

Agenda

Item #1



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

Minutes of the December 7, 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. 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: October 30, 2007 Meeting

Mr. Wayne reviewed a few grammatical changes and word changes made to the drafted minutes. On motion by Mr. Marsano and seconded by Mr. Shiah, the minutes as amended were adopted unanimously.

Agenda Item #2 Public Hearing on Rulemaking

Mr. Wayne reminded the members that at the last meeting, the proposed changes to the rules were accepted by the Commission in order to receive public comments. He said as of today, no written comments had been received.

Carl Lindemann, Truedialog.org, addressed the Commission. He said that the issue he wanted to address was not brought up in the proposed rules. The issue of concern to Mr. Lindemann was how the Commission decided whether an issue brought before it was within the Commission's jurisdiction and whether the issue should be on the Commission's agenda or not. He suggested that there may be matters that are of general concern to the Commission but which are not specifically within the ambit of the Commission's jurisdiction. He said that there is a need for greater clarity on the process of how those jurisdictional questions are resolved.

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Mr. Marsano asked for Mr. Lindemann's view on the process currently used for matters brought before the Commission.

Mr. Lindemann expressed concern that matters coming before the Commission be within the Commission's ambit and that the Commission be able to address issues of concern to the Commission *sua sponte* or that are otherwise brought to its attention.

At this point the public hearing on rulemaking was closed.

Agenda Item #3 Maine Clean Election Act Violation/Clyde E. Dyar

Mr. Wayne reviewed the background for arriving at the penalty amount for Mr. Dyar. The staff recommended finding Mr. Dyar in violation of 21-A M.R.S.A. §1125(6), for over spending \$409.71 of his MCEA funds to promote his campaign, and assessing a \$50 penalty.

Mr. Dyar stated that this was his first running as a candidate and felt very overwhelmed at running a campaign in a six week period, while trying to keep track of all the reporting requirements during this time. He expressed his gratitude to the Commission staff for all the help he received during his campaign. Mr. Dyar further stated that the matching fund process was confusing and difficult to react to in a timely, constructive fashion. As a result, a bill was forgotten in the haste of campaigning and he notified the Commission right away when this mistake was discovered. Mr. Dyar paid the bill from his own personal funds.

Mr. Dennis Keschl, Mr. Dyar's treasurer, stated this was his first time being involved in the election process. He stated that due to the shorter timeframe for the special election cycle, the process became very difficult and confusing. Mr. Keschl also stated that had he and Mr. Dyar been through the process before, the time challenge may not have been an issue.

Mr. Friedman asked what in particular was difficult about the process.

Mr. Dyar said in a regular election the time constraints are not a problem. In a six week period for the special election, the matching funds piece is very difficult to manage. He feels there should be an allotted

amount of money for all candidates and when that runs out, that is the end of funding. The shorter election cycle is not conducive to the clean election process.

Mr. Youngblood stated that the rules for clean elections need to be understood and followed by all candidates. He moved to follow the staff recommendation and find Mr. Dyar in violation of §1125(6) for over spending. Mr. Marsano seconded.

Mr. Friedman recognized the difficulty with being a first time candidate and the condensed timeframe for campaigning.

The motion passed (4-0).

**Agenda Item #4 Audit of 2006 Candidate Paul Hatch and
Agenda Item #5 Audit of 2006 Candidate Pamela Hatch**

Mr. Friedman asked whether both items should be taken together. Mr. Wayne said they were related and could be taken together. After discussion, it was decided to make a motion to combine the two items. Mr. Marsano moved that Items 4 and 5 be joined for the purpose of discussion, deliberation, and decision. The motion was seconded by Mr. Youngblood. Mr. and Mrs. Hatch had no objection to the joining of the two matters. The motion passed by a vote of 4-0.

Mr. Wayne reviewed the history of Mr. and Mrs. Hatch's campaigning over the past several elections. He stated that documentation for expenditures was missing from both campaigns in 2006 and some expenditures were paid from personal funds and reimbursed by public MCEA funds. While it was permissible to use personal funds for campaign expenditures and make reimbursements from campaign funds, the campaigns are required to keep documentation to support their expenditures. There were seven expenditures totaling almost \$3,000 between the two campaigns for which there was no documentation. Mr. Wayne outlined different options the Commission could take regarding the findings of these audits. He said the Commission could view this as a well-intentioned campaign, with poor recordkeeping standards, or the Commission could find the lack of documentation a critical deficiency and ask the campaigns return the amounts of these expenditures, or the Commission could request the campaign to produce more documents to support the expenditures and postpone the matters to a later meeting.

Mr. Dinan reviewed the detailed audit findings for the Commission and proposed that the Commission may want to have Mr. Hatch respond to each finding as Mr. Dinan went through them. Regarding the first audit finding, Mr. Dinan expressed concern that seed money contributions were not deposited into the campaign bank account and therefore there is no independent way to confirm how much the campaign received in seed money contributions which could have an impact on the amount of the initial MCEA distribution to the campaign. He also stated that Mr. Hatch said there was no bank account, when in fact there was an account dating back to 2005.

Mr. Hatch proposed an explanation would cover everything that the Commission was about to consider. Mr. Hatch said that the documentation was simply lost and he takes responsibility for it. He said the documents were probably thrown out with the Sunday newspaper. Mrs. Hatch uses the dining room table as campaign headquarters and he has a long-standing habit of reading the newspaper at the dining room table. He said that he probably shuffled the documents into the newspaper when he was picking it up from the table. He said it was stupid on his part but not intended. He said he and his wife cannot hold up their end of the contract, so they will pay the money back and pay any penalty assessed against them. They do not want to draw these proceedings out.

Mr. Friedman asked Mr. Hatch if his position was the same for all six findings that the documents were lost for all six expenditures.

Mr. Hatch said it was.

Mr. Friedman further asked if Mr. Hatch would like more time to get the documentation from the vendors.

Mrs. Hatch stated that they had checked with Staples and the US Post Office and were told in both cases that additional receipts could not be provided.

Mr. Dinan continued the remainder of the detailed findings for Mr. Hatch. He also said the staff had extended every possible time line for getting the documentation materials required by law from Mr. and Mrs. Hatch. Regarding Finding No. 2, Mr. Dinan said a volunteer, John Ring, provided a statement that said he received \$100 in payment from the Hatches, and the campaign reported the expenditure; however, later Mr. Ring stated he did not receive payment, so the expenditure is being questioned. Mr. Dinan also

reviewed the comingling of funds violation, unreported expenditure violation, and undocumented expenditures violation.

Mr. Hatch restated that he owes some money and he will pay it but has nothing to add to the technicalities of the bookkeeping since he was not involved in it. He also said he really did not want to run as a clean election candidate, but was talked into it. He would recommend anyone running for office to pay for their own campaign. He would not run again as a clean election act candidate.

Mr. Friedman asked how many clean election campaigns Mr. Hatch had run. Mr. Hatch said he had run three times, but had to withdraw from one due to health reasons.

Mr. Dinan reviewed Mrs. Hatch's audit findings. These findings and recommendations are very similar to Paul Hatch's audit - undocumented expenditures, commingling of funds, and seed money violations.

Mrs. Hatch stated they had done several things wrong and should have contacted the Commission early on. She said she was a bookkeeper for many years and has lost some of that capacity. The expenditures for postage and Staples were paid for in cash in case they did not need to use them. The postage was purchased very early in the campaign with personal funds because she had the cash in hand and always reported personal funds used. She was running her own campaign and feels she may have taken on more than she could handle.

Mr. Friedman summarized the recommendations for Mr. Hatch. For the seed money violation, a penalty of \$100; for undocumented expenditures, the recommendation is either assess a \$300 penalty if the Commission believes the expenditures were made, or if the Commission does not accept the assertion that the expenditures were made, then the staff recommendation is for Mr. Hatch to repay \$590.63 back to the MCEA fund plus an appropriate penalty. For unreported expenditures, the recommendation is a \$250 penalty. For misreported expenditures, comingling of funds, and unexplained excess balance in campaign bank account, the recommendation is to find technical violations with no penalties.

Mr. Friedman reviewed the recommendations regarding Mrs. Hatch's audit. For the seed money violation, the recommendation is a penalty of \$100. For undocumented expenditures, the recommendation is either to assess a \$500 penalty if the Commission believes the expenditures were made, or if the Commission does

not accept that the expenditures were made, then the recommendation is for Mrs. Hatch to repay \$1,879.98 and to assess an appropriate penalty. For the undocumented payment of MCEA funds, the recommendation is to repay \$78 if the Commission determines that the payment was not made for campaign purposes or, if the Commission accepts that the payment was for campaign purposes, a finding of a technical violation but no penalty. For comingling of funds, the recommendation is a finding of technical violation with no penalty. For the unexplained excess balance in campaign bank account, the recommendation is for Mrs. Hatch to repay the difference between \$1,879.98 (undocumented expenditures) and \$2,396.53 (bank balance), which is \$516.57 if the Commission determines that the expenditures were not made and to assess an appropriate penalty. If it is determined that the expenditures were made, no action needs to be taken.

Mr. Shiah asked if there were bookkeeping issues in past campaigns. Mrs. Hatch said there were no bookkeeping issues in the past.

Mr. Friedman asked if their campaigns had been audited before. Mrs. Hatch said they had not been audited before.

Mr. Shiah asked Mr. and Mrs. Hatch if the expenditures had actually been made.

Mr. Hatch said that considering the amount of money being questioned, he would prefer to just pay the fines. He said he would not do something stupid for only \$3,000, which was six days pay for him in the past.

Mr. Marsano asked Mr. Hatch specifically about the bank account, which Mr. Hatch stated in his letter did not exist. Yet upon further investigation by the Commission, it was discovered that the bank account dated back to 2005. Mr. Marsano said this discrepancy was a significant factor regarding Mr. Hatch's credibility.

Mrs. Hatch clarified that the account was in existence before 2005.

Mr. Marsano stated, if that was the case, then Mr. Hatch's letter was wrong.

Mr. Hatch stated again that he was not involved in the bookkeeping of the campaign.

