outlet and get better documentation. Mr. Dinan said it was up to the vendor who is billing the candidate and the invoice is obtainable after the service is provided. Mr. Dinan did confirm it is difficult to get; however, it can be obtained.

Ms. Thompson asked how to reconcile the candidate's statement that she could not obtain the documentation and the auditor's statement that they could be. Mr. Dinan said that he did in fact have invoices from the TV stations that the candidate herself provided. Ms. Thompson asked whether the concept of "ultimate invoice" was a widely accepted auditing concept. Mr. Dinan told her that it was. He also confirmed that all media outlets have audited financial statements and accounting systems.

Mr. Youngblood asked how the previous campaign discrepancies were handled.

Mr. Dinan reviewed the other three campaigns stating they all had this problem with media buyers' documentation. Senator Woodcock was able to get documentation after much time and labor, as was Ms. LaMarche. Mr. Dinan said the media outlets seem to be reluctant to create this documentation; however, due to the large amount of money being spent, these invoices have to be specific regarding the campaign and the amount of money expended.

Mr. Friedman reviewed the staff recommendations for each of the findings as provided by the staff auditor.

Ms. Thompson moved to adopt the staff recommendations for Findings #1A and #1B; Findings #2A, #2B, and 2C; and Finding #3 as stated in the staff's memorandum.

Mr. Shiah asked for clarification of the total penalty amount and was told that the total was \$400.

The motion was seconded by Mr. Youngblood and passed unanimously (5-0).

Agenda Item #3 Audit of 2006 Candidate John W. Churchill

Mr. Dinan reported that Rep. John W. Churchill was a Maine Clean Election Act candidate for re-election to the Maine House of Representatives in the 2006 election and lost. He was randomly selected for an audit. Rep. Churchill told the staff that his records were destroyed by a tornado on his way to Florida. Mr. Dinan said most records could be reproduced and the findings were not very serious. Mr. Dinan said Finding #1 involved a violation of spending limit during the seed money qualifying period. Finding #2 involved two expenditures that were not adequately documented by the campaign. Finding #3 concerned another expenditure for campaign tee shirts which could not be documented. Mr. Dinan said the staff took Mr. Churchill at his word and accepted his explanation for not having complete documentation due to the tornado. Mr. Dinan said there was another matter of concern and may warrant policy consideration. He explained Mr. Churchill made expenditures from his personal account or credit card and then, keeping track of these expenditures, he reimbursed the total amount owed to himself from his campaign fund account. He provided a reconciliation of these transactions; however, the preferred practice is to disburse payments from the campaign account directly for independently verifiable documentation of campaign expenditures.

Mr. Youngblood moved to that the Commission accept the recommendation of the audit. Mr. Shiah seconded.

Ms. Thompson asked if these recommendations are consistent with other audits under these circumstances. Mr. Dinan said under mitigating circumstances, the enforcement of violations has been a little more lenient.

Mr. Youngblood stated his concern over candidates making expenditures on their personal credit cards, due the difficulty of tracking these expenditures by the Commission.

Mr. Dinan stated that using a debit card from the campaign account is a better, more acceptable practice. Mr. Dinan said he did reconcile the reports to Mr. Churchill's campaign bank statements and felt satisfied that the campaign expenditures were reported. It is not usual practice to require a candidate to submit personal bank or credit card records.

Mr. Youngblood stated his concern that a candidate could defer using MCEA funds until the end of the campaign and use his or her personal funds or credit cards for campaign expenditures instead. That way a candidate could spend more than the MCEA distribution and reimburse himself or herself less than the actual amount, if that was to the candidate's advantage.

Ms. Thompson stated spending more than the law allows is putting a candidate at a definite advantage. She wondered if there should be limits as to how expenditures are made, such that no expenditures should be allowed to come from a personal account.

Mr. Dinan said that he would not suggest such a restriction and said the candidate has the burden of producing adequate documentation for expenditures made with personal funds or personal credit cards.

Mr. Marsano thought the problem could be addressed by adopting a timeline for reimbursements to candidates for expenditures that were made within a reporting period.

Mr. Dinan said that usually does happen. Mr. Churchill chose to let them accumulate and reimburse himself all at once at the end of his campaign.

Ms. Gardiner wondered why a candidate would have to do this since they have access to a debit card.

Mr. Dinan said they all have the ability to write a check or use a debit card, but some candidates still prefer using cash, which is an accounting nightmare.

Mr. Wayne stated that there will be an upcoming rulemaking and the Commission could proposed a requirement that candidates make reimbursements within a certain period of time or with the same reporting period.

The motion passed 5-0.

In consideration of the Commission's practice to address agenda items out of order to accommodate the attendance of public participants regarding particular items, the following agenda item was taken out of order:

Other Business

Katherine Smith, District 99 Special Election, Seed Money Contribution Issue

Mr. Wayne explained that Katherine Smith was running for the House seat in District 99 as a publicly financed candidate. He stated candidates can collect seed money contributions of no more than \$100 from individuals only. Ms. Smith accepted a contribution from Rep. Sean Faircloth's political action committee in the amount of \$100, not realizing that it was from his PAC account. Compounding the confusion in this case, the Legislature, when making a change in the statute last spring regarding seed money contributions, inadvertently deleted the 'individual contribution' language from the statute, so technically at this point, she is not in violation of the statute. Ms. Smith is requesting an exception to the seed money rule since this contribution was unintentionally made from the PAC and the check has been returned to Rep. Faircloth. Mr. Wayne stated that the LVA Committee is seeking to rectify this problem by introducing an emergency bill to re-insert the deleted language and have a retroactive effective date to September 20, 2007.

Mr. Friedman wondered if a vote needed to be taken today; Ms. Gardiner thought a vote would definitely secure any decision made today if there is a retroactive change in the statute.

Representative Janet Mills speaking on behalf Ms. Smith stated Ms. Smith is not here to rely on any inadvertent loophole in the statute. Ms. Smith wants to promote the process of the Clean Election Law. Rep. Mills suggested ratifying Ms. Smith's remedial effort of returning the PAC check, amending her seed money report, and accepting a personal check from Rep. Sean Faircloth.

Mr. Marsano stated he would support that and moved that the Commission ratify the actions taken by Ms. Smith and by Mr. Faircloth so as to obviate the problem under the law as it existed, or as it might exist, if a change is retroactive. Ms. Thompson seconded. The motion passed 5-0.

The Commission resumed the scheduled order of agenda items at this point.

Agenda Item #4 Presentation of Audit Reports for Rep. Boyd Marley and Sheila Rollins

Mr. Dinan presented audit reports for two 2006 legislative candidates. Both audits recommend findings of minor violation for incomplete expenditure documentation and assessing no monetary penalties.

Mr. Shiah moved to accept the finding of violation for Rep. Boyd Marley with no penalty; the motion was seconded by Mr. Marsano. Motion passed by a vote of 5-0.

Mr. Shiah moved to accept the finding in violation for Sheila Rollins with no penalty; the motion was seconded by Mr. Marsano. Motion passed with a vote of 5-0.

Agenda Item #5 Guidance on Executive Branch Lobbying

Mr. Wayne explained a new requirement that lobbyists must report communications with the officials in the executive branch and constitutional officers made for the purpose of influencing legislation. The staff has drafted guidance for the lobbyists and circulated the draft advisory to all registered lobbyists. He said only one response was formally submitted. He also noted that there are two options outlined in the packet materials regarding research and analysis done by lobbyists. He explained that the issue is whether any research or analysis prepared by lobbyists for his or her own purposes and not submitted to any governmental officials should be considered as lobbying time. Mr. Wayne said if the research is submitted at a later time, the question is whether that the time spent on the research and analysis should be considered lobbying. Mr. Wayne further advised that Option A would not provide a clawback so research and analysis would not count as lobbying; Option B would provide a clawback so the time spent on research and analysis would be reported as time lobbying.

Ms. Thompson asked who generated the bill. Mr. Wayne said Marilyn Canavan proposed the bill regarding executive branch lobbying.

Ms. Thompson asked if anyone on staff was present during the committee hearings and discussions. Mr. Lavin, Assistant Director, was present during much of the deliberations. She wanted to know if staff had reviewed the legislative record during the debate.

Mr. Lavin said he did not recall any debate on the chamber floor regarding the bill.

Kristine Ossenfort, Esq., of the Maine State Chamber of Commerce, addressed the Commission. She is in support of Option A since she does a great deal of research on her own regarding health insurance across the country. She stated that she does keep track of actual lobbying time, but finds it would be difficult to keep track of the time she spends researching issues, especially when it is done several months or years before it may actually be used by a governmental official. She also expressed appreciation for the guidance information provided by the staff and said the document addresses many issues that lobbyists are likely to encounter.

Mr. Marsano stated he would like the record to show he has known and worked with Ms. Ossenfort for many years.

Patricia Aho, Esq., of Pierce Atwood Consulting, LLC, addressed the Commission. She met with Mr. Wayne to seek guidance a few months ago and is very pleased with the document that has been drafted. The new law is very broad and definitions are slim or not existent, so this document drafted by the Commission is extremely beneficial to the lobbyists. As far as the options are concerned, she would support Option A, since she too does a great deal of research and analysis on different laws and provides information a year or two later on such research. She believes the clawback option would be very cumbersome.

Mr. Marsano moved that Option A be adopted. Mr. Youngblood seconded.

Ms. Thompson asked how the legislative committee viewed this clawback option. Mr. Lavin said the clawback has been in the law but the law is ambiguous and this did not come up in the committee discussions.

Mr. Wayne stated that the issue has not come up before the Commission nor has any advice been given regarding clawback.

Mr. Friedman said he supported Option A and he appreciates getting feedback from the lobbyists that were present today. He stated that he values their input since this is their area of specialty.

Mr. Marsano stated Option A supported a critical component of the relationship between the lobbyists and the legislative officials. He said there is a lot of intellectual sharing that goes on between these individuals that is beneficial to the process in state government and that Option B would place a negative tone on this relationship. He further stated he would be fearful this knowledge and research provided by the lobbyists would become less available if unnecessary reporting burdens are placed upon them. Mr. Marsano said Option A allows us to deal realistically in the world we live.

Ms. Thompson expressed concern over an issue where a well-financed organization or lobbyist has an advantage over a not so well financed lobbyist. She said she would prefer to advertise the item again to get more public input.

Ms. Aho stated the guidance is very important and if the Commission could decide on the other parts of the guidance other than the clawback options, it would be helpful for lobbyists who have to report this month.

Mr. Youngblood said he did not want to inhibit the flow of learned education between lobbyists and governmental officials.

Ms. Thompson moved to table the motion. There was no second and the motion failed.

Mr. Shiah would like the record to show that his wife works in the Governor's office and could be an executive branch official referred to today.

The motion passed by vote of 4-1 (Ms. Thompson opposed).

Mr. Friedman asked regarding the remainder of the lobbyist advisory. Mr. Wayne suggested the Commission approve the rest of the guidelines as well so that they can be provided to the lobbyists in time for reporting.

Mr. Shiah moved to accept the remainder of the advisory; the motion was seconded by Mr. Marsano. Mr. Youngblood commended the staff for the great job done on this advisory.

The motion passed by vote of 4-1 (Ms. Thompson opposed).

Agenda Item #6 Request by Perry A. Lamb

Mr. Wayne reviewed the history of Mr. Lamb's issue with regard to local highway law and how the law is interpreted. Mr. Wayne and Commission counsel do not believe the Commission has jurisdiction over this matter and have informed Mr. Lamb of this. Mr. Wayne has copied the MMA on his correspondence to Mr. Lamb.

Mr. Lamb informed the Commission of the history of his issue with government agencies and the Law Court regarding his road and taking of property. He believes the ethics of all state agencies is the Ethics Commission's business; and if not, then perhaps the Commission could point him in the direction where he needs to go.

Mr. Marsano stated that the Commission should be addressing only the jurisdictional issue before hearing any more background information from Mr. Lamb.

Mr. Friedman informed Mr. Lamb that the Commission's jurisdiction is limited to complaints about legislative ethics, individual legislators, lobbyist and overseeing the Clean Election Act. The Ethics Commission has no jurisdiction over road abandonment laws. He advised Mr. Lamb to seek out an attorney to help, or to go to the Legislature directly to get a bill passed. Mr. Friedman said unfortunately the Commission does not have jurisdiction over this issue.

Mr. Lamb feels the issue is carelessness of the Legislature allowing this easement law to be passed.

Mr. Friedman restated the limit of the Commission's jurisdiction.

Agenda Item #7 Confidentiality of Legislative Ethics Complaints

Mr. Wayne stated that as part of a legislative review of exceptions to the Freedom of Access Law, the Right to Know Advisory Committee has asked the Ethics Commission whether it supports continuing the statutory requirement that complaints about legislative ethics filed with the Commission be kept confidential. The Committee would like our advice by the end of October.

Mr. Wayne explained that a legislative ethics complaint is required to be confidential. The Commission is required to notify the subject of the complaint and can decide whether to hold a public hearing. The staff can conduct preliminary fact gathering for the Commission. The Legislator has the opportunity to respond to the complaint. All of these steps and investigatory materials are confidential. If the Commission decides to hold a public hearing, the materials become public at that point. The staff's advice is to keep this process but clarify the law. There is a concern among some Legislators that some complaints will be filed with the Commission for political purposes or out of a grudge against the Legislator and that some people can be harmed by the airing of unfounded complaints. Mr. Wayne informed the members that in 2006 there was a legislative ethics issue that did not go to public hearing because the fifth slot for a board member was not filled, therefore a tie vote kept the issue from reaching public hearing stage. He said the news media found fault with the Ethics Commission for not doing its duty. He further stated that there are members of the public who would like the entire process to be open.

Mr. Youngblood asked for clarification on the changes to be made to 1 M.R.S.A. § 1013. Mr. Wayne stated that the drafting of the changes was done back in 2006 by a legislative advisory committee which he feels is a good suggestion for language.

Ms. Gardiner explained the difference between investigative records and findings of fact. She said when the complaint is filed with the Commission, it is investigated and treated confidentially at that stage. Then it is brought before the Commission for its decision whether to go further with the complaint, like a screening for probable cause. She further stated that findings of fact or recommendations on the complaint are not done unless the Commission decided at that initial stage to pursue the complaint. The confidential part would be the investigative stage up to point the Commission decided to pursue.

Mr. Youngblood said section 5(C) does not refer whether it was pursued by the Commission or not, and that it seems to refer to alleged conflicts, in his opinion. He thought the language sounded like it was referring to conflicts not pursued by the Commission. If it were alleged, it would not get to the point of recommendation. Ms. Gardiner said that the phrase "complaints that the Commission has voted to pursue" may be better language.

Mr. Youngblood felt there may be things in the findings of fact that should not be made public.

Mr. Wayne stated he thought the drafter only intended to issue findings of facts to Legislature after the public hearing on the complaint. He said only those would be public. Mr. Wayne said the language can be clarified.

Ms. Gardiner said that section 4 clearly states that if the Commission votes not to pursue, then records remain confidential and are not public. She said there would not be any findings or recommendations if the Commission decided not to pursue. She further agreed that language in paragraph C could be clarified.

Mr. Marsano asked if putting in language, “after the hearing,” in paragraph C would resolve the confusion. He said the findings of fact after a public hearing would be public because there would be notice. He thought this would be more clear.

Ms. Gardiner stated that after the Commission votes to pursue and a public hearing is held, then everything, including findings of fact, would become public.

Mr. Wayne said the Commission is required to submit a report to the Legislature on how these legislative ethics complaints are handled. Mr. Wayne suggested that if the Commission wants to hold off on any recommendations to Right to Know Committee, we can hold off and use the report to the Legislature as the recommendations to this Committee which will allow more time. Mr. Wayne said the Committee would appreciate hearing from the Commission regarding its approval of the basic framework for confidentiality until there is a public hearing which is currently in statute.

Ms. Thompson made a motion for Mr. Wayne to advise the Right to Know Committee that the Commission approves and supports the current statute language for confidentiality until there is a public hearing. Mr. Marsano stressed the word ‘until’ be kept in the language and seconded this motion. Motion passed 5-0.

Agenda Item #8 Initiation of Rulemaking

Mr. Wayne stated the staff recommends the Commission conduct a public hearing on proposed rulemaking at the next meeting pursuant to the State Administrative Procedure Act to amend its rules. Mr. Wayne said Mr. Marsano's suggestion for changing the reimbursement to candidates be amended with a limited timeframe could be included.

Mr. Marsano further suggested making a debit card a requirement for payments by candidates for ease of accountability of expenditures.

Mr. Youngblood stated his concern over a MCEA candidate spending private funds without reporting these expenditures from personal funds.

Mr. Marsano noted his concern for the staff's protection over the language in section 5 of Chapter 1, which reads, "or other information." He feels the wording is too vague and for the protection of the staff. He thought adding a phrase such as "documented or substantiated" covers the staff's pursuing any complaint. He is concerned that a complaint phoned in may come with no backup documentation.

Mr. Wayne suggested deleting the phrase, "other information." Ms. Gardiner cautioned that deleting the phrase limits what types of complaints the Commission can pursue. After further discussion, it was decided to delete the phrase.

Mr. Wayne noted that section 7 of Chapter 1 regarding expenditures for political action committees or party committees is an additional reporting requirement. He said this would require PACs and party committees to report which candidate they have made expenditures in support of.

Mr. Shiah made a motion to put the draft rulemaking changes out for public comment; the motion was seconded by Mr. Marsano. The motion passed by a vote of 5-0.

Agenda Item #8 Selection of Meeting Date

Mr. Wayne suggested the Commission choose a date for the next meeting of the Commission after the Thanksgiving holiday so that the Commission can hold a public hearing on proposed rules

amendments. Discussion took place regarding the statute requirements for meeting frequency. It was decided to meet on Friday, December 7 for the purpose of conducting a regular meeting and public hearing for rule amendments.

Other Business

Audit of Cultural Agencies by State Controller

Mr. Wayne said the Commissioner of Administrative and Financial Services, Rebecca Wyke, conducted an audit of the state cultural agencies (State Library, State Museum, State Commission on Historic Preservation, and State Arts Commission) due to a concern that the agencies hired private lobbyists – Mike Saxl (former Speaker of the House) and James Cohen of Verrill & Dana. Ms. Wyke’s concern was the State had hired these private lobbyists using public funds. Mr. Wayne said the State Controller did not want to get into the definition of what is lobbying, so referred the matter to the Ethics Commission. No public funds were used for lobbying according to the lobbyists. The lobbyists claim these were consulting services. The audit concluded that the cultural agencies did use funds inappropriately. Mr. Wayne said if Mr. Saxl and Mr. Cohen were paid to promote legislation to the legislative branch, then they were lobbying. Mr. Wayne said more than \$100,000 was billed by these two lobbyists and that the outstanding obligation has been forgiven since the issue has been brought out. Mr. Wayne said if an individual spends and is compensated for more than eight hours within a month on influencing legislation, the individual is supposed to register as a lobbyist with the Ethics Commission. Mr. Saxl and Mr. Cohen have not done so. Mr. Wayne provided documentation to the Commission on research he has done that supports the view that they have been lobbying. Mr. Wayne requested the Commission allow him to follow up with these allegations and provide more information for the Commission at the December meeting.

Ms. Thompson said she it is imperative that more research be done to get to the bottom of this issue.

Mr. Wayne said if there were a violation and they should have registered, the penalties could be quite high.

Comments by Carl Lindemann on Proposed Rule Changes

It was noted that Mr. Lindemann’s memo was not received by the Commission staff until approximately 4:30 p.m. the night before the meeting. Mr. Friedman said since the Commissioners

have not had an opportunity review Mr. Lindemann's comments, it was requested that Mr. Wayne notify Mr. Lindemann that he may present his comments for them at the next meeting in December.

Mr. Wayne also advised the Commission that a member of the Legislature contacted the staff regarding the requirement of an annual disclosure statement for the Commission members which would identify any conflicts of interest.

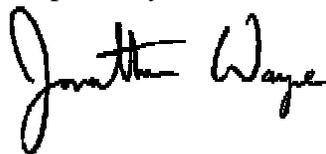
Mr. Friedman stated that he did not feel a disclosure statement was necessary; however, in order to show leadership on this issue, he would be willing to look at such a disclosure statement for further consideration.

Mr. Youngblood thought the board members should be proactive and create their own disclosure statement instead of having the Legislature draft such a document.

Mr. Wayne will draft a proposed statement.

Meeting adjourned at 12:20 p.m.

Respectfully submitted,

A handwritten signature in black ink that reads "Jonathan Wayne". The signature is written in a cursive, flowing style.

Jonathan Wayne, Executive Director

Additional Material
Agenda Item #1
Changes to October 30, 2007 Minutes

Kristine Ossenfort, Esq., of the Maine State Chamber of Commerce, addressed the Commission. She is in support of Option A since she does a great deal of research on her own regarding health insurance across the country. She stated that she does keep track of actual lobbying time, but finds it would be difficult to keep track of the time she spends researching issues, especially when it is done several months or years before it may actually be used by a governmental official. She also expressed appreciation for the guidance information provided by the staff and said the document addresses many issues that lobbyists are likely to encounter.

Mr. Marsano stated he would like the record to show he has known ~~and worked with~~ Ms. Ossenfort for many years and she was an employee of his law office when she was a law student.

Patricia Aho, Esq., of Pierce Atwood Consulting, LLC, addressed the Commission. She met with Mr. Wayne to seek guidance a few months ago and is very pleased with the document that has been drafted. The new law is very broad and definitions are slim or not existent, so this document drafted by the Commission is extremely beneficial to the lobbyists. As far as the options are concerned, she would support Option A, since she too does a great deal of research and analysis on different laws and provides information a year or two later on such research. She believes the clawback option would be very cumbersome.

Mr. Marsano moved that Option A be adopted. Mr. Youngblood seconded.

Ms. Thompson asked how the legislative committee viewed this clawback option. Mr. Lavin said the clawback has been in the law but the law is ambiguous and this did not come up in the committee discussions.

Mr. Wayne stated that the issue has not come up before the Commission nor has any advice been given regarding clawback.

Mr. Friedman said he supported Option A and he appreciates getting feedback from the lobbyists that were present today. He stated that he values their input since this is their area of specialty.

Mr. Marsano stated Option A supported a critical component of the relationship between the lobbyists and the legislative officials. He said there is a lot of intellectual sharing that goes on between these individuals that is beneficial to the process in state government and that Option B would place a negative tone on this relationship. He further stated he would be fearful this knowledge and research provided by the lobbyists would become less available if unnecessary reporting burdens are placed upon them. Mr. Marsano said Option A allows us to deal realistically in the world in which we live.

Ms. Thompson expressed concern over an issue where a well-financed organization or lobbyist has an advantage over a not so well financed lobbyist. She said she would prefer to advertise the item again to get more public input.

Ms. Aho stated the guidance is very important and if the Commission could decide on the other parts of the guidance other than the clawback options, it would be helpful for lobbyists who have to report this month.

Mr. Youngblood said he did not want to inhibit the flow of learned education between lobbyists and governmental officials.

Ms. Thompson moved to table the motion. There was no second and the motion failed.

Mr. Shiah would like the record to show that his wife works in the Governor's office and could be an executive branch official referred to today.

The motion passed by vote of 4-1 (Ms. Thompson opposed).

Mr. Friedman asked regarding the remainder of the lobbyist advisory. Mr. Wayne suggested the Commission approve the rest of the guidelines as well so that they can be provided to the lobbyists in time for reporting.

Mr. Shiah moved to accept the remainder of the advisory; the motion was seconded by Mr. Marsano. Mr. Youngblood commended the staff for the great job done on this advisory.

The motion passed by vote of 4-1 (Ms. Thompson opposed).

Agenda Item #6 Request by Perry A. Lamb

Mr. Wayne reviewed the history of Mr. Lamb's issue with regard to local highway law and how the law is interpreted. Mr. Wayne and Commission counsel do not believe the Commission has jurisdiction over this matter and have informed Mr. Lamb of this. Mr. Wayne has copied the MMA on his correspondence to Mr. Lamb.

Mr. Lamb informed the Commission of the history of his issue with government agencies and the Law Court regarding his road and taking of property. He believes the ethics of all state agencies is the Ethics Commission's business; and if not, then perhaps the Commission could point him in the direction where he needs to go.

Mr. Marsano stated that the Commission should be addressing only the jurisdictional issue before hearing any more background information from Mr. Lamb.

Mr. Friedman informed Mr. Lamb that the Commission's jurisdiction is limited to complaints about legislative ethics, individual legislators, lobbyist and overseeing the Clean Election Act. The Ethics Commission has no jurisdiction over road abandonment laws. He advised Mr. Lamb to seek out an attorney to help, or to go to the Legislature directly to get a bill passed. Mr. Friedman said unfortunately the Commission does not have jurisdiction over this issue.

Mr. Lamb feels the issue is carelessness of the Legislature allowing this easement law to be passed interpreted.

Mr. Friedman restated the limit of the Commission's jurisdiction.

Agenda Item #7 Confidentiality of Legislative Ethics Complaints

Mr. Wayne stated that as part of a legislative review of exceptions to the Freedom of Access Law, the Right to Know Advisory Committee has asked the Ethics Commission whether it supports continuing

Agenda Item #8 Initiation of Rulemaking

Mr. Wayne stated the staff recommends the Commission conduct a public hearing on proposed rulemaking at the next meeting pursuant to the State Administrative Procedure Act to amend its rules. Mr. Wayne said Mr. Marsano's suggestion for changing the reimbursement to candidates be amended with a limited timeframe could be included.

Mr. Marsano further suggested making a debit card a requirement for payments by candidates for ease of accountability of expenditures.

Mr. Youngblood stated his concern over a MCEA candidate spending private funds without reporting these expenditures from personal funds.

Mr. Marsano noted his concern for the staff's protection over the language in section 5 of Chapter 1, which reads, "or other information." He feels the wording is too vague and for the protection of the staff. He thought adding a phrase such as "documented or substantiated" covers the staff's pursuing any complaint. He is concerned that a complaint phoned in may come with no backup documentation.

Mr. Wayne suggested deleting the phrase, "other information." Ms. Gardiner cautioned that deleting the phrase limits what types of complaints the Commission can pursue. After further discussion, it was decided to delete the phrase.

Mr. Wayne noted that section 7 of Chapter 1 regarding expenditures for political action committees or party committees is an additional reporting requirement. He said this would require PACs and party committees to report which candidate they have made expenditures in support of.

Mr. Shiah made a motion to put the draft rulemaking changes as modified out for public comment; the motion was seconded by Mr. Marsano. The motion passed by a vote of 5-0.

Agenda Item #8 Selection of Meeting Date

Mr. Wayne suggested the Commission choose a date for the next meeting of the Commission after the Thanksgiving holiday so that the Commission can hold a public hearing on proposed rules amendments. Discussion took place regarding the statute requirements for meeting frequency. It was decided to meet on Friday, December 7 for the purpose of conducting a regular meeting and public hearing for rule amendments.

Other Business

Audit of Cultural Agencies by State Controller

Mr. Wayne said the Commissioner of Administrative and Financial Services, Rebecca Wyke, conducted an audit of the state cultural agencies (State Library, State Museum, State Commission on Historic Preservation, and State Arts Commission) due to a concern that the agencies hired private lobbyists – Mike Saxl (former Speaker of the House) and James Cohen of Verrill & Dana. Ms. Wyke’s concern was the State had hired these private lobbyists using public funds. Mr. Wayne said the State Controller did not want to get into the definition of what is lobbying, so referred the matter to the Ethics Commission. No public funds were used for lobbying according to the lobbyists. The lobbyists claim these were consulting services. The audit concluded that the cultural agencies did use funds inappropriately. Mr. Wayne said if Mr. Saxl and Mr. Cohen were paid to promote legislation to the legislative branch, then they were lobbying. Mr. Wayne said more than \$100,000 was billed by these two lobbyists and that the outstanding obligation has been forgiven since the issue has been brought out. Mr. Wayne said if an individual spends and is compensated for more than eight hours within a month on influencing legislation, the individual is supposed to register as a lobbyist with the Ethics Commission. Mr. Saxl and Mr. Cohen have not done so. Mr. Wayne provided documentation to the Commission on research he has done that supports the view that they have been lobbying. Mr. Wayne requested the Commission allow him to follow up with these allegations and provide more information for the Commission at the December meeting.

Ms. Thompson said she felt it is imperative that more research be done to get to the bottom of this issue.

Mr. Wayne said if there were a violation and they should have registered, the penalties could be quite high.

Agenda

Item #2



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

MEMORANDUM

To: Interested Parties

From: Jonathan Wayne, Executive Director

Date: November 6, 2007

Subject: Opportunity to Comment on Proposed Rule Amendments

The Ethics Commission is soliciting comments on proposed changes to the Commission's Rules. In case you are interested in commenting, I have enclosed a summary of the proposed amendments and the proposed amendments to Chapter 1 and Chapter 3 of the Commission Rules.

The Commission will hold a public hearing on Friday, December 7, at 9:00 a.m. at which you are invited to comment on the changes to the rules. Written and e-mailed comments are also welcome. (My e-mail address is Jonathan.Wayne@maine.gov.) The deadline for written and e-mailed comments is 5:00 p.m. on December 17. The Commission will make any amendments to its rules at its January 2008 meeting on a date to be determined.

The rule changes relating to the Maine Clean Election Act would be considered major substantive, and the Commission will submit any major substantive amendments to the Legislature for its consideration following the Commission's January meeting.

If you have any questions, please telephone me at 287-4179. Thank you for your consideration of the proposed amendments.

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

PHONE: (207) 287-4179

FAX: (207) 287-6775

Chapter 1: PROCEDURES

SUMMARY: This Chapter describes the nature and operation of the Commission, and establishes procedures by which the Commission's actions will be governed.