Mr. Marsano said the burden of proof lies with Mr. and Mrs. Hatch at this point. He said they can offer statements or produce facts that will establish proof. Mr. Marsano stated that he does not want the findings to involve a marriage. If it were a cumulative finding, it would mean that the Commission was not singling out one or the other. He said that there may be some benefit to that approach so that the Commission is not allocating blame between the two parties.

Mr. Youngblood asked how the difference was arrived at assessing a \$300 penalty for Mr. Hatch and \$500 penalty for Mrs. Hatch.

Mr. Wayne said he made that decision since Mr. Hatch's undocumented expenditures totaled \$1,000 and Mrs. Hatch's totaled almost \$1,900, so the amount of the penalty is proportionate to the amount of undocumented expenditures. Mr. Wayne said the Commission had a great deal of latitude regarding the amount of a penalty to assess.

Ms. Gardiner stated that in the past when there have been credibility issues, the candidate has had the burden of proof as to whether expenditures were in fact made by providing documentation or through testimony. If the Commission determined that the expenditures were not made, the Commission has required the return of the funds. The Commission is not locked into that, but that is how previous cases were handled. The assessment of a penalty was then handled as a separate step and the Commission considered the particular circumstances involved in the case before them.

Mr. Wayne said this is the first year that audits have been undertaken. Most campaigns have been able to come up with documentation. He said it depends on how the Commission wants to administer the MCEA program. Mr. Wayne advised that there are no rules or policies that say it is the candidate's burden to come up with documentation and if documentation of expenditures cannot be provided then the candidate has to return the money spent.

Mr. Marsano reminded the Commission that at the last meeting, there was a case where documentation was not provided due to a tornado in the candidate's hometown. The Commission decided in that case to accept the explanation for undocumented expenditures.

Mr. Wayne said if the Commission wished to adopt this policy, then they should do so.

Mr. Friedman said the candidates have to take certain steps, according to the statute, to prove that expenditures were made. In the case of the Hatches, he said if the Commission feels the proof has not been provided for expenditures, then the amount of funds to be returned totals \$2,973.54 and the Commission could assess a penalty, or not, in addition.

Mr. Marsano asked Ms. Gardiner if the cumulative approach would be legally appropriate.

Ms. Gardiner stated that it would not be inappropriate. She does not think it would make a difference either way, cumulative or separately, other than the cumulative approach would avoid the issue of assigning blame to one person or the other. The ultimate conclusion is in finding whether there is satisfactory proof of the expenditures.

Mr. Marsano said the daughter should be left out of these considerations. He moved that the Commission require the return of \$2,973.54 in clean election act funds and assess a civil penalty for false reporting and spending MCEA funds for purposes not related to the campaigns in an amount of \$500.

Mr. Friedman clarified that Mr. Marsano accepts the staff findings that there has not been proper documentation provided, therefore the expenditures are being disallowed.

Mr. Marsano confirmed.

Ms. Gardiner asked if the motion included the findings regarding seed money expenditures or comingling or just to the findings regarding the expenditures which the Hatches have not proven to have occurred.

Mr. Marsano said the intent of his motion is to recognize that the Hatches agreed to join their two audits; to find that they have failed to meet the burden of proof that the expenditures were made; to require that the amount of MCEA funds spent on these undocumented expenditures be returned to the Fund; and to propose a minimum penalty of \$500 for the other findings with recommended penalties in each audit, *i.e.*, the seed money violations, failure to document expenditures, and failure to report expenditures.

Mr. Friedman seconded.

Mr. Shiah said that the Hatches have not met their burden of proof in the traditional ways and that is unfortunate. In the past, there have been other candidates who have stated the same thing as the Hatches. It is difficult in this case considering that the Hatches have not had problems in the past.

The motion passed by a vote of 3-1. Mr. Shiah opposed.

Agenda Item #6 Request for Waiver of Late-Filing Penalty/Gary C. Wood

This item was postponed to the January meeting.

Agenda Item #7 Request for Waiver of Late-Filing Penalty/Benjamin T. Collings

Mr. Wayne stated that Mr. Collings was not able to attend the meeting. Benjamin T. Collings is a registered lobbyist for the Penobscot Nation. His monthly lobbyist report was filed 24 minutes late. Mr. Wayne provided a letter from Mr. Collings which Mr. Collings hand delivered to the Commission the day before the meeting. Mr. Wayne reviewed the Commission's past process in handling late-filed lobbyist's reports, which ranged from an automatic waiver for lobbyists who had not filed late for the previous 2 years to a strict policy of imposing a \$100 penalty for any late-filed monthly report.

Mr. Youngblood stated that he has no sympathy for a lobbyist who knows the rules and reporting requirements and still filed a late report.

Mr. Marsano stated that he did not think that a waiver of the penalty was in order, but asked the other Commission members whether a minor penalty would be appropriate if the lobbyist's explanation was credible. He said that especially if the lobbyist was working pro bono and admitted to being wrong, a minor penalty would be in order.

Mr. Friedman asked if there was anyone who wanted to comment on this matter. There was no one.

Mr. Friedman stated that lobbyists know the requirements and rules very well. He further stated that if a complaint were filed 24 minutes late in court, there would be ramifications for that. He agrees with Mr. Youngblood to not grant a waiver or reduction.

Mr. Marsano said he is not in favor of a waiver, only a reduction in the penalty.

Mr. Shiah stated that he knows Mr. Collings a little. There are different levels of lobbyists and some are more in tuned to the legal requirements than others. He believes that \$100 is too much of a penalty for being 24 minutes late.

Mr. Youngblood moved to assess the recommended penalty of \$100; Mr. Friedman seconded. The motion failed by a tie vote; Mr. Friedman and Mr. Youngblood in favor and Mr. Marsano and Mr. Shiah opposed.

Mr. Marsano moved to find a violation and assess a \$25 penalty; Mr. Shiah seconded. The motion failed by a tie vote; Mr. Marsano and Mr. Shiah in favor and Mr. Friedman and Mr. Youngblood opposed.

Mr. Friedman moved to find a violation and assess a \$75 penalty; Mr. Youngblood seconded. The motion failed by a tie vote; Mr. Friedman and Mr. Youngblood in favor and Mr. Marsano and Mr. Shiah opposed.

Mr. Shiah moved to find a violation and assess a penalty of \$50; Mr. Marsano seconded. The motion passed by a vote of 3 – 1. Mr. Youngblood opposed.

Agenda Item #8 Audit Reports for Robert F. Bauer and Sen. Earle L. McCormick

Mr. Dinan reviewed Senator McCormick's audit report. He said this audit was selected because of the large amount of matching funds (\$40,164) Senator McCormick received and expended in the 2006 election. Mr. Dinan explained that there was one finding for incomplete documentation regarding postage. The receipt for the expenditure was not submitted originally and Senator McCormick was able to provide proof of the mailer and proof of payment made to the post office. The staff recommendation is to find a violation with no penalty.

Mr. Shiah moved to accept the staff recommendation; Mr. Marsano seconded. The motion passed (4-0).

Mr. Dinan reviewed the audit report of F. Robert Bauer, a House candidate in the 2006 election. He explained there were two findings, one for unreported seed money contributions and expenditures (for postage he purchased out of his own money). The recommendation is to find a technical violation with no penalty. The second finding was a purchase of sign materials for \$178.15 with proof of payment but no

vendor invoice for the expenditure. The recommendation is also to find a technical violation with no penalty.

Mr. Youngblood asked if Mr. Bauer had to amend his seed money report. Mr. Dinan confirmed that this would be done.

Mr. Shiah moved to accept the staff recommendation; Mr. Marsano seconded. The motion passed (4-0).

Agenda Item #9 Guidance on Reporting under 21-A M.R.S.A. § 1056-B

Mr. Wayne said the staff has been getting many questions regarding reporting obligations for organizations which spend more than \$1,500 on a ballot question but which are not political action committees. Mr. Wayne gave examples of these types of organizations – AARP, Maine Heritage Policy Center, Maine Center for Economic Policy – which were active in the TABOR ballot question but which are not PACs since their major purpose is not to influence ballot questions elections. Mr. Wayne outlined some new draft advice that the Commission counsel and staff have proposed. He drew attention in particular to the proposed advice regarding an organization's involvement in the drafting of a ballot question. Mr. Wayne suggested the Commission consider the advice that if an organization that drafted proposed legislation later submits the legislation as a citizen initiative or engages in any financial activity regarding the citizen initiative based on the proposed legislation it drafted, the costs for drafting the legislation would be reportable and count towards the \$1,500 threshold. It would not be reportable if the organization does not know whether the draft legislation will actually become a ballot question and does not spend money in connection with the citizen initiative.

Mr. Friedman asked if the public had seen this guidance. Mr. Wayne said the public had not seen it yet.

Mr. Youngblood asked if this creates a loophole to help existing Legislators create legislation.

Ms. Gardiner said this would not apply to Legislators. She said the only person who can submit a citizen initiative is a registered voter. Organizations cannot submit a citizen initiative.

Mr. Wayne said there may be a loophole; however, if the legislation drafted by the organization does become a ballot question issue, then the costs associated with the drafting would become reportable at the point that the organization made any expenditures to influence the ballot question.

Mr. Friedman expressed concern over the lack of public input on this issue. He said he wants to be certain the public can and will comment, so he would like to put this item back on the agenda for next meeting and hope that more comments will be received.

Mr. Marsano expressed a concern about the impact on organizations that may have to reconstruct the history of work that had been done a number of years prior to the citizen initiative. He said that he agreed with the Chair's suggestion that the Commission receive more comments from the public.

Mr. Wayne said that he would notify all 1056-B filers, PACs, and other interested parties of these proposed guidelines and request comments.

Mr. Carl Lindemann, TrueDialogue.org, addressed the Commission. He wondered what the effect of the proposed legislation regarding PACs and 1056-B organizations would be if it were enacted. He said that it would considerably narrow the field of organizations that would fall into the 1056-B category.