SECTION 1. DEFINITIONS

In addition to the definitions provided in Title 21-A, chapters 1, 13, and 14, the following definitions shall apply to the rules of the Commission, unless the context otherwise requires:

1. **Act.** "Act" means the Maine Clean Election Act, Title 21-A, chapter 14.
2. **Association.** "Association" means a group of two or more persons, who are not all members of the same immediate family, acting in concert.
3. **Campaign Deficit.** "Campaign deficit" means debts, liabilities, and unmet financial obligations from all previous campaigns as reported to the Commission on campaign termination report forms required by Title 21-A, chapter 13, subchapter II [§1017(9)].
4. **Campaign Surplus.** "Campaign surplus" means money, equipment, property and other items of value remaining after retiring previous campaign deficit as reported to the Commission on campaign termination report forms required by Title 21-A, chapter 13, subchapter II [§1017(9)].
5. **Candidate.** "Candidate" has the same meaning as in Title 21-A, chapter 1, subchapter I [§1(5)], and includes individuals running for office as a write-in candidate.

INFORMATIONAL NOTE: All contributions made after the day of the general election to a candidate who has liquidated all debts and liabilities associated with that election are deemed to be made in support of the candidate's candidacy for a subsequent election, pursuant to section 4.2.A(5)(e) of this rule. A candidate who collects funds subsequent to an election for purposes other than retiring campaign debt is required to register with the Commission. Title 21- A, chapter 13, subchapter II [§1013-A].

6. **Certified Candidate.** "Certified candidate" has the same meaning as in the Act [§ 1122(1)].
7. **Commission.** "Commission" means the Commission on Governmental Ethics and Election Practices established by Title 5, §12004-G, subsection 33, and 1 M.R.S.A. §1001 *et seq.*
8. **Contribution.** "Contribution" has the same meaning as in Title 21-A, chapter 13, subchapter II [§1012(2)].

9. **Election.** "Election" means any primary, general or special election for Governor, State Senator or State Representative. The period of a primary election begins on the day a person becomes a candidate as defined in 21-A M.R.S.A. §1(5) and ends on the date of the primary election. The period of a general election begins on the day following the previous primary election and ends on the date of the general election. The period of a special election begins on the date of proclamation of the special election and ends on the date of the special election.
10. **Expenditure.** "Expenditure" has the same meaning as in Title 21-A, chapter 13, subchapter II [§1012(3)].
11. **Fund.** "Fund" means the Maine Clean Election Fund established by the Act [§1124].
12. **In-Kind Contribution.** "In-kind contribution" means any gift, subscription, loan, advance or deposit of anything of value other than money made for the purpose of influencing the nomination or election of any person to political office or for the initiation, support or defeat of a ballot question.
13. **Member.** A "member" of a membership organization includes all persons who currently satisfy the requirements for membership in the membership organization, have affirmatively accepted the membership organization's invitation to become a member, and either:
 - A. pay membership dues at least annually, of a specific amount predetermined by the membership organization; or
 - B. have some other significant financial attachment to the membership organization, such as significant investment or ownership stake in the organization; or
 - C. have a significant organizational attachment to the membership organization that includes direct participatory rights in the governance of the organization, such as the right to vote on the organization's board, budget, or policies.

Members of a local union are considered to be members of any national or international union of which the local union is a part, of any federation with which the local, national, or international union is affiliated, and of any other unions which are members or affiliates of the federation. Other persons who have an enduring financial or organizational attachment to the membership organization are also members, including retired members or persons who pay reduced dues or other fees regularly to the membership organization.
14. **Nonparticipating Candidate.** "Nonparticipating candidate" has the same meaning as in the Act [§1122(5)].
15. **Participating Candidate.** "Participating candidate" has the same meaning as in the Act [§1122(6)].

16. **Qualifying Contribution.** “Qualifying Contribution” has the same meaning as in the Act [§1122(7)].
17. **Qualifying Period.** “Qualifying period” has the same meaning as in the Act, except that for special elections, vacancies, withdrawals, deaths, disqualifications or replacements of candidates, the qualifying period shall be the period designated in section 8 of this chapter [§1122(8)].
18. **Seed Money Contribution.** “Seed money contribution” has the same meaning as in the Act [§1122(9)].
19. **Write-In Candidate.** “Write-in candidate” means a person whose name does not appear on the ballot under the office designation to which a voter may wish to elect the candidate and who has filed a declaration to be a write-in candidate pursuant to 21-A M.R.S.A. § 722-A.

SECTION 2. ORGANIZATION

1. **Commission.** The Commission on Governmental Ethics and Election Practices is an independent agency of the State, consisting of five (5) members appointed by the Governor, subject to review by the joint standing committee of the Legislature having jurisdiction over legal affairs and confirmation by the Legislature in accordance with Title 1, §1002, subsection 1. The Commission members will elect one member to serve as Chair. Except for the Chair, the members of the Commission have no individual authority.
2. **Office**
 - A. The Commission employs such staff as may be authorized by the Legislature. A Director supervises the staff and is responsible for all day-to-day operations. In the interim between Commission meetings, the Director reports to the Chair, who acts on behalf of the Commission on certain administrative matters. The Commission’s offices are located in the Public Utilities Commission Building at 242 State Street in Augusta, where any filing or written submission may be made between the hours of 8 a.m. and 5 p.m. on any day when state government offices are open, except that filings by facsimile or electronic means, where otherwise permitted by statute or rule, may be transmitted at any time. The office has a mailing address of 135 State House Station, Augusta, Maine 04333.
 - B. All records of the Commission are maintained in these offices, where they are available for inspection or copying, except as particular records are made confidential by law. The cost of copying Commission documents is set by the Director of the Commission, subject to reasonable limitations and approval of the Commission.
 - C. During any period when the position of Director is vacant, the Chair of the Commission will appoint an acting Director.

SECTION 3. MEETINGS

1. **Regular Meetings.** The Commission shall meet at least once per month in any year in which primary and general elections are held.
2. **Special Meetings.** The Commission may meet at any time at the call of the Secretary of State, the President of the Senate, the Speaker of the House of Representatives, the Chairman of the Commission, or a majority of its members. Each member of the Commission must have at least 24 hours notice of the time, place and purpose of the meeting. If written notice is not feasible, telephone notice satisfies the foregoing requirement.
3. **Agenda.** The Director will prepare a written agenda for each meeting of the Commission. The agenda will contain items of business to be considered, staff findings and recommendations, and will include the date, time and location of the meeting. When possible, the agenda will be mailed to each Commission member at least 7 days before the meeting.
4. **Notice.** In addition to the public notice required by the public meetings law, 1 M.R.S.A. §406, notice of Commission meetings ~~will~~ shall be given to those directly involved in a matter ~~or affected by matters~~ pending before the Commission, as follows:
 - A. **Legislative Ethics.** When a properly filed request or referral is made for an advisory opinion on a question of legislative ethics, notice that the matter has been placed on the agenda for a Commission meeting will be given by mail to the Legislator whose circumstances or conduct is at issue, or to the Presiding Officer of either House referring the inquiry. When a complaint alleging a violation of the laws on legislative ethics is filed, the Legislator will be informed promptly of the nature of the allegations and the existence of any investigation by the Commission. Notice that the matter has been placed on the agenda for a Commission hearing will be given by certified mail to both the Legislator and the complainant not less than 10 days before the date set for a hearing.
 - B. **Campaign Reports and Finances Law; Lobbyist Disclosure Law.** Notice of the Commission's consideration of any noncompliance with the requirements of the Campaign Reports and Finances Law, the Maine Clean Election Act, or Lobbyist Disclosure Law will be provided to any person or organization alleged to have committed a violation and to any person who has officially requested a Commission investigation or determination, except that notice of the Commission's consideration of issuing subpoenas to conduct an investigation need not be given.
 - C. **Other Matters Contents of Notice**
 - (1) ~~With respect to any other matter presented to the Commission, notice will be given to the person or organization whose conduct is at issue, and to any complainant, except as provided in Section 3, subsection 1, paragraph B of these rules.~~

- (2) The notice will include the date, time, and location of the Commission meeting. If mail notice of a meeting is not feasible, the staff will make best efforts to give oral notice to Commission members or to those entitled to notice under this provision.
5. **Public Meetings.** All meetings, hearings or sessions of the Commission will be open to the general public unless, by an affirmative vote of at least 3 members, the Commission requires the exclusion of the public, pursuant to 1 M.R.S.A. §1005 or 1 M.R.S.A. §1013(3).
6. **Quorum.** Every decision of the Commission must be made at a meeting at which at least 3 members of the Commission are present and voting. When it is impossible or impractical for a member of the Commission to travel to Augusta to attend a meeting in person, the member may participate in the meeting by telephone. That member will be considered present at the meeting and part of the quorum.

At least 2 members must be present in person for the conduct of a meeting or public hearing before the Commission. If fewer than 3 members are present in person for a hearing, however, objections to rulings of the presiding officer concerning the conduct of the hearing must be preserved until a meeting of the Commission at which a quorum is present in person. The presiding officer at a meeting or public hearing must be present in person.

7. **Minutes**

- A. The Director will prepare minutes of each business meeting of the Commission. These minutes will be the official record of Commission meetings, and will accurately record all matters considered.
- B. The minutes will record any executive session of the Commission and its subject matter, but will not report the proceedings of the executive session. Likewise, minutes will not be taken of any public hearing held by the Commission, since hearings are separately recorded.

SECTION 4. INITIATION OF PROCEEDINGS

1. **Legislative Ethics.** The Commission is authorized to investigate and make advisory recommendations to either House of the Maine Legislature concerning legislative conflicts of interest or any breach of the legislative ethics set forth in 1 M.R.S.A. §§ 1001 - 1023. The Commission's opinion may be sought by three methods, or the Commission may act on its own motion.
- A. **Legislator's Own Conduct**
- (1) A Legislator seeking an advisory opinion with respect to his or her own circumstances or conduct should make a written request for an opinion, setting forth the pertinent facts with respect to the legislative matter at issue and the circumstances of the Legislator giving rise to the inquiry.

- (2) The request will be officially filed only when received at the offices of the Commission. The Director will promptly send a copy of the request to the Chair, and the matter will be placed on the agenda for the next Commission meeting, or if necessary, at a special meeting.
 - (3) An oral request by a Legislator for an opinion with respect to his or her own circumstances will not be considered an official request for an advisory opinion, and a Legislator making such a request will be so notified, by letter, and encouraged to file a written request.
- B. **Complaints.** Any written complaint will be included in the agenda of the next Commission meeting.
- (1) **Complaint by a Legislator.** Copies of any sworn complaint filed by a Legislator will promptly be sent to the Legislator against whom the complaint has been lodged and to the Commission Chair, in each case identifying the Legislator making the complaint. A complaint invokes the Commission's authority only if made under oath and only if it addresses an alleged conflict of interest relating to circumstances arising during the term of the legislature then in office.
 - (2) **Other Complaints**
 - (a) The Director will review each complaint to determine whether the matter relates to the Commission's statutory mandate. When a complaint is filed, the Director, in consultation with Commission Counsel, will review the matter to determine whether the complaint has sufficient merit to warrant recommending the calling of a meeting. When a meeting is called, the Commission will determine in executive session whether to hear the complaint. If the nature of the complaint clearly does not fall within the scope of the Commission's jurisdiction, the Director will so notify the complainant by letter within 14 days of receiving the complaint. In such cases, the respondent need not be notified. The Commission may reverse any administrative decision.
 - (b) An oral complaint by any person alleging a conflict of interest concerning any legislator does not constitute a complaint under 1 M.R.S.A. §1013(2)(B), and a person registering such a complaint will be so notified, by letter.
- C. **Referral by Presiding Officer.** When a Legislator has requested an advisory opinion from the Presiding Officer of the House of which he/she is a member, and the Presiding Officer has referred the inquiry directly to the Commission, the Director will arrange a meeting of the Commission as soon as possible to consider the question.

2. **Election Campaign Reporting and Maine Clean Election Act Violations**

- A. **Report Review.** The Commission staff will review all reports filed pursuant to 21-A M.R.S.A., chapters 13 and 14 to verify compliance with the reporting requirements set by statute or rule. Notice of any omission, error, or violation will be given by mail to the filer and a copy of the notice and any other communication made to or from the filer relating to the problem(s) will be placed in the filer's record. The Commission staff will establish a reasonable time period for the filer to remedy any omission or error. If the filer fails to respond within that time frame, the Commission staff may extend the time period within which the filer must comply or place the matter on the agenda of the next Commission meeting, along with all documents relating to the case. Additionally, any apparent violations or occurrences of substantial nonconformance with the requirements of the law will be placed on the agenda of the next meeting.
- B. **Late Reports and Registrations.** Where required by statute, notice of failure to file a required report will be timely sent by Commission staff. When a report or registration is filed late, the Director's recommendations will be based on the following considerations:
- (1) Lateness of report or registration,
 - (2) Reason for lateness,
 - (3) Kind of report (more stringent application for pre-election reports),
 - (4) Amount of campaign funds not properly reported,
 - (5) Previous record of the filer,
 - (6) Good faith effort of the filer to remedy the matter; and
 - (7) Whether the late filing had an effect on a certified candidate's eligibility for matching funds.
- C. Reports of noncompliance with the provisions of the campaign registration and reporting laws or the Maine Clean Election Act that may come to the attention of the Commission staff from any source other than review of the reports filed will be reported to the Commission Chair. Any person (as defined in 21-A M.R.S.A. §1001) may make an official request for a Commission investigation or determination by filing a written request at the Commission's office, setting forth such facts with sufficient details as are necessary to specify the alleged violation. Statements should be made upon personal knowledge. Statements which are not based upon personal knowledge must identify the source of the information which is the basis for the request, so that respondents and Commission staff may adequately respond to the request. A copy of any such written request will be promptly mailed to the candidate or organization alleged to have violated the

statutory requirements. An official request will be placed on the agenda of the next Commission meeting.

- D. An oral report of a violation, or a written request containing insufficient detail to specify the violation charged, does not constitute an official request for a Commission determination, and a person registering such a complaint will be so notified.
- ~~E. If the Director and Counsel are in agreement that the subject matter of a request for an investigation is clearly outside the jurisdiction of the Commission, the staff may forward the request to the appropriate authority or return it to the person who made the request, provided that the staff notifies the Commission members of the action at the next Commission meeting. [NOTE: MOVED BELOW WITHOUT CHANGE]~~
- ~~F. E.~~ The signature of a person authorized to sign a report or form constitutes certification by that person of the completeness and accuracy of the information reported. The use of a password in filing an electronic report constitutes certification of the completeness and accuracy of the report.

3. **Lobbyist Disclosure Procedures**

- A. **Report Review.** The Commission staff will monitor all filings made pursuant to 3 M.R.S.A. §311 *et seq.* for timeliness, legibility, and completeness. The staff will send the lobbyist a notice of any apparent reporting deficiency, including failure to use prescribed forms. The notice will include a request that the deficiency be corrected within 15 business days of the notice. If remedy is not made, it will be noted on the agenda of the next Commission meeting. The Commission may reject reports that are incomplete or illegible.
- B. **Late Registrations and Reports.** Notice will be given by mail to any lobbyist whose registration, monthly disclosure report, or annual report is delinquent. In the case of a late monthly report, the notice must be mailed within 7 business days following the filing deadline for the report. In the case of late annual reports and registrations, the notice must be mailed within 15 business days following the filing deadline. The notice must include a statement specifying the amount assessed. A penalty of \$100 will be assessed the lobbyist for every month that a monthly disclosure report is late and a penalty of \$200 will be assessed the lobbyist and employer for every month a registration or annual report is filed late. For purposes of 3 M.R.S.A. §319(1), the month will end on the 15th day of the month following the month in which a report was due. Any failure to submit a required report, registration, or penalty fee will be noted on the Commission agenda.
- C. **Suspensions.** The Commission may suspend any person from lobbying who fails to file a required report or pay an assessed fee. A notice of the suspension must be mailed to the lobbyist by U.S. Certified Mail within three days following the suspension. Reinstatement will occur on the date the required report or payment is received in the Commission office. A notice of the reinstatement must be

mailed to the lobbyist by U.S. Certified Mail or given directly to the lobbyist within three days following receipt of the required report or payment.

- D. **Request for Penalty Waiver.** A lobbyist may request a waiver of any late penalty the lobbyist incurs. The request must be made in writing to the Commission and must state the reason for the delinquency. Any such request must be noted on the agenda of the next Commission meeting. Only the Commission may grant penalty waivers.
- E. **Request for Waiver of Nonsession Reporting Requirement.** A lobbyist may request a waiver of the monthly nonsession reporting requirement set forth in 3 M.R.S.A. §317(4) if the lobbyist does not expect to be engaged in lobbying when the Legislature is not in session. The Director is authorized to provisionally grant such waivers pending approval by the Commission. Provisional waivers may be granted only where a request is properly filed, the statement properly completed, and where there is no apparent reason to doubt the statement is true. During the period in which the waiver is effective, reports will not be required. If lobbying is resumed during the period for which the waiver was granted, the lobbyist must file a monthly disclosure report for the month or months lobbying was conducted.
- F. **Faxing Duly Executed Lobbyist Registration, Reports.** Any registration or report required by 3 M.R.S.A. ch. 15 may be provisionally filed by transmission of a facsimile copy of the duly executed report to the Commission, provided that the original of the same report is received by the Commission within 5 calendar days thereafter.

4. Matters Outside the Commission's Jurisdiction. If the Director and Counsel are in agreement that the subject matter of a request for an investigation is clearly outside the jurisdiction of the Commission, the staff may forward the request to the appropriate authority or return it to the person who made the request, provided that the staff notifies the Commission members of the action at the next Commission meeting. [NOTE: *MOVED FROM ABOVE WITHOUT CHANGE*]

SECTION 5. FACT FINDING AND INVESTIGATIONS

1. **Before Commission Meeting.** With respect to any inquiry, ~~report complaint,~~ or request for Commission action properly filed in accordance with the preceding section, or any potential violation that comes to the attention of Commission staff through an audit or review of reports, the Director may conduct such preliminary fact finding as is deemed prudent and desirable. When the Director and Counsel find a basis for a preliminary investigation, they will recommend such steps to the Chair as necessary. ~~Pursuant to reviewing reports or finding of fact, the Director, in consultation with Counsel, will prepare a summary of findings and recommendations for inclusion on the agenda.~~ The Chair is authorized to issue subpoenas in the name of the Commission to compel the attendance of witnesses or the production of records, documents or other evidence when the Chair and the Commission's Counsel are in agreement that the testimony or evidence sought by the subpoena is necessary to disposition of the matter; and to issue any subpoena in the name of the Commission on behalf of any person having a statutory right

to an agency subpoena. Consultations between the Commission and its Counsel concerning an investigation (including the issuance of subpoenas) where premature public knowledge of the investigation would place the Commission or another investigatory office at a substantial disadvantage may be held in executive session pursuant to 1 M.R.S.A. §§ 405(6)(E), 1005, and 1013(3). Any oral testimony compelled by a subpoena issued by this provision will be presented to the Commission or its staff. When a matter is ready for presentation to the Commission, the Director, in consultation with Counsel, will prepare a summary of findings and recommendations for inclusion on the agenda.

2. **By the Commission.** Once any matter is reached on the agenda of a Commission meeting, the Commission will control any further investigation or proceedings. No hearings will be held except by direction of the Commission. On a case-by-case basis, the Commission may authorize its Chair, Director, or any ad hoc committee of its members, to conduct further investigative proceedings on behalf of the Commission between Commission meetings. Any authorization so conferred will be fully reflected in the minutes of the Commission meeting.

SECTION 7. EXPENDITURES

1. **Expenditures by Consultants, Employees, and Other Agents of a Political Campaign.** Each expenditure made on behalf of a candidate, political committee, or political action committee by any person, agency, firm, organization, etc., employed or retained for the purpose of organizing, directing, managing or assisting the candidate, the candidate's committee, or the political action committee must be reported separately by the candidate or committee as if made or incurred by the candidate or committee directly. The report must include the name of the third party vendor or payee to whom the expenditure was made, the date of the expenditure, and the purpose and amount of the expenditure. It is not sufficient to report only the total retainer or fee paid to the person, agency, firm, organization, etc., if that retainer or fee was used to pay third party vendors or payees for campaign-related goods and services.
2. **Expenditures by Political Action Committees.** In addition to the requirements set forth in 21-A M.R.S.A. §1060(4), the reports must contain the purpose of each expenditure and the name of each payee and creditor.
3. **Timing of Reporting Expenditures**
 - A. Placing an order with a vendor for a good or service; signing a contract for a good or service; the delivery of a good or the performance of a service by a vendor; or a promise or an agreement (including an implied one) that a payment will be made constitutes an expenditure, regardless whether any payment has been made for the good or service.
 - B. Expenditures must be reported at the earliest of the following events:
 - (1) The placement of an order for a good or service;

- (2) The signing of a contract for a good or service;
 - (3) The delivery of a good or the performance of a service by a vendor;
 - (4) A promise or an agreement (including an implied one) that a payment will be made; or
 - (5) The making of a payment for a good or service.
- C. At the time the duty to report an expenditure arises, the person submitting the report is required to determine the value of goods and services to be rendered (preferably through a written statement from the vendor) and to report that value as the amount of the expenditure. If the expenditure involves more than one candidate election, the report must include an allocation of the value to each of those candidate elections.
4. **Advance Purchases of Goods and Services for the General Election**
- A. Consulting services, or the design, printing or distribution of campaign literature or advertising, including the creation and broadcast of radio and television advertising, contracted or paid for prior to the primary election must be received prior to the primary election in order to be considered primary election expenditures.
 - B. If the Commission receives a complaint stating that a candidate or a committee purchased goods or services before a primary election for use in the general election, the Commission may request that the candidate or committee distinguish which of the goods and services were used in the primary election and which were used in the general election.
5. All campaign-related payments made with the personal funds or credit card of the candidate or an individual authorized by the candidate must be reported as expenditures in the reporting period during which the payment to the vendor or payee is made. The candidate must report the name of the vendor or payee to whom the payment was made, the date of the expenditure, and the purpose and amount of the expenditure. When the expenditure is reported, the candidate should indicate the person who made the payment by entering "Paid by [name of candidate or supporter]" in the remarks section of the expenditure schedule. It is not sufficient to report only the name of the candidate or authorized individual to whom reimbursement was made and the total amount of the reimbursement. If a Maine Clean Election Act candidate uses his or her personal funds to make an expenditure, the campaign must reimburse the candidate within the same reporting period.
6. Multiple expenditures for bank fees and for vehicle travel may be reported in an aggregate amount, provided that the candidate or committee identifies the time period of the expenditures in the remarks section of the report.
7. When a political action committee or party committee makes an expenditure for a communication to voters for the purpose of influencing the election of a clearly

identified candidate, the amount spent to influence that candidate's election must be specified on the regularly filed campaign finance report of the committee, regardless whether the communication expressly advocates for the election or defeat of the candidate. If a single expenditure influences the election of more than one candidate, the political action committee or party committee shall itemize the amount spent per candidate.

SECTION 9. ACCELERATED REPORTING SCHEDULE

1. **General.** In addition to other reports required by law, any candidate for Governor, State Senator or State Representative who is not certified as a Maine Clean Election Act candidate under Title 21-A §1121 *et seq.*, and who has a certified candidate as an opponent in an election must comply with the following reporting requirements on forms prescribed, prepared, and provided by the Commission.

INFORMATIONAL NOTE: Title 21-A §1017 prescribes reporting requirements for candidates.

2. **101% Trigger Report.** Any candidate subject to this section, who receives, spends or obligates more than ~~1% in excess of~~ the primary or general election distribution amounts for a Maine Clean Election Act candidate opponent in the same race, must file with the Commission, within 48 hours of such receipt, expenditure, or obligation, a report detailing the candidate's total campaign contributions, receipts, expenditures and obligations to date. The Commission will notify all candidates who have an opposing certified candidate of the applicable distribution amounts and of the trigger report requirement.
3. ~~Any privately funded candidate with a Maine Clean Election Act opponent shall file A nonparticipating candidate who is required to file a report under subsection 2 shall file no later than 5:00 p.m. the following three reports detailing the candidate's total campaign contributions, obligations and expenditures to date, except that a candidate who has not received, spent, or obligated the amount sufficient to require a report under subsection 2 may file an affidavit, by the date the report is due, attesting that the candidate has not received, spent or obligated that amount:~~
 - A. ~~a report filed not later than 5:00 p.m. on the 42nd day before the date on which an election is held that is complete as of the 44th day before the that date of that election;~~
 - B. ~~for gubernatorial candidates only, a report filed not later than 5:00 p.m. on the 21st 25th day before the date on which an election is held that is complete as of the 23rd 27th day before the that date of that election; and~~
 - C. ~~a report filed not later than 5:00 p.m. on the 12th 18th day before the date on which an election is held that is complete as of the 14th 20th day before the that date of that election.; and~~

D. a report on the 6th day before the date on which an election is held that is complete as of the 8th day before that date.

4. **24-Hour Report.** Any candidate who is required to file a 101% trigger report must file an updated report with the Commission reporting single expenditures of \$1,000 or more by candidates for Governor, \$750 by candidates for State Senator, and \$500 by candidates for State Representative made after the 14th day before any election and more than 24 hours before 5:00 11:59 p.m. on the date of that election. The report must be submitted to the Commission within 24 hours of those expenditures.
5. **Filing by Facsimile or Electronic Means.** For purposes of this section, reports may be filed by facsimile or by other electronic means acceptable to the Commission, and such reports will be deemed filed when received by the Commission provided that the original of the same report is received by the Commission within 5 calendar days thereafter.

SECTION 10. REPORTS OF INDEPENDENT EXPENDITURES

1. **General.** Any person, party committee, political committee or political action committee that makes an independent expenditure aggregating in excess of \$100 per candidate in an election must file a report with the Commission according to this section.
2. **Definitions.** For purposes of this section, the following phrases are defined as follows:
 - A. "Clearly identified," with respect to a candidate, has the same meaning as in Title 21-A, chapter 13, subchapter II.
 - B. "Expressly advocate" means any communication that uses phrases such as "vote for the Governor," "reelect your Representative," "support the Democratic nominee," "cast your ballot for the Republican challenger for Senate District 1," "Jones for House of Representatives," "Jean Smith in 2002," "vote Pro-Life" or "vote Pro-Choice" accompanied by a listing of clearly identified candidates described as Pro-Life or Pro-Choice, "vote against Old Woody," "defeat" accompanied by a picture of one or more candidate(s), "reject the incumbent," or communications of campaign slogan(s) or individual word(s), which in context can have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidate(s), such as posters, bumper stickers, advertisements, etc. which say "Pick Berry," "Harris in 2000," "Murphy/Stevens" or "Canavan!".
 - C. "Independent expenditure" has the same meaning as in Title 21-A §1019-B. Any expenditure made by any person in cooperation, consultation or concert with, or at the request or suggestion of, a candidate, a candidate's political committee or their agents is considered to be a contribution to that candidate and is not an independent expenditure.
3. **Reporting Schedules.** Independent expenditures must be reported to the Commission in accordance with the following provisions:

- A. Independent expenditures aggregating in excess of \$100 per candidate per election but not in excess of \$250 made by any person, party committee, political committee or political action committee must be reported to the Commission in accordance with the following reporting schedule, except that expenditures made ~~in the last 11 days after the 14th day~~ before an election must be reported within 24 hours of the expenditure.

(1) **Quarterly Reports.** Quarterly reports must be filed by 5:00 p.m. on

- (a) ~~A report must be filed on~~ January 15th and be complete as of January 5th;
- (b) ~~A report must be filed on~~ April 10th and be complete as of March 31st;
- (c) ~~A report must be filed on~~ July 15th and be complete as of July 5th; and
- (d) ~~A report must be filed on~~ October 10th and be complete as of September 30th.

(2) **Pre-Election Report.** A report must be filed by 5:00 p.m. on the 14th ~~12th~~ day before the election is held and be complete as of that day.

If the total of independent expenditures made to support or oppose a candidate exceed \$100, each subsequent amount spent to support or oppose the candidate must be reported as an independent expenditure. As long as the total amount spent with respect to the candidate does not exceed \$250, all reports must be filed according to the deadlines in this paragraph. If the total amount spent per candidate exceeds \$250, the reports must be filed in accordance with paragraph B.

[NOTE: FOR EXAMPLE, IF A COMMITTEE MAKES THREE \$80 EXPENDITURES IN SUPPORT OF A CANDIDATE ON SEPTEMBER 20, THE 15TH DAY BEFORE THE ELECTION AND THE 8TH DAY BEFORE THE ELECTION, THOSE THREE EXPENDITURES MUST BE REPORTED ON OCTOBER 10th, AND THE ~~12TH~~ 14TH AND 7TH DAYS BEFORE THE ELECTION, RESPECTIVELY.]

- B. Independent expenditures aggregating in excess of \$250 per candidate per election made by any person, party committee, political committee or political action committee must be reported to the Commission within 24 hours of those expenditures. If any additional expenditures, regardless of amount, increase the total spent per candidate above the threshold of \$250, each additional expenditure must be reported within 24 hours.

[NOTE: FOR EXAMPLE, IF A COMMITTEE HAS REPORTED INDEPENDENT EXPENDITURES TOTALING \$300 IN SUPPORT OF A CANDIDATE, AND THE COMMITTEE MAKES AN ADDITIONAL \$50 INDEPENDENT EXPENDITURE IN SUPPORT OF THE CANDIDATE, THE ADDITIONAL \$50 EXPENDITURE MUST BE REPORTED WITHIN 24 HOURS.]

- C. Reports must contain information as required by Title 21-A, chapter 13, subchapter II (§§ 1016-1017-A), and must clearly identify the candidate and indicate whether the expenditure was made in support of or in opposition to the candidate. Reports filed after the eighth day before an election must include the following information:
1. the date on which the person making the expenditure placed the order with the vendor for the goods or services;
 2. the approximate date when the vendor began providing design or any other services in connection with the expenditure;
 3. the date on which the person making the expenditure first learned of the total amount of the expenditure; and
 4. a statement why the expenditure could not be reported by the eighth day before the election.
- D. A separate 24-Hour Report is not required for expenditures reported in an independent expenditure report.