Agenda Item #10 Proposed Annual Disclosure Statement for Commission Members

Mr. Wayne said that the Commission had heard several suggestions, including the possibility of proposed legislation, that the Commission members should consider filing annual disclosure statements regarding the kinds of affiliations and activities that may be considered a conflict of interest. The proposed disclosure statement was sent out for public comment. Mr. Wayne said he had received comments from Mr. Lindemann expressing concern that the policy did not go far enough because it did not outline what would be the consequence if a conflict of interest did arise. Mr. Wayne explained that there is proposed legislation relating to what constitutes conflicts of interest for a Commission member, how the Commission responds, etc. He said the Commission could let the legislative process decide what the procedures would be, or the Commission could include procedures in this proposed policy. Mr. Wayne advised the Commission that the Speaker of the House has introduced legislation to require the Ethics Commission members to file an annual disclosure statement.

Alison Smith and Ann Luther, Maine Citizens for Clean Elections, addressed the Commission. Ms. Smith said that she had made a comment to Mr. Wayne regarding the inclusion of affiliations with lobbyists. She stated that the public benefits from disclosure. However, she did express concern that mere disclosure may not achieve the stated purpose of the disclosure statement, which was to provide the public assurance that the Commission was acting independently and in its interest.

Ms. Luther said the new legislation concerning conflicts of interest may address this issue. She said that in their view, it was as much an abrogation of duty for a Commission member to recuse himself or herself when there was no real conflict as it was to sit on a case where there was a real conflict of interest. She hoped the legislation would provide guidance on these important considerations.

Mr. Friedman asked for clarification on adding affiliations with lobbyists. Ms. Smith stated that it was just a gut reaction to the form and felt it should probably be included because lobbyists form a large segment of the Commission's regulated communities. She said disclosure only goes so far, but how to deal with conflicts is another whole issue that needs to be addressed for the benefit of the public.

Mr. Marsano expressed concern that there ought to be a reserved right for a Commission to recuse himself or herself without comment as to the basis for that recusal so as not to unduly impair the judgment of his or her colleagues. He gave the example of a Commission member who has no faith in the credibility of a witness or someone before the Commission. That Commission member ought to be able to recuse himself or herself without comment otherwise the Commission member, in stating the reason for the recusal, may impair the judgment of the other Commission members.

Ms. Luther said that she could not agree or disagree with Mr. Marsano's comments. She said that she considers it to be a problem for someone who has been speciously accused of a conflict of interest to recuse himself or herself in order to avoid the appearance of a conflict.

Mr. Lindemann, Truedialog.org, addressed the Commission. He expressed concern that there is no consequence for failing to disclose or falsely disclosing conflicts of interest in the nomination process and in the re-appointment process. He also said that this issue came up because of former Commission Chair Ginn-Marvin who was the treasurer of a regulated entity. He said that it was important to find the balance between being knowledgeable of the regulated communities and knowing too much.

Mr. Marsano asked Mr. Lindemann if the Ginn Marvin matter had not come up, would his views still be the same regarding disclosure of Commission members.

Mr. Lindemann said laws arise out of violations, and the issue would not have occurred to him if the Ginn Marvin matter had not arisen.

Mr. Marsano asked if it would be acceptable for a Commissioner to remain involved in a matter after making a disclosure, such as Mr. Shiah's earlier disclosure that he knew a lobbyist that was before the Commission.

Mr. Lindemann said that if later found out that the relationship was a close one, he would have problems with that.

Mr. Marsano asked whether Mr. Lindemann would be willing to accept the statement of a Commissioner who said that he knew the person appearing before the Commission but that he believes it would not impair his ability to proceed in the matter or would Mr. Lindemann have to know how close that relationship was before accepting that statement. Mr. Lindemann said that Commissioners should be given the benefit of the doubt.

Mr. Marsano expressed concern over defining "close" and "affiliation."

Mr. Friedman said he believes the framework with which to deal with these issues should come from the Legislature, as that is the body that grants the Commission its authority. If there is legislation being considered regarding disqualification and recusal, the Commission ought to wait for that. All Commission members are governed by their own personal reflection on whether there is a conflict of interest. He also said that Ms. Ginn Marvin always recused herself and left the room whenever discussions took place regarding the Maine Heritage Policy Center matter.

Mr. Marsano said he supports letting the Legislature tell the Commissioners what the expectations are regarding this issue. The governance of the Legislature is significantly important in this matter.

Mr. Friedman said at the last meeting everyone agreed disclosure was something the Commission should be doing and directed the staff to come up with a format which he believes this draft has accomplished; however, he would add the lobbyist section to the form.

Mr. Marsano expressed concern over the word “affiliation” as it is used. He feels the Commission should review it very closely and have more discussion on the areas or language that may be vague. He stated that he needs more guidance before he would be able to fill out the current form.

Mr. Youngblood had the same concerns regarding “affiliation.” He stated that “affiliation” is a broad term in his view. He explained that he is an incorporator of the Eastern Maine Medical Center, whose main function is to hire the board of directors, which hires management, which hires lobbyists. Mr. Youngblood asked whether that was an affiliation that would be a problem.

Mr. Friedman stated anyone on the Commission who has come up through the political process, which is usually the case, would have affiliations with all sorts of political entities that may need to be disclosed.

Mr. Marsano stated he felt this matter should be tabled until the results of the legislative action are known. He said he wants to know what the Legislature thinks about this issue. The Legislature will conduct their own hearing anyway to determine what the language should be.

Mr. Marsano also stated he would like to see an opportunity for the Commission members to discuss this amongst themselves and with Commission staff and counsel to get advice. He moved to table the matter. Mr. Shiah seconded.

Ms. Luther stated that the legislative committee will probably ask for the Commissioners’ comments ultimately, so tabling may not get this Commission out of the process.

Mr. Marsano said he would be willing to speak to the Legislature. He believes if the policy is passed today, the opportunity to get the Legislature’s input may not happen.

The motion to table this matter passed by a vote of 3-1 Mr. Friedman opposed.

Agenda Item #10 Presentation of Audit Summary Report

Mr. Dinan reported that the staff had not done an organized audit prior to the 2006 elections. In 2006, audits were done randomly; however, all publicly funded gubernatorial candidates were audited. There were 61 legislative candidates, four gubernatorial candidates and three 'special purpose' audits that were warranted by circumstances that arose during the campaigns. Mr. Dinan said two-thirds of the audits of the legislative candidates found no exceptions. In most cases, he said, candidates did not have the documentation that is required under the law. However, in most cases, these candidates were able to provide this documentation when asked. The remaining third had committed violations ranging from mundane to serious. There are sixteen different kinds of violations, the most common being missing or incomplete documentation. Mr. Dinan said there were very few cases of misuse of public funds. He reported there were three cases where candidates used public funds for personal reasons and seven cases of comingling of funds. He felt these problems can be overcome in the future with more training and education for first-time candidates. Mr. Dinan said that knowledge of possible audits is also a reason for candidates to be more diligent in keeping good records. He said most people are honest and do not want to be in violation. He also said the Commission would rather help the candidate solve the problem, than issue penalties.

Mr. Friedman asked if there would be a document that outlines the most commonly found violations and remedies to prevent them. Mr. Dinan said the 2008 Candidate Guide has this type of information included as a result of the 2006 audit process.

Mr. Marsano asked how the random selection was arrived at. Mr. Dinan said the selection process is done by a numbering process and then those numbers are put into an electronic number generator, which provides a 20% random selection.

Mr. Shiah asked if the candidates knew ahead there would be a 20% audit selection. Mr. Dinan confirmed that the candidates knew this from the beginning since it was printed in the Candidate Guide. He said the audit process does influence the behavior of candidates, especially when the news media covers the issues.

Mr. Shiah said candidate education for first-time candidates is very important and proactive.

Mr. Dinan said training sessions were held by staff in the spring prior to the 2006 election all around the state. This will be done again for the 2008 election cycle. He said expectations are spelled out for candidates at these sessions. Mr. Dinan said all of the candidates' campaign finance reports are reviewed by staff very carefully.

Mr. Shiah said he believes there is a fear by candidates of calling the Commission office with questions and would support making sure the candidates know that the Commission welcomes questions and phone calls.

Mr. Youngblood expressed appreciation for the outstanding job Mr. Dinan has done with the audit process.

Mr. Friedman also commended Mr. Dinan on his professionalism and expertise. He said Mr. Dinan is tenacious, but compassionate with findings and violation recommendations.

Alison Smith, Maine Citizens for Clean Elections, also expressed the value of the audit process. She said compliance of candidates is a direct result of the audit process. She felt giving examples of the good ideas and best practices for candidates to follow would be more helpful than listing the wrong steps to keep records.

Mr. Dinan said the 2008 Candidate Guidebook will cover this.

Mr. Youngblood asked how much of this information is available under the public's right to know law. Mr. Dinan said all of his audit records are.

Agenda Item #11 Report to Oversight Committee on Legislative Ethics

Mr. Wayne said members of the Legal & Veterans Affairs Committee directed him to provide some historical data regarding legislative ethics complaints received in the last ten years and whether the laws are sufficient to properly resolve these complaints. Mr. Wayne reviewed the report that he drafted in consultation with Assistant Director, Paul Lavin and Commission counsel, Phyllis Gardiner. He requested any comments by the Commission members and whether the Commissioners wanted the report to be submitted through him or through them. He thought the most contentious matter is that the current law appears to allow Legislators to file complaints against other Legislators, but that the public could not. Mr. Wayne did point out that the Commission could conduct an investigation on its own motion if a matter was

brought to the Commission by a member of the public and which the Commission thought warranted an investigation. The report recommends that the public be allowed to file complaints against Legislators. Before submitting the report to the Legislature, Mr. Wayne said he wanted the Commission to have an opportunity to provide input regarding the report's proposals. He said the Legislature may feel that if the law is changed to allow the public to file complaints, the Ethics Commission may become a forum for political grudge matches and frivolous complaints.

Mr. Marsano said he felt that if the Legislature directs Mr. Wayne to develop a report, then he should be the one submitting the report since he has the expertise in these matters and the Legislature mandated him to develop the research and report back.

Mr. Friedman said that if the Legislature directs the Executive Director to submit a report regarding legislative ethics complaints rather than a resolve to get the Commission's point of view, then the Commission members do not need to be involved in the submission.

Mr. Youngblood recommended that any proposal take into consideration the staff resources are adequate to handle the additional work.