4. **Multi-Candidate Expenditures.** When a person or organization is required to report an independent expenditure for a communication that supports multiple candidates, the cost should be allocated among the candidates in rough proportion to the benefit received by each candidate.

- A. The allocation should be in rough proportion to the number of voters who will receive the communication and who are in electoral districts of candidates named or depicted in the communication. If the approximate number of voters in each district who will receive the communication cannot be determined, the cost may be divided evenly among the districts in which voters are likely to receive the communication.

[NOTE: FOR EXAMPLE, IF CAMPAIGN LITERATURE NAMING SENATE CANDIDATE X AND HOUSE CANDIDATES Y AND Z ARE MAILED TO 10,000 VOTERS IN X'S DISTRICT AND 4,000 OF THOSE VOTERS RESIDE IN Y'S DISTRICT AND 6,000 OF THOSE VOTERS LIVE IN Z'S DISTRICT, THE ALLOCATION OF THE EXPENDITURE SHOULD BE REPORTED AS: 50% FOR X, 20% FOR Y, and 30% FOR Z.]

- B. If multiple county or legislative candidates are named or depicted in a communication, but voters in some of the candidates' electoral districts will not receive the communication, those candidates should not be included in the allocation.

[NOTE: FOR EXAMPLE, IF AN EXPENDITURE ON A LEGISLATIVE SCORECARD THAT NAMES 150 LEGISLATORS IS DISTRIBUTED TO VOTERS WITHIN A TOWN IN WHICH ONLY ONE LEGISLATOR IS

SEEKING RE-ELECTION, 100% OF THE COST SHOULD BE ALLOCATED TO THAT LEGISLATOR'S RACE.]

- C. If a candidate who has received matching funds because of a multi-candidate communication believes that he or she deserves additional matching funds because the communication disproportionately concerns his or her race, the Commission may grant additional matching funds in proportion to the relative treatment of the candidates in the communication.
5. **Rebuttable Presumption.** Under Title 21-A M.R.S.A. §1019-B(1)(B), an expenditure made to design, produce or disseminate a communication that names or depicts a clearly identified candidate in a race involving a Maine Clean Election Act candidate and that is disseminated during the 21 days before ~~an~~ a primary election and 35 days before a general election will be presumed to be an independent expenditure, unless the person making the expenditure submits a written statement to the Commission within 48 hours of the expenditure stating that the cost was not incurred with the intent to influence the nomination, election or defeat of a candidate.
- A. The following types of communications may be covered by the presumption if the specific communication satisfies the requirements of Title 21-A M.R.S.A. §1019-B(1)(B):
- (1) Printed advertisements in newspapers and other media;
 - (2) Television and radio advertisements;
 - (3) Printed literature;
 - (4) Recorded telephone messages;
 - (5) Scripted telephone messages by live callers; and
 - (6) Electronic communications.
- This list is not exhaustive, and other types of communications may be covered by the presumption.
- B. The following types of communications and activities are not covered by the presumption, and will not be presumed to be independent expenditures under Title 21-A M.R.S.A. §1019-B(1)(B):
- (1) news stories and editorials, unless the facilities distributing the communication are owned or controlled by the candidate, the candidate's immediate family, or a political committee;
 - (2) activity or communication designed to encourage individuals to register to vote or to vote if that activity or communication does not name or depict a clearly identified candidate;

- (3) any communication from a membership organization to its members or from a corporation to its stockholders if the organization or corporation is not organized primarily for the purpose of influencing the nomination or election of any person for state or county office;
 - (4) the use of offices, telephones, computers, or similar equipment when that use does not result in additional cost to the provider; and
 - (5) other communications and activities that are excluded from the legal definition of "expenditure" in the Election Law.
- C. If an expenditure is covered by the presumption and is greater, in the aggregate, than \$100 per candidate per election, the person making the expenditure must file an independent expenditure report or a signed written statement that the expenditure was not made with the intent to influence the nomination, election or defeat of a candidate. The filing of independent expenditure reports should be made in accordance with the filing schedule in subsections 3(A) and 3(B) of this rule. Independent expenditures aggregating \$100 or less per candidate per election do not require the filing of an independent expenditure report or a rebuttal statement.
- D. If a committee or association distributes copies of printed literature to its affiliates or members, and the affiliates or members distribute the literature directly to voters, the applicable 21-day or 35-day period applies to the date on which the communication is disseminated directly to voters, rather than the date on which the committee or association distributes the literature to its affiliates or members.
- E. For the purposes of determining whether a communication is covered by the presumption, the date of dissemination is the date of the postmark, hand-delivery, or broadcast of the communication.
- F. An organization that has been supplied printed communications covered by the presumption and that distributes them to voters must report both its own distribution costs and the value of the materials it has distributed, unless the organization supplying the communications has already reported the costs of the materials to the Commission. If the actual costs of the communications cannot be determined, the organization distributing the communication to voters must report the estimated fair market value.
- G. If a person wishes to distribute a specific communication that appears to be covered by the presumption and the person believes that the communication is not intended to influence the nomination, election or defeat of a candidate, the person may submit the rebuttal statement to the Commission in advance of disseminating the communication for an early determination. The request must include the complete communication and be specific as to when and to whom the communication will be disseminated.

SECTION 11. REPORTS OF BALLOT QUESTION CAMPAIGN ACTIVITY BY PERSONS AND ORGANIZATIONS OTHER THAN POLITICAL ACTION COMMITTEES

When a person or organization is required under 21-A M.R.S.A. §1056-B to file reports because of contributions or expenditures of more than \$1,500 made in support of or in opposition to a ballot question, the reports must be filed according to the following schedule:

1. **Quarterly Reports.** Reports must be filed by 11:59 p.m. on the following deadlines until the date of the election on which the question is on the ballot:
 - A. A report must be filed on January 15th and be complete as of January 5th;
 - B. A report must be filed on April 10th and be complete as of March 31st;
 - C. A report must be filed on July 15th and be complete as of July 5th; and
 - D. A report must be filed on October 10th and be complete as of September 30th.

2. **Pre- and Post-Election Reports.** The person or organization must also file the following reports by 11:59 p.m. on the following deadlines:
 - A. A report must be filed on the 6th 11th day before the election is held and be complete as of the ~~12th~~ 14th day before the election.
 - B. A report must be filed on the 42nd day after the election is held and be complete as of the 35th day after the election.

3. **24-Hour Reports.** Any contribution or expenditure in excess of \$500 made after the ~~12th~~ 14th day before the election and more than 24 hours before the election must be reported within 24 hours of that contribution or expenditure or by noon of the first business day after the contribution or expenditure, whichever is later.

PROPOSED AMENDMENT TO THE CAMPAIGN FINANCE REPORTING FORM

The Commission proposes to eliminate Schedule E of the campaign finance reporting form for county and legislative candidates who have financed their campaign through accepting traditional campaign contributions. This form requires candidates to list campaign property or equipment that could be converted to the candidate's personal use after an election (*e.g.*, computers, fax machines, or telephones) and how such property or equipment is disposed of. This schedule would continue to be required for candidates who have purchased such property with Maine Clean Election Act funds, pursuant to 21-A M.R.S.A. §§ 1125(12) and 1126, and Chapter 3, Section 7(2)(C) of the Commission rules.

94-270

COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES

Chapter 3: MAINE CLEAN ELECTION ACT AND RELATED PROVISIONS

SECTION 5. DISTRIBUTION OF FUNDS TO CERTIFIED CANDIDATES

1. Fund Distribution

- A. **Establishment of Account.** Upon the certification of a participating candidate, the Commission will establish an account with the Office of the Controller, or such other State agency as appropriate, for that certified candidate. The account will contain sufficient information to enable the distribution of revenues from the Fund to certified candidates by the most expeditious means practicable that ensures accountability and safeguards the integrity of the Fund.
- B. **Manner of Distribution of Fund.** The Commission will authorize distribution of revenues from the Fund to certified candidates by the most expeditious means practicable that ensures accountability and safeguards the integrity of the Fund. Such means may include, but are not limited to:
- (1) checks payable to the certified candidate or the certified candidate's political committee; or
 - (2) electronic fund transfers to the certified candidate's or the certified candidate's political committee's campaign finance account.

2. Timing of Fund Distributions

- A. **Distribution of Applicable Amounts.** The Commission will authorize the initial distribution of applicable amounts from the Fund to certified candidates in accordance with the time schedule specified in the Act [§1125(7)] and this Chapter.
- B. **Matching Fund Allocations.** At any time after certification, revenues from the Fund may be distributed to certified candidates in accordance with subsection 3, below.
- C. **Advances**
- (1) To facilitate administration of the Matching Fund Provision of this chapter, and to encourage participation in the Act, the Commission may authorize the advance distribution of revenues from the Fund to certified candidates. In determining whether to authorize such advances and the amounts of any such advances, the Commission will consider the amount of revenue in the Fund, the number of certified candidates, the number of nonparticipating candidates, and information contained in campaign finance and independent expenditure reports.

- (2) A certified candidate may only draw upon, spend or otherwise use, such advance Fund distributions after receiving written notification from the Commission authorizing a matching fund allocation in a specified amount. Written notification by the Commission may be by letter, facsimile or electronic means.

3. **Matching Fund Provision**

- A. **General.** The Commission will authorize immediately an allocation of matching funds to certified candidates in accordance with the Act when the Commission determines that the eligibility for receipt of matching funds has been triggered [§1125(9)].
- B. **Matching Fund Computation Involving Only Certified Candidates**
 - (1) For each certified candidate, the Commission will:
 - (a) add to the initial distribution amount for that election:
 - (i) the sum of any matching funds previously provided for that election, and
 - (ii) the sum of independent expenditures made in support of each certified candidate; and
 - (b) subtract the sum of independent expenditures made in opposition to each certified candidate.
 - (2) The Commission will compare the final computed amounts and will immediately authorize a matching fund allocation equal to the difference to the certified candidate with the lesser amount.
 - (3) In computations involving only certified candidates, the Commission will not use seed money raised or unspent funds remaining after a primary election in computing the amount of matching funds.
- C. **Matching Fund Computation Based on Nonparticipating Candidates' Receipts or Expenditures.** In races in which there is at least one certified and one nonparticipating candidate, and the matching fund computation is triggered by the financial activity of nonparticipating candidate, including any independent expenditures in support of the nonparticipating candidate:
 - (1) The Commission will first determine the applicable amount for the nonparticipating candidate
 - (a) by adding:
 - (i) the sum of the nonparticipating candidate's expenditures, obligations and in-kind contributions, or the sum of the nonparticipating candidate's cash and in-kind contributions and loans, including surplus or

unspent funds carried forward from a previous election to the current election, whichever is greater, and

- (ii) the sum of independent expenditures made in support of the same nonparticipating candidate; and
 - (b) by subtracting the sum of independent expenditures made in opposition to the same nonparticipating.
- (2) The Commission then will determine the applicable amount for the certified candidate
- (a) by adding:
 - (i) the amount of the initial distribution for that election;
 - (ii) the sum of independent expenditures made in support of the certified candidate;
 - (iii) the sum of matching fund allocations already provided to the certified candidate; and
 - (iv) the amount of:
 - a) any seed money raised by an enrolled certified candidate in a primary or special election or by a replacement candidate in a general election; or
 - b) any unspent funds carried forward from the primary election to the subsequent general election by an enrolled certified candidate in a general election; or
 - c) any seed money raised and, if applicable, any other distribution received prior to the general election distribution by an unenrolled certified candidate in a general or special election; and
 - (b) by subtracting the sum of independent expenditures made in opposition to the same certified candidate.
- (3) The Commission will compare the final computed amounts and, if the amount for the certified candidate is less than the amount for the nonparticipating candidate, will immediately authorize a matching fund allocation equal to the difference to the certified candidate.

D. **Matching Fund Computation Not Involving a Nonparticipating Candidate.**
In races in which there are two or more certified candidates and at least one nonparticipating candidate,

- (1) if the matching fund computation is triggered by an independent expenditure in support of or opposition to a certified candidate, and
 - (2) the campaign totals, including independent expenditures, of any nonparticipating candidate in the race are equal to or less than the campaigns totals, including independent expenditures, of at least one certified candidate in the race; then
 - (3) the matching fund computation must be completed according to the procedure in paragraph B of this subsection.
 - E. The Commission will make computations promptly upon the filing of campaign finance reports and independent expenditure reports.
 - F. To prevent the abuse of the Matching Fund Provision, the Commission will not base any calculation on independent expenditures that, although containing words of express advocacy, also contain other words or phrases that have no other reasonable meaning than to contradict the express advocacy. For example, expenses related to a communication saying, "Vote for John Doe -- he's incompetent and inexperienced," will not be considered a communication in support of John Doe in the calculation of matching funds.
 - G. **Matching Fund Cap.** Matching funds are limited to 2 times the amount originally distributed to a certified candidate from the Fund for that election, except that matching funds paid to candidates for Governor for the general election are limited to an amount equal to the initial distribution amount for that election. Certified candidates are not entitled to cumulative matching funds for multiple opponents.
 - H. **Other.** Any distribution based on reports and accurate calculations at the time of distribution is final, notwithstanding information contained in subsequent reports.
 - I. **Coordination with Other State Agencies.** The Commission will coordinate with the Office of the Controller and other relevant State agencies to implement a mechanism for the distribution of Fund revenues to certified candidates that is expeditious, ensures public accountability, and safeguards the integrity of the Fund.
 - J. **Disbursements with No Campaign Value.** If a privately financed candidate has received monetary contributions which are disbursed in ways that do not in any way influence the nomination or election of the candidate, those receipts will not be considered by the Commission in calculating matching funds for his or her opponent. Such disbursements may include repaying a loan received by the candidate, refunding a contribution to a contributor, or transferring funds to a party or political committee for purposes that do not relate to the candidate's race.
4. **Advance Purchases of Goods and Services for the General Election**
- A. If, prior to the primary election, a candidate purchases or receives in-kind contributions of consulting services, or the design, printing, or distribution of campaign literature and advertising, including radio and television advertising, but uses or will use a preponderance of those services exclusively for the general

election, then the portion used or to be used for the general election must be counted as a general election receipt or expenditure in calculating the amount of matching funds for any certified candidate in the same race.

- B. If a certified candidate in a general election believes that an opponent, or person or committee making an independent expenditure, has failed to disclose an advance purchase for the general election, the certified candidate shall submit a written request for an investigation to the Commission no later than August 30 of the election year, or within 30 days of the opponent's filing of the 42-day post-primary report, whichever is later. The request must identify the pre-primary election expenditure that is believed to be for the general election and must state a specific basis for believing that the goods and services purchased were not used for the primary election.
- C. The Commission will request a response from the opposing candidate or other respondent, and will make a determination whether the expenditure should be counted toward the certified candidate's eligibility for matching funds.

SECTION 7. RECORD KEEPING AND REPORTING

- 1. **Record Keeping by Participating and Certified Candidates.** Participating and certified candidates and their treasurers must comply with applicable record keeping requirements set forth in Title 21-A, chapter 13, subchapter II [§1016], and chapter 14 [§1125(12-A)]. Failure to keep or produce the records required under Title 21-A and these rules is a violation of the Act for which the Commission may impose a penalty. The Commission may also require the return of funds for expenditures lacking supporting documentation if a candidate or treasurer is found in violation of the record keeping requirements. The candidate or the treasurer shall have an opportunity to be heard prior to any Commission decision imposing a penalty or requiring the return of funds under this section. In addition to these specific actions, the Commission may also take any other action authorized under Title 21-A.
 - A. **Fiduciary Responsibility for Funds.** All seed money contributions and public campaign 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, ~~other than unspent seed money~~. Matching fund advance revenues for which no spending authorization has been issued must be deposited in a federally insured account and may not be used 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 must be based on the standard mileage rate prescribed for employees of the State of Maine for the year

in which the election occurs. For each trip for which reimbursement is made, a record must 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. A candidate may be reimbursed for vehicle travel expenses at a rate less than the standard mileage rate. A candidate may also reimburse a volunteer for vehicle travel expenses at a rate less than the standard mileage rate as long as the difference does not exceed \$100 per volunteer per election. The Commission may disallow any vehicle travel reimbursements for which the candidate or the treasurer cannot produce an accurate record.

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, except that a gubernatorial candidate may be allowed to reserve up to \$2,000 in order to defray expenses associated with an audit by the Commission.
 - (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, except that a gubernatorial candidate may be allowed to reserve up to \$3,500 in order to defray expenses associated with an audit by the Commission.
- 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, economic, just, equitable, and reasonable under normal market conditions based upon the value of items of similar description, age, and condition as determined by acceptable evidence of value.

Agenda

Item #3



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

November 29, 2007

Mr. Clyde E. Dyar
PO Box 59
Mount Vernon, ME 04352

Dear Mr. Dyar:

Thank you for your November 19, 2007 letter explaining that you spent \$409.51 more than was permitted as a Maine Clean Election Act candidate in the 2007 special election. As we discussed last week, this matter will be scheduled for the Commission meeting on December 7, 2007 at 9:00 a.m. The purpose of this letter is to inform you of the staff's recommendation.

After a candidate has qualified for Maine Clean Election Act funding, he or she may spend only public funds received from the state. The candidate is not permitted to contribute his or her own funds to the campaign:

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. (21-A M.R.S.A. §1125(6))

Spending more than is permitted – which the Commission staff refers to as overspending – is potentially a serious election violation because it could give a candidate an unfair advantage and could possibly change the results of a close race. It is therefore important for Maine Clean Election Act candidates to keep track of their total expenditures and obligations to avoid exceeding their limit.

Your 2007 campaign was permitted to spend \$8,993.02. Our understanding is that your expenditures and obligations totaled \$9,402.53, which is \$409.51 more than you were allowed. Your November 19 letter explains that in the heat of the campaign you did not remember that you owed a debt to Dyer Associates, and you had insufficient MCEA funds with which to pay that bill. You intend to pay the remaining balance of \$409.51 from your personal funds.

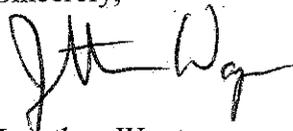
At the December 7 meeting, the staff will recommend that the Commission find that you violated 21-A M.R.S.A. § 1125(6) by spending money other than your Maine Clean Election Act funds to promote your campaign. We will also recommend that the Commission assess a penalty of \$50 against you. The recommended penalty is relatively small based on a number of considerations:

- When you realized the error, you showed good faith on November 19, 2007 by promptly telephoning Candidate Registrar Sandy Thompson, visiting our office in person with your campaign treasurer Dennis Keschl, and by writing a letter the same day explaining the overspending.
- This was your first campaign as a Maine Clean Election Act candidate, and the compressed time period of the special election did not provide you with much time to learn the restrictions of the Maine Clean Election Act program.
- Overall, you and your treasurer demonstrated a noticeable interest in complying with the requirements for Maine Clean Election Act candidates. In that context, the Commission staff finds it credible that the violation was unintentional.
- You will pay the \$409.51 from your own funds to pay the remaining debt to Dyer Associates.
- At its September 21, 2007 meeting, the Commission assessed a penalty of \$50 against a 2006 candidate for a similar violation.

Please be aware that the Commission will have the discretion to assess a penalty that is greater or less than the staff recommendation, or to assess no penalty at all. Under 21-A M.R.S.A. §1127(1), the Commission can assess a penalty of up to \$10,000 for a violation of the Maine Clean Election Act.

Please telephone Candidate Registrar Sandy Thompson or me at 287-4179 if you have any questions.

Sincerely,



Jonathan Wayne
Executive Director

cc: Dennis Keschl

November 19, 2007

Jonathan Wayne
Commission of Governmental Ethics and Election Practices
135 State House Station
Augusta, ME 04333-0135

Dear Mr. Wayne;

Thanks for meeting with my treasurer, Dennis Keschl and myself today and I hope this letter clarifies the situation I now find myself in.

In finalizing our accounting last Saturday (November 16th), while assembling the information for the 42 day report, I discovered that I had not accounted for some advertising that was purchased as I had not received a bill until then and with the consternation of six weeks of campaigning and everything going so fast, I had not remembered the bill was not received or paid. While I received the fax of the bill on the 16th it read like there was more due than there actually was so I asked for a new billing, which I received this morning (copy attached) and in reconciling the account with Dennis I became aware that there was not enough money left in the account to pay the bill of advertising (\$493.00 for three weeks of advertising), as we only had \$83.49 left as a balance, therefore, it puts me in the undesirable situation of having to pay the bill (most of it, [\$409.51]) from my own funds. Although it was in the "heat of battle" I know that it is my responsibility to keep within the rules and guidelines of the Clean Election Act and I accept full responsibility for the incident.

I realize that it also puts me in an undesirable situation with the clean election rules and with this letter ask that this matter be resolved as soon as possible, as Dennis and I would like to do the 42 day report as soon as possible. I will pay the bill and wait for a meeting with the Ethics Commission for resolution of any further consequences.

Thank you for your consideration



Clyde E. Dyar
PO Box 59
Mount Vernon, ME 04352
tel: 207-293-6740
cell: 207-592-3700

Dyer Associates
263 Main Street
Winthrop, ME 04364

Statement

Clyde Dyer Political Campaign Advertising

Display Political Ad/Community Advertiser	157.00	10/13
Display Political Ad/Community Advertiser	168.00	10/26
Display Political Ad/Community Advertiser	168.00	10/27
Total:	493.00	

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) .]

Title 21-A, §1127, Violations

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§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).]

2. Class E crime. A person who willfully or knowingly violates this chapter or rules of the commission or who willfully or knowingly makes a false statement in any report required by this chapter commits a Class E crime and, if certified as a Maine Clean Election Act candidate, must return to the fund all amounts distributed to the candidate.

[IB 1995, c. 1, §17 (new).]

IB 1995, Ch. 1, §17 (NEW).

PL 2003, Ch. 81, §1 (AMD).

PL 2005, Ch. 301, §33 (AMD).

PL 2005, Ch. 542, §6 (AMD).

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: November 29, 2007

Re: Questioned Expenditures of Paul and Pamela Hatch

This memo brings to your attention some special concerns that have arisen in the audits of two Maine Clean Election Act candidates in 2006, Paul and Pamela Hatch. In summary, the Hatches' lack of documentation for seven of their reported expenditures totaling \$2,973.54 has led the Commission staff to be concerned that the expenditures did not, in fact, occur. Below we explain the staff's concerns, and suggest a few options you may wish to consider for the December 7 meeting.¹

This memo is intended to supplement the final audit report, which outlines the auditor's findings regarding a number of issues. Our goal as Commission staff is to promote accountability for over \$3 million in public funds that are now being paid to legislative candidates every election year, while recognizing that in some cases legislative campaigns historically have been managed somewhat informally and that the record-keeping requirements must be kept reasonable to make the Maine Clean Election Act (MCEA) program viable.

Last year, Paul Hatch ran for the State Senate and Pamela Hatch ran for the State House of Representatives. Both were randomly selected for an audit. Mrs. Hatch was the treasurer for Paul Hatch's campaign. Their daughter, Victoria Hatch, was the nominal treasurer for Pamela Hatch's campaign, although we suspect that Pamela Hatch did most of the record-keeping and reporting for her own campaign as well as her husband's.

In the course of performing the audits, the Commission's auditor requested that the Hatches supply both a vendor invoice and proof of payment (such as a canceled check) for a number of selected expenditures. (As explained below, all MCEA candidates are required by statute to keep these records for all expenditures over \$50.) The campaigns were able to provide partially or full documentation for some of the expenditures. For

¹ For the purposes of this memo, the staff will treat the problems with these two campaigns as a single set of problems instead of providing the staff's position regarding each campaign separately. The reason for this is that the record-keeping deficiencies and the manner in which the campaigns operated are identical. The audit reports do treat each campaign individually and the details for each campaign can be found in those two reports.

seven of their expenditures totaling \$2,973.54, the campaigns could supply neither a vendor invoice nor a canceled check (or other proof that the vendor received payment).

Without these documents, the Commission staff cannot be confident that the campaigns, in fact, made these reported expenditures.

The Hatches are adamant that the reported expenditures truly occurred.² They further state:

- When the Hatches made the purchases, the vendors gave them receipts which they cannot locate now.
- At our request, the Hatches have gone to the Post Office and Staples to request duplicate receipts or other documents showing those expenditures were made. Both the Post Office and Staples have replied that they cannot provide such documents.
- The Hatches made the expenditures from their personal funds and expected to have the campaigns reimburse them later. They have stated that the expenditures were made in cash, although they have also provided some indication that they paid for some of the purchases by check from their personal bank accounts. They have not supplied us with any copies of checks from their personal bank accounts used to make the purchases.

Background

Requirement for Candidates to Keep Records of Expenditures

Most legislative candidates in Maine are conscientious and want to comply with the legal requirements for political candidates. The rationale for requiring candidates to keep records of their expenditures is to have documentary proof available that the expenditures that the candidates have reported are accurate. This is especially important for MCEA candidates who are spending public funds. If candidates know that the Commission may request expenditure documentation in the course of an audit, they may be more likely to file accurate financial reports and less likely to misuse MCEA funds (which is already a rare occurrence).

Since at least 1985, all legislative candidates (both publicly and privately financed) have been required to keep “a receipted bill, stating the particulars, for every expenditure in excess of \$50”:

4. Receipts preservation. A treasurer shall obtain and keep a receipted bill, stating the particulars, for every expenditure in excess of \$50 made by

² In a meeting at our office on October 12, 2006, however, they did admit that a reported 10/29/06 expenditure of \$920 for postage was actually the sum of several smaller expenditures for postage made over a period of months leading up to 10/29/06.

or on behalf of a political committee or a candidate The treasurer shall preserve all receipted bills and accounts required to be kept by this section for 2 years following the final report required to be filed for the election to which they pertain, unless otherwise ordered by the commission or a court. (21-A M.R.S.A. § 1016(4))

In 2006, the Legislature enacted special record-keeping requirements for MCEA candidates:

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;

B. A vendor invoice stating the particular goods or services purchased for every expenditure of \$50 or more; and

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.

(21-A M.R.S.A. § 1125(12-A))

The 2006 amendment added the requirement for candidates to keep canceled checks (or other proof of payment) and bank account statements. The amendment also clarified the long-standing requirement for candidates to keep a vendor invoice. These requirements were in effect beginning on April 6, 2006.

General Results of Audit Program in 2006

In 2006, the Commission undertook for the first time systematic audits of MCEA candidates. Previously, the Commission did not audit MCEA candidates in the sense of requesting documentation of expenditures, other than in isolated compliance situations.

The Commission audited 61 randomly selected legislative candidates in 2006. Not all candidates had vendor invoices or canceled checks at the beginning of their audit, but they were able to fully document all or almost all of the expenditures by the conclusion of the audit. The Hatches are unique in the very large amount of expenditures that remain undocumented.

Hatches' Campaign Experience

Pamela and Paul Hatch have had ample campaign experience in which to learn that they were statutorily required to keep receipts or invoice from vendors. Pamela Hatch has been a candidate for the Maine Senate or Maine House of Representatives in every election since 1992. Paul Hatch has been a candidate for the Legislature in every election

since 2000. They both received MCEA funding during the 2002, 2004, and 2006 elections, as shown in the Appendix.

Undocumented Expenditures

In her campaign finance reports, Pamela Hatch reported making the following expenditures, which have remained completely undocumented:

Expenditures Reported by Pamela Hatch's Campaign			
<i>Date</i>	<i>Payee</i>	<i>Expenditure Type – Remark</i>	<i>Amount</i>
10/31/06	Postmaster	Postage – Mailing	\$585.00
10/31/06	Staples	Literature – Plus Labels, Inkjet Ink, Envelopes	\$457.63
11/2/06	Postmaster	Postage – GOTV-Postcards	\$480.00
11/5/06	Staples	Literature – for leaflet drop on Sunday night and Monday	\$357.35
Total			\$1,879.98

Paul Hatch's campaign reported making the following expenditures, which have remained completely undocumented:

Expenditures Reported by Paul Hatch's Campaign			
<i>Date</i>	<i>Payee</i>	<i>Expenditure Type – Remark</i>	<i>Amount</i>
5/30/06	Staples	Literature – Printing for Postcard Mailing	\$73.56
7/30/06	John Ring	Salary – Driver	\$100
10/29/06	Postmaster	Postage – Postcard Mailing for Get Out the Vote	\$920.00
Total			\$1,093.56

The total of these expenditures is \$2,973.54. The campaigns do not have a vendor invoice or a proof of payment (such as a canceled check) for any of these seven expenditures.

The campaign reported making an expenditure of \$100 to John Ring on July 30, 2006, but confirmed in the audit that this reported payment as in error. Rather, it made four later payments of \$100 each to Mr. Ring were not included in campaign finance reports. They have described the failure to report the four later payments as an oversight.

Different Explanations for the October 29, 2006 Expenditure of \$920.00

On September 19, 2006, the Commission's auditor mailed a letter to Paul Hatch requesting more information about specific expenditures, including the reported October 29, 2006 expenditure of \$920 to the Post Office. The campaign responded with a letter dated September 24, 2007. The letter was not signed but the heading at the top of the letter indicated it was from Mr. Hatch. It stated that:

USPS dated 10/29/06 for \$920 that was reported but not documented.

This was bought by my wife/treasurer Pamela Hatch for a postcard mailing prior to the general election with cash from our personal funds. Check was made out

to reimburse her for the cost. John Ring and I had found out early on that the voter's lists supplied by the Democratic Party at no cost to us were out of date and we had listed as best we could corrections to them as we went door to door. In one instance, the Town of Bingham had post office boxes listed but no home address. In the final days of campaigning, we knew it would be impossible to send another prepaid mailing at the cost of \$5200 thru Ourso/Beychok and reach the people we needed to reach. In hindsight, it would have made sense as we look back, to have done our transactions by personal check or by credit card so we would have some proof of purchase, especially since we lost the receipt. (underlining added)

On October 12, 2006, the Hatches met with the Commission staff. We asked whether the campaign could produce the check that it used to reimburse the Hatches for the \$920 purchase of postage. Mrs. Hatch responded that the statement "Check was made out to reimburse her for the cost" was not correct, and that, in fact, she had not yet been reimbursed for the \$920 expenditure. We expressed to her our surprise that she would make a \$920 purchase of postage in cash. She replied that the reported amount of \$920 was actually not a single expenditure but was the combined total of a number of purchases made over a period of months. She showed us a receipt from the Post Office dated July 8, 2006 for the purchase of \$390 in postage and she claimed this purchase was part of the \$920 total.