Ms. Gardiner pointed out that even though the law does not provide an express process for an individual citizen to file a complaint with the Commission, the history of legislative ethics complaints shows that several complaints were originated by individual citizens. She said there is nothing to preclude a citizen from bringing matters to the staff's attention and for the staff to bring that matter to the Commission. She said that she thought it was important to be aware of the potential for an increase in the number of complaints filed but that we have no way of knowing at this point whether there would be an increase.

Mr. Friedman stated that if he were defending a Legislator in a citizen-filed complaint with the Ethics Commission, he would raise jurisdictional issues. He feels the grant of authority this Commission has does not include citizen's complaints; we can only act within that authority.

Agenda Item #12 Scheduling Meetings

Mr. Friedman thought putting together a few dates for meetings ahead of time would be beneficial. After discussion, several dates were tentatively scheduled.

Other Business - William Walcott

Mr. Wayne reported that the Attorney General's office was in the process of investigating Rep. William Walcott for misuse of MCEA funds. The prosecuting attorney for the Attorney General's Office has requested that the staff review Mr. Walcott's bank account records from his 2004 campaign to see whether the staff saw any misuse of funds during that campaign. Because the AAG received the 2004 bank records through the grand jury process, she cannot share those records with the staff. Mr. Wayne asked the Commission to consider issuing a subpoena for the bank records for Mr. Walcott's 2004 campaign.

Ms. Gardiner said the Commission has the authority to audit and investigate to determine the facts concerning the expenditures by a candidate.

Mr. Friedman said that step would be in connection with an audit initiated by the Commission.

Mr. Youngblood said that by subpoenaing and reviewing the records, the staff would be opened up to a subpoena to testify at a trial.

Mr. Marsano expressed concern over the Commission getting back involved in the investigation at this point, given that the Commission referred the case to the Attorney General, which put the Attorney General in charge of the investigation. Mr. Marsano expressed concern that the Commission would be exceeding its authority by using its statutory powers for the purpose of becoming a witness.

Mr. Wayne said he would withdraw his suggestion of obtaining a subpoena due to these concerns.

Mr. Marsano said if prosecution is declined, then the Commission would proceed with its own investigation.

By motion of Mr. Shiah, the meeting adjourned at 12:30 p.m.

Respectfully submitted,

Jonathan Wayne, Executive Director

Agenda

Item #2



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

To: Commission Members and Counsel
Cc: Gary C. Wood, Esq.
From: Jonathan Wayne, Executive Director
Date: January 15, 2007
Re: Background Information for Waiver Request by Lobbyist Gary C. Wood

Procedures for Late-Filing Penalties

The Ethics Commission receives reports from lobbyists, political candidates for state and county office, political action committees (PACs), and party committees in accordance with regularly scheduled deadlines. If a report is not filed on time, an automatic penalty process is set in motion:

- The Commission staff notifies the filer that the report appears to be late and how a preliminary penalty will be calculated based on statute.
- The filer is given an opportunity to pay the penalty or request a waiver.
- If the filer requests a waiver, the request is scheduled for consideration by the Commission. The staff does not grant waivers in order to promote transparency and avoid any suggestion of favoritism.

While some filers find this procedure to be unnecessarily strict, it is clearly set forth in the Election Law for late campaign finance reports filed by candidates, PACs, and party committees (21-A M.R.S.A. §§ 1020-A(2) and 1062(2)). The Commission has used the same procedures for late disclosure reports filed by lobbyists.

Mitigating Circumstances for Late Campaign Finance Reports

The Commission is authorized by law to waive a penalty in full or in part "due to mitigating circumstances." In the case of candidates, PACs, and party committees, mitigating circumstances are defined as:

- a valid emergency determined by the Commission ... to warrant the waiver of the penalty ...;
- an error by the Commission staff;
- failure to receive notice of the filing deadline; or
- other circumstances determined by the Commission that warrant mitigation of the penalty, based upon relevant evidence presented that a bona fide effort was made to file the report in accordance with the statutory requirements, including, but not limited to, unexpected delays in postal service. (*Id.*)

The Election Law also allows the Commission to waive late-filing penalties if the Commission determines that the penalty is disproportionate to the size of the candidate's campaign, the level of experience of the candidate or committee's treasurer, or the harm suffered by the public from the late disclosure. (Id.)

Mitigating Circumstances for Late Disclosure Reports by Lobbyists

The penalty statute in the Lobbyist Disclosure Law (3 M.R.S.A. § 319(1), attached) authorizes the Commission to waive a penalty due to mitigating circumstances, but does not define what circumstances should be considered mitigating. In my experience, the Commission members have tended to apply the same considerations for lobbyists as they do for candidates, PACs, and party committees.

Recent Practice

When I began my position in mid-2003, the Commission members routinely granted a 50% reduction for late-filing penalties for any first-time late filer who requested a waiver. That approach seemed to impress upon filers the need to report on time, while demonstrating flexibility by the Commission. In the next two years, the Commission gradually adopted a stricter approach, and discontinued the 50% reduction. I believe some newer Commission members felt that assessing the full penalty set forth in statute would encourage timely filing and would help avoid possible inconsistencies.

Based on memory (without conducting research of Commission meetings in the last few years), the Commission most often has granted waivers to late filers in situations involving unforeseen medical situations of a candidate, lobbyist, or committee treasurer, the occasional error by Commission staff, or (since electronic filing became mandatory) some event that interfered with a filer's access to a computer. Following the approach preferred by the Commission members, the staff has gradually become stricter about recommending penalty waivers.

Staff Recommendation re: Request by Gary C. Wood

Gary C. Wood is the Corporation Counsel for the City of Portland, and was registered in 2007 as a lobbyist. He was one day late filing the monthly lobbyist report due October 15, 2007. The preliminary amount of the penalty set by statute is \$100. Mr. Wood requests a waiver of the penalty because there was confusion between his office and the office of the city manager regarding whether he or Assistant City Manager Patricia Finnigan would file the report. Mr. Wood or Ms. Finnigan is expected to attend the January 25 meeting in support of the waiver request.

The staff recommended no waiver of the penalty at the December 7 meeting in order to be consistent with recent Commission actions on penalty matters. We do not have any objection if the Commission wishes to reduce the penalty in Mr. Wood's case. Also, in light of the changed membership of the Commission, the staff is ready to apply a more lenient approach generally to routine penalty matters if you are so inclined. Thank you for your consideration.

Title 3, §319, Penalty

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§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) .

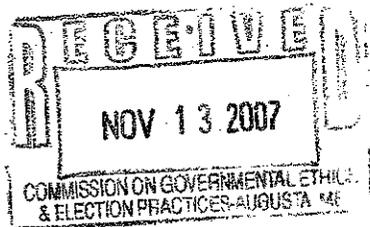
PL 1993, Ch. 691, §22 (AMD) .



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 Down End Report Menu

Instructions to:

Create new monthly report - click the Add button

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

Agenda

Item #3



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

January 16, 2008

By Regular and Certified Mail

David Hughes
34 Howe Street
Lewiston, ME 04240

Dear Mr. Hughes:

This is to inform you that the Ethics Commission staff has scheduled your 2007 special election campaign for consideration by the Commission at its next meeting on January 25, 2008. The staff will be requesting authorization to investigate whether all funds received by you were spent for campaign-related purposes. As a Maine Clean Election Act (MCEA) candidate, you were required to file a post-election report by December 18, 2007 disclosing how you spent the MCEA funds paid to you and to return any unspent funds to the Commission. I have attached my January 2 letter explaining these obligations.

You have not responded to eight communications from the Commission staff:

- a November 13, 2007 letter reminding you that December 18 would be the deadline to file your post-election report and to return all unspent funds;
- a telephone call to you on December 18 by Commission Assistant Cyndi Phillips reminding you to file the report by 5:00 p.m.;
- a voicemail message on December 21 from Candidate Registrar Sandy Thompson informing you that your report was two days late;
- a certified letter from Ms. Thompson dated December 28, 2007 warning you of civil penalties for late-filing (you signed the postal receipt for this letter);
- a January 2, 2008 letter from me requesting that you file the report and return all unspent Maine Clean Election Act funds;
- a voicemail message from me on January 7, 2008 summarizing the January 2 letter and requesting that you return my call;
- a January 14, 2008 voicemail from me requesting the report and the payment of unspent funds; and
- my January 14, 2008 e-mail with the January 2 letter attached.

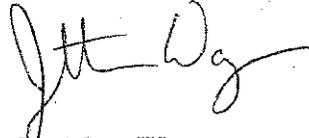
Because you have not responded to these attempts to reach you, the Commission staff increasingly believes it must investigate whether all funds you received were spent on campaign-related purposes.

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

The staff of the Commission will place this matter on the agenda of the next Commission meeting on January 25, 2008. You are welcome to attend that meeting to respond to the staff's concern. We urge you to file the report, return unspent campaign funds, and provide the bank records as requested in the January 2, 2008 letter.

If you have any questions, please contact me at 287-4179.

Sincerely,

A handwritten signature in black ink, appearing to read "Jonathan Wayne". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Jonathan Wayne
Executive Director



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

January 2, 2008

David Hughes
34 Howe Street
Lewiston, ME 04240

Dear Mr. Hughes:

This letter requests that you fulfill certain legal responsibilities as a Maine Clean Election Act (MCEA) candidate in the 2007 special election. The staff of the Commission has made a number of communications notifying you that you were required to file a financial report of your campaign expenditures and return any unspent public funds by Tuesday, December 18, 2007.

This is to request that – as soon as possible – you:

- (1) file your post-election campaign finance report;
- (2) return all unspent Maine Clean Election Act funds; and
- (3) submit bank records showing all of your campaign expenditures.

If you cannot take these actions by Wednesday, January 16, please telephone me at 287-4179 to discuss an alternative deadline. Please be aware that the Election Law requires the Commission to assess a penalty for late campaign finance reports that increases daily, so please file the report as soon as possible.

With regard to reporting expenditures, please remember that if any consultant purchased goods or services on your behalf, you are required to report the date, amount, and payee of each purchase as if you made them directly. (Chapter 1, §7(1) of Commission Rules, attached)

Because of your lateness in filing a post-election campaign finance report and in returning unspent public funds, the Commission staff requests that you submit your campaign bank records to the Commission so that the staff can verify that your reported expenditures are accurate and that all MCEA funds were used strictly for campaign purposes. You were required to keep bank records under 21-A M.R.S.A. §1125(12-A)(A) (attached).