The information disclosed at the October 12, 2006 meeting is unsettling in a few respects:

- If the campaign in fact made large purchases of postage over a number of months during 2006 (including July 8) that added up to \$920, the reporting of a single expenditure of \$920 on October 29, 2006 was not accurate. Also, if purchases of postage in mid-2006 were used for mailings in the middle portion of the year, the reported remark of "Postcard Mailing for Get Out the Vote" was not correct either.
- The September 24, 2006 letter from the Paul Hatch campaign incorrectly stated that the campaign had reimbursed Pamela Hatch by check for her \$920 purchase. The Paul Hatch campaign should not have included information in response to an audit request, which its treasurer (Pamela) knew to be false.
- The September 24, 2006 letter leaves the impression that the campaign in fact made a single purchase of \$920 on October 29, 2006. If the \$920 amount was actually an aggregate of a number of transactions earlier in the year, that should have been stated forthrightly in the September 24 letter.

Staff Concerns

A number of circumstances, taken together, have caused the Commission staff to become concerned that the seven expenditures totaling \$2,973.54 did not occur. We have not reached any conclusion, but there is insufficient information available at this time to

verify that the expenditures were in fact made. Our concerns are raised by the following facts:

- The campaigns do not have any documentation for the seven expenditures, other than the July 8, 2006 receipt that purportedly was part of the \$920 purchase.
- Of the 61 legislative campaigns audited at random, almost all of the campaigns were able to obtain vendor invoices and proof of payment for the expenditures selected for audit. There were a few instances in which the campaigns were only able to produce partial documentation (either a vendor invoice or a canceled check). The Hatches' inability to document \$2,973.54 in expenditures is a much larger documentation deficiency than any other 2006 legislative campaign that was audited.
- The staff is unable to find a reasonable explanation for the Hatches making such large expenditures of personal cash for campaign purchases, particularly when both campaigns had sufficient MCEA funds in checking accounts that could have been used to pay for the goods and services. For example, in the case of Pamela Hatch's campaign, she reports making four cash payments totaling \$1,880 within a six-day period right before the general election that she has been unable to document. Why would the campaign make those purchases using personal cash? If she instead made the purchases through her personal checking account, she should produce copies of the checks.
- In the context of responding to the Commission's written audit request in which the Commission requested a specific explanation for the reported 10/29/06 expenditure of \$920 by the Hatch campaign, it is disconcerting that the campaign's September 24, 2006 letter would incorrectly state that the campaign had reimbursed Pamela Hatch and would not disclose that the reported expenditure of \$920 was not accurate.

Options You May Wish to Consider

After hearing from the Hatches at the December 7 meeting, you may wish to consider some of the following options depending on your reaction to the evidence provided to date:

- A. Accept the reported expenditures.** If you are sufficiently confident that the seven reported expenditures did, in fact, occur, you could choose to find the campaigns in violation of 21-A M.R.S.A. § 1125(12-A) for not obtaining required vendor invoices and proof of payment and could assess civil penalties for those violations. The staff believes such penalties would be appropriate. Based on the evidence available at this time, however, the staff cannot recommend this option. There remains a possibility that the Hatches will come forward with additional evidence in the future that will provide greater assurance that the expenditures are genuine.

B. Request further explanation or evidence of the expenditures. In light of the Hatches' inability to produce vendor invoices or canceled checks verifying the seven expenditures, you may wish request that the Hatches produce other types of evidence that the campaign made the purchases, such as:

- Sample pieces of the "Mailing" and "GOTV-Postcards" that were sent with the postage purchased on October 31 and November 2, 2006 by the Pamela Hatch campaign. Preferably, the mailings and postcards would be postmarked to prove that the mailings were sent.
- Samples of the leaflets that were purchased by the Pamela Hatch campaign at Staples, preferably postmarked.
- Samples of the "Postcard Mailing for Get Out the Vote" that was sent with the Paul Hatch campaign's 10/29/06 purchase of \$920 in postage. If other mailings were sent with this postage earlier in the year, the campaign should provide samples. Preferably, they would be postmarked to demonstrate when the mailings occurred.
- Samples of the "Printing for Postcard Mailing" purchased from Staples on 5/30/06, preferably postmarked.
- Sworn affidavits from individuals outside the Hatch family that were involved in the mailings and leaflet drop and who can attest that these communications were in fact distributed to voters. If the individuals have direct knowledge of the purchases of postage and photocopying from the Post Office and Staples, the affidavits should include what they know about the purchases.
- Copies of bank statements and cancelled checks from the Hatches' personal bank account demonstrating that the Hatches made these purchases with personal funds – either by check or in cash.

C. Disallow the expenditures and consider punitive action. If you conclude that the seven reported expenditures did not occur, you should consider requesting the return of the \$2,973.54 in funds and may wish to consider civil penalties for false reporting or spending MCEA funds for purposes not related to a campaign.

Thank you for your consideration of this matter.

**Paul and Pamela Hatch's Participation
in the Maine Clean Election Act**

Candidate	Year	Office	District	Payments of MCEA Funds
Pamela Hatch	2002	Senate	13	\$37,924
Pamela Hatch	2004	Senate	26	\$35,136
Pamela Hatch	2006	House	85	\$11,892
<i>Total</i>				\$84,952
Paul Hatch	2002	House	98	\$6,176
Paul Hatch	2004	House	85	\$4,586
Paul Hatch	2006	Senate	26	\$23,840
<i>Total</i>				\$34,602
<i>Total for Both</i>				\$119,554



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

November 14, 2007

Audit Report No. 2006-SEN013

**Candidate: Paul R. Hatch
Senate District 26**

Background

Paul R. Hatch was a candidate for the Maine State Senate, District 26, in the 2006 general election. The Commission on Governmental Ethics and Election Practices (Commission) certified Mr. Hatch 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

Finding No. 1 – Undocumented Seed Money Expenditures: The Hatch campaign reported \$400 in seed money contributions and \$398.67 in seed money expenditures made during the qualifying period. The contributions were not deposited in the campaign bank account. The audit disclosed that none of the seed money expenditures was substantiated with a receipt, invoice, cancelled check, or other form of documentation. (See Exhibit I.) This documentation is important for verifying what goods and services were purchased and that the vendor received payment. According to the candidate and his treasurer, the contributions

were made in cash and the expenditures were paid for in cash. It is the Commission's practice to offset the initial distribution of MCEA funds by the amount of unspent seed money. In this case, the Commission deducted the cash balance of \$1.33 in the seed money report from the first payment of MCEA funds paid to the candidate. Accordingly, in the absence of bank account statements and seed money expenditure documentation, the auditor is unable to verify that the amounts of the reported contributions and expenditures are accurate and the first payment of MCEA funds to the candidate was in the correct amount.

Auditor's Note No. 1 – Mr. Hatch responded in writing to this finding (see the attachment to this report). He states that he did not deposit seed money into a bank account because he did not have a bank account opened for the purpose. The audit disclosed that the candidate maintained account number 90356368 at the Skowhegan Savings Bank, and that this account was used as the campaign bank account for the entire period of the campaign and beyond. Moreover, this account was in existence as early as the year 2005. Mr. Hatch's response does not provide any additional information as to why his qualifying period expenditures are undocumented.

Criteria: 21-A M.R.S.A. § 1125(12-A)(A), "The treasurer shall obtain and keep...[b]ank or other account statements for the campaign account covering the duration of the campaign. 21-A M.R.S.A. § 1125(12-A)(B), "The treasurer shall obtain and keep...[a] vendor invoice stating the particular goods or services purchased for every expenditure of \$50 or more...." 21-A M.R.S.A. § 1125(12-A)(C), "The treasurer shall obtain and keep...[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." Commission Rules, Chapter 3, Section 3(3), "...the Commission will deduct from the initial distribution from the Fund to a certified candidate an amount equal to the amount of unspent seed money reported by that candidate."

Recommendations: The Commission staff recommends that the Commission find the candidate in violation of 21-A M.R.S.A. § 1125(12-A)(A), (B) and (C), and consider assessing the candidate and his treasurer a penalty of \$100.

Finding No. 2 – Undocumented Maine Clean Election Act Expenditures: The Hatch campaign reported three expenditures totaling \$1,093.56 that were partly or completely undocumented (see Exhibit I). Two expenditures (\$920.00 reportedly paid to the U.S. Post Office and \$73.56 reportedly paid to Staples) had no documentation, i.e., no proof of purchase and no proof of payment. The third (a reported 7/30/2006 payment to John Ring) was initially documented by a signed statement by Mr. Ring which he later recanted. There was no proof of payment in that instance. Vendor invoices are required by the Election Law to verify that goods and services purchased were related to the campaign and the canceled check or other proof of payment is required to verify that the reported vendor received payment.

The candidate and his treasurer claim that the postal and Staples expenditures were made in cash, and that the payment to John Ring reported on the Six Day Pre-General campaign

finance report never occurred. In the absence of any supporting documentation for the postal and Staples expenditures the auditor questions whether the reported transactions were legitimate campaign expenses or in fact were actually made. With respect to the reported payment to John Ring (later disavowed), the auditor believes that in view of the conflicting statements by Mr. Ring, this expenditure is highly questionable as well.

Auditor's Note No. 2 – Mr. Hatch's written response to this finding (see the attachment to this report) does not shed any light on the missing expenditure documentation.

Criteria: 21-A M.R.S.A. § 1125(12-A)(B), "The treasurer shall obtain and keep...[a] vendor invoice stating the particular goods or services purchased for every expenditure of \$50 or more...." 21-A M.R.S.A. § 1125(12-A)(C), "The treasurer shall obtain and keep...[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." 21-A M.R.S.A. § 1127(1), "a person who violates any provision of this chapter or rules of the commission ... is subject to a fine not to exceed \$10,000 per violation payable to the fund."

Recommendations: The staff recommends that the Commission find the campaign in violation of 21-A M.R.S.A. § 1125(12-A) for not keeping vendor invoices and proof of payment for these expenditures. In the absence of any supporting documentation for the expenditures to the U.S. Post Office and Staples totaling \$993.56, the staff is unable to verify whether the reported expenses were actually made. (The campaign has acknowledged that the reported \$100 expenditure to John Ring dated July 30, 2006 did not occur, although the campaign made four later payments to him.)

The staff urges the Commission to consider whether these expenditures did, in fact, occur, taking into consideration all relevant evidence which the Commission believes is appropriate. The Commission may wish to consider two options:

- If the Commission is reasonably confident that the campaign did make the reported postal and Staples expenditures, the staff recommends assessing a penalty of \$300 for the failure to keep required vendor invoices and proof of payment under 21-A M.R.S.A. § 1125(12-A). The rationale for the penalty is that the state of Maine should be able to rely on candidates to keep the vendor invoice and proof of payment required by statute, and should not have to take a campaign's word that reported expenditures did occur.
- If, in the alternative, the Commission concludes that the campaign did not make the reported expenditures to the U.S. Post Office and Staples, the Commission should view the misreporting as a very serious violation. In that case, the staff recommends that the Commission disallow the three expenditures totaling \$1,093.56. As a result, when the reporting errors discussed in Finding No. 3 are also taken into consideration, the staff recommends that the Commission request the repayment of \$590.63 in MCEA funds. (see calculation in Finding No. 3) The Commission may also wish to

consider other civil penalties, such as a penalty for violating 21-A M.R.S.A. § 1125(6) by using MCEA funds for purposes that were not campaign-related and a penalty for violating 21-A M.R.S.A. § 1125(12) by misreporting expenditures of MCEA funds. The Commission may assess a penalty of up to \$10,000 for any violation of the MCEA.

Finding No. 3 – Unreported Primary and General Election Campaign Expenditures: As part of his review of campaign records, the auditor determined that the Hatch campaign made five campaign payments totaling \$461.30 (see Exhibit I) that were not publicly disclosed in campaign finance reports submitted to the Commission. In addition to the lack of public disclosure; the failure to report the expenditures also affects the final cash balance for the campaign which must be returned after the general election. The candidate returned \$992.83 of authorized but unspent MCEA funds to the Commission after the general election. If the questioned amount of \$1,093.56 in Finding No. 2 is disallowed, then the adjusted ending balance should be \$1,583.46, and the candidate should return an additional \$590.63 to the Maine Clean Election Fund (see Exhibit II).

Criteria: 21-A M.R.S.A. § 1017(5), “A report required under this section...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.” 21-A M.R.S.A. § 1125(12), “...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.”

Recommendations: The Commission staff recommends that the Commission find the candidate in violation of 21-A M.R.S.A. §§ 1017(5) and 1125(12) for not accurately reporting the five campaign expenditures and assess the candidate and his treasurer a penalty of \$250. As noted in Finding No. 2, if the Commission concludes that the reported expenditures of \$920 to the U.S. Post Office and \$73.56 to Staples were not truthful, it may wish to consider additional penalties.

Finding No. 4 – Misreported Campaign Expenditures: The Hatch campaign misreported two payments made to Poli Graphics, a vendor of printed materials. Details of the transactions follow:

<u>Transaction Date</u>	<u>Reported Amount</u>	<u>Amount Paid</u>	<u>Variance</u>
5/12/2006	\$1,643.07	\$1,797.55	\$154.48
7/27/2006	\$708.35	\$595.50	(\$112.85)
Totals	\$2,351.42	\$2,393.05	\$41.63

The payment dated 5/12/2006 was remitted to the vendor by the campaign treasurer and later reimbursed to her in the correct amount. The error is in the amount reported on the campaign finance report. The expenditure dated 7/27/2006 was paid to the vendor in the amount of \$595.50, reported to the Commission as \$708.35, and reimbursed to the campaign treasurer in the amount of \$708.35. According to the campaign treasurer, the reported

amounts were based on telephone quotes for services provided by the vendor at the time services were ordered.

Auditor's Note No. 3 – Mr. Hatch responded in writing to this finding (see the attachment to this report). He claims the reimbursement to Mrs. Hatch in the amount of \$708.35 was based on the payment to *PoliGraphics* of \$595.50 and payment to *Spirit Line* of \$112.78. The audit disclosed the following: (a) Mr. Hatch reported a payment to *PoliGraphics* of \$708.35 dated 7/27/2006 in his Six Day Pre-General campaign finance report. He also listed a payment to *Spirit Line* 46787 of \$112.85 dated 7/27/2006 in the same report. The reimbursement check paid to Mrs. Hatch in the amount of \$708.35 noted on the memo line “AARP credit card poligraphics” (no mention of *Spirit Line*). The auditor examined the AARP annual statement for 2006 issued to Mr. Hatch, and only the *PolyGraphics* expenditure of \$595.50 was listed. The candidate has not provided the auditor with any documentation to support the claimed *Spirit Line* payment. At the very least based upon Mr. Hatch's statement, his campaign overstated the *PolyGraphics* expenditure by \$112.85; however, without additional evidence, the auditor has no basis to change the finding.

Criteria: 21-A M.R.S.A. § 1017(5), “A report required under this section...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. 21-A M.R.S.A. § 1125(12), “...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.”

Recommendations: The Commission staff recommends that the Commission find the candidate in technical violation of 21-A M.R.S.A. §§ 1017(5) and 1125(12) for not reporting the correct amounts and for not amending the campaign reports after the accurate amounts became available. This type of error is not uncommon, and therefore the Commission staff recommends no penalty assessment. The staff also recommends that the Commission direct Mr. Hatch to amend his reports to reflect the correct amount of campaign expenditures.

Finding No. 5 – Commingling of Funds: Mr. Hatch used an existing bank account at the Skowhegan Savings Bank as his campaign account. The account balance at the beginning of April, 2006 was \$507.38. Mr. Hatch transferred \$450 of this amount to another account he maintained at Skowhegan Savings Bank during April. In addition, he purchased checks for the campaign from these non-MCEA funds in April. On May 3, 2006, the balance of non-MCEA funds in the account was \$46.08 (see Exhibit I). Mr. Hatch thus commingled his MCEA funds with the \$46.08 in personal funds.

Criteria: 21-A M.R.S.A. § 1016(1), “All funds of a political committee and campaign funds of a candidate must be segregated from, and may not be commingled with, any personal funds of the candidate, treasurer or other officers, members or associates of the committee.” 21-A M.R.S.A. § 1125(7-A), “The campaign funds must be segregated from, and may not be commingled with, any other funds.”

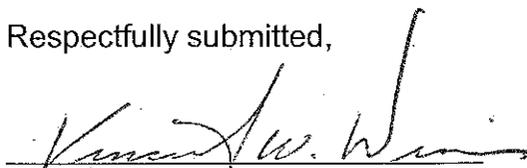
Recommendations: The Commission staff believes the candidate violated the cited provisions by commingling MCEA funds with some personal funds. However, we have found this to be a common error among candidates who deposit the minimum required amount by the bank to open or maintain an account with non-MCEA funds, and once they receive their MCEA distribution from the Commission, they forget to reimburse themselves for the original deposit amount. Normally, the staff does not recommend penalizing candidates in this situation. Accordingly, we recommend a finding of technical violation of 21-A M.R.S.A. § 1125(7-A) but with no penalty assessment.

Finding No. 6 -- Unexplained Excess Balance in the Campaign Bank Account: The Hatch campaign reported an ending balance of \$992.83 in their 42 Day Post-General campaign finance report. This amount was repaid to the Maine Clean Election Fund. The audit disclosed however, that the balance in the campaign bank account after all reported campaign transactions had been accounted for was \$2,214.36. The audit further determined that this cash balance included an intended travel reimbursement to the candidate of \$1,689.96 which was reported but not actually made. In addition, the bank balance included the \$46.08 in non-MCEA funds discussed above. After accounting for unreported and unreimbursed campaign expenses, an unexplained balance of \$478.32 of MCEA fund remained in the account (see Exhibit I). The Commission staff provided the candidate and his treasurer with an opportunity to explain why the campaign should be allowed to use the \$478.32 for any unpaid campaign obligations, but on October 26, 2007, the campaign chose instead to refund the \$478.32 to the Maine Clean Election Fund. The Commission staff believes that no further action regarding this finding is warranted.

Candidate's Comments

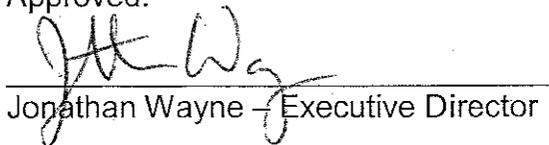
Mr. Hatch's comments on the audit findings and recommendations are attached.

Respectfully submitted,



Vincent W. Dinan – Staff Auditor

Approved:



Jonathan Wayne – Executive Director

CANDIDATE: PAUL R. HATCH
 SENATE DISTRICT 26
 AUDIT OF 2006 CAMPAIGN FINANCE REPORTS

VENDOR	DATE	AMOUNT	REPORTING PERIOD
Undocumented Seed Money Expenditures			
Postmaster 04976	1/18/2006	\$156.00	Seed Money
Staples	1/20/2006	\$73.50	Seed Money
WalMart 04976	2/5/2006	\$52.40	Seed Money
WalMart 04976	3/12/2006	\$9.41	Seed Money
Postmaster 04976	3/13/2006	\$48.00	Seed Money
Big Apple 04976	4/10/2006	\$39.36	Seed Money
Big Apple 04976	4/15/2006	<u>\$20.00</u>	Seed Money
Total		<u>\$398.67</u>	

Unreported Primary and General Election Expenditures

John Ring	8/4/2006	\$150.00	Six Day Pre-General
John Ring	8/30/2006	\$100.00	Six Day Pre-General
John Ring	9/18/2006	\$100.00	Six Day Pre-General
John Ring	10/5/2006	\$100.00	Six Day Pre-General
Harland Checks	4/19/2006	<u>\$11.30</u>	Six Day Pre-Primary
Total		<u>\$461.30</u>	

Undocumented Primary and General Election Expenditures

John Ring	7/30/2006	\$100.00	Six Day Pre-General
Postmaster 04976	10/29/2006	\$920.00	42 Day Post-General
Staples	5/30/2006	<u>\$73.56</u>	Six Day Pre-Primary
Total		<u>\$1,093.56</u>	

CANDIDATE: PAUL R. HATCH
 SENATE DISTRICT 26
 AUDIT OF 2006 CAMPAIGN FINANCE REPORTS

VENDOR	DATE	AMOUNT	REPORTING PERIOD
Banking Issues			
Non-MCEA Bal. @ 4/3/2006		\$507.38	
Add: seed money deposited and any MCEA funds		\$0.00	
Subtotal		\$0.00	
Less:			
Transfer to Acct 4000336 (non-campaign)		(\$450.00)	
Payment for campaign checks made with non-MCEA funds		(\$11.30)	
Non-MCEA Bal. on 5/3/2006		\$46.08	

Reconciliation of funds remaining in the campaign bank account:

Balance at 8/16/2007	\$2,214.36
Less:	
Unreimbursed fuel costs	(\$1,689.96)
Non-MCEA funds	(\$46.08)
Unreconciled balance	\$478.32

AUDIT OF 2006 CAMPAIGN FINANCE REPORTS**CANDIDATE: PAUL R. HATCH****SENATE DISTRICT: 26****MODE OF CAMPAIGN FINANCING: MCEA****Adjustments to the ending Balance Reported in the 42 Day Post-General Report**

Ending Balance per 42DPG Report	\$992.83
Add: Postage reported but not paid	\$920.00
Add: Staples reported but not paid	\$73.56
Add: J. Ring Reported but not paid	\$100.00
Less: J. Ring paid but not reported	(\$150.00)
Less: J. Ring paid but not reported	(\$100.00)
Less: J. Ring paid but not reported	(\$100.00)
Less: J. Ring paid but not reported	(\$100.00)
Less: checks purchased but not reported	(\$11.30)
Less: net unreported PoliGraphics payments	(\$41.63)
Adjusted Ending Balance	\$1,583.46

Adjustments to the Ending Balance in the Campaign Bank Account

Ending Bank Balance per Jan., 2007 Statement	\$2,214.36
Less: unreimbursed travel costs	(\$1,689.96)
Less: Non-MCEA funds	(\$46.08)
Adjusted Ending Bank Balance	\$478.32

Memo: On Audit Report No. 2006-SEN26 from Paul R. Hatch

To: Executive Director Mr. Wayne, Mr. Dinan and
MCEA Commission Members

Finding No. 1

The sum of \$400.00 was donated by family members.

Pamela Hatch (wife) \$100.00
Victoria Hatch (daughter) \$100.00
Paula Ridley (daughter) \$100.00
Paul Hatch (myself) \$100.00

This money was not deposited in an account because I did not have the Bank account opened at the time. All the funds except \$1.33 were used for campaign purposes to raise the Five dollar contributions. They included a mailing, supplies for the mailing, thank you notes, postage and gasoline to pick up contributions and verify that those who had donated were voters in my district. Had I not had the opportunity to qualify as a clean election candidate I would have had to raise funds for my campaign by begging from other sources and/or using some of my retirement. The only other option was not to be a candidate at all.

Finding No. 2

Undocumented expenditures in the amount of \$1093.56 were made in cash. Stamps and mailing supplies were bought. Although cash receipts were received we have been unable to find them. We were unable to get copies from either Post office or Staples. The reason we paid cash was that in my previous campaign in 2002 we were called a few days before election by the ethics commission and told we could spend quite a sum of money and were unable to get newspaper, local radio ads or T.V. ads because of the time line. The decision was made to purchase stamps and supplies with our own money and send a mailing if additional money became available. Also in regards to Mr. Ring he is one of the most honest people we know. He donated much more time than the small amount we paid to him from the campaign, driving me from town to town and even walking long distances as I canvassed door to door, putting up with heat in June, July and August, black flies, dogs, keeping notes for me on my voters list, doing parades, leaflet drops, helping at the fair booth in Skowhegan and eating hot dogs because they were cheap and paying for his own lunches most of the time. He just made a mistake about the payment in July.

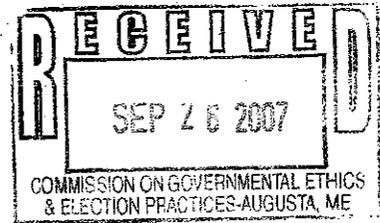
Finding No. 4

The finding of the Auditor Mr. Dinan was a little confusing the correct amount for polygraphics was \$ 595.50 a check was made out to my wife for \$708.35 but included the credit card billing for both polygraphics (signs) and Spirit Line (parade decorations for \$112.85). Have copies of both credit card billings and a 1st place trophy we won at the Norridgewock Labor Day parade for best politically decorated vehicle.

Paul R. Hatch
23 French Street
Skowhegan, Maine
04976-1614

September 24, 2007

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



*By Certified
Mail*

Dear Mr. Dinan,

Received your letter dated September 19, 2006 requesting information for the following items.

USPS dated 10/29/06 for \$920.00 that was reported but not documented.

This was bought by my wife/treasurer Pamela Hatch for a postcard mailing prior to the general election with cash from our personal funds. Check was made out to reimburse her for the cost. John Ring and I had found out early on that the voter's lists supplied by the Democratic Party at no cost to us were out of date and we had listed as best we could corrections to them as we went door to door. In one instance the Town of Bingham had Post Office boxes listed but no home address. In the final days of campaigning we knew it would be impossible to send another prepaid mailing at the cost of \$5200.00 thru Ourso/Beychok and reach the people we needed to reach. In hindsight it would have made sense, as we look back to have done our transactions by personal check or by credit card so we would have had some proof of purchase especially since we lost the receipt.

Staples dated 5/30/06 for \$73.56 that was reported but not documented.

This was again an item paid by cash by my wife/treasurer Pamela Hatch. This was to make sure that friends and neighbors who are Dems who supported me and others who were Dems and made contributions to the Maine Clean Election fund were encouraged to get out to vote so I would qualify for a the general election. We also made numerous phone calls but knew that with our schedules we would be unable to finish the job before the primaries so we decided to do the mailing concept too.

John Ring dated 7/30/06 for \$100.00 that was not reported.

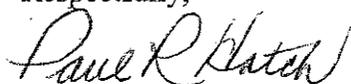
After reaching Mr. Ring this last week-end on his cell phone (he was in Portland) and unable to get any reception, he called this morning from his home in Pittsfield. My wife asked about the July 30th payment and asked if I had paid by cash or personal check. The answer was no that he and Paul had talked about everything being documented. He brought a letter today stating that he made a mistake. Letter is enclosed.

John Ring dated 8/4/06 for \$150.00, 8/30/06 for \$100.00, 9/18/06 for \$100.00 and 10/5/06 for \$100.00 that was not reported.

This was an oversight and my wife /treasurer Pamela Hatch sent an amended report on the 20th prior to receiving your letter dated the 19th. The item above was not reported because we wanted to make sure that we talked to John about the matter before we amended the report and included the July payment.

Thank you Mr. Dinan for your patience and consideration over the last several weeks and for your professionalism and the numerous times you sat with us and explained what was needed to complete the report.

Respectfully,

A handwritten signature in cursive script that reads "Paul R. Hatch". The signature is written in dark ink and is positioned above the printed name.

Paul R. Hatch

Agenda

Item #5



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

November 27, 2007

Audit Report No. 2006-HR048

**Candidate: Pamela H. Hatch
House District 85**

Background

Pamela H. Hatch was a candidate for the Maine House of Representatives, District 85, in the 2006 general election. The Commission on Governmental Ethics and Election Practices (Commission) certified Ms. Hatch 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 her 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

Finding No. 1 – Undocumented Seed Money Expenditures: The Pamela Hatch campaign reported \$200 in seed money contributions and \$199.65 in seed money expenditures made during the qualifying period. The contributions were not deposited in the campaign bank account. The audit disclosed that none of the seed money expenditures was substantiated with a receipt, invoice, cancelled check, or other form of documentation. (See Exhibit I) This documentation is important for verifying what goods and services were purchased and that the vendor received payment. According to the candidate, the contributions were made in

cash and the expenditures were paid for in cash. It is the Commission's practice to offset the initial distribution of MCEA funds by the amount of unspent seed money. In this case, the Commission deducted the cash balance of \$.35 in the seed money report from the first payment of MCEA funds paid to the candidate. Accordingly, in the absence of bank account statements and seed money expenditure documentation, the auditor is unable to verify that the amounts of the reported contributions and expenditures are accurate and the first payment of MCEA funds to the candidate was in the correct amount.

Criteria: 21-A M.R.S.A. § 1125(12-A)(A), "The treasurer shall obtain and keep...[b]ank or other account statements for the campaign account covering the duration of the campaign. 21-A M.R.S.A. § 1125(12-A)(B), "The treasurer shall obtain and keep...[a] vendor invoice stating the particular goods or services purchased for every expenditure of \$50 or more...." 21-A M.R.S.A. § 1125(12-A)(C), "The treasurer shall obtain and keep...[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." Commission Rules, Chapter 3, Section 3(3), "...the Commission will deduct from the initial distribution from the Fund to a certified candidate an amount equal to the amount of unspent seed money reported by that candidate."

Recommendations: The Commission staff recommends that the Commission find the candidate in violation of 21-A M.R.S.A. § 1125(12-A)(A), (B) and (C), and consider assessing the candidate and her treasurer a penalty of \$100.

Finding No. 2 – Undocumented Maine Clean Election Act Expenditures: The Pamela Hatch campaign reported four expenditures totaling \$1,879.98 that were completely undocumented (see Exhibit I). The candidate claims all four expenditures – two to the Postmaster and two to Staples – were made in cash. In the absence of any supporting documentation for the postal and Staples expenditures, the auditor questions whether the reported transactions were legitimate campaign expenses or in fact were actually made.