Please telephone me at 287-4179 if you have any questions about this request.

Sincerely,

Jonathan Wayne
Executive Director

cp

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

- C. All contributions made to a candidate from the day after the primary election through the date of the general election for which the candidate seeks office are deemed to be made in the general election.
- D. Notwithstanding division (e) below, all contributions made after the general election to a general election candidate for the purpose of reducing debts and liabilities associated with the candidate's candidacy are deemed to be made in the general election.
- E. 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.
- F. Subparagraphs A through E above shall apply to any write-in candidate who has qualified under 21-A M.R.S.A. §723, or who has received contributions or made expenditures with the intent of qualifying as a candidate.

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;

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

The treasurer shall preserve the records for 2 years following the candidate's final campaign finance report for the election cycle. The candidate and treasurer shall submit photocopies of the records to the commission upon its request.

- A. Bank or other account statements for the campaign account covering the duration of the campaign; [2005, c. 542, §5 (NEW) .]
- B. A vendor invoice stating the particular goods or services purchased for every expenditure of \$50 or more; and [2005, c. 542, §5 (NEW) .]
- C. A record proving that a vendor received payment for every expenditure of \$50 or more in the form of a cancelled check, cash receipt from the vendor or bank or credit card statement identifying the vendor as the payee. [2007, c. 443, Pt. B, §6 (AMD) .]

[2007, c. 443, Pt. B, §6 (AMD) .]

12-B. Audit requirements for candidates for Governor. The commission shall audit the campaigns of candidates for Governor who receive funds under this chapter to verify compliance with election and campaign laws and rules. Within one month of declaring an intention to qualify for public financing, a candidate for Governor, the campaign's treasurer and any other relevant campaign staff shall meet with the staff of the commission to discuss audit standards, expenditure guidelines and record-keeping requirements.

[2007, c. 443, Pt. B, §6 (NEW) .]

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

[1995, c. 1, §17 (NEW) .]

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

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

B. Within 5 days after an appeal is properly made and after notice is given to the challenger and any opponent, the commission shall hold a hearing, except that the commission may extend this period upon agreement of the challenger and the candidate whose certification is the subject of the appeal, or in response to the request of either party upon a showing of good cause. The appellant has the burden of proving that the certification decision was in error as a matter of law or was based on factual error. The commission must rule on the appeal within 5 business days after the completion of the hearing. [2007, c. 443, Pt. B, §6 (AMD) .]

C. A challenger may appeal the decision of the commission in paragraph B by commencing an action in Superior Court within 5 days of the date of the commission's decision. The action must be conducted in accordance with Rule 80C of the Maine Rules of Civil Procedure, except that the court shall issue its written decision within 20 days of the date of the commission's decision. Any aggrieved party may appeal the decision of the Superior Court by filing a notice of appeal within 3 days of that decision. The record on appeal must be transmitted to the Law Court within 3 days after the notice of appeal is filed. After filing the notice of appeal, the parties have 4 days to file briefs and appendices with the clerk of the

Wayne, Jonathan

From: Wayne, Jonathan
Sent: Monday, January 14, 2008 10:56 AM
To: 'newshues@yahoo.com'
Cc: Thompson, Sandy
Subject: Filing Report and Returning Unspent Campaign Funds

Attachments: 1.2.08 Letter to David Hughes.pdf

I have attached a letter dated January 2, 2008 I sent to you almost two weeks ago requesting that you return unspent campaign funds and file a campaign finance report disclosing how you spent Maine Clean Election Act funds you have received. We have not received a response to this letter or a number of communications directed toward you.

Please telephone me at 287-4179, and take the other actions requested in the letter. If I do not hear back from you shortly, I will schedule this matter for the public agenda of the next Commission meeting. Thank you.



1.2.08 Letter to
David Hughes....



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

To: David Hughes Candidate File
From: Jonathan Wayne
Date: January 14, 2008, 9:50 a.m.
Re: Voicemail message for David Hughes

I telephoned David Hughes just now at 740-0951. He didn't answer and I left a voicemail message. The message explained that he had not responded to a couple of letters and a few voicemail messages we had left for him. The message requested that he telephone me at 287-4179, and file the required report of how he spent his MCEA funds, and to return any unspent funds.

I explained that the Commission was meeting soon, and that if I did not hear back from him today or tomorrow, I would put this matter on the public agenda of the next Commission meeting.

Name: Hughes, David
District #: 72 SPECIAL ELECTION

Home Phone: 740-0951
Cell Phone: same
Work: same
newshues@yahoo.com
Fax#:

Vendor Form -

If no, 2007 Vendor Form Received: yes no

Notes

Called 12/18/07 Reminder 42 DAY Report is due
12/21/07 - left message on phone that report
2 days late; asked to call me if
had any problems ST.

~~12/21~~ 1/7/08 - left voicemail message explaining
1/2/08 letter and requesting a call back ST

1/14/08 - left voicemail explaining need for
report, duty to repay public funds
and 1/25/08 agenda.



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

December 28, 2007

Mr. David Hughes
 34 Howe Street
 Lewiston, ME 04240

BY REGULAR AND CERTIFIED MAIL

Re: Delinquent Campaign Finance Report – Due December 18, 2007 by 11:59 p.m.

Dear Mr. Hughes:

Our records show that you have not filed your 42-Day Post-Election Report. State law [21-A M.R.S.A. § 1020-A] requires that a penalty be assessed for late reports based on the amount of financial activity conducted during the filing period, on the number of calendar days a report is filed late, and on the candidate's filing record. If you spent MCEA funds during the filing period, you could be subject to civil penalties, which are accruing on a daily basis. Once you have filed your report, our office will calculate the penalty using the enclosed penalty matrix, and will notify you of the amount of the penalty. **Therefore, we urge you to file your report as soon as possible.**

Sincerely,

Sandy Thompson
 Candidate Registrar

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Mr. David Hughes
 34 Howe Street
 Lewiston, ME 04240

COMPLETE THIS SECTION ON DELIVERY

- A. Signature
 David Hughes Agent
 Addressee
- B. Received by (Printed Name) *David Hughes* C. Date of Delivery *12/29/07*
- D. Is delivery address different from item 1? Yes
 If YES, enter delivery address below: No

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.
4. Restricted Delivery? (Extra Fee) Yes

A, MAINE

2. Article Number
 (Transfer from service label)

7006

7006 2150 0003 4779 8692



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

November 13, 2007

Mr. David Hughes
34 Howe Street
Lewiston, ME 04240

Dear Mr. Hughes:

As a Maine Clean Election Act (MCEA) candidate in the November special elections, you are required to return all unspent MCEA funds and to file a final campaign finance report. These are the deadlines by which you will have to return funds and file your report:

No later than December 11, 2007, you are required to pay all debts and obligations and make all reimbursements, if any, to yourself and others working on your campaign.

No later than December 18, 2007, you are required file your 42-Day Post-Election report and to return the amount of unspent authorized MCEA funds, which can be found on line 8 of Schedule F of the report (Cash Authorized to Spend). When completing your 42-Day Post-Election report, please remember to include any expenditures that were previously reported in 24-Hour reports.

Please remember that MCEA candidates are required to keep all campaign financial records for two years from the date of the last report of the election. For the 2007 special election, records including receipts, invoices, bank statements, cancelled checks, etc. must be kept until 12/18/2009. In addition, please notify the Commission if your mailing address, telephone number, or e-mail address changes or if the contact information of your treasurer changes.

Please do not hesitate to contact me at 287-7651 if you have any questions. Thank you.

Sincerely,

Sandy Thompson
Candidate Registrar



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

October 23, 2007

Mr. David A. Hughes
34 Howe St.
Lewiston, ME 04240

Dear Mr. Hughes:

The Commission on Governmental Ethics and Election Practices has received and approved your request for certification as a Maine Clean Election Act candidate for Representative.

The Commission has authorized the State to make a payment of \$4,287.00 for the special election. This amount is based on \$4,362.00 for a contested race, less \$75.00 in unspent seed money. The payment will be made by check or electronic funds transfer (EFT), depending on whether you have requested EFT. You should receive the payment within two to four business days after receiving this letter. Please telephone the Commission if you do not receive the payment by then.

If you have any questions, please do not hesitate to contact the Commission staff at 287-4179. Thank you.

Sincerely,

A handwritten signature in cursive script, appearing to read "Paul Lavin".

Paul Lavin
Assistant Director

cc: Michael Carey

Agenda

Item #4



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

To: Commission Members and Counsel

From: Jonathan Wayne

Date: January 15, 2008

Re: Lobbying and Other Services Provided by Verrill Dana LLP to the Maine
Community Cultural Alliance

On October 29, 2007, the State Controller issued a report of an internal control audit of four state cultural agencies: the Maine Arts Commission, the Maine Historical Preservation Commission, the Maine Library Commission, and the Maine State Museum Commission. One of the issues considered in the audit was whether the agencies hired two attorneys at Verrill Dana LLP, James I. Cohen and Michael V. Saxl, to provide services beginning in 2004 that included lobbying.

Mr. Cohen and Mr. Saxl have explained that in 2004 they agreed to work with several cultural leaders in the state to re-establish a previously existing organization, the Maine Community Cultural Alliance (MCCA), to support arts and cultural organizations statewide. They state that they provided a variety of services (discussed below) through September 2007, initially not knowing whether the MCCA would be re-established and whether they would be paid for their services. They were proceeding with the representation out of a commitment to help arts and cultural organizations in Maine.

At your meeting on October 30, 2007 you directed me to conduct preliminary fact-gathering on the issue of whether the two attorneys were required to register as lobbyists with the Commission and file monthly reports. The staff concludes that they were not required to register as lobbyists because they did not meet the threshold of providing eight hours of lobbying services to MCCA within a single calendar month. We therefore believe no action is required by the Commission.