Criteria: 21-A M.R.S.A. § 1125(12-A)(B), "The treasurer shall obtain and keep...[a] vendor invoice stating the particular goods or services purchased for every expenditure of \$50 or more...." 21-A M.R.S.A. § 1125(12-A)(C), "The treasurer shall obtain and keep...[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." 21-A M.R.S.A. § 1127(1), "a person who violates any provision of this chapter or rules of the commission ... is subject to a fine not to exceed \$10,000 per violation payable to the fund."

Recommendations: The Commission staff recommends that the Commission find the candidate in violation of 21-A M.R.S.A. § 1125 (12-A) (B) and (C). The staff also recommends that the Commission consider the following alternatives for addressing the violation:

- a. If the Commission determines that the \$1,879.98 in undocumented expenditures was not made by the candidate for the purposes of her campaign, then the staff recommends that the Commission direct Ms. Hatch to return the full amount to the Maine Clean Election Fund. In this instance, the Commission should also consider imposing a significant penalty for false reporting and mis-use of public funds.
- b. If, on the other hand, the Commission concludes that the questioned expenditures listed in the exhibit were legitimately made by the candidate, then the staff recommends that the Commission assess the candidate with a penalty of \$500.

The actual mechanics of the alternate payment processes are discussed below under Finding No. 5 which concerns the campaign's questioned bank balances.

Finding No. 3 – Undocumented Maine Clean Election Act Payment: The Pamela Hatch campaign reported an expenditure for postage on 5/29/2006 in the amount of \$78.00. The campaign records included a postal receipt in that amount, but there was no disbursement on record from the campaign bank account. The auditor was therefore unable to determine that the expenditure was made for a campaign purpose. The candidate informed the auditor that she paid the expenditure in cash, but there was no record of reimbursement to the candidate on file.

Criterion: 21-A M.R.S.A. § 1125(12-A)(C), "The treasurer shall obtain and keep...[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."

Recommendations: The Commission staff recommends that the Commission find Ms. Hatch in violation of 21-A M.R.S.A. § 1125 (12-A) (C). The staff also recommends that the Commission consider the following alternatives for addressing the violation:

- c. If the Commission determines that the \$78.00 reported expenditure was not made by the candidate for the purposes of her campaign, then the staff recommends that the Commission direct Ms. Hatch to return the full amount to the Maine Clean Election Fund. In this instance, the commission should also consider imposing a significant penalty for false reporting and mis-use of public funds.
- d. If, on the other hand, the Commission concludes that the questioned expenditure listed in Exhibit I was legitimately made by the candidate, the staff recommends no additional action other than the finding of violation 21-A M.R.S.A. § 1125 (12-A) (C).

The actual mechanics of the alternate payment processes are discussed below under Finding No. 5 which concerns the campaign's questioned bank balances.

Finding No. 4 – Commingling of Funds: Pamela Hatch used an existing bank account at the Taconnet Federal Credit Union as her campaign account. The account balance at the beginning of April, 2006 was \$98.16. Ms. Hatch withdrew \$50.00 from this account on April 6, 2006. She also purchased checks for the campaign from these non-MCEA funds in April. On April 30, 2006, the balance of non-MCEA funds in the account was \$35.91. Subsequently, on May 8, 2006, the Commission deposited \$511.65 in the account and at that point commingling occurred. Moreover, the original amount of non-MCEA funds was never withdrawn or reimbursed to or by the campaign.

Criteria: 21-A M.R.S.A. § 1016(1), "All funds of a political committee and campaign funds of a candidate must be segregated from, and may not be commingled with, any personal funds of the candidate, treasurer or other officers, members or associates of the committee." 21-A M.R.S.A. § 1125(7-A), "The campaign funds must be segregated from, and may not be commingled with, any other funds."

Recommendations: The Commission staff believes the candidate violated the cited provisions by commingling MCEA funds with some personal funds. However, we have found this to be a common error among candidates who deposit the minimum required amount by the bank to open or maintain an account with non-MCEA funds, and once they receive their MCEA distribution from the Commission, they forget to reimburse themselves for the original deposit amount. Normally, the staff does not recommend penalizing candidates in this situation. Accordingly, we recommend a finding of technical violation of 21-A M.R.S.A. § 1125(7-A) but with no penalty assessment.

Finding No. 5 – Unexplained Excess Balance in the Campaign Bank Account: The Pamela Hatch campaign reported an ending balance of \$113.75 in their 42 Day Post-General campaign finance report. This amount was repaid to the Maine Clean Election Fund. The audit disclosed however, that the balance in the campaign bank account after all reported campaign transactions had been accounted for was \$4,461.21. The auditor concluded that the following adjustments were in order:

TRANSACTION	DATE	AMOUNT
Campaign Bank Balance	12/31/2006	\$4,461.21
Less:		
Unreimbursed Travel	11/14/2006	\$ 92.52
Non-MCEA Funds in the Account	4/18/2006	\$ 35.91
Unreimbursed "Copy Center" Invoice Originally Mis-reported on 42SPG	10/31/2006	\$ 1,936.25
Adjusted Bank Balance		\$ 2,396.53

After accounting for unreported, mis-reported, and unreimbursed campaign expenses, an unsupported balance of \$2,396.53 of MCEA funds remains. The candidate and her treasurer provided a reconciliation on October 22, 2007 that purported to reconcile the ending balance in the bank account with the campaign's reported expenditures. Although the transactions

listed agreed within \$.35 (\$4,461.21 per the bank compared to \$4,461.56 per the candidate), \$2,396.88 of the listed items remain undocumented and are questioned by the auditor. The candidate is claiming that the \$2,396.88 in expenditures was for legitimate campaign-related purchases that she made out of her personal funds and she deserves to use her remaining campaign funds to reimburse herself for these purchases. Exhibit II sets forth the details of the reconciliation.

Criterion: 21-A M.R.S.A. § 1125 (12), "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 all general elections that candidate shall return all unspent fund revenues to the commission."

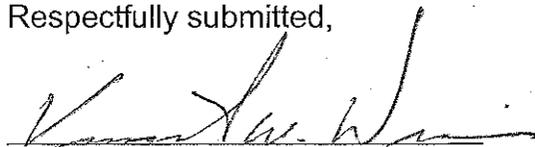
Recommendations: The Commission staff recommends that the Commission consider the following alternatives:

- e. Exhibit II shows a balance adjusted for unreimbursed expenditures of \$2,396.53. If the Commission determines that the referenced expenditures were not made by the candidate for the purposes of her campaign, then the staff recommends that the Commission direct Ms. Hatch to return the adjusted bank balance of \$ 2,396.53. In addition, the Commission should consider assessing penalties for false reporting and mis-use of public funds.
- f. If, on the other hand, the Commission concludes that the questioned expenditures listed in the exhibit were legitimately made by the candidate, then the staff recommends that the Commission take no further action on the finding and permit the candidate to use the adjusted bank balance of \$ 2,396.53 to reimburse herself for campaign expenditures she made from her personal funds.

Candidate's Comments

Ms. Hatch's comments on the audit findings and recommendations are attached.

Respectfully submitted,



Vincent W. Dinan - Staff Auditor

Approved:



Jonathan Wayne - Executive Director

AUDIT OF 2006 CAMPAIGN FINANCE REPORTS

CANDIDATE: PAMELA H. HATCH

HOUSE DISTRICT: 85

MODE OF CAMPAIGN FINANCING: MCEA

FINDINGS

TRANSACTIONS	DATE	AMOUNT
Undocumented Seed Money Expenditures		
Postmaster 04976	1/9/2006	\$102.00
Staples	1/30/2006	\$69.36
WalMart 04976	3/15/2006	\$28.29
Total		\$199.65

Missing Payment Documentation

Postmaster 04976	5/29/2006	\$78.00
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Completely Undocumented Expenditures

Postmaster 04976	10/31/2006	\$585.00
Postmaster 04976	11/2/2006	\$480.00
Staples	10/31/2006	\$457.63
Staples	11/5/2006	\$357.35
Total		\$1,879.98

RECONCILIATION OF UNREIMBURSED EXPENSES WITH ENDING BANK BALANCE

Ending Bank Balance	12/31/2006	\$4,461.21
Less:		
Unreimbursed TRV Expense		(\$92.52)
Non-MCEA Funds		(\$35.91)
Subtotal		\$4,332.78
Less:		
The Copy Center (reported as Maine Street Solutions)	10/31/2006	(\$1,936.25)
Unreconciled Campaign Bank Balance		\$2,396.53

AUDIT OF 2006 CAMPAIGN FINANCE REPORTS

CANDIDATE: PAMELA H. HATCH

HOUSE DISTRICT: 85

MODE OF CAMPAIGN FINANCING: MCEA

RECONCILIATION OF UNREIMBURSED EXPENSES WITH ENDING BANK BALANCE

TRANSACTION	DATE	AMOUNT
Ending Bank Balance	12/31/2006	\$4,461.21
Less:		
Unreimbursed TRV Expense		(\$92.52)
Non-MCEA Funds		(\$35.91)
Subtotal		\$4,332.78
Less:		
The Copy Center (reported as Maine Street Solutions)	10/31/2006	(\$1,936.25)
Subtotal		\$2,396.53
OCTOBER 22, 2007 RECONCILIATION SUBMITTED BY PAMELA HATCH:		
Ending Bank Bal.	12/31/2006	\$4,461.21
Less:		
Unreimbursed Travel		(\$92.52)
Non-MCEA Funds in the Account		(\$35.91)
Unreimbursed "Copy Center" Invoice ##		(\$1,936.25)
Subtotal		\$2,396.53
Less: Reconciling but Undocumented items:		
Postmaster #	5/29/2006	(\$78.00)
Postmaster **	5/29/2006	(\$78.00)
Staples **	5/29/2006	(\$78.26)
Postmaster **	10/31/2006	(\$585.00)
Postmaster **	11/2/2006	(\$480.00)
Staples **	10/31/2006	(\$457.63)
Staples **	11/5/2006	(\$357.35)
Al's Pizza **	11/6/2006	(\$146.57)
Staples **	11/10/2006	(\$136.07)
Subtotal		(\$2,396.88)
Unreconciled Balance		(\$0.35)

NOTES:

Postal receipt; no campaign disbursement

** No proof of purchase or proof of payment

Unreimbursed payment to the "Copy Center", originally reported as payment to "Maine Street Solutions"; vendor invoice and cancelled check from personal (non-campaign) bank account on file.

11/26/07

Sent e-mail and regular mail

ATTACHMENT

Pamela H. Hatch
23 French Street
Skowhegan, Maine 04976-1614

Memo: On Audit Report No. 2006-HRO48 from Pamela H. Hatch
To: Executive Director Mr. Wayne, Mr. Dinan and MCEA Commission Members

Finding No. 1

The sum of \$200.00 dollars was a contribution from my husband and me for seed money. Each of us contributed \$100.00 to be used to do a mailing and collect the required number of five dollar contribution. I decided that I would not ask other people to donate because I didn't need to raise a huge amount of money as I had enough time to not only do the mailing but also do the follow-up phone calls and going to peoples homes to pick up the contributions. The mailing was a common practice. All the expenses were paid in cash and I did not open the bank account until I had qualified as a MCEA candidate.

The other findings in the report were for undocumented items that were purchased and used for my campaign. These included printing, mailings, supplies and to feed my campaign help in the final days of the campaign. I had the receipts and reported the amounts in the reporting periods of 2006. During the campaign I used our personal funds at times to purchase items knowing I would be reimbursed. To try and find all the information I wrote, called and talked to vendors and tried to get copies of statements. I was successful with some but others I was told the receipt I received at point of purchase was it. My daughter and I have spent many, many days over the last several months going thru every room and box in our house to try to find the missing information (not an easy task as we have lived here for better than 25 years). We had little success.

Agenda

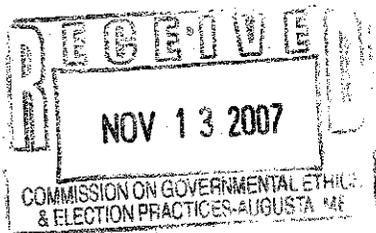
Item #6



PORTLAND MAINE

Strengthening a Remarkable City, Building a Community for Life www.portlandmaine.gov

Corporation Counsel
Gary C. Wood



November 9, 2007

Associate Counsel
Elizabeth L. Boynton
Penny Littell
James R. Adolf
Mary E. Costigan

Gavin O'Brien
Commission on Governmental Ethics
And Election Practices
135 State House Station
Augusta, ME 04333-0135

RE: Letter Dated October 23, 2007 Concerning Late Filing of September Lobbyist Monthly Disclosure Report

Dear Mr. O'Brien:

I am respectfully requesting that the Commission make a final penalty determination in relation to the late filing of the City's September lobbyist monthly disclosure report and not impose the \$100 fine noted in your letter dated October 23, 2007 (attached).

The reason that the City was late with this one report is that the position of City Lobbyist was in transition between myself and my office (Corporation Counsel) and Assistant City Manager Patricia Finnigan who works in the City Manager's office. There was confusion between our offices as to who was responsible for filing the September report which is why it was filed late.

In behalf of the City I would also note that we have never been late with any prior filings and always done our best to report any lobbying effort as required by law.

As a municipality we try to make sure that all of our taxpayer's dollars are spent in the interest of the taxpayers and we hope that you will forgive this one late filing and the \$100 penalty.

Thank you for your consideration.

Sincerely,

Gary C. Wood
Corporation Counsel and former Lobbyist
for the City of Portland

cc: Pat Finnigan, Assistant City Manager and Lobbyist for City of Portland



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

OCT 23 2007

To: Gary Wood, Lobbyist for:
 City of Portland

From: Gavin O'Brien

Date: October 23, 2007

Each registered lobbyist is required to file monthly reports with the Commission on Governmental Ethics and Election Practices no later than 15 calendar days following the month that is the subject of the report. Reports are due by 5:00 p.m. Any person who fails to file a timely report may be assessed a penalty of \$100 for every month the report is late. You filed your September Lobbyist Monthly Disclosure report on 10/16/07. The penalty is \$100.

If you agree with this preliminary penalty determination, you may use the attached billing statement to pay that amount within 30 days of the date of this notice. Please mail your remittance to the Commission on Governmental Ethics and Election Practices, 135 State House Station, Augusta, Maine 04333.

However, if you have a valid reason for filing late, you may request the Commission to make a final penalty determination. The Commission will notify you of the disposition of your case within 10 days after its determination.

Any person who fails to file a report or pay a fee may be suspended from further lobbying by written notice of the Commission until such failure is corrected.

Please direct any questions you may have about this matter to the Commission at (207) 287-4179.

cc: City of Portland

Cut Along Dotted Line

To: Commission on Governmental Ethics
 and Election Practices
 135 State House Station
 Augusta, Maine 04333

From: Gary Wood, Lobbyist for:
 City of Portland

Re: Penalty for late filing of the September Lobbyist Disclosure Report (\$100)

Amount Enclosed: \$ _____

Check/M.O. No.: # _____

Please make Check or Money Order Payable to Treasurer, State of Maine

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


[Menu](#)
[Home](#)
[Help](#)
[Logout](#)
[Change Password](#)
[✓ Popup Help](#)

Multiple Reports for Mr. Gary Wood

Monthly Report - Long Form

Report Description	Report Status	Report Date		
December -- 2006	Filed	1-2-2007	Delete	Print
January -- 2007	Filed	2-13-2007	Delete	Print
February -- 2007	Filed	3-9-2007	Delete	Print
March -- 2007	Filed	4-17-2007	Delete	Print
April -- 2007	Filed	5-11-2007	Delete	Print
May -- 2007	Filed	6-15-2007	Delete	Print
June -- 2007	Filed	7-12-2007	Delete	Print
July -- 2007	Filed	8-3-2007	Delete	Print
August -- 2007	Filed	9-4-2007	Delete	Print
September -- 2007	Filed	10-16-2007	Delete	Print

[Search](#)
[Add](#)
[Top](#)
[Page Up](#)
[Page Dn](#)
[End](#)
[Report Menu](#)

Instructions to:

Create new monthly report - click the Add button

****See Help Menu for Instructions****

Title 3, §319, Penalty

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PLEASE NOTE: The Revisor's Office CANNOT perform research for or provide legal advice or interpretation of Maine law to the public. If you need legal assistance, please contact a qualified attorney.

§319. Penalty

1. Failure to file registration or report. Any person who fails to file a registration or report as required by this chapter may be assessed a fine of \$100 for each person listed or who should have been listed on the lobbyist registration for every month the person fails to register or is delinquent in filing a report pursuant to section 317. The commission may waive the penalty in whole or in part if the commission determines the failure to register or report was due to mitigating circumstances.

[1993, c. 691, §22 (rpr).]

1-A. Notice of suspension. Any person who fails to file a report or pay a fee as required by this chapter may be suspended from further lobbying by written notice of the commission until such failure is corrected.

[1993, c. 446, Pt. B, §12 (amd).]

2.

[1979, c. 632, §3 (rp).]

3. Exemption. Notwithstanding section 317, subsection 1, a registered lobbyist is exempt from the penalty imposed under this section if, while the Legislature is convened in special session, the lobbyist failed to file a report with the commission pursuant to section 317 if no lobbying has been performed during that special session.

[1993, c. 446, Pt. B, §13 (amd).]

PL 1975, Ch. 576, § (NEW).

PL 1975, Ch. 621, §2 (RP).

PL 1975, Ch. 724, § (REN).

PL 1977, Ch. 696, §17 (AMD).

PL 1979, Ch. 632, §3 (RPR).

PL 1989, Ch. 114, § (AMD).

PL 1991, Ch. 465, §2 (AMD).

PL 1993, Ch. 446, §A15, B11-13 (AMD).

PL 1993, Ch. 691, §22 (AMD).

Agenda

Item #7

O'Brien, Gavin

From: Benjamin Collings [ben2klucia@yahoo.com]
Sent: Thursday, November 15, 2007 12:22 PM
To: O'Brien, Gavin
Subject: Re: Lobbyist Report

Mr. O'Brien,

Last month, I wasn't able to file my report on Oct. 15 by 5:00 pm. I believe I filed the report 15- 20 minutes after 5:00 pm.

Since then, you have sent me a letter with a \$100 fine.

I believe this action to be very dramatic and I would like to appeal this penalty of \$100. I am not a well paid lobbyist and I haven't been lobbying since June. I understand the importance of deadlines so you are able to monitor the political activity in Maine but I believe that the Ethics Commission can exercise discretion in such a case. I have never intentionally tried to circumvent the laws of Maine and I believe that you can excuse such a case just like other government agencies do when they have details regarding individual cases.

Thank you for your attention.

Benjamin T. Collings

Get easy, one-click access to your favorites.
Make Yahoo! your homepage.
<http://www.yahoo.com/r/hs>



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

To: Benjamin Collings, Lobbyist for:
Penobscot Nation

From: Gavin O'Brien

Date: October 23, 2007

Each registered lobbyist is required to file monthly reports with the Commission on Governmental Ethics and Election Practices no later than 15 calendar days following the month that is the subject of the report. Reports are due by 5:00 p.m. Any person who fails to file a timely report may be assessed a penalty of \$100 for every month the report is late. You filed your September Lobbyist Monthly Disclosure report after 5:00 p.m. on 10/15/07. The penalty is \$100.

If you agree with this preliminary penalty determination, you may use the attached billing statement to pay that amount within 30 days of the date of this notice. Please mail your remittance to the Commission on Governmental Ethics and Election Practices, 135 State House Station, Augusta, Maine 04333.

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Please direct any questions you may have about this matter to the Commission at (207) 287-4179.

cc: Penobscot Nation

Cut Along Dotted Line

To: Commission on Governmental Ethics and Election Practices
135 State House Station
Augusta, Maine 04333

From: Benjamin Collings, Lobbyist for:
Penobscot Nation

Re: Penalty for late filing of the September Lobbyist Disclosure Report (\$100)

Amount Enclosed: \$ _____

Check/M.O. No.: # _____

Please make Check or Money Order Payable to Treasurer, State of Maine

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

PHONE: (207) 287-4179

FAX: (207) 287-6775

Last Name	First Name	Employer Name	Filed Date	Report Title
Collins	Benjamin	Penobscot Nation	10/15/2007 5:24:40 PM	Monthly Report - Short Form

Title 3, §319, Penalty

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[1993, c. 691, §22 (rpr).]

1-A. Notice of suspension. Any person who fails to file a report or pay a fee as required by this chapter may be suspended from further lobbying by written notice of the commission until such failure is corrected.
[1993, c. 446, Pt. B, §12 (amd).]

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PL 1975, Ch. 576, § (NEW) .
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PL 1979, Ch. 632, §3 (RPR) .
PL 1989, Ch. 114, § (AMD) .
PL 1991, Ch. 465, §2 (AMD) .
PL 1993, Ch. 446, §A15, B11-13 (AMD) .
PL 1993, Ch. 691, §22 (AMD) .

December 7, 2007

Benjamin T. Collings
PO Box 1213
Portland, ME 04104

Michael P. Friedman
Francis C. Marsano
David D. Shiah
A. Mavourneen Thompson
Edward M. Youngblood
242 State Street
Augusta, Maine 04333

Dear Maine Ethics Commission Members,

For the month of October, I submitted my short form lobbyist report 24 minutes late. I apologize for this minor misstep and hope that you wave the \$100 late fee that the Ethics staff suggests that I pay. I am not able to attend the Dec. 7 public hearing and therefore submit to you this letter.

First, I only had one client, most of my work was pro bono and what pay I received was not substantial. It is an undue financial hardship to pay \$100, especially considering that I stopped my lobbying in June. With that being said, I agree in principal to continue filing reports even when I am not lobbying if those are the rules everyone must abide by.

Second, even if I was a wealthy lobbyist with many clients I believe that members of the Commission should be able to use their discretion in such manners and wave late fees if they find no intent to circumvent the transparency of government and if the action of a lobbyist consists of an exception, not a consistent disregard of deadlines.

Third, I believe I am reasonable in my request. Some cities forgive the first parking ticket every six months ^{and} the Maine Revenue Services will wave assessed fees if a business filed a quarterly report late, but actually didn't have any transactions in that period. Government can be forgiving at times for simple human errors.

I am not asking to be treated differently, I agree that you need guidelines to have an efficient agency. What I am asking is that anyone, including myself, be given at least one chance over the course of a year when dealing with a minor detail that entailed a matter of minutes. I would ask that you consider the spirit of the law, not the letter of the law in this instance.

Sincerely,



Benjamin T. Collings

Agenda

Item #8



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

To: Commission Members

From: Vincent W. Dinan, Staff Auditor

A handwritten signature in black ink, appearing to be 'W', written over the 'From' line.

Date: November 29, 2007

Subject: December, 2007 Candidate Audit Report Submittals

Materials submitted with the December, 2007 Commission packet include the four candidate audit reports listed below.

Candidate Name	District	Disposition
Paul Hatch	SD 26	See Commission Agenda
Sen. Earle McCormick	SD 21	See Commission Agenda
F. Robert Bauer	HD 37	See Commission Agenda
Pamela Hatch	HD 85	See Commission Agenda

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

PHONE: (207) 287-4179

FAX: (207) 287-6775



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

November 9, 2007

Audit Report No. 2006-SEN015

**Candidate: Senator Earle L. McCormick
Senate District 21**

Background

Senator Earle L. McCormick was elected to the Maine State Senate, District 21, in the 2006 general election. The Commission on Governmental Ethics and Election Practices (Commission) certified Sen. McCormick 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

Finding No. 1 – Incomplete documentation of campaign expenditures: The McCormick campaign reported two payments to the U. S. Postal Service that were partially undocumented. The amounts of the payments were \$2,989.32 (10/19/2006) and \$5,850.00 (11/2/2006), respectively. The candidate was able to provide cancelled checks that substantiated the purchases, but was unable to provide invoices or receipts that documented the items purchased. Sen. McCormick indicated that he had forwarded the postage payments to printing services firms that were making campaign mailings on his behalf, and

he did provide copies of the printers' invoices. According to Sen. McCormick, the printers did not have the postal receipts on file.

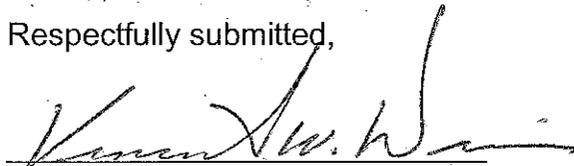
Criterion: 21-A M.R.S.A. §1125(12-A)(B), "The treasurer shall obtain and keep ...[a] vendor invoice stating the particular goods or services purchased for every expenditure of \$50 or more...."

Recommendations: the Commission staff recommends that the Commission find the candidate in technical violation of 21-A M.R.S.A. § 1125 (12-A) (B). Although the postal receipts were not available, we found the cancelled checks and vendor invoices from the printers to be convincing proof of the disbursements, and, in addition, we found the candidate's other campaign financial records to be well maintained. Therefore, we recommend that the Commission take no further action and not assess any penalty for the violation.

Candidate's Comments:

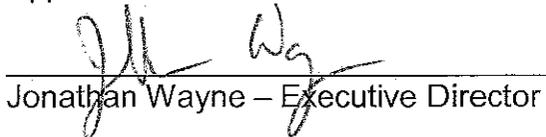
Senator McCormick did not comment on the audit findings.

Respectfully submitted,



Vincent W. Dinan - Staff Auditor

Approved:



Jonathan Wayne - Executive Director



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

November 19, 2007

Audit Report No. 2006-HR047

**Candidate: F. Robert Bauer
House District 37**

Background

F. Robert Bauer was an unenrolled candidate for the Maine House of Representatives, District 37, in the 2006 general election. The Commission on Governmental Ethics and Campaign Practices (Commission) certified Mr. Bauer as a Maine Clean Election Act (MCEA) candidate on June 14, 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
- 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

Finding No. 1 – Unreported Seed Money Contributions and Expenditures: Mr. Bauer spent \$72.00 in personal funds on postage during the qualifying period, but he neglected to report either the contribution or the expenditure. Mr. Bauer informed the auditor that he did not receive or expend any other seed money funds.

Criteria: 21-A M.R.S.A §1122 (9), "A seed money contribution must be reported according to procedures developed by the commission." 21-A M.R.S.A. §1125 (12), "participating and

certified candidates shall report any money collected [and] all campaign expenditures ... according to procedures developed by the commission."

Recommendations: The Commission staff determined that the unreported contributions and expenditures did not impact the distribution of MCEA funds in any way. Accordingly, given the minor nature of the infraction, the staff recommends that the Commission find the candidate in violation of 21-A M.R.S.A. § 1122 (9) and 21-A M.R.S.A. § 1125 (12), and not assess a penalty. The staff also asks the Commission to direct the client to amend his seed money report to reflect both the contribution and the expenditure.

Finding No. 2 – Incomplete Expenditure Documentation: The Bauer campaign made a \$178.15 expenditure at EBS Building Supply for sign materials. A cancelled check was on file, but no vendor invoice was available for review. In the absence of purchase documentation, the auditor was unable to verify the campaign purpose of the expenditure.

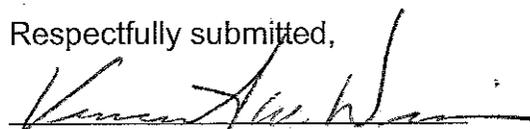
Criterion: 21-A M.R.S.A. §1125(12-A)(B), "The treasurer shall obtain and keep...[a] vendor invoice stating the particular goods or services purchased for every expenditure of \$50 or more...."

Recommendations: The Commission staff recommends that the Commission find the candidate in technical violation of 21-A M.R.S.A. § 1125 (12-A) (B); since the auditor found Mr. Bauer's campaign records to be generally well maintained, the staff further recommends that no penalty be assessed.

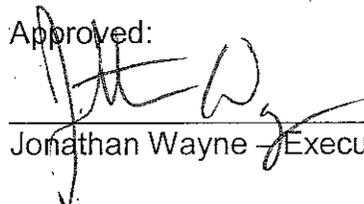
Candidate's Comments

Mr. Bauer did not comment on the audit findings and recommendations.

Respectfully submitted,


Vincent W. Dinan - Staff Auditor

Approved:


Jonathan Wayne - Executive Director

Agenda

Item #9



Guidance on Reporting under 21-A M.R.S.A. § 1056-B

What is the § 1056-B reporting requirement?

Most organizations that raise or spend money to influence a statewide ballot question in Maine form a political action committee (PAC) for that purpose, and file regular PAC reports with the Commission. Some advocacy, charitable, or other organizations do not qualify as PACs under the Election Law, but they are interested in raising and spending money to influence ballot questions. In 2000, the Maine Legislature enacted 21-A M.R.S.A. § 1056-B to create a reporting requirement for these non-PAC organizations. Under this section,

[a]ny person not defined as a political committee who solicits and receives contributions or makes expenditures, other than by contribution to a political action committee, aggregating in excess of \$1,500 for the purpose of initiating, promoting, defeating or influencing in any way a ballot question must file a report with the Commission.

The complete language of 21-A M.R.S.A. § 1056-B is attached to this memo.

Does the requirement apply only to individuals?

No. Under Maine Election law, the term "person" includes individuals, committees, firms, partnerships, corporations, associations, groups or organizations.

What contributions are covered by § 1056-B? [STAFF ADVICE, 12/20/06]

Section 1056-B covers "contributions ... made for the purpose of initiating, promoting, defeating, or influencing in any way a ballot question" The Commission interprets this to include:

- funds which the contributor specified were given for the purpose of promoting or opposing a ballot question;
- funds provided in response to a solicitation which would lead the contributor to believe that the funds would be used specifically for the purpose of promoting or opposing a ballot question; and
- funds which can reasonably be determined to have been provided by the contributor for the purpose of promoting or opposing a ballot question when

viewed in the context of the contribution and the recipient's activities regarding a ballot question.

Funds provided in response to a solicitation which would lead the contributor to believe that the funds would be used to support an organization's general activities, rather than activities relating to a ballot question, are not covered by § 1056-B.

What expenditures are covered by §1056-B? [STAFF ADVICE, 12/20/06]

Section 1056-B covers "expenditures made for the purpose of initiating, promoting, defeating, or influencing in any way a ballot question" The Commission interprets this to include:

- expenditures for communications to voters for the purpose of promoting or opposing a ballot question, including advertising on television, radio, and print media; literature that is mailed or distributed by hand to voters; automated telephone calls and scripted calls from live callers; signs, bumper stickers, and other forms of outdoor advertising;
- staff time promoting or opposing the ballot question at public or press events;
- staff time canvassing (conducting door-to-door visits to) voters;
- travel expenses paid to employees or volunteers who are conducting activities to promote or oppose a ballot question;
- staff time preparing presentations, testimony, letters to the editor, opinion pieces, articles for publication, or press releases to promote or oppose a ballot question;
- research or technical analysis including the writing of reports, where the organization knows or reasonably should know that the research will be used to promote or oppose a ballot question; and
- expenditures to distribute research or technical analysis regarding a ballot question for the purpose of encouraging voters to vote yes, or no, on the question.

This list is not intended to be exhaustive and is similar to the types of expenditures reported by political action committees to promote or defeat a ballot question.

What expenditures are not covered by § 1056-B? [STAFF ADVICE, 12/20/06]

Expenditures made merely to educate voters or others in a neutral way about a ballot question are not covered by § 1056-B. These would include:

- hosting a meeting at which advocates or members of the public are invited to present their views on the ballot question, provided that the sponsors of the event make reasonable efforts to ensure that the forum is balanced;
- ~~costs of distributing~~ news stories, commentary, or editorials concerning a ballot question ~~distributed~~ through the facilities of a broadcasting station, newspaper, magazine, or other periodical publication, unless the facilities are owned or controlled by persons otherwise engaged in other advocacy activities to promote or oppose the ballot question; and
- research or analysis of a ballot question which is not conducted for the purpose of initiating, promoting, or defeating the ballot question. This could include research that is conducted in a neutral fashion and is intended to be communicated to opinion leaders, in academic settings, or to the public at large. When statewide ballot questions are pending, it is not unusual for individuals with specialized skills (e.g., academics, attorneys, educational institutions, pollsters) to be hired to undertake research or analysis concerning the ballot question. If these activities are neutral and not made for the purpose of promoting or defeating the question, they would not be covered by § 1056-B.

Do “expenditures [made] for the purpose of initiating ... a ballot question” include payments to staff or other expenses incurred in drafting legislation intended as a ballot question?

Yes. If an organization pays its employees (or incurs other expenses) to draft legislation that the organization intends will be submitted to the Secretary of State as a direct initiative (even if submitted by a different organization), those expenses should be counted as expenditures made to initiate a ballot question.

If an organization pays its employees to draft legislation and the organization truly does not know whether the legislation will be submitted as a ballot question, those costs are not covered by 21-A M.R.S.A. § 1056-B. If the legislation is later approved by the Secretary of State for circulation as a petition for a direct initiative, however, the drafting costs should be considered a covered expense at the time the petition is approved.

If an organization’s only financial activity with respect to a ballot question is providing monetary contributions to a PAC, does the organization need to file reports under § 1056-B?

No. If an organization’s only expenditures in connection with a ballot question are contributions to a PAC, the organization is not required to file a § 1056-B report.

What if an organization donates the time of its paid employees to a PAC to influence a ballot question or makes payments to vendors for goods or services to influence a ballot question in coordination with a PAC?

Donating paid staff to a PAC, or coordinating expenditures with a PAC are in-kind contributions to the PAC. They are exempt from being counted toward the \$1,500 expenditure threshold to file a § 1056-B report; however, the PAC must report them as in-kind contributions.

An organization's expenditures to influence a ballot question may only be considered an in-kind contribution to a PAC if they are coordinated with the PAC or are accepted by a PAC. Expenditures to influence a ballot question made independently of the PAC should not be considered contributions to the PAC.

Guidance to PACs and Contributors on the Reporting of In-Kind Contributions

In 2006, some PACs involved in ballot question campaigns reported receiving significant in-kind contributions from other organizations, but provided little detail regarding the goods and services they received. In future elections, the Commission will request that PACs provide more detail about large in-kind contributions they have received. For example, if a PAC reports that it received significant paid staff time from another organization, it should include a description of those staff activities and the number of hours of staff time that were contributed. A PAC's reporting of coordinated spending made by a contributor should include a brief description of the goods and services that were purchased and their value. Contributed staff and coordinated expenditures should not be lumped together as a single contribution for the reporting period, but should be itemized as separate contributions.

Future Law Changes and Guidance

Please be aware that the Maine Legislature will consider L.D. 1394 in the 2008 session, which could amend the reporting requirements for non-PAC organizations. If legislation amending §1056-B is enacted, the Commission will offer further guidance as necessary.

If you have any questions, please telephone the Commission's PAC/Party/Lobbyist Registrar at 287-4179.

21-A M.R.S.A. § 1056-B. Reports of contributions and expenditures by persons

Any person not defined as a political committee who solicits and receives contributions or makes expenditures, other than by contribution to a political action committee, aggregating in excess of \$1,500 for the purpose of initiating, promoting, defeating or influencing in any way a ballot question must file a report with the Commission. In the case of a municipal election, a copy of the same information must be filed with the clerk of that municipality.

1. Filing requirements. A report required by this section must be filed with the Commission according to a reporting schedule that the Commission shall establish that takes into consideration existing campaign finance reporting schedule requirements in section 1059.

2. Content. A report must contain an itemized account of each contribution received and expenditure made aggregating in excess of \$100 in any election; the date of each contribution; the date and purpose of each expenditure; and the name of each contributor, payee or creditor. Total contributions or expenditures of less than \$500 in any election need not be itemized. The report must state whether the purpose for receiving contributions and making expenditures is in support of or in opposition to the ballot question.

3. Forms. A report required by this section must be on a form prescribed and prepared by the Commission. A person filing this report may use additional pages if necessary, but the pages must be the same size as the pages of the form.

Wayne, Jonathan

From: Brenda Peluso [bpeluso@nonprofitmaine.org]
Sent: Tuesday, November 27, 2007 1:22 PM
To: Wayne, Jonathan
Cc: Scott Schnapp
Subject: Re: 11/14/07 Memo

Hello and thanks for the opportunity to comment on proposed "Guidance on Reporting under 21 – A M.R.S.A. Section 1056-B".

I only have a couple of comments/questions:

1) Under "What expenditures are covered by Section 1056-B?", I believe the 6th bullet is too broad. Research that is undertaken with a broad purpose that eventually is used to influence the outcome of a ballot initiative could be interpreted to count here and I don't think that is your intention. Perhaps adding the phrase "at the time the research is conducted" would help. "...should know, at the time the research is conducted, that the research will be used to promote or oppose a ballot question."

Another approach would be to insert the word "exclusively" – "...research will be used exclusively..." But I think that narrows things a bit too much.

2) Under "What expenditures are not covered...?", do you mean in the second bullet that staff time writing op eds or letters to the editor with the purpose of influencing the outcome of a ballot initiative doesn't count? I would certainly think that staff time would count, but since the distribution is free – that would be tough to quantify its in kind contribution to your efforts.

Thanks again for the opportunity. Take care.

Best regards, Brenda Peluso
Director of Public Policy
Maine Association of Nonprofits
565 Congress Street, Suite 301
Portland, ME 04101
207.871.1885
www.nonprofitmaine.org

Advancing / Connecting / Strengthening



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

MEMORANDUM

To: Interested Parties

From: Jonathan Wayne, Executive Director

Date: November 14, 2007

Subject: Opportunity to Comment on Ballot Question Reporting

The Ethics Commission is soliciting comments on proposed guidance on ballot question reporting. Organizations which raise or spend more than \$1,500 to influence ballot questions and which do not qualify as political action committees (PACs) must file reports with the Ethics Commission under 21-A M.R.S.A. § 1056-B. About one year ago, the Commission staff offered advice to § 1056-B filers. Now, the staff is proposing that the Commission update the guidance and make clarifications in certain areas. The new advice is mostly contained in the last 1 ½ pages of the memo. The proposed guidance would only impact PACs if they are benefiting from in-kind contributions of donated staff or expenditures by other organizations to influence ballot questions.

The Commission will consider the proposed guidance at its meeting on Friday, December 7, at 9:00 a.m., and you are invited to comment at the meeting. Written and e-mailed comments are also welcome. (My e-mail address is Jonathan.Wayne@maine.gov.) Your written comments will be most helpful if the Commission receives them no later than Wednesday, November 28, so that the Commission members can read them in advance of the meeting.

If you have any questions, please telephone me at 287-4179. Thank you for your consideration of the proposed amendments.

Agenda

Item #10



DRAFT

COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES
Mail: 135 State House Station, Augusta, Maine 04333
Office: 242 State Street, Augusta, Maine

Website: www.maine.gov/ethics
Phone: 207-287-4179
Fax: 207-287-6775

Annual Disclosure Policy for Ethics Commission Members

At its December 7, 2007 meeting, the members of the Maine Commission on Governmental Ethics and Election Practices adopted this policy of annual disclosure by members of the Commission. The policy will provide additional assurance that the Commission members are acting at all times in a manner that is objective and independent of personal or political affiliations.

Annual Disclosure Statement

Members of the Commission will file an annual disclosure statement by February 15th of each year regarding the member's affiliations and political activities in the previous calendar year. The disclosure will include the kinds of affiliations and political activities which could be viewed as a conflict of interest, such as affiliations with political action committees, party committees, or candidate committees; affiliations with nonprofit or commercial organizations that are involved in candidate or ballot question elections; ownership or involvement in a commercial entity that has contracted to provide services to political groups; fundraising for a candidate or ballot question; and endorsements of political candidates. The categories of information to be disclosed are based on the qualifications and prohibited activities for Commission members established by the Legislature in 1 M.R.S.A. §§ 1002(2) and (6).

Updated Disclosure Statement

Each member of the Commission will also file an updated disclosure statement for the *current* year if the member enters into any *new* covered affiliations or activities. The member should file the form within 21 days of entering into the new affiliation or activity. The Commission's Executive Director will remind the Commission members of the obligation to file an updated disclosure statement at public meetings in or around April, July, and October of each year.

Public Disclosure

The Commission staff will promptly post the annual and updated disclosure statements on the Commission's website.

Conflicts of Interest

If a member has a conflict of interest in a matter before the Commission, the member will recuse himself or herself from voting on the matter and will not influence it. The Commission has proposed legislation for the 2008 session setting forth standards for a conflict of interest and how the member should respond to an allegation of a conflict received from outside the Commission.



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

MEMORANDUM

To: Commission Members
 From: Jonathan Wayne
 Date: November 29, 2007
 Re: Annual Disclosure Statement

In response to the staff's request for comments on the proposed annual disclosure statement for members of the Commission, a member of the public asked why there was no requirement that Commission members disclose affiliations with lobbyists. Since lobbyists and their clients are regulated entities within the scope of the Commission's jurisdiction, the commenter suggested that affiliations with lobbyists also be disclosed in the annual statement.

The staff agrees with the commenter that affiliations with lobbyists should be included in a disclosure statement. If the Commission also agrees, the staff proposes the following section to be added to the disclosure statement.

Please list all current affiliations with lobbying, consulting, or law firms that employ lobbyists; with businesses, organizations, or associations of which you are an owner, officer, director, primary decision-maker, fundraiser, or member and which employ lobbyists; and list all members of your immediate family who are lobbyists in the State of Maine.

AFFILIATIONS WITH LOBBYISTS

NAME OF FIRM; BUSINESS, ORGANIZATION, OR ASSOCIATION; OR FAMILY MEMBER	PLEASE INDICATE THE NATURE OF YOUR AFFILIATION WITH THE LISTED ENTITIES.



DRAFT

Website: www.maine.gov/ethics
 Phone: 207-287-4179
 Fax: 207-287-6775

2007 ANNUAL DISCLOSURE STATEMENT FOR COMMISSION MEMBERS

Covering January 1, 2007 – December 31, 2007

Due: February 15, 2008

COMMISSION MEMBER INFORMATION

Name		
OCCUPATION AND EMPLOYER INFORMATION		
Occupation		
Employer Name		
Employer Address	City	State

Have you been a candidate for any elective office (county, state, or federal) within the past year? If so, please list below.

CANDIDACY FOR POLITICAL OFFICE

NAME OF OFFICE	PLEASE INDICATE COUNTY, STATE, OR FEDERAL OFFICE

Have you served as an officer, director, primary decision-maker, fundraiser, or employee of, or worked as an independent contractor for, any political action committees, party committees, or authorized candidate committees during 2007? If so, please identify the committee and indicate in what capacity you were involved. In addition, please name all political committees for which you are *currently* serving in *any* capacity listed above.

AFFILIATIONS WITH POLITICAL COMMITTEES

NAME OF POLITICAL ACTION COMMITTEE, PARTY COMMITTEE, OR AUTHORIZED CANDIDATE COMMITTEE	PLEASE INDICATE THE CAPACITY IN WHICH YOU SERVED: OFFICER, DIRECTOR, PRIMARY DECISION-MAKER, FUNDRAISER, EMPLOYEE, OR INDEPENDENT CONTRACTOR.

Please list all businesses, corporations, or other commercial or for-profit organizations for which you are an owner, officer, director, primary decision-maker, employee, or independent contractor if the organization spent more than \$1,500 during 2007 to influence an election for state, county, or municipal office or a local or statewide ballot question in Maine.

AFFILIATIONS WITH COMMERCIAL ORGANIZATIONS

NAME OF COMMERCIAL ORGANIZATION	PLEASE INDICATE THE CAPACITY IN WHICH YOU SERVED: OWNER, OFFICER, DIRECTOR, PRIMARY DECISION-MAKER, EMPLOYEE, OR INDEPENDENT CONTRACTOR.

Please list all non-profit organizations, community groups, or other organizations based in Maine for which you are an officer, director, primary decision-maker, fundraiser, employee, or independent contractor.

Please indicate whether any of the organizations you have listed were involved in supporting or opposing a local or statewide ballot question, or any candidate for state, county or municipal office during 2007.

If the organization was involved, please indicate whether that organization spent more than \$1,500 in 2007 to influence the outcome of the ballot question or candidate election.

AFFILIATIONS WITH NON-PROFIT OR OTHER ORGANIZATIONS

NAME OF NON-PROFIT OR OTHER ORGANIZATION	PLEASE INDICATE THE CAPACITY IN WHICH YOU SERVED: OFFICER, DIRECTOR, PRIMARY DECISION-MAKER, FUNDRAISER, EMPLOYEE, OR INDEPENDENT CONTRACTOR.	PLEASE INDICATE THE BALLOT QUESTION (LOCAL OR STATE) OR CANDIDATE SUPPORTED/OPOSED AND IF MORE THAN \$1,500 WAS SPENT.

Please list all non-profit, commercial, or other organizations for which you are an owner, officer, or primary decision-maker which provided goods or services to a political action committee, party committee, or candidate committee during 2007.

BUSINESS AFFILIATIONS WITH POLITICAL COMMITTEES

NAME OF ORGANIZATION	PLEASE INDICATE THE CAPACITY IN WHICH YOU SERVED: OWNER, OFFICER, OR PRIMARY DECISION-MAKER.

If you engaged in any political fundraising to promote the election or defeat of a candidate or the passage or defeat of a ballot question in Maine during 2007, please identify the candidate or ballot question and whether you acted in support or opposition. Do not include candidates at the county or municipal level, or out-of-state non-federal elections.

Please list any political candidate which you endorsed during 2007. Do not include candidates at the county or municipal level, or out-of-state non-federal elections.

POLITICAL FUNDRAISING AND CANDIDATE ENDORSEMENTS

NAME OF CANDIDATE OR BALLOT QUESTION	INDICATE POSITION: SUPPORTED OR OPPOSED	DID YOU ENDORSE THE CANDIDATE? ENTER YES OR NO

Please indicate whether you are involved with any organizations or in any activities, not listed above, which could give rise to an appearance of a conflict of interest with regard to your role as a Commission member.

ADDITIONAL COMMENTS

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Please sign and date.

<hr style="border: none; border-top: 1px solid black; margin-bottom: 5px;"/> SIGNATURE	<hr style="border: none; border-top: 1px solid black; margin-bottom: 5px;"/> DATE
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DRAFT

2008 UPDATED DISCLOSURE STATEMENT FOR COMMISSION MEMBERS

COMMISSION MEMBER INFORMATION

Name		
OCCUPATION AND EMPLOYER INFORMATION		
Occupation		
Employer Name		
Employer Address	City	State

Have you been a candidate for any elective office (county, state, or federal) within 2008? If so, please list below.

CANDIDACY FOR POLITICAL OFFICE

NAME OF OFFICE	PLEASE INDICATE COUNTY, STATE, OR FEDERAL OFFICE

Have you served as an officer, director, primary decision-maker, fundraiser, or employee of, or worked as an independent contractor for, any political action committees, party committees, or authorized candidate committees during 2008? If so, please identify the committee and indicate in what capacity you were involved.

AFFILIATIONS WITH POLITICAL COMMITTEES

NAME OF POLITICAL ACTION COMMITTEE, PARTY COMMITTEE, OR AUTHORIZED CANDIDATE COMMITTEE	PLEASE INDICATE THE CAPACITY IN WHICH YOU SERVED: OFFICER, DIRECTOR, PRIMARY DECISION-MAKER, FUNDRAISER, EMPLOYEE, OR INDEPENDENT CONTRACTOR.

Please list all businesses, corporations, or other commercial or for-profit organizations for which you are an owner, officer, director, primary decision-maker, employee, or independent contractor if the organization spent more than \$1,500 during 2008 to influence an election for state, county, or municipal office or a ballot question in Maine, including businesses or organizations that were previously listed in your 2007 annual statement.

AFFILIATIONS WITH COMMERCIAL ORGANIZATIONS

NAME OF COMMERCIAL ORGANIZATION	PLEASE INDICATE THE CAPACITY IN WHICH YOU SERVED: OWNER, OFFICER, DIRECTOR, PRIMARY DECISION-MAKER, EMPLOYEE, OR INDEPENDENT CONTRACTOR.

Please list all non-profit organizations, community groups, or other organizations based in Maine for which you are an officer, director, primary decision-maker, fundraiser, employee, or independent contractor that were not listed in your 2007 annual statement. Please indicate whether any of the organizations you have listed in this section in your 2007 annual statement were involved in supporting or opposing a ballot question, or any candidate for state, county or municipal office during 2008.

If the organization was involved, please indicate whether that organization spent more than \$1,500 in 2008 to influence the outcome of the ballot question or candidate election.

AFFILIATIONS WITH NON-PROFIT OR OTHER ORGANIZATIONS

NAME OF NON-PROFIT OR OTHER ORGANIZATION	PLEASE INDICATE THE CAPACITY IN WHICH YOU SERVED: OFFICER, DIRECTOR, PRIMARY DECISION-MAKER, FUNDRAISER, EMPLOYEE, OR INDEPENDENT CONTRACTOR.	PLEASE INDICATE THE BALLOT QUESTION (LOCAL OR STATE) OR CANDIDATE SUPPORTED/OPOSED AND IF MORE THAN \$1,500 WAS SPENT.

Please list all non-profit, commercial, or other organizations for which you are an owner, officer, or primary decision-maker which provided goods or services to a political action committee, party committee, or candidate committee during 2008, including organizations previously listed in your 2007 annual statement.

BUSINESS AFFILIATIONS WITH POLITICAL COMMITTEES

NAME OF ORGANIZATION	PLEASE INDICATE THE CAPACITY IN WHICH YOU SERVED: OWNER, OFFICER, OR PRIMARY DECISION-MAKER.

If you engaged in any political fundraising to promote the election or defeat of a candidate or the passage or defeat of a ballot question in Maine during 2008, please identify the candidate or ballot question and whether you acted in support or opposition. Do not include candidates at the county or municipal level, or out-of-state non-federal elections.

Please list any political candidate which you endorsed during 2008. Do not include candidates at the county or municipal level, or out-of-state non-federal elections.

POLITICAL FUNDRAISING AND CANDIDATE ENDORSEMENTS

NAME OF CANDIDATE OR BALLOT QUESTION	INDICATE POSITION: SUPPORTED OR OPOSED	DID YOU ENDORSE THE CANDIDATE? ENTER YES OR NO

Please indicate whether you are involved with any organizations or in any activities, not listed above, which could give rise to an appearance of a conflict of interest with regard to your role as a Commission member.

ADDITIONAL COMMENTS

--

Please sign and date.

<hr style="width: 100%;"/> SIGNATURE	<hr style="width: 100%;"/> DATE
--------------------------------------	---------------------------------

TrueDialog.ORG

For a more Authentic Democracy

Phone 207-774-1936
Email: info@truedialog.org

P.O. Box 171
Portland, Maine 04112

To: Members of the Ethics Commission
From: Carl Lindemann, TrueDialog.org
Date: November 28, 2007
RE: Proposed Annual Disclosure Statement

It is not clear how the proposed annual disclosure statement for Commissioners would fulfill Executive Director Wayne's stated purpose to "provide additional assurance that the Commission members are acting at all times in a manner that is objective and independent of personal or political affiliations."

The proposed disclosure is analogous to two other disclosures already in place – the form for candidates to the Commission and the annual disclosure for legislators. However, these disclosures take place in a very different context. Candidates for the Commission are subject to rejection for what they may disclose. Likewise, there are consequences for what legislators disclose and penalties if they fail to disclose faithfully.

In stark contrast, the proposed annual disclosure statement for Commissioners would operate in the context of the "It Just Sits There" rule put forward by Assistant Attorney General Gardiner at the July 16th meeting. This allows Commissioners to decide for themselves if they are fit to serve and if their conduct does not violate the statutes administered by the Commission. What this means in practical terms is that there is no consequence for what a Commissioner discloses or fails to disclose.

Worse, the proposal suggests that by simply disclosing an inappropriate relationship, that resolves all issues. What if this same approach were applied to legislative conflicts of interest? To paraphrase, would it "provide additional assurance that legislators are acting at all times in a manner that is objective and independent of personal or political affiliations"?

The proposed annual disclosure for Commissioners fails in the context of the Commission's "It Just Sits There" rule. It does not provide any increase in accountability over what was in now in place. This is clear when applied to the specific situation that has prompted this proposal, the challenge to former Commission Chair Ginn Marvin's qualifications and conduct. She was an officer in a political committee, a disqualifying conflict for service as a Commissioner. It is also likely that she engaged in prohibited fundraising activities. If she had disclosed all this and had insisted on remaining on the Commission regardless, would it have made it any better?

Accountability for Commissioners and depoliticizing the Commission are worthy goals. It is not clear how this proposal, by itself, works towards realizing them.

-END-



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

MEMORANDUM

To: DISTRIBUTION LIST
From: Jonathan Wayne, Executive Director
Date: November 15, 2007
Subject: Opportunity to Comment on Proposed Policy of Annual Disclosure by
Ethics Commission Members

The Ethics Commission is soliciting comments on a proposed policy under which members of the Commission would file an annual disclosure statement regarding their affiliations and political activities during the previous year. Members would also file an updated statement for the current year if they engaged in new activities or affiliations. The policy will provide additional assurance that the Commission members are acting at all times in a manner that is objective and independent of personal or political affiliations.

The Commission will consider the proposed policy at its meeting on Friday, December 7. If you would like to comment, please send your comments by e-mail to Jonathan.Wayne@maine.gov no later than Thursday, November 29 so that the Commission members can read them in advance of the meeting.

If you have any questions, please telephone me at 287-4179. Thank you for your consideration of the proposed policy.

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Mike Mahoney, Esq.
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Sun Journal

Ethics commission overdue for top-down review

Sunday, August 12, 2007

Questions about conflicts and managing clean elections push for fresh look at ethics panel's duties

How important is it for those serving on the Maine Ethics Commission to be above reproach?

Outstanding issues over the qualifications and conduct of Commissioner Jean Ginn Marvin, raised by her failure to disclose connections to a political group, might do worse than just lower expectations for clean government. Unchecked, a compromised commissioner could corrupt the system. Add that Ginn Marvin is apparently exempt from the code she is charged to enforce signals the need for a top-down review of the ethics commission.



[thumbnails](#) | [gallery](#)

The commission dates to post-Watergate reforms that swept the country in the 1970s. Since, it has had periods where "ethics commission" was in name only. After initial enthusiasm for reform, the commission faded into an empty shell.

By the late 1980s, running the commission was a half-time administrative assistant's job, who was primarily tasked with maintaining appearances for the all-but-defunct outfit.

Fortunately, some believed in the need for an ethics watchdog. Their efforts rejuvenated the agency. Within a decade, the commission was rebuilt on a sure foundation to support Maine's leadership in adopting the Maine Clean Elections Act.

With the act's arrival, the ethics commission went through a fundamental restructuring. Since Maine was the first state to adopt publicly funded elections, combining ethics enforcement and administering the MCEA was an educated guess. Since, other models have emerged. Some states split these into separate organizations. With the wealth of experience now available, Maine's initial formulation is due for review. An independent examination to establish best practices would confirm Maine's national leadership as other states adopt publicly funded elections.

Evaluating the commission's composition is an integral part of this process. The architects of the MCEA thought it key to de-politicize commissioners.

Why is it problematic to load the commission with former legislators? A politicized commission is like staffing a planning board with developers. A sprinkling may add an industry insider perspective, but an overabundance strains the board's objectivity.

Sadly, the ideal of having a nonpolitical commission is all but forgotten today. The political leadership in the Legislature nominates candidates. The result is four of the five current commissioners have served in the Legislature.

If the commission is to be politicized, its members must demonstrate exemplary qualifications and conduct. That the commission is a rulemaking body also makes this essential. A compromised commissioner could have systemic consequences beyond corrupting individual cases. So laws governing commissioners must be rigorously enforced. Even the appearance of impropriety has to bring a swift, unequivocal response.

That is why Ginn Marvin's role as a regulator/rulemaker while also serving as treasurer of a regulated political organization is corrosive. When this was challenged last November, Ethics Commission Executive Director

Jonathan Wayne said it was acceptable since the ex-legislator had disclosed her ties:

"(Ginn Marvin) was a member of the MHPC (Maine Heritage Policy Center) board when the governor appointed her at the suggestion of the legislative leadership, so apparently the issue was not viewed as a disqualifying conflict at the time of her appointment," Wayne stated in a November 2006 letter.

Wayne and others have mistakenly thought she had been appropriately "cleared" to serve on the commission because she had completely and truthfully filled out her "qualification-to-serve" form. In reality, Ginn Marvin failed to do so. She omitted her MHPC board membership.

At best, Ginn Marvin sets a bad example in a regulatory framework based on accurate, faithful disclosure. To set this right requires a determination as to whether she is qualified to serve. Also, there are sufficient grounds for believing that Ginn Marvin has engaged in prohibited fundraising activities as MHPC's treasurer. This demands an investigation. Yet she appears to be exempt from objective inquiry. The independence the commission enjoys from direct oversight now seems to insulate it - and Ginn Marvin - from accountability.

The good that can come of this is an independent review to determine best practices for the ethics commission. Perhaps administration of the MCEA should operate independently. Or, if they remain together, creating a nonpolitical commission may be the way for Maine to lead. Whatever happens, the current situation cannot continue.

If the ethics commission is going to be politicized, then it has got to be policed.

Carl Lindemann is a former journalist and founder of truedialog.org, a not-for-profit government activist organization. He lives in Portland. E-mail him at carl@truedialog.org.

Agenda

Item #1 1



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

To: Commission Members

From: Vincent W. Dinan, Staff Auditor 

Date: November 30, 2007

Subject: *Summary Report – 2006 MCEA Candidate Audits*

Cc: Jonathan Wayne, Executive Director

In 2006, the Commission staff initiated a program to audit, on a selective basis, the campaign receipts and expenditures of gubernatorial and legislative candidates who had qualified for Maine Clean Election Act (public) funding. The results of those efforts are summarized in the attached document.

Our report addresses the examination process, the method used to select candidates for audit, and it also provides a comprehensive overview of findings arrayed by candidate and by office. We have made recommendations based on findings of violations, and have also identified campaign practices that we believe should be either changed or eliminated.

We believe that the information discussed in the report provides useful insights into both the accomplishments and the challenges of the Clean Election program. In addition, we have endeavored to provide suggestions for improved program administration to be implemented as we move into the 2008 election cycle.

Attachment

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

PHONE: (207) 287-4179

FAX: (207) 287-6775

Summary Report

2006 MCEA Candidate Audits

**Audits of Gubernatorial and Legislative Candidates Funded
Under the Provisions of the Maine Clean Election Act**



**Prepared by Vincent W. Dinan, Staff Auditor
Approved by Jonathan Wayne, Executive Director**



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INTRODUCTION

In 2006, the State of Maine Commission on Governmental Ethics and Election Practices (Commission) began auditing campaign receipts and expenditures of candidates who received public funding authorized by the Maine Clean Election Act (MCEA). The audits concentrated on transactions recorded in campaign finance reports submitted by the candidates during their 2006 primary and general election campaigns.

AUDIT PROGRAM OBJECTIVES

The overarching objective of the Commission's 2006 audit program was to assess candidate compliance with the terms of MCEA and the Commission's rules. Other objectives included:

- Detection and reporting violations of the MCEA.
- Identification of campaign finance and reporting requirements which create barriers to compliance by MCEA candidates.
- Reporting on emerging policy matters relative to MCEA compliance and enforcement to assist the Commission in their rule-making deliberations.

Campaign audits were also intended to assist the Commission staff in identifying and addressing training requirements for MCEA participants, their treasurers, and other campaign staff.

PROGRAM DESIGN AND SAMPLE SELECTION

The Commission's audit program was based on the principles set forth in the *Government Auditing Standards* of the U.S. Government Accountability Office, as well as other generally accepted auditing standards, with the focus on the program objectives described above. Available Commission staff resources limited the number of audits that could be undertaken within the 2006 election cycle, so legislative campaigns were selected using a statistical random sampling technique. All gubernatorial campaigns were audited due to the large disbursements of public funds to the candidates.