Controller's Audit Report

In June 2007, the State Controller's office received an allegation that the cultural agencies had attempted to revive the MCCA in order to pay for lobbying of the Maine Legislature. The Controller's October 29 audit report and a subsequent November 30 audit report contained findings that the agencies had deviated from purchasing and other policies for state government agencies. These findings have been given due consideration by other departments of state government, and are not within the

jurisdiction of the Ethics Commission. This inquiry is focused exclusively on whether the attorneys were required to register with the Commission as lobbyists.

Legal Requirements for Lobbyists to Register and File Reports

The purpose of Maine's Lobbyist Disclosure Law is to provide the public with information about who is paying lobbyists to influence the legislative process. Individuals qualify as lobbyists if they have been employed by another party for the purpose of lobbying and if they have engaged in lobbying for more than 8 hours in a calendar month. The definition of lobbyist is:

10. Lobbyist. "Lobbyist" means any person who is specifically employed by another person for the purpose of and who engages in lobbying in excess of 8 hours in any calendar month, or any individual who, as a regular employee of another person, expends an amount of time in excess of 8 hours in any calendar month in lobbying. "Lobbyist" does not include a lobbyist associate. (3 M.R.S.A. § 312-A(10))

The definition of lobbying primarily includes direct communication with a government official to influence legislation, and does not include many services which the lay public might presume are part of lobbyists' everyday work. The following definition was in effect through September 19, 2007:

9. Lobbying. "Lobbying" means to communicate directly with any official in the Legislature for the purpose of influencing any legislative action or with the Governor for the purpose of influencing the approval or veto of a legislative action when reimbursement for expenditures or compensation is made for those activities. It includes the time spent to prepare and submit to the Governor, a Legislator or a legislative committee oral and written proposals for, or testimony or analyses concerning, a legislative action. (3 M.R.S.A. § 312-A(9))

This definition does not include, for example, time spent by a lobbyist in meetings with a client discussing legislation; time which a lobbyist spends monitoring legislation; and time spent performing legal or quantitative research that is never provided to the Legislature or the Governor. Even though these activities may relate to legislation and may be billable to a client, they fall outside the statutory definition of lobbying and do not count toward the eight-hour per month threshold.

The definition of lobbying includes the qualifying clause "when reimbursement for expenditures or compensation is made for those activities." If someone is petitioning the Legislature outside of a paid employment relationship (*e.g.*, because they care personally about an issue of public policy), the communication is not lobbying.

Services Provided by Verrill Dana

The Commission staff examined the work papers of the State Controller for the October 29, 2007 report and interviewed David Cheever, who was MCCA's contact person for the Verrill Dana attorneys. On November 15, 2007, we sent a questionnaire to James Cohen and Michael Saxl, and they provided a detailed response dated November 29.

Based on the audit documents and the response by Verrill Dana, it appears that the attorneys provided MCCA¹ with services worth \$131,903. The firm was paid \$28,500 and the remaining amount (\$103,403) ultimately was considered *pro bono*.

Mr. Cohen and Mr. Saxl explain that most of the services they provided to MCCA did not consist of lobbying as it is defined in 3 M.R.S.A. § 312-A(9):

[T]he bulk of our activities fell outside the definition of "lobbying" insofar as they fell into the following primary categories: (1) internal communications with coalition partners rather than to covered officials (these were weekly calls and meetings taking up tremendous amounts of time); (2) legislative monitoring and reviewing of printed bills and calendars; (3) legal work and communications related to the formation of MCCA; (4) media relations; (5) grassroots activities; and (6) work with Executive Branch officials other than the Governor regarding the New Century Program.

In response to our questionnaire, the attorneys provided a chart showing a monthly breakdown of the services they provided for each month from May 2004 to September 2007. (See Exhibit 6 of the firm's November 29 response.²) *The chart indicates that James Cohen and Michael Saxl did not spend more than 8 hours in a calendar month providing lobbying services to MCCA, which would have required them to register as lobbyists.* When the activities of Verrill Dana's employees are added together, the chart indicates that the firm provided 701.2 hours of services to MCCA, of which 118.2 hours were spent lobbying (16.8%).

Staff's Examination of Billing Records

Like many law firms, attorneys at Verrill Dana keep detailed records of the work they have performed. The information is typed into a computerized billing system.

At the request of the Commission staff, Verrill Dana permitted Assistant Director Paul Lavin and I to review the time records for all work performed for MCCA for the period

¹ For the sake of simplicity, this memo refers to the Maine Community Cultural Alliance as Verrill Dana's client, even though it could be argued that MCCA was not successfully revived as a functioning organization and that others benefitted from the firm's services.

² On January 8, 2008, Verrill Dana provided us with a revised version of Exhibit 6 which, I believe, fixed some minor math miscalculations. To avoid any confusion, I have included only the revised version of Exhibit 6 in the attached materials.

from December 2004 to July 2005. We selected these eight months as a manageable sample because this appeared to be the time period in which the attorneys were busiest providing services to MCCA and, thus, the period in which they were most likely to exceed the threshold of eight hours in a calendar month.

On January 8, 2008, Paul Lavin and I visited the Augusta office of Verrill Dana and reviewed the time records privately in a conference room. The firm allowed us to review the descriptions and time amounts for all entries for the account – both lobbying and non-lobbying. Those entries which the attorneys had previously counted as lobbying in Exhibit 6 were highlighted before we arrived. We believe this opportunity to review the time records demonstrated a high degree of cooperation by the firm. Under its current statutory authority, the Commission would have been unable to subpoena these records.

Based upon our review, Paul and I found that the attorneys recorded their work for MCCA with sufficient detail to distinguish lobbying tasks from non-lobbying tasks. The attorneys had a good understanding of which activities fell within the statutory definition of lobbying and which activities did not. Our conclusion was that the monthly totals of lobbying work and non-lobbying work in Exhibit 6 for the period of December 2004 - July 2005 accurately reflected the entries in the firm's billing system. Based on our review, we tend to have confidence in the overall accuracy of Exhibit 6.

Staff Recommendation

In light of the detailed response of Verrill Dana to our request for information and the confirmation provided by our examination of the time records, the staff concludes that Mr. Cohen and Mr. Saxl were not required to register as lobbyists. The time records support the firm's explanation that the bulk of services provided to MCCA were not lobbying. In particular, our review showed that meetings with the client and communications to the client occupied a great deal of the attorneys' time during early 2005. It therefore appears that the Verrill Dana attorneys did not meet the threshold which required them to register as lobbyists. We recommend no further action in this matter.

Attached documents

- Verrill Dana's November 29, 2007 response to the staff's questionnaire (includes revised Exhibit 6)
- Commission staff's November 15, 2007 questionnaire
- Verrill Dana's January 7, 2008 letter confirming the completeness of Exhibit 6
- State Controller's October 29, 2007 audit report (without most attachments)

Verrill Dana^{LLP}

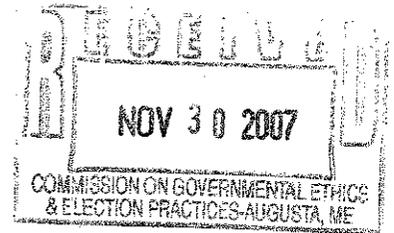
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November 29, 2007

Jonathan Wayne
Executive Director
Maine Commission on Governmental Ethics and Election Practices
135 State House Station
Augusta, ME 04333-0135



Dear Mr. Wayne:

This letter is provided in response to your request for information dated November 15, 2007. We are pleased to have the opportunity to provide the Maine Commission on Governmental Ethics and Election Practices (the "Commission") with the requested information in order to assist the Commission in reviewing the questions raised in this matter. We believe, and are confident that the Commission will find, that we were not required to register and file reports with the Commission as lobbyists in connection with our work with the Maine Community Cultural Alliance or other non-profit cultural organizations.

We appreciate that the Commission's inquiry is limited to whether we were required to register as lobbyists. Neither of us was required to register as lobbyists for two independent reasons:

- We were not compensated for the lobbying activities we engaged in (which constituted only 16% of our overall work effort).
- We did not reach the 8-hour threshold for reporting lobbying activity in any calendar month.

These reasons are described more fully below. We also have provided below a brief factual summary of our activities, followed by our specific responses to the seven questions asked in your letter of November 15.

Our Firm's Support of the Arts and Culture in Maine

As noted in the State Controller's audit, Verrill Dana and Maine Street Solutions provided *pro bono* services related to the New Century Community Program on behalf of a broad coalition of private arts and cultural institutions over the last four years valued at over \$100,000. We believe in arts and culture as an important tool to improve Maine's economy and strengthen our society, and we are proud of our ability and our commitment to provide substantial *pro bono* services to the cultural community. We are particularly proud of the New

Jonathan Wayne, Executive Director

Maine Commission on Governmental Ethics and Election Practices

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Century Program, which provides matching grants to arts and cultural organizations throughout the State of Maine with zero dollars retained by the State for administration. This Program has in turn been nationally recognized for its efficiency and innovation by the Pew Charitable Trust and Harvard University's John F. Kennedy School.

Our personal commitment to arts is substantial and longstanding. Jim Cohen is a former trustee of the Portland Symphony Orchestra where he served three years as the board's Vice President of Budget and Finance. As Mayor of Portland in 2006, Jim was known as the "Arts Mayor," and he currently chairs the Creative Economy Steering Committee which he formed last year. Jim has also spoken nationally about the New Century Program at the U.S. Federation of Humanities Councils Annual Meeting and at the Summer Meeting of the Coalition of State Library Associations.

During his service in the legislature, Michael Saxl was the chief sponsor of the New Century legislation. He successfully helped build coalitions and secure strong bi-partisan support for the program. In his personal life he has supported the arts, culture and humanities in very direct ways. He has enjoyed involvement ranging from acting in the Shoestring Theatre's annual production of the Christmas Carol for a number of years to currently serving as the President of the Board of the Holocaust and Human Rights Center of Maine.

Suffice it to say that we are deeply committed to the arts and humanities and have demonstrated that commitment in both our professional and personal lives.

The Maine Community Cultural Alliance

We have provided services to various non-profit cultural institutions in Maine for years, largely on a *pro bono* basis. In fact, as lobbyists for many private business interests in Maine, we view our association with arts and cultural organizations as positive and something to be promoted—even if the work is unpaid. Our efforts on behalf of arts and culture have centered on the New Century Community Program, which is a grant program established by the Legislature and administered by the Maine Cultural Affairs Council. Our efforts can largely be described as strategic, marketing, monitoring, and legal in nature. A small percentage of our services constituted direct advocacy services, but largely without compensation and below reportable thresholds.