The Commission auditor developed an audit sample of 20 percent of the candidates for seats in both the 2006 House of Representatives and the Senate races. The sample selection is delineated in the following exhibits:

- Total MCEA candidate populations by candidate name and electoral district – Exhibit I
- Candidates selected for audit – House of Representatives – Exhibit II
- Candidates selected for audit – Senate – Exhibit III

As the exhibits indicate, 48 House candidates and 13 Senate candidates were selected for audit. In addition, the Commission initiated three special purpose audits outside of the normal sample selection.

One candidate was audited because of lateness in returning unexpended Clean Election funds; another was audited because he had received MCEA funds as both a House candidate and a replacement Senate candidate; and a third was selected based on his level of matching funds expenditure.

AUDIT RESULTS

The 2006 election cycle was the first since public funding became available to candidates where the Commission launched a formal, comprehensive, and highly structured audit effort. The results have been both encouraging and instructive for the Commission staff. Complete audit findings are catalogued in Exhibit IV, and are summarized in the following table:

Audit Findings	Gubernatorial Candidates (4)	House Candidates (49)	Senate Candidates (15)	Total (68)
No exceptions or deficiencies	0	34	10	44
Undocumented or Incomplete Documentation of Expenditures	3	9	3	15
Unreported Expenditures	2	2	1	5
Misreported Expenditures	3	3	2	8
Unallowable Expenditures	1	1	0	2
Commingling of Funds	0	5	2	7
Personal Use of MCEA Funds	0	2	1	3
Unexplained Excess Balance in Campaign Bank Account	0	1	1	2
Expenditures in Excess of Maximum Allowable	1	2	1	4
Overpayment of Returned MCEA Funds	0	1	0	1
Uncontrolled Expenditures	1	0	0	1
Questioned Fair Market Value Estimate of Campaign Equipment	1	0	0	1
Failure to Reimburse In-Kind Contribution	0	0	1	1
Contributions in Excess of Maximum Allowable	0	0	1	1
Conflict of Interest	1	0	0	1
Failure to Sell Campaign Equipment after Election	0	1	0	1
Referral to AG for Possible Criminal Prosecution	0	1	0	1

The complete distribution of audit findings associated with each candidate is provided in Exhibit IV.

It should be noted that, quite significantly, the majority of legislative candidates passed the audit with no exceptions. Although the audits of gubernatorial campaigns all disclosed some level of discrepancy, most of the errors identified involved non-critical data recording mistakes and related inaccuracies based on what the Commission staff believes was incomplete understanding of provisions of the statute and the Commission's rules.

In addition, the most widespread area of non-compliance the auditor encountered among both gubernatorial and legislative candidates was that of records maintenance and retention. Gubernatorial candidates in particular seemed to experience great difficulty in obtaining basic invoices for services rendered by media, i.e., television, radio, print, outlets. The absence of such documentation was the principal source of audit discrepancies among the candidates for governor. Few candidates – gubernatorial and legislative – had all of the required documentation on hand that was needed to support their campaign expenditures. In most cases, however (except as noted above), the campaigns were able to obtain the records necessary within a reasonable amount of time. Again, this type of discrepancy seems to be attributable to a lack of understanding of the statutory provisions and regulations concerning documentation of contributions and expenditures. The Commission staff believes that the issues described above can be overcome in the future with improved candidate and campaign worker education and training.

In contrast, the auditor did identify certain critical errors which must be remedied if the Commission is to maintain the integrity of the Clean Election program. In particular, the Commission staff is concerned with the small number of candidates who converted MCEA funds to personal use, and candidates who commingled MCEA funds with funds in their personal bank accounts.

The staff is also concerned about practices found in some campaigns that may not currently be prohibited by law, but do create opportunities for misuse of public funds. These issues include:

- Potential conflicts of interest that arise when a campaign official with responsibility for disbursing MCEA funds is also the recipient of such disbursements.
- Campaign consultants who invoice their services on a lump sum basis without providing the details of the costs being billed, or who do not disclose services or procurements subcontracted to other vendors.
- Candidates who interpret the statute and regulations over-broadly, and use MCEA funds to reward campaign workers with gift certificates, meals and parties. While this did not appear to be a huge problem, there were ample indications that some candidates made too liberal use of public funds to reward those individuals whose efforts made a positive impact on their campaigns.
- Purchase of campaign equipment – particularly computers – that must be sold after the election at “fair market value”, and which is frequently sold to the candidates' families, campaign volunteers and friends at such a low “fair market value” price that it can only be construed as a thinly veiled reward to the purchaser for campaign services.

Most of the matters discussed above have been or are being addressed by the Commission in their rule-

making, in the development of proposals for legislative changes, or through better candidate education and training.

CONCLUSIONS

Based on the audit results described above, as well as the staff's determination of relative impact on candidate accountability for use of MCEA funds and the integrity of the public financing process, violations and candidate issues of non-compliance are ranked as follows:

Violation	Number of Audits	Rate of Occurrence	Ranked in Importance
Undocumented or Incomplete documentation of Expenditures	15	22%	2
Misreported Expenditures	8	2%	5
Commingling of Funds	7	10%	3
Unreported Expenditures	5	7%	4
Expenditures in Excess of Maximum Allowable	4	6%	8
Personal Use of Public Funds	3	4%	1
Unallowable Expenditures	2	3%	7
Unexplained Ending Balance in Campaign Bank Account	2	3%	6
All Others	8	12%	9

Notes: *Rate of Occurrence* is expressed as a percentage derived as *No. of Occurrences/Total No. of Audits*. *Ranked in Importance* is the staff's estimate of the finding's relative importance based on its general materiality within the context of the examinations made by the auditor.

The Commission staff believes that the majority of audit findings represents administrative errors, and were for the most part inadvertent. Moreover, the staff believes that these administrative mistakes did not negatively impact the proper utilization of Clean Election funding in a substantive way. This is not to underestimate the seriousness of those findings regarding the misuse of public funds, or other abuses of the state's ethics rules and the privileges and obligations attendant on receipt of MCEA funds.

The Commission staff further concludes that focused efforts by the staff and by candidates in the areas that follow will significantly improve candidate compliance in future election periods:

- Early, more frequent, and perhaps mandatory training for candidates and their treasurers regarding the provisions of the Maine Clean Election Act and the Commission's implementing rules.
- Aggressive oversight of campaign banking practices, including the deposit of all campaign funds, i.e., contributions, MCEA distributions, interest payments, vendor credits, into the campaign bank account, and disbursement of all campaign expenditures from the campaign bank account.
- Continuing emphasis on correct documentation of campaign expenditures in communications with campaign staff.
- More attention paid to qualifying period reporting, including purchases and utilization of money orders and documentation of seed money contributions and expenditures.



Exhibits

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Exhibit I. MCEA Candidate Population

2006 AUDIT SUMMARY

Candidate Population

Office	District	Last	First	Party	ID
Representative	1	Jackson	Troy	Democratic	1
Representative	2	Therault	Charles	Democratic	2
Representative	3	Learnard	Robert	Democratic	3
Representative	4	Bernard	Charles	Democratic	4
Representative	4	Edgecomb	Peter	Republican	5
Representative	5	Fischer	Jeremy	Democratic	6
Representative	5	Smith	Zachary	Republican	7
Representative	6	Clark	Tyler	Republican	8
Representative	6	Lundeen	Jacqueline	Democratic	9
Representative	7	Churchill	John	Republican	10
Representative	8	Cleary	Richard	Democratic	11
Representative	8	Flewelling	Dale	Republican	12
Representative	9	Cameron	Jeanne	Democratic	13
Representative	10	Clark	Herbert	Democratic	14
Representative	11	McLeod	Everett	Republican	15
Representative	11	Turner	Beth	Democratic	16
Representative	12	Gifford	Jeffery	Republican	17
Representative	12	Kirkpatrick	David	Democratic	18
Representative	13	Duchesne	Robert	Democratic	19
Representative	13	Gavett	Andrew	Republican	20
Representative	14	Donovan	Riley	Republican	21
Representative	15	Dunbar	Scott	Republican	22
Representative	15	Norton	Jacqueline	Democratic	23
Representative	16	Blanchette	Patricia	Democratic	24
Representative	17	Faircloth	Sean	Democratic	25
Representative	17	Kasten	John	Republican	26
Representative	18	Dunn	Michael	Democratic	27
Representative	19	Cain	Emily	Democratic	28
Representative	19	Cowan	Lance	Republican	29
Representative	20	Hall	Darren	Republican	30
Representative	20	Pratt	Benjamin	Democratic	31
Representative	22	Greeley	Christian	Republican	32
Representative	22	Lamborn	Ben	Democratic	33
Representative	23	Richardson	David	Republican	34
Representative	23	Shepley	Donald	Democratic	35
Representative	24	Denis	Craig	Democratic	36
Representative	24	Thomas	Douglas	Republican	37
Representative	25	Dort	Richard	Democratic	38
Representative	26	Annis	James	Republican	39
Representative	26	Philbrick	Daniel	Democratic	40
Representative	27	Erdo	Julius	Democratic	41

Exhibit I. (continued) MCEA Candidate Population					
Office	District	Last	First	Party	ID
Representative	28	Cray	Dean	Republican	42
Representative	28	Hogate	Jeanne	Democratic	43
Representative	29	Clement	Arthur	Democratic	44
Representative	30	McFadden	Howard	Republican	45
Representative	31	Alexander	Judith	Republican	46
Representative	31	Perry	Anne	Democratic	47
Representative	32	Emery	Harold	Republican	48
Representative	32	Prescott	Harold	Democratic	49
Representative	33	Norton	Clifford	Democratic	50
Representative	34	Eaton	Robert	Democratic	51
Representative	35	Koffman	Theodore	Democratic	52
Representative	35	Partridge	David	Republican	53
Representative	36	Pingree	Hannah	Democratic	54
Representative	37	Bauer	F. Robert	Unenrolled	55
Representative	37	Schatz	James	Democratic	56
Representative	37	Sullivan	Kerry	Republican	57
Representative	38	Savage	Steven	Democratic	58
Representative	39	Higgins	David	Democratic	59
Representative	40	Leclerc	Brenda	Democratic	60
Representative	40	Rosen	Kimberley	Republican	61
Representative	41	Weddell	Lance	Democratic	62
Representative	42	Gilbert	Donna	Democratic	63
Representative	43	Ash	Walter	Democratic	64
Representative	43	Giles	Jayne	Republican	65
Representative	44	Misluk	Peter Patrick	Democratic	66
Representative	44	Walker	Robert	Republican	67
Representative	45	Harmon	R. Ryan	Republican	68
Representative	45	Piotti	John	Democratic	69
Representative	46	Bowen	Stephen	Republican	70
Representative	46	Miramant	David	Democratic	71
Representative	47	Mazurek	Edward	Democratic	72
Representative	48	Glover	Nancy	Democratic	73
Representative	48	Rector	Christopher	Republican	74
Representative	49	Cowan	Diane	Democratic	75
Representative	49	Richardson	Wesley	Republican	76
Representative	50	Pieh	Wendy	Democratic	77
Representative	51	Dickens	Ellen	Democratic	78
Representative	51	McKane	Jonathan	Republican	79
Representative	52	McKeen	William	Republican	80
Representative	52	Miller	Elizabeth	Democratic	81
Representative	53	Rines	Peter	Democratic	82
Representative	53	Sutter	William	Republican	83
Representative	54	Fletcher	Kenneth	Republican	84

Exhibit I. (continued) MCEA Candidate Population					
Office	District	Last	First	Party	ID
Representative	54	Fredette	Kevin	Democratic	85
Representative	55	Cotta	H. David	Republican	86
Representative	55	Thompson	Judd	Democratic	87
Representative	56	Silsby	Kimberly	Democratic	88
Representative	57	Crockett	Patsy Garside	Democratic	89
Representative	57	Ellis	Rachel	Republican	90
Representative	58	Browne	William	Republican	91
Representative	58	LeGendre	Alexis	Democratic	92
Representative	59	Hanley	Stephen	Democratic	93
Representative	60	Prescott	Kerri	Republican	94
Representative	60	Scease	Jane	Democratic	95
Representative	61	Bailey	William	Republican	96
Representative	61	MacDonald	W. Bruce	Democratic	97
Representative	62	Gethicker	Shawn	Republican	98
Representative	62	Watson	Thomas	Democratic	99
Representative	63	McKenna	Amy	Republican	100
Representative	63	Priest	Charles	Democratic	101
Representative	64	Garrison	Chester	Republican	102
Representative	64	Percy	Leila	Democratic	103
Representative	65	Grose	Carol	Democratic	104
Representative	65	Wasserott	Susan	Republican	105
Representative	66	Frans	David	Green Independent	106
Representative	66	Gerzofsky	Stanley	Democratic	107
Representative	66	Rider	Todd	Republican	108
Representative	67	Berry	Seth	Democratic	109
Representative	67	Hobart	Brian	Republican	110
Representative	68	Beaulieu	Michael	Republican	111
Representative	68	Desgrosseilliers	Sheila	Democratic	112
Representative	69	Potvin	Ronald	Republican	113
Representative	69	Simpson	Deborah	Democratic	114
Representative	70	Carrier	Guy	Republican	115
Representative	70	Samson	Mark	Democratic	116
Representative	71	Babine, Sr.	John	Republican	117
Representative	71	Makas	Elaine	Democratic	118
Representative	72	Hughes	David	Republican	119
Representative	72	Walcott	William	Democratic	120
Representative	73	Lachance	Laurier	Republican	121
Representative	73	Wagner	Richard	Democratic	122
Representative	74	Craven	Margaret	Democratic	123
Representative	74	Painter	John	Republican	124
Representative	76	Canavan	Marilyn	Democratic	125
Representative	77	Duperry	Christopher	Republican	126
Representative	77	Trinward	Pamela	Democratic	127

Exhibit I. (continued) MCEA Candidate Population					
Office	Disrict	Last	First	Party	ID
Representative	78	Conover	Jill	Democratic	128
Representative	78	Purnell II	Kevin	Republican	129
Representative	79	Sirois	David	Republican	130
Representative	79	Treat	Sharon	Democratic	131
Representative	80	Smith	Nancy	Democratic	132
Representative	81	Souther	Clark	Democratic	133
Representative	82	Flood	Patrick	Republican	134
Representative	82	Jenkins	Priscilla	Democratic	135
Representative	83	Jones	Deane	Democratic	136
Representative	84	Finch	Edward	Democratic	137
Representative	84	Reny	Joshua	Republican	138
Representative	85	Finley	Donna	Republican	139
Representative	85	Hatch	Pamela	Democratic	140
Representative	86	Curtis	Philip	Republican	141
Representative	86	Susi	Ted	Democratic	142
Representative	87	Pineau	Raymond	Democratic	143
Representative	87	Reid	William	Republican	144
Representative	88	Pinkham Sr.	Wright	Republican	145
Representative	88	Tessier	Paul	Democratic	146
Representative	89	Harvell	Lance	Republican	147
Representative	89	Mills	Janet	Democratic	148
Representative	90	Collins	Maxine	Democratic	149
Representative	90	Saviello	Thomas	Unenrolled	150
Representative	91	Carter	Timothy	Democratic	151
Representative	92	Patrick	John	Democratic	152
Representative	92	Smith	Paula	Republican	153
Representative	93	Arsenault	Reginald	Democratic	154
Representative	93	Hotham	Randy	Republican	155
Representative	94	Hanley	Bruce	Republican	156
Representative	94	Hayes	Terry	Democratic	157
Representative	95	Gedat	Roy	Democratic	158
Representative	96	Bryant-Deschenes	Joan	Republican	159
Representative	96	Sirois	Lawrence	Democratic	160
Representative	97	Muse	Roberta	Republican	161
Representative	97	Turner	Marlee	Democratic	162
Representative	98	Rollins	Sheila	Democratic	163
Representative	98	Sykes	Richard	Republican	164
Representative	99	Cressey	Philip	Republican	165
Representative	99	Smith	Katherine	Democratic	166
Representative	100	Bradley	James	Democratic	167
Representative	100	Hamper	James	Republican	168
Representative	101	Bossie	Thomas	Democratic	169
Representative	102	Moore	Gary	Republican	170

Exhibit I. (continued) MCEA Candidate Population					
Office	District	Last	First	Party	ID
Representative	102	Shaw	Michael	Democratic	171
Representative	103	Bauer	Lu	Democratic	172
Representative	104	Berube	Robert	Republican	173
Representative	104	Grant	Prudence	Democratic	174
Representative	105	Rheault	Christopher	Democratic	175
Representative	105	Vaughan	Michael	Republican	176
Representative	106	Migliaccio	Marguerite	Republican	177
Representative	106	Webster	David	Democratic	178
Representative	107	Bicknell	Brian	Republican	179
Representative	107	Woodbury	Richard	Unenrolled	180
Representative	108	Damon	Donna	Democratic	181
Representative	109	Graham	Anne	Democratic	182
Representative	110	Bryant	Mark	Democratic	183
Representative	110	Haskell	Clayton	Republican	184
Representative	111	Heckman	Geoffrey	Democratic	185
Representative	111	Plummer	Gary	Republican	186
Representative	112	Savage	David	Republican	187
Representative	113	Brautigam	John	Democratic	188
Representative	114	Forbis	Sharon	Republican	189
Representative	114	Marley	Boyd	Democratic	190
Representative	115	Cummings	Glenn	Democratic	191
Representative	116	Gauger	Janette	Republican	192
Representative	116	Harlow	Charles	Democratic	193
Representative	117	Haskell	Anne	Democratic	194
Representative	118	Eder	John	Green Independent	195
Representative	118	Hinck	Jon	Democratic	196
Representative	119	Adams	Herbert	Democratic	197
Representative	119	Reading	Matthew	Green Independent	198
Representative	120	Ferland	Jeffrey	Republican	199
Representative	120	Meiklejohn	Benjamin	Green Independent	200
Representative	120	Rand	Anne	Democratic	201
Representative	121	Dill	Cynthia	Democratic	202
Representative	121	Duddy	Jennifer	Republican	203
Representative	122	Bliss	Lawrence	Democratic	204
Representative	122	Nixon	Paul	Republican	205
Representative	123	Crosby	Gary	Republican	206
Representative	123	Eberle	Jane	Democratic	207
Representative	124	Feeney	David	Republican	208
Representative	124	Kaenrath	Bryan	Democratic	209
Representative	125	Cramer	Lyle	Republican	210
Representative	125	Peoples	Ann	Democratic	211
Representative	126	Driscoll	Tim	Democratic	212
Representative	126	Munday	Tatia	Republican	213

Exhibit I. (continued) MCEA Candidate Population					
Office	District	Last	First	Party	ID
Representative	127	McDonough	John	Republican	214
Representative	128	Pendleton	Peggy	Democratic	215
Representative	128	Tallarico	Leo	Green Independent	216
Representative	129	Freeman	Harold	Republican	217
Representative	130	Farrington	David	Democratic	218
Representative	130	Harnden	Ryan	Republican	219
Representative	131	Marean	Donald	Republican	220
Representative	132	Hogan	George	Democratic	221
Representative	133	Pilon	Donald	Democratic	222
Representative	134	Cushing	John	Republican	223
Representative	134	Valentino	Linda	Democratic	224
Representative	135	Beaudoin	Paulette	Democratic	225
Representative	137	Casavant	Alan	Democratic	226
Representative	137	Seavey	H. Stedman	Republican	227
Representative	138	Campbell Sr.	James	Republican	228
Representative	138	Sloan	Lacey Marie	Democratic	229
Representative	139	Jacobsen	Lawrence	Republican	230
Representative	139	Wagner	Joseph	Democratic	231
Representative	140	Connor	Gary	Democratic	232
Representative	140	Perreault	Sylvia	Republican	233
Representative	141	Babbidge	Christopher	Democratic	234
Representative	142	Boland	Andrea	Democratic	235
Representative	143	Reagan	Debra	Republican	236
Representative	143	Tuttle	John	Democratic	237
Representative	144	Chamberlain	Donna	Democratic	238
Representative	144	Nass	Joan	Republican	239
Representative	145	Burns	Richard	Democratic	240
Representative	145	Stone	Oscar	Republican	241
Representative	146	Gould	Bonnie	Republican	242
Representative	146	Scharff	Adam	Democratic	243
Representative	147	Cilluffo	Anthony	Democratic	244
Representative	148	Beavers	Roberta	Democratic	245
Representative	149	Hill	Dawn	Democratic	246
Representative	150	Weaver	Windol	Republican	247
Representative	151	Wheeler	Walter	Democratic	248
Senate Candidates					
Senate	1	Bowman	Peter	Democratic	1
Senate	1	Lemont	Kenneth	Republican	2
Senate	2	Nass	Richard	Republican	3
Senate	2	Wright	Thomas	Democratic	4
Senate	3	Courtney	Jonathan	Republican	5
Senate	3	Hanslip	Joseph	Democratic	6
Senate	4	Staples	Amanda	Republican	7

Exhibit I. (continued) MCEA Candidate Population					
Office	District	Last	First	Party	ID
Senate	5	Hobbins	Barry	Democratic	8
Senate	5	Kewish	Charity	Republican	9
Senate	6	Bartlett II	Philip	Democratic	10
Senate	6	Willett	Jane	Republican	11
Senate	7	Bromley	Lynn	Democratic	12
Senate	7	Glynn	Kevin	Republican	13
Senate	7	Louis	Keith	Green Independent	14
Senate	8	Babin	David	Republican	15
Senate	8	Perchinski	Kelsey	Green Independent	16
Senate	8	Strimling	Ethan	Democratic	17
Senate	9	Brannigan	Joseph	Democratic	18
Senate	9	Fernald	David	Republican	19
Senate	10	Edmonds	Betheda	Democratic	20
Senate	11	Simpson	John	Democratic	21
Senate	11	Turner	Karl	Republican	22
Senate	12	Kelly	Lani	Republican	23
Senate	13	Hastings	David	Republican	24
Senate	13	Medd	Marjorie	Democratic	25
Senate	14	Bryant	Bruce	Democratic	26
Senate	14	Greaney	Leonard	Republican	27
Senate	15	Desgrosseilliers	Edward	Democratic	28
Senate	15	Snowe-Mello	Lois	Republican	29
Senate	16	Poulin	Larry	Republican	30
Senate	16	Rotundo	Margaret	Democratic	31
Senate	17	Greenwood	Randall	Republican	32
Senate	17	Nutting	John	Democratic	33
Senate	18	Gooley	Walter	Republican	34
Senate	18	Holden	Richard	Democratic	35
Senate	19	Benoit	Paula	Republican	36
Senate	19	Mayo III	Arthur	Democratic	37
Senate	20	King	Kathleen	Democratic	38
Senate	21	McCormick	Earle	Republican	39
Senate	21	Rines	Brian	Democratic	40
Senate	22	Barrows	Scott	Democratic	41
Senate	22	Savage	Christine	Republican	42
Senate	23	Chase	Gail	Democratic	43
Senate	23	Weston	Carol	Republican	44
Senate	24	Mitchell	Elizabeth	Democratic	45
Senate	24	Nutting	Robert	Republican	46
Senate	25	Davis	Thomas	Republican	47
Senate	25	Marrache	Lisa	Democratic	48
Senate	26	Hatch	Paul	Democratic	49
Senate	26	Mills	S. Peter	Republican	50

Exhibit I. (continued) MCEA Candidate Population					
Office		Last	First	Party	ID
Senate	27	Libby Jones	Sharon	Democratic	51
Senate	28	Fredette	Kenneth	Republican	52
Senate	29	Finlay	Thomas	Democratic	53
Senate	29	Kadey	Dana	Unenrolled	54
Senate	29	Raye	Kevin	Republican	55
Senate	30	Gibbs	Deborah	Unenrolled	56
Senate	30	Joyce	Patrick	Republican	57
Senate	30	Schneider	Elizabeth	Democratic	58
Senate	31	Rosen	Richard	Republican	59
Senate	31	Spellman	Ruth-Marie	Democratic	60
Senate	32	Perry	Joseph	Democratic	61
Senate	33	Poulin	Mary	Democratic	62
Senate	34	Beckwith	J. Chipman	Democratic	63
Senate	34	Sherman	Roger	Republican	64
Senate	35	Martin	Cathy	Republican	65
Senate	35	Martin	John	Democratic	66

Exhibit II. Audit Sample Selection - House

2006 AUDIT SUMMARY
Audit Sample Selection
House of Representatives Candidates

ID	NAME	SALU-TATION	PARTY
7	Smith, Zachary	Mr.	R
84	Thompson, Judd	Rep.	D
240	Scharff, Adam	Mr.	D
39	Cray, Dean	Mr.	R
198	Dill, Cynthia	Ms.	D
192	Haskell, Anne	Ms.	D
107	Simpson, Deborah	Ms.	D
223	Casavant, Alan	Mr.	D
183	Heckman, Geoffrey	Mr.	D
157	Bryant-Deschenes, Joan	Rep.	R
102	Gerzofsky, Stanley	Rep.	D
232	Boland, Andrea	Ms.	D
146	Collins, Maxine	Ms.	D
205	Feeney, David	Mr.	R
37	Philbrick, Daniel	Mr.	D
59	Gilbert, Donna	Ms.	D
168	Moore, Gary	Rep.	R
216	Marean, Donald	Rep.	R
38	Erdo, Julius	Mr.	D
100	Grose, Carol	Rep.	D
230	Perreault, Sylvia	Ms.	R
163	Cressey, Philip	Rep.	R
134	Reny, Joshua	Mr.	R
229	Connor, Gary	Mr.	D
44	Perry, Anne	Rep.	D
186	Brautigam, John	Rep.	D
29	Pratt, Benjamin	Mr.	D
203	Crosby, Gary	Mr.	R
103	Berry, Seth	Mr.	D
79	Rines, Peter	Rep.	D
83	Cotta, H. David	Mr.	R
189	Cummings, Glenn	Rep.	D
114	Lachance, Laurier	Mr.	R
241	Cilluffo, Anthony	Mr.	D
5	Edgecomb, Peter	Rep.	R
121	Conover, Jill	Ms.	D
153	Hotham, Randy	Rep.	R
219	Cushing, John	Mr.	R

ID	NAME	SALU-TATION	PARTY
125	Greenwood, Randall	Mr.	R
178	Woodbury, Richard	Rep.	U
10	Churchill, John	Rep.	R
17	Turner, Beth	Ms.	D
182	Haskell, Clayton	Mr.	R
76	McKane, Jonathan	Rep.	R
161	Rollins, Sheila	Ms.	D
188	Marley, Boyd	Rep.	D
50	Bauer, F. Robert	Mr.	U
136	Hatch, Pamela	Ms.	D
Research Randomizer Results:			
1 Set of 48 Unique Numbers Per Set			
Range: From 1 to 245 -- Unsorted			
Set 1			

Exhibit III. Audit Sample Selection - Senate

2006 AUDIT SUMMARY

Audit Sample Selection

Senate Candidates

ID	NAME	SALUTATION	PARTY
51	Fredette, Kenneth	Mr.	R
39	Rines, Brian	Mr.	D
10	Kewish, Charity	Ms.	R
61	Poulin, Mary	Ms.	D
55	Gibbs, Deborah	Ms.	U
60	Perry, Joseph	Sen.	D
23	Hastings, David	Sen.	R
11	Bartlett, Phillip	Sen.	D
4	Courtney, Jonathan	Sen.	R
36	King, Kathleen	Ms.	D
5	Hanslip, Joseph	Mr.	D
48	Hatch, Paul	Mr.	D
19	Edmonds, Betheda	Sen.	D

Research Randomizer Results:

1 Set of 13 Unique Numbers Per Set

Range: From 1 to 65 -- Unsorted

Set 1

<p style="text-align: center;">Exhibit IV. (continued) 2006 PRIMARY AND GENERAL ELECTIONS SUMMARY OF AUDIT EXAMINATIONS AND REPORTS</p>	CANDIDATE NAME	OFFICE	REPORT NO.								
Referred to AG for Possible Criminal Prosecution											
Failure to Sell Campaign Equip. after the Election											
Conflict of Interest											
Contribution in Excess of the Max.										X	
Failure to Reimburse/ In-Kind Contib.									X		
Questioned Fair Mkt. Val.of Equip. Re-Sale											
Uncontrolled Expenditures											
Overpayment of Returned MCEA Funds											
Expenditures in Excess of Max. Allow.									X		
Unexplained Excess Balance in Campaign Bank Account									X		
Personal Use of Public Funds	X										
Commingling of Funds	X								X		
Unallowable Expenditures											
Mis-reported Expenditures									X		
Unreported Expenditures									X		
Undocumented / Incomplete Doc.of Expenditures	X							X			X
No Audit Exceptions		X	X	X	X	X	X	X	X		
	Joseph Perry	Senate	2006-SEN006								
	David Hastings	Senate	2006-SEN007								
	Phillip Bartlett	Senate	2006-SEN008								
	Jonathan Courtney	Senate	2006-SEN009								
	Kathleen King	Senate	2006-SEN010								
	Joseph Hanslip	Senate	2006-SEN011								
	Betheda Edmonds	Senate	2006-SEN012								
	Paul Hatch	Senate	2006-SEN013								
	Randall Greenwood	Senate	2006-SEN014								
	Earle McCormick	Senate	2006-SEN015								

House Candidates															
Zachary Smith	House of Rep.	2006-HR001	X												
Judd Thompson	House of Rep.	2006-HR002	X												
Dean Cray	House of Rep.	2006-HR003	X												
Cynthia Dill	House of Rep.	2006-HR004	X												
Adam Scharff	House of Rep.	2006-HR005	X												
Anne Haskell	House of Rep.	2006-HR006	X												
Geoffrey Heckman	House of Rep.	2006-HR007		X											
Alan Casavant	House of Rep.	2006-HR008	X												
Stanley Gerzofsky	House of Rep.	2006-HR009	X												
Joan Bryant-Deschenes	House of Rep.	2006-HR010			X										
Andrea Boland	House of Rep.	2006-HR011	X												
Daniel Philbrick	House of Rep.	2006-HR012	X												
Donna Gilbert	House of Rep.	2006-HR013	X												
Gary Moore	House of Rep.	2006-HR014	X												
Sylvia Perrault	House of Rep.	2006-HR015	X												
Donald Marean	House of Rep.	2006-HR016			X										
Julius Erdo	House of Rep.	2006-HR017	X												
Joshua Reny	House of Rep.	2006-HR018	X												
Phillip Cressey	House of Rep.	2006-HR019		X										X	
Anne Perry	House of Rep.	2006-HR020	X												
John Brautigam	House of Rep.	2006-HR021	X												

**SUMMARY REPORT
2006 MCEA CANDIDATE AUDITS**

Commission on Governmental Ethics and Election Practices
Mailing: 135 State House Station, Augusta, Maine 04333
Location: 242 State Street, Augusta, Maine

Phone: 207-287-4179
Fax: 207-287-6775
website: www.maine.gov/ethics

Agenda

Item #12



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

To: Commission Members
From: Jonathan Wayne
Date: November 30, 2007
Re: Proposed Report to the Joint Standing Committee on Legal and Veterans Affairs

As you know, one duty of the Ethics Commission is to receive complaints concerning legislative ethics. The areas within the Commission's jurisdiction are conflicts of interest, undue influence on an administrative agency, and abuse of position. Few complaints are filed. Resolve, Chapter 81 of the Public Laws of 2007 directed that the Executive Director of the Commission submit a report concerning legislative ethics complaints to the Joint Standing Committee on Legal and Veterans Affairs.