Our original work in this arena, in 2001 and 2003, was on behalf of the Maine Humanities Council, a private non-profit corporation based in Portland that is also a member of the Maine Cultural Affairs Council. From January through April of 2004, we provided services for the Maine Library Association, a private non-profit organization whose membership base is comprised of libraries throughout the State of Maine. Our work for these organizations was largely *pro bono* related to the New Century Community Program, and in the course of our work, we worked closely with other members of the Maine Cultural Affairs Council, a legislatively established organization comprised mostly of private individuals who serve on the boards of seven designated agencies, five of whom are state agencies and two of whom are private non-

Jonathan Wayne, Executive Director

Maine Commission on Governmental Ethics and Election Practices

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profits (namely the Maine Humanities Council and the Maine Historical Society). Five state agency directors serve as *ex officio* members of the Council, but they are non-voting members. We worked collaboratively with, but not for, the members of the Council in the same way we have worked with other state agencies in areas ranging from public utility regulation, to public spending reform, to drinking water conservation, to banking regulation.

In the fall of 2004, many cultural leaders in Maine questioned why only a handful of arts and cultural organizations were carrying the load of statewide support for arts and culture, and several individuals within the Maine Cultural Affairs Council suggested that perhaps a previously existing organization called the Maine Community Cultural Alliance should be reformed to serve as an umbrella organization of statewide arts and cultural organizations. In fact, working with such an "Alliance" is one of the specific mandates of the Cultural Affairs Council as established by the Legislature:

4. The Council shall

...

F. Coordinate the program with a statewide cultural alliance organization that is a private nonprofit educational agency supporting libraries, museums and arts and humanities organizations and with statewide groups of individuals and artists concerned about the health of the State's cultural resources;

27 M.R.S.A. § 558(4)(F).

Because of our commitment to arts and culture, Verrill Dana agreed to work with several members of the Council to re-establish the Maine Community Cultural Alliance (the "Alliance" or "MCCA") with the goal that such Alliance would be a private non-profit with an independent board that would work to support arts and cultural organizations statewide. The Alliance was incorporated in December of 2004, but not until the late spring of 2005 did private individuals step forward to draft by-laws and form a nominating committee for the Alliance board. Throughout the incorporation of the Alliance, a lawyer for Verrill Dana served as sole incorporator and registered agent for the Alliance, an association and responsibility we were and are proud to assume and state publicly.

May 2004 – June 2005

From May 2004 to June 2005, we continued our work with a broad coalition of arts and cultural organizations, but we did not have a client and we did not get paid. Our retention agreement with the Maine Library Association had expired by this time, and MCCA did not exist as an independent organization until December 2004. From May through November of 2004, our work focused on four primary areas: (1) providing legal advice with regard to whether digital archives and computer hardware were properly "bondable" under an Education Bond that had been passed by the voters; (2) providing public relations advice regarding how members of

Jonathan Wayne, Executive Director

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the Cultural Affairs Council should expend certain Pine Tree Zone funds already allocated by the Legislature; (3) exploring the legal requirements associated with reforming the non-profit Alliance; and (4) attending multiple meetings of the Council where the New Century Program was discussed, including efforts to catalogue the capital needs of arts and cultural organizations around the State. Few, if any, of these services met the definition of "lobbying" under Maine law because they did not involve direct communications, they did not involve covered officials, and they were unrelated to any pending or expected legislation.

Starting in December of 2004, we began attending multiple meetings of the Council with respect to the upcoming Legislative Session, and we monitored the activities of the Legislature in areas related to arts and culture. As set forth in our July 15, 2005 letter accompanying our first invoice, (Ex. 1), the bulk of our activities fell outside the definition of "lobbying" insofar as they fell into the following primary categories: (1) internal communications with coalition partners rather than to covered officials (these were weekly calls and meetings taking up tremendous amounts of time); (2) legislative monitoring and reviewing of printed bills and calendars; (3) legal work and communications related to the formation of MCCA; (4) media relations; (5) grassroots activities; and (6) work with Executive Branch officials other than the Governor regarding the New Century Program.

During the 2005 Legislative session, we also periodically engaged in activities constituting "direct communications" with covered officials with regard to the New Century Community Program, which was a pending legislative matter. However, we did not receive any compensation for our work. We did not have a client, nor did we have a specific expectation of compensation, but we proceeded with our work effort out of a commitment to help arts and cultural organizations throughout the State in spite of the real likelihood that we would not be paid. We retained billing records for these activities notwithstanding the absence of a specific client because lawyers at our firm record all their time during the day, whether billable or not, and these records indicate that the time we spent on activities defined as "lobbying" did not reach reportable thresholds.

By June 2005, the efforts to resurrect the Alliance gained some momentum. The Alliance had been incorporated in December, but it was not until June that a draft of by-laws, initially prepared by Verrill Dana, was refined with input from Steve Podgajny and Merle Nelson. Also at this time, Steve Podgajny and Dave Cheever came forward as volunteers to form the nominating committee for a board, a necessary step before MCCA could file for non-profit status or formally adopt by-laws. In July of 2005, Dave Cheever volunteered to serve as "Treasurer" of MCCA, and when Steve Podgajny stepped back due to other time commitments, Mr. Cheever became the primary point of contact for MCCA. From this point forward until MCCA was dissolved this summer by the Secretary of State, no board was ever appointed, no by-laws ever adopted, and no non-profit designation ever obtained.

July 2005 – November 2005

In July 2005, we sent our first invoice to MCCA, covering services provided from May 2004 through June 15, 2005. (Ex. 1) We sent the invoice to Steve Podgajny, who forwarded it to David Cheever, MCCA's Treasurer. This invoice itemized services provided by Verrill Dana in the amount of \$68,730.00, discounted 25% to \$51,609.75, plus \$289.02 in costs. As noted above, this invoice accurately reflected the value of the services provided, but given the absence of formal organization by MCCA, Verrill Dana had little expectation of payment for the invoice, nor was there any understanding as to which, if any, services might be compensated. The fact is, we never expected to receive payment in the amount of \$51,898.77, or anything close to it. The purpose of sending the invoice was not to request payment in full, but to convey the value of the services we had provided from May 2004 through June 15, 2005, and to invite an offer to pay some portion of that value.

By the fall of 2005, Verrill Dana had been working on issues related to MCCA for nearly 18 months without payment nor any clear promise of payment. Nonetheless, out of our commitment to the issues, we continued to work with arts and cultural organizations throughout this period. Finally, in November of 2005, Verrill Dana received a check from the Alliance in the amount of \$12,000. The payment was not accompanied by information clarifying the specific services intended to be covered, nor did Verrill Dana ever receive any verbal or written statements from MCCA confirming retention for a specific purpose, time period, or service.

It was not until we received the check for \$12,000 in November 2005 that we knew with any certainty that we had a client, and that we would be compensated for some portion of our services. Following receipt of payment, however, we were in no way concerned that the payment would trigger a duty for us to register on a retroactive basis as lobbyists for MCCA for two reasons. First, we were confident that we had not reached 8 hours of lobbying activities in any given month. Second, under Verrill Dana's accounting system, payments are applied first to the oldest recorded time entries, and the value of the November payment was insufficient to cover the value of services provided prior to the commencement of the 2005 legislative session, which services included almost no activities meeting the definition of lobbying.

December 2005 – November 2006

In 2006, we continued to provide assistance to MCCA with respect to the New Century Program during the "short session" of the Legislature. While there still was no signed retention agreement, Verrill Dana received clarification from MCCA that our primary goal was to provide strategic and monitoring services for MCCA, not services constituting lobbying. From December 2005 through May 2006, Verrill Dana did not receive any payment, and only recorded 19.2 total hours spent on activities defined as "lobbying." (Ex. 6).

Following the session, in May 2006, at the request of Mr. Cheever, we sent a second invoice to MCCA. (Ex. 2) This invoice carried forward the previous balance due after the \$12,000 payment, which was \$39,898.77, and added a late charge (which was omitted from

Jonathan Wayne, Executive Director

Maine Commission on Governmental Ethics and Election Practices

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subsequent invoices). In September 2006, we sent a third invoice to Mr. Cheever, also at his request, that reflected the previous balance of \$39,898.77 and added \$45,647.50 for the value of services provided from June 16, 2005 to July 1, 2006, plus costs of \$736.04, resulting in a total bill of \$86,282.31. (Ex. 3) As with the prior invoices, the amounts recorded reflected the actual value of time spent on matters related to MCCA consistent with the firm's practice of recording all time entries, whether billable or not. Again, we did not expect to receive payment in full or anything close, and we specifically noted our expectation that some portion would be provided on a *pro bono* basis, but we nonetheless wanted to convey the value of the services we had provided and give MCCA some basis for discussing what an appropriate payment might be. As a result of these discussions, we ultimately agreed in late 2006 to reduce the balance owed for services provided through November 30, 2006 to \$15,000. In other words, for the period from May 1, 2004 through November 30, 2006, Verrill Dana agreed to treat \$71,282.31 as *pro bono* services.

December 2006 – June 2007

In a further attempt to formalize the relationship between Verrill Dana and MCCA, on December 21, 2006, we sent an engagement letter to Mr. Cheever proposing a fee agreement for services to be provided to MCCA from December 1, 2006 through June 30, 2007. (Ex. 4) According to the terms of the proposed retention letter, Verrill Dana would assist MCCA with respect to several pending legislative matters, but our services would once again focus on monitoring and strategic activities as opposed to lobbying activities. As described in the scope of services in the letter, Verrill Dana would engage in activities that included: advice to MCCA members; participation in meetings; media outreach; and grassroots efforts. The letter also indicated that Verrill Dana would advise MCCA regarding its direct outreach to the Legislature. We proposed a flat fee of \$16,500, to be paid in six monthly installments of \$2,750 each. As with prior proposed retention letters, this proposal was never signed.

In February 2007, we sent our last invoice that reflected the \$15,000 balance as of November 30, 2006, plus the proposed \$16,500 fee going forward. (Ex. 5) This invoice did not reflect a MCCA check we received from Mr. Cheever in January 2007 in the amount of \$2,500, which was applied to the previous balance as of November 30, 2006 of \$15,000. We subsequently received payments from the Maine Humanities Council for \$8,000 and the Maine Historical Society for \$6,000, leaving \$15,000 due (and ultimately written off as *pro bono*).

Summary of Services Provided and Funds Received

In sum, between May 2004 and the present, Verrill Dana provided services worth \$130,877.50 (\$68,730 + \$45,647.50 + \$16,500), and also incurred \$1,025.06 in costs, for a total value of \$131,902.56. We received payment of \$14,500 from MCCA and \$14,000 from other private organizations for a total of \$28,500, leaving \$103,402.56 in unpaid services that were provided *pro bono*. Our records show that activities defined as "lobbying" accounted for approximately 16% of the total services Verrill Dana provided, and in no calendar month did such activities reach reportable thresholds. (Ex. 6)

Responses to Numbered Requests for Information

Request #1. Please see attached spreadsheet (Ex. 6) which states the total number of hours that we worked in each month, and also separates out the number of hours we spent on lobbying activities (as defined in 3 M.R.S.A. § 312-A(9)) and other activities in each month.

To compile this spreadsheet, each individual timekeeper reviewed his or her time entries as recorded in a single account and categorized each activity defined as lobbying. In all cases, we were conservative in terms of what we classified as lobbying—that is, we have attempted to err on the side of allocating more time to lobbying, not less. By way of example, in some cases we have classified conversations with private individuals about communications with covered officials, or classified administrative functions such as collating handouts to legislators as “lobbying.” Likewise, conversations with covered officials regarding general matters of arts and culture, unrelated to pending legislation, was typically categorized as “lobbying.”

As you can see from the attached spreadsheet, Jim Cohen worked a total of 185.6 hours, with 37.9 hours, or 20% of his time, spent on activities defined as lobbying. Mike Saxl worked a total of 413.8 hours, with 65.1 hours, or 16% of his time, spent on activities defined as lobbying. Other timekeepers spent only 6.9 hours total lobbying out of 101.8 hours worked. These numbers reflect all our time spent, regardless of actual compensation.

Request #2. Please see response to Request #1.

Request #3. As a general rule, when we are employed by a client to perform services that are likely to include lobbying, we set up in advance separate billing ledgers for lobbying and non-lobbying activities. As we record our time, we record it in the appropriate ledger. When invoices are prepared, the individual timekeepers review the invoices to make sure that activities are recorded in the correct ledger. As an additional check, the billing attorney responsible for the client’s account also reviews the entries. We also have a dedicated staff person who coordinates and conducts additional review of bills. Only after these reviews are completed is a final invoice prepared, and any amounts recorded on the lobby ledger are disclosed to the Ethics Commission on a monthly, and then annual basis. Verrill Dana registers for numerous clients every year, and the firm has a strong track record of timely and thorough lobbyist filings. Jim and Mike are currently registered as lobbyists for at least seventeen clients. In fact, even though we are not required to file in months where lobby activities do not exceed 8 hours, it is not uncommon for us to do so. If we had been required to file as lobbyists in this instance, we certainly would have complied. We are very proud of the work we have done to support arts and culture in Maine. In short, we believe in full disclosure, we have a strong compliance record, and we have a strong administrative methodology to assure complete compliance with Maine law.

In this case, subsequent to May 2004, we did not set up separate billing ledgers for lobbying and non-lobbying activities related to the New Century Program because we had not been hired by a client to engage in lobbying services and we did not expect to get paid for lobbying. Even when we were paid in November 2005 and January 2007, we were not paid for

Jonathan Wayne, Executive Director

Maine Commission on Governmental Ethics and Election Practices

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lobbying—we were paid a small amount which did not come close to compensating us for all of our non-lobbying services (the bulk of what we did for MCCA) and which, when applied under Verrill Dana's accounting system, did not even cover those months prior to the start of the 2005 legislative session.

Request #4. Verrill Dana regards its internal time records as proprietary work product and as communications protected by the attorney-client privilege. We appreciate the Commission staff's desire to verify the accuracy of the spreadsheet we are providing in response to Requests #1 and 2, and we want to do everything we can to assure the Commission that we are accurately recording our time and making all appropriate reports, but we cannot disclose our time records. We believe that we would be able to reassure the Commission staff of the accuracy of our records by answering questions as to whether we classify certain types of activities as lobbying, without revealing privileged or proprietary information. We would be happy to do so in a meeting with the Commission's staff, if that is desired.

Request #5. Up until "Services Provided in 2007," the information contained in the section of your letter entitled "Discounted and Paid Services" appears to be accurate (except where inconsistent with the summary provided at the outset of this letter). The summary related above should also clarify some of these events.

Under the Section entitled "Services Provided in 2007," it is important to note that no one signed the proposed retention letter dated December 21, 2006. It is also correct that in February 2007, we billed a combined total of \$31,500: \$15,000 for services performed on or before November 30, 2006, and \$16,500 for services performed after that date. Around the time we sent this invoice, we received a \$2,500 payment from MCCA in January 2007 which was applied to the \$15,000 due for services performed on or before November 30, 2006. Later in 2007, we received \$8,000 from the Maine Humanities Council and \$6,000 from the Maine Historical Society for a total of \$14,000. That left \$15,000 due on the February 2007 invoice, which amount has since been written off.

We would like to address a statement from your November 15 letter that should be clarified to ensure accuracy. On page 2, the last sentence of the second full paragraph, you state that the auditor expressed a concern that the Cultural Affairs Council engaged the hiring of Verrill Dana. The auditor's suggestion that the Council hired Verrill Dana is inaccurate. At no point did Verrill Dana work for the Council. Verrill Dana collaborated with the Council on issues of interest to the Council, but the Council was never Verrill Dana's client.

Request #6. We believe that we were not required to register as lobbyists for two independent reasons: (1) neither of us reached the 8-hour reporting threshold in any calendar month; and, (2) we were not compensated for lobbying services. Because we did not engage in direct advocacy for more than 8 hours in a month, we would not have been required to register as lobbyists even if we had been fully compensated for the services we provided. In addition, because we were compensated such a small amount relative to the total value of services we provided (most of which were not lobbying), and because the payments we received were

Jonathan Wayne, Executive Director

Maine Commission on Governmental Ethics and Election Practices

November 30, 2007

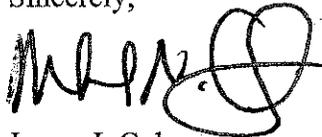
Page 9

applied to the oldest services first, we believe that any compensation we received would not even cover our non-lobbying work. Therefore, even if we had reached the reporting threshold in some months, we would not have been required to register as lobbyists because we would not have been compensated for our time spent lobbying, a key requirement under Maine law.

Request #7. The compensation we received with respect to LD 793 was entirely unrelated to our work related to the New Century Community Program. Our work regarding LD 793 was for an unincorporated association called the Joint Library Legislative Committee, and the bulk of our services constituted legislative monitoring and strategic advice. Services constituting direct communications with covered officials fell well short of reportable thresholds.

To conclude, we thank you for the opportunity to clarify the record regarding our work in support of arts and culture in Maine. We are very proud of the work we have done. We believe we have helped make an impact not only in generating seed funding for arts and culture in Maine, but also in organizing the creative economy and creating a broader understanding of its role in Maine's future. This has been an exciting time in Maine for arts and culture. We have been recognized nationally for our work and have worked many hours training advocates in Maine and across the country. We look forward to continuing to contribute our time and effort to strengthen the role of arts and culture in Maine.

Sincerely,

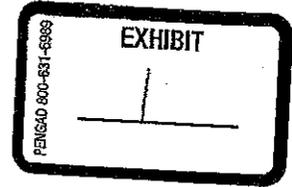
A handwritten signature in black ink, appearing to be a combination of initials and a name, possibly "M. V. Saxl" or similar, written in a cursive style.

James I. Cohen

Michael V. Saxl

Verrill Dana LLP

Attorneys at Law



HONORABLE MICHAEL V. SAXL
JAMES I. COHEN, PARTNER
msaxl@verrilldana.com
jcohen@verrilldana.com

ONE PORTLAND SQUARE
PORTLAND, MAINE 04112-0586
207-774-4000 • FAX 207-774-7499
www.verrilldana.com

July 15, 2005

Maine Community Cultural Alliance
Attn: Stephen J. Podgajny
23 Pleasant Street
Brunswick, ME 04011

Re: Legislative and Outreach Services from May 2004 - June 18, 2005

Dear Steve:

As you know, we have been engaged in an on-going effort to shape a bold legislative strategy for the members of the Cultural Affairs Council (CAC). During this time, at the request of members represented by the CAC, we have greatly increased the scope and magnitude of our work. This document outlines the services we have provided to the CAC members -- and its new advocacy arm, the Maine Community Cultural Alliance (MCCA) -- and services we have been asked to provide through the close of the 2005 legislative session. These services can be divided into two distinct components: (1) services provided to MCCA members prior to November 1, 2004, and (2) services from November 1, 2004 through the conclusion of the 2005 session of the Maine Legislature on June 18, 2005. Services related to the period following the 2005 legislative session would need to be addressed separately.

During the last several years, we have accomplished much in terms of General Fund contributions to the New Century Community Program, bond funding for certain library and technology-related projects, and more recently funding for the Pine Tree Zone demonstration project. Even more recently, we have begun to develop a strategy for stable operational funding and substantial bond contributions to cultural infrastructure. The efforts have been and will continue to be substantial, but so are the potential opportunities for cultural organizations and the state as a whole.

You should note that we have not worked for the member agencies pursuant to a specific fee agreement since April of 2004, which is when the prior agreement expired. That agreement with the Maine Library Association was for \$12,500 and covered our services related to the 2004 Legislative session. During that time, the actual value of our services exceeded \$20,000. Since that session concluded in April of 2004, we have essentially been working with clear but informal understanding that we would be compensated for our services. This seemed appropriate

for three primary reasons. First, during this time period we have been asked to become involved in a wide array of matters, but the matters