The background for the resolve is that in January 2006, the Presiding Officers of the Maine Legislature announced their intention to establish an advisory committee to examine Maine Statutes related to legislative ethics. The committee consisted of current and former Legislators, former presiding officers, accomplished members of the public, and citizen lobbyists. Phyllis Gardiner (as the designee of the Attorney General) and I were non-voting, *ex officio* members of the committee.

The Advisory Committee met several times between June and December 2006. The views of the members varied widely, and consensus was sometimes difficult. The Advisory Committee issued a final report on December 5, 2006, which included proposed legislation. The legislation was introduced in the 2007 session as L.D. 1008. After holding a public hearing and work session, the Legislature replaced the original language in the bill with the language in Resolve, Chapter 81.

I have attached a proposed draft report for your consideration. The Legislature directed me to provide the report, rather than the Commission. Nevertheless, some parts of the report suggest that the recommendations are from the Commission, and I am proposing that you approve the report. If you prefer otherwise, please let me know.

I need to highlight one issue in the report that may cause sharp concern with some members of the Legislature. Current law contemplates that the Commission may receive complaints only from Legislators. The report proposes that members of the general public should also be permitted to file complaints. You may wish to consider whether the Commission should make this proposal, given the challenges to enactment.



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

DRAFT

To: Joint Standing Committee on Legal and Veterans Affairs

From: Jonathan Wayne, Executive Director

Date: December __, 2007

Re: Report on History of Legislative Ethics Complaints and Sufficiency of Existing Law

Resolve, Chapter 81 of the Public Laws of 2007 directed that the Executive Director of the Maine Commission on Governmental Ethics and Election Practices submit a report concerning legislative ethics complaints to the Joint Standing Committee on Legal and Veterans Affairs:

Sec. 1 Commission on Governmental Ethics and Election Practices to provide historical data regarding receipt and resolution of complaints pertaining to legislative ethics violations. Resolved: That the executive director of the Commission on Governmental Ethics and Election Practices shall provide to the Joint Standing Committee on Legal and Veterans Affairs the number of legislative ethics complaints received during the past 10 years, from whom the complaints were received, the extent of any investigation into any complaint and the final resolution of the complaints. In addition to the historical data, the executive director shall report whether or not the existing laws regarding legislative ethics and the authority granted to the Commission on Governmental Ethics and Election Practices are sufficient to properly resolve legislative ethics complaints or whether those laws impose barriers to effectively addressing actions that are recognized as violations of legislative ethics; and be it further

Sec. 2 Report date and authorized legislation. Resolved: That the executive director of the Commission on Governmental Ethics and Election Practices shall submit the data and report described in section 1 by February 15, 2008, including any proposed legislation. The Joint Standing Committee on Legal and Veterans Affairs is authorized to submit legislation to the Second Regular Session of the 123rd Legislature based on the information included in the report.

This memo constitutes the report required by Resolve, Chapter 81. Proposed legislation is attached as an Appendix. The report and legislation were approved by the members of the Commission at their December 7, 2007 meeting.

I. BACKGROUND ON RESOLVE, CHAPTER 81

In January 2006, the Presiding Officers of the Maine Legislature announced their intention to establish an advisory committee to examine Maine Statutes related to legislative ethics. The membership, activities, and recommendations of the Presiding Officers' Advisory Committee on Legislative Ethics are described on the website of the Speaker of the Maine House of Representatives, <http://speaker.maine.gov/ethics/index.html>.

The Advisory Committee issued a final report on December 5, 2006, which included proposed legislation. The report also recommended changes to the Legislature's rules to encourage disclosure by Legislators when their actions might appear to involve a conflict of interest. The Committee also suggested better training of Legislators on ethics issues.

The Commission's Counsel (as the designee of the Maine Attorney General) and I were non-voting, *ex officio* members of the committee. We assisted the Presiding Officers' staff in working on the proposed legislation that was attached to the report. The legislation was introduced in the 2007 session as L.D. 1008. After holding a public hearing and work session, the Legislature replaced the original language in the bill with the language in Resolve, Chapter 81.

II. HISTORY OF LEGISLATIVE ETHICS COMPLAINTS

During the past 10 year, the Ethics Commission has received four complaints concerning legislative ethics that were within the Commission's jurisdiction. In addition, the Commission's former director, William Hain, requested that the Commission consider one matter on his own initiative. Under 1 M.R.S.A. §§ 1013(2)(J) and (3), legislative ethics complaints filed with the Commission must be kept confidential until the Commission decides to hold a public hearing to consider the complaint. The information below is therefore general.

Complaint #1

Year: 1998

Complainant: member of the public

General Issue: The complainant was employed in a workplace in which the employees were scheduled to vote on a decision to unionize. The complaint was that it was inappropriate for two members of the Maine Legislature to write a

letter on legislative stationery encouraging employees to vote “yes” on the decision.

Extent of Investigation: The Commission staff requested that the Legislators respond to the complaint. The Commission held a meeting in executive session.

Final Resolution: Following the executive session, the Commission voted to dismiss the complaint. The Commission also decided to communicate with legislative leadership regarding the permissible uses of legislative stationery.

Complaint #2

Year: 2001

Complainant: The Commission’s former executive director, William Hain, initiated the matter. No complaint was filed.

General Issue: Mr. Hain alleged that a Legislator had influenced campaign finance legislation that would affect a penalty matter relating to the Legislator.

Extent of Investigation: The Commission requested a response from the Legislator. The Commission held a meeting in executive session.

Final Resolution: Following the executive session, the Commission voted to dismiss the matter.

Complaint #3

Year: 2006

Complainant: Advocacy organization

General Issue: The complaint alleged that a Legislator had influenced legislation relating to the Legislator’s employer and personal employment. The complaint also alleged that the Legislator had unduly influenced an administrative agency regarding a penalty matter relating to the Legislator’s employer.

Extent of Investigation: The Commission staff requested a response from the Legislator. The staff also interviewed persons with knowledge of the facts of the complaint. The Commission considered a large volume of documents from the complainant, two interested organizations, and from the Legislator. The Commission held meetings in executive session.

Final Resolution: The Commission voted 2-2 not to hold a public hearing regarding the matter.

Complaint #4

Year: 2006

Complainant: Member of the public

General Issue: The complaint alleged that a Legislator had influenced legislation that affected the employment of the Legislator's spouse.

Extent of Investigation: After receiving the complaint, the Commission staff requested a written response from the Legislator. The staff also spoke with the complainant and considered documents provided by the complainant. The Commission held a meeting in executive session, and heard presentations from the complainant and the Legislator.

Final Resolution: The Commission determined that the complaint did not have merit, and voted not to take any action on the complaint.

Complaint #5

Year: 2006

Complainant: Member of the public

General Issue: The complainant had interacted with the Legislator as an attorney representing the complainant's opponent in civil litigation involving property damage. The complainant believed that the Legislator influenced legislation that might affect the lawsuit.

Extent of Investigation: After receiving the complaint, the Commission staff requested a written response from the Legislator. The staff also interviewed the complainant and considered documents provided by the complainant. The Commission held a meeting in executive session, and heard presentations from the complainant and the Legislator.

Final Resolution: The Commission determined that the complaint did not have merit, and voted not to take any action on the complaint.

III. SUFFICIENCY OF EXISTING LAWS

The Commission believes that the existing procedural laws governing the handling of legislative ethics laws are mostly adequate, but they could be improved. Five key issues are discussed below. In the Appendix to this memo, the Commission has attached proposed changes to 1 M.R.S.A. § 1013 which would address Issues #1 - #4. The legislation is based closely on section 6 of L.D. 1008. Any proposed language that was drafted by the Commission and was not part of L.D. 1008 is shaded in gray.

Issue #1: Permitting Ethics Complaints from the Public

Current law contemplates that the Commission will receive complaints about legislative ethics only from Legislators:

1. **Authority.** The commission shall have the authority: ...

B. To investigate complaints filed by Legislators, or on its own motion, alleging conflict of interest against any Legislator, to hold hearings thereon if the commission deems appropriate and to issue publicly findings of fact together with its opinion; (1 M.R.S.A. § 1013(1)(B))
(underlining added)

In rare instances, this restriction could easily be a barrier to the Commission's consideration of legislative ethics violations. It is not hard to imagine circumstances in which someone other than a Legislator would learn of information suggesting a conflict of interest, undue influence, or abuse of position, and wish to file a complaint directly with the Commission without turning to a Legislator. First, the person may not know a Legislator or may not feel comfortable asking a Legislator to complain about a colleague. Even if the person is willing to approach a Legislator, there may be personal or political reasons that would inhibit a member of the Maine Legislature from filing a complaint against a fellow member.

The Commission proposes that individuals other than Legislators should be permitted to file complaints. It suggests the same statutory language that was included in L.D. 1008:

Any person may file a complaint against a Legislator alleging a violation of legislative ethics. The complaint must be filed in writing and signed under oath and must specify the facts of the alleged violation and such other information as the commission requires.

In those rare instances in which a Legislator is in a conflict of interest, permitting individuals other than Legislators to file complaints will increase the chances that the Commission will consider the facts of the situation and will submit findings of fact and an opinion to the Legislature that could prevent similar missteps in the future.

The Commission is aware of the concern that the proposed change might invite complaints that are frivolous or politically motivated. The Commission is hopeful that this would not come to pass. The current law contains a disincentive against filing a groundless complaint: the Commission can order the complainant to pay legal and other costs incurred by the Legislator in responding to the complaint. (1 M.R.S.A. § 1013(2)(G)) The filing of a false charge of a conflict of interest, which the complainant does not believe to be true (or inducing another to do so) is a Class E crime. (1 M.R.S.A. § 1020) There are additional disincentives to filing a politically motivated or malicious complaint. All complaints must be kept confidential until the Commission has decided to hold a public hearing on the complaint. (See Issue #4 below.) A breach of that confidentiality requirement would be a Class D crime. Thus, from the outset, a complainant seeking to harm a Legislator in the public's eye cannot bring the complaint to the attention of the public or the press. If a complaint is frivolous or politically motivated, the Commission likely will not hold a public hearing on the complaint, and the complainant would be required to keep the complaint confidential permanently. In addition, complaints must be made under oath and there are penalties in the Maine Criminal Code for making false material statements under oath in an official proceeding. (17-A M.R.S.A. § 452) These provisions of existing law could remove the advantage or result the complainant seeks in filing a frivolous or politically motivated complaint.

If the Legislature does not want to allow complaints by the public, it is important to note that existing law does permit the Commission to investigate complaints on its own motion. So, if the Commission receives a meritorious complaint from someone other than a Legislator, current law does not prevent the Commission from considering the issues contained within the complaint.

Issue #2: Conduct from a Previous Legislature

Under existing law:

Only those complaints dealing with alleged conflicts of interest related to the current Legislature shall be considered by the commission. (1 M.R.S.A. § 1013(2)(B))

Some Legislators have expressed that it is sensible to have a statute of limitations on the filing of legislative ethics complaints, so that complainants are encouraged to come forward with reports of misconduct and not to sit on their hands. On the other hand, it is easy to foresee a circumstance in which the current-legislature restriction could be a barrier to the Commission considering a meritorious complaint. For example, if the Legislator's actions occurred toward the end of a Legislature, it may be impossible for a complainant to learn of the conduct until after the beginning of the next Legislature. In that circumstance, the Commission would lack jurisdiction to hear the complaint.

The Commission proposes that the statute be amended to grant it jurisdiction to consider complaints based on activity that occurred or was continuing within two years of the filing of the complaint. The Commission draws its proposal from L.D. 1008:

The commission shall consider only complaints against Legislators in office at the time of the filing of the complaint and only complaints relating to activity that occurred or was ongoing within 2 years of the complaint.

It could be argued that the statute of limitations should be longer than two years. Nevertheless, the Commission proposes a two-year period because it was a compromise that was found acceptable by a majority of members of the Advisory Committee.

Issue #3: Procedures for Screening Complaints and Holding a Public Hearing

Under existing law, when a complaint is filed, the Commission must provide a copy of the complaint to the Legislator whose conduct is at issue. The Commission may conduct an investigation and hold a public hearing as it deems necessary. The Legislator also has a right to request a public hearing. (1 M.R.S.A. § 1013(2)(B) and (E)) If a hearing is held, the Legislator has the right to call witnesses and to cross-examine witnesses. (1 M.R.S.A. § 1013(2)(D)) After the hearing, the Commission must issue findings of fact and an opinion to the legislative chamber of which the Legislator is a member. That chamber is authorized to take any action it believes is appropriate. (1 M.R.S.A. § 1013(2)(B)) The Commission is not authorized to take any punitive action against the Legislator.

The Commission believes the current hearing procedures contained in 1 M.R.S.A. § 1013(2)(C) - (E) should be improved. They do not provide any direction to the Commission regarding how it should decide whether to conduct an investigation or hold a hearing. If the Commission decides to hold a hearing, it is required to subpoena such witnesses as the complainant requests, which may be unnecessary and disadvantageous to the administration of the proceedings. Other than being able to call witnesses, the role of the complainant is not completely clear. The procedures contain an unusual provision that *any* person who believes that they have been adversely affected by testimony in the hearing has the right to testify at the hearing.

The attached proposal by the Commission is based on L.D. 1008, and is intended to clarify the screening process and hearing procedures. Once a complaint is filed the Commission shall provide the Legislator with an opportunity to respond. The Commission shall hold a meeting in executive session to decide whether to conduct an investigation or conduct a hearing. The Legislator may attend the meeting and present such evidence as the Commission deems appropriate. The Commission has the discretion to allow a complainant to attend the meeting and to present oral argument, but it is not required to do so.

The proposal requires the Commission to conduct a rulemaking to establish procedures for legislative ethics investigations and hearings. It also specifies that if the Commission decides to hold a hearing on a complaint, the Commission may, by order, grant the complainant or other interested persons full or limited party status, but the Commission is

not required to do so. Limited party status means that the Commission would control the ability of the party to call witnesses, cross-examine witnesses, or present evidence.

Issue #4: Confidentiality of Complaints

Under 1 M.R.S.A. §§ 1013(2)(J) and (3), legislative ethics complaints filed with the Commission must be kept confidential until the Commission decides to hold a public hearing to consider the complaint. This confidential screening process seems designed to strike a balance between identifying meritorious claims of conflicts of interest and not creating a forum that would encourage complaints that are uninformed or ill-motivated. Under this design, complaints that present a genuine question of a conflict of interest will receive a public hearing. If the complaint is based on a poor understanding of the law or bad faith, the complaint will be dismissed and will not be heard publicly and will remain confidential. This screening process is not unlike private confidential screening processes in other ethics enforcement schemes.

The Commission staff has recommended applying the current confidentiality provisions in 1 M.R.S.A. §§ 1013(2)(J) and (3) as follows:

Step A	A complaint alleging a conflict of interest is filed with the Commission.	Confidential
Step B	The Commission staff provides a copy of the complaint to the Legislator, and the staff requests a preliminary written response on the issue of whether the Commission should hold a hearing and whether an ethics violation occurred.	Confidential
Step C	The staff may conduct preliminary fact-gathering.	Confidential
Step D	The Legislator responds to the staff request.	Confidential
Step E	The Commission holds a meeting in executive session to decide whether to hold a public hearing to consider the complaint. If the Commission decides not to hold a hearing, the matter would remain confidential permanently.	Confidential
Step F	The Commission holds a public hearing and conducts any further investigation it deems necessary.	Public
Step G	The Commission issues findings of fact and opinion.	Public

If the Commission decides to hold a hearing, the hearing would be public, including all records presented at the hearing even if they were generated as part of Steps A - E.

The Commission’s legislative proposal seeks to maintain this basic structure and to clarify the procedures. It is based on L.D. 1008 with some minor modifications.

Issue #5: Definition of Legislative Conflict of Interest

Resolve, Chapter 81 directed that the Commission comment on current procedures for handling complaints and did not specifically invite the Commission to comment on the definition of conflict of interest. Nevertheless, some comment seems appropriate for this report, because a lack of clarity regarding what is a conflict of interest can provide insufficient guidance to Legislators and can hamper the Commission's consideration of a complaint.

In the view of the Commission staff, the different standards contained within 1 M.R.S.A. § 1014(1) cause confusion in the interpretation and application of the statute. For example, if a Legislator is going to receive a benefit from proposed legislation that would affect his employment, must the benefit be "unique and distinct" to qualify as a conflict (paragraph 1(F)) or merely "distinct" (paragraph 1(E)). To which population should the Legislator be compared: is it the "general community" (paragraph 1(E)), the "general public" (paragraph 1(F)), or individuals in the same profession or employment as the Legislator (paragraphs 1(E) and (F))?

Paragraph 1(A) covers a situation in which an "enterprise" that is affiliated with a Legislator (*e.g.*, a business or nonprofit) is affected by proposed legislation. Unlike paragraphs 1(E) and (F), paragraph 1(A) does not indicate what degree of benefit or loss results in a conflict of interest.

The statutory proposal by the Presiding Officers' Advisory Committee attempted to resolve this confusion and to *broaden* the scope of what is a conflict of interest. A majority of members of the Advisory Committee found the "unique and distinct" standard to be "very narrow, making it highly unlikely that a legislator would ever be restrained by conflict of interest rules." (Final Report, page 4)

Some members of the Advisory Committee, however, opposed broadening the definition. They expressed that they do not want to reduce the expertise that some Legislators bring to discussion of policy issues based on their personal employment, do not want to discourage participation in the Legislature, and do not believe that there is a significant problem with conflicts of interest in the Maine Legislature.

The experience of the Advisory Committee demonstrates how difficult it can be to reach a consensus about how to define a legislative conflict of interest. People of good will who are equally concerned about governmental ethics may easily reach different conclusions about how Maine's citizen legislature ought to operate. If the Legislature is interested in reconsidering the proposal by the Presiding Officers' Advisory Committee, the language is available in section 7 of L.D. 1008. In addition, press reports seem to indicate that at least one other legislative proposal regarding what is a conflict of interest has been accepted for the 2008 legislative session.

Thank you for your consideration of this report. Please let me know if the Commission or its staff can provide further assistance to the Legal and Veterans Affairs Committee as it considers these issues.

An Act To Improve the Legislative Ethics Laws

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 1 MRSA §1013, as amended by PL 1989, c. 561, §§5 and 6, is further amended to read:

§ 1013. Authority; procedures

1. **Authority.** The commission ~~shall have the~~has authority:

A. To issue, on request of any Legislator on an issue involving ~~himself~~that Legislator, or on its own motion, written advisory opinions and guidelinesguidance on problems or questions involving possible conflicts of interest;

B. To investigate complaints ~~filed by Legislators, or on its own motion,~~ alleging conflict of interest against any Legislator, to hold hearings ~~thereon~~on those complaints if the commission ~~deems~~ determines it appropriate and to issue publicly ~~findings of fact together with its opinion;~~ and

C. To administer the disclosure of sources of income by Legislators as required by this subchapter.

2. **Procedures.** The following procedures ~~shall~~ apply:

A. Requests for advisory opinions by members of the Legislature ~~shall~~must be filed with the commission in writing, and signed by the Legislator requesting the opinion and ~~shall~~must contain such supporting data as the commission ~~shall require~~requires. When preparing an advisory opinion on its own motion, the commission shall notify the Legislator concerned and allow ~~him~~the Legislator to provide additional information to the commission. In preparing an advisory opinion, either upon request or on its own motion, the commission may make such an investigation as it ~~deems~~determines necessary. A copy of the commission's advisory opinion ~~shall~~must be sent to the Legislator concerned and to the presiding officer of the ~~House~~legislative body of which the Legislator is a member;

B. ~~A Legislator making a complaint shall file the complaint under oath with the chairman. The complaint shall specify the facts of the alleged conflict of interest. The Legislator against whom a complaint is filed shall immediately be given a copy of the complaint and the name of the complainant. Only those complaints dealing with alleged conflicts of interest related to the current Legislature shall be considered by the commission. Upon a majority vote of the commission, the commission shall conduct such investigation and hold such hearings as it deems necessary. The commission shall issue its findings of fact together with its opinion regarding the alleged conflict of interest to the House of which the Legislator concerned is a member. That House may take whatever action it deems appropriate, in accordance with the Constitution of the State of Maine. Any person may file a~~

complaint against a Legislator alleging a conflict of interest. The complaint must be filed in writing and signed under oath and must specify the facts of the alleged conflict and such other information as the commission requires. The commission shall consider only complaints against Legislators in office at the time of the filing of the complaint and only complaints relating to activity that occurred or was ongoing within 2 years of the complaint.

(1) The Legislator against whom a complaint is filed must immediately be given a copy of the complaint and an opportunity to respond.

(2) The commission shall hold a meeting in executive session to decide whether to pursue the complaint by conducting an investigation or holding a hearing. The commission may permit the Legislator and complainant to attend the meeting and make a presentation regarding whether the commission should conduct an investigation or hold a hearing.

(3) Upon a majority vote of the commission, the commission shall conduct such an investigation and hold such hearings as it determines necessary. If one or more seats on the commission are vacant, the vote of 2 commissioners is sufficient to order an investigation and hearings.

C. When the conduct of a particular Legislator is under inquiry and a hearing is to be held, the Legislator shall must be given written notification of the time and place at which the hearing is to be held. Such notification shall must be given not less than 10 days prior to the date set for the hearing.

D. The commission shall ~~have the~~ has authority, through its ~~chairman~~ chair or any member designated by ~~him~~ the chair, to administer oaths, subpoena witnesses and compel the production of books, records, papers, documents, correspondence and other material and records ~~which the committee deems~~ commission determines relevant. ~~The commission shall subpoena such witnesses as the complainant~~ Legislator or the Legislator against whom the complaint has been filed may request to be subpoenaed. The State, its agencies and instrumentalities shall furnish to the commission any information, records or documents ~~which~~ the commission designates as being necessary for the exercise of its functions and duties. In the case of refusal of any person to obey an order or subpoena of the commission, the Superior Court, upon application of the commission, shall ~~have~~ has jurisdiction and authority to require compliance with the order or subpoena. Any failure of any person to obey an order of the Superior Court may be punished by that court as a contempt thereof.

E. ~~Any person whose conduct is under inquiry shall be accorded due process and, if requested, the right to a hearing. All witnesses shall be subject to cross examination.~~ The commission shall adopt rules consistent with due process for the conduct of investigations and hearings under this subchapter. Rules adopted pursuant to this paragraph are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A.

~~Any person whose name is mentioned in an investigation or hearing and who believes that testimony has been given which adversely affects him shall have the right to testify, or at the discretion of the commission and under such circumstances as the commission shall determine to protect the rights of the Legislator under inquiry, to file a statement of facts under oath relating solely to the material relevant to the testimony of which he complains. Any witness at an investigation or hearing, subject to rules and regulations promulgated by the commission, shall be entitled to a copy of such testimony when the same becomes relevant to a criminal proceeding or subsequent investigation or hearings.~~

~~All witnesses shall be sworn. The commission may sequester witnesses as it deems necessary. The commission shall not be is not bound by the strict rules of evidence, but its findings and opinions must be based upon competent and substantial evidence. The commission may, by order, allow the complainant or any other interested person to intervene and participate in the hearing as a full or limited party to the proceeding. If the commission allows an interested person to participate as a limited party, the order shall state any restrictions on the party's right to present evidence, call and examine witnesses and to make oral cross-examination of witnesses.~~

~~If, after conducting a hearing or other investigation, the commission determines that the Legislator was involved in a conflict of interest, it shall issue its findings of fact together with its opinion regarding the conflict of interest to the legislative body of which the Legislator concerned is a member. That legislative body may take whatever action it determines appropriate, in accordance with the Constitution of Maine.~~

~~Time periods and notices may be waived by agreement of the commission and the person whose conduct is under inquiry.~~

F. If the commission concludes that it appears that a Legislator has violated a criminal law, a copy of its findings of fact, its opinion and such other information as may be appropriate shall must be referred to the Attorney General. Any determination by the commission or by a ~~House of the Legislature~~ legislative body that a conflict of interest has occurred does not preclude any criminal action relating to the conflict ~~which that~~ that may be brought against the Legislator.

G. If the commission determines that a complaint filed under oath is ~~groundless and without foundation~~ frivolous or was filed in bad faith, or if the Legislator ~~filing the complaint~~ complainant fails to appear at the hearing without being excused by the commission, the commission may order the complainant to pay to the Legislator against whom the complaint has been filed ~~his~~ that Legislator's costs of investigation and defense, including any reasonable attorney's fees. ~~The~~ Such an order is deemed a final agency action and the complainant may appeal such an order to the House of which he is a member pursuant to the Maine Administrative Procedure Act.

Such an order ~~shall~~does not preclude any other remedy available to the Legislator against whom the complaint has been filed, including, but not limited to, an action brought in Superior Court against the complainant for damages to ~~his~~the Legislator's reputation.

H. ~~A copy of the commission's~~The commission shall file with the Clerk of the House and the Secretary of the Senate a copy of written advisory opinions and guidelines~~guidance issued by the commission,~~ with such deletions and changes as the commission ~~deems~~considers necessary to protect the identity of the person seeking the opinions, or others, ~~shall be filed with the Clerk of the House.~~ The ~~clerk~~Clerk of the House shall keep ~~them~~a copy of such opinions and guidance in a special binder and shall finally publish them in the Legislative Record. The commission may exempt an opinion or a part thereof ~~of an opinion~~ from release, publication or inspection, if it ~~deems~~considers such action appropriate for the protection of 3rd parties and makes available to the public an explanatory statement to that effect.

I. A copy of the commission's findings of fact and opinions regarding complaints against Legislators ~~shall~~must also be filed with the Clerk of the House and the Secretary of the Senate. The ~~clerk~~Clerk of the House shall keep them in a special binder and shall finally publish them in the Legislative Record.

J. ~~The records of the commission and all information received by the commission acting under this subchapter in the course of its investigation and conduct of its affairs shall be confidential, except that Legislators' statements of sources of income, evidence or information disclosed at public hearings, the commission's findings of fact and its opinions and guidelines are public records.~~

K. When a Legislator has a question or problem of an emergency nature about a possible conflict of interest or an issue involving ~~himself~~which that Legislator that arises during the course of legislative action, ~~he~~the Legislator may request an advisory opinion from the presiding officer of the legislative body of which ~~he~~the Legislator is a member. The presiding officer may, ~~at his discretion,~~ issue an advisory opinion, ~~which shall.~~ An advisory opinion issued by the presiding officer must be in accordance with the principles of this subchapter, which shall be in writing, and which shall be reported to the commission. The commission may then issue a further opinion on the matter. The presiding officer may refer such a question or problem directly to the commission, which shall meet as soon as possible to consider the question or problem.

L. The commission shall make reasonable efforts to resolve a complaint within 90 days of its filing.

3. Confidentiality. ~~The subject of any investigation by the commission shall be informed promptly of the existence of the investigation and the nature of the charges or allegations. Otherwise, notwithstanding chapter 13, all complaints shall be confidential until the investigation is completed and a hearing ordered or until the nature of the investigation becomes public knowledge. Any person, except the subject of the~~

investigation, who knowingly breaches the confidentiality of the investigation is guilty of a Class D crime.

4. Confidentiality of records and proceedings relating to screening complaints alleging a conflict of interest. Notwithstanding chapter 13, a complaint alleging a conflict of interest is confidential and is not a public record until after the commission has voted pursuant to subsection 2, paragraph B to pursue the complaint, and a commission proceeding to determine whether to pursue a complaint must be conducted in executive session. If the commission does not vote to pursue the complaint, the complaint and records relating to the investigation of that complaint remain confidential and are not public records. This subsection does not prevent the commission from including general information about complaints in any report to the Legislature. Any person who knowingly breaches the confidentiality of a complaint investigation commits a Class D crime. This subsection does not prevent commission staff from disclosing information that is necessary to investigate a complaint.

5. Confidentiality of records other than complaints. Commission records other than complaints are governed by this subsection.

A. Investigative records relating to complaints that the commission has voted to pursue are confidential until they are provided to commission members or otherwise distributed at a public hearing of the commission.

B. Legislators' statements of sources of income are public records.

C. If the commission determines that the Legislator was involved in a conflict of interest, the commission's findings of fact and opinion submitted to the Legislature are public records.

D. Advisory opinions of the commission and requests for advisory opinions from the commission are public records, except as provided in subsection 2, paragraph H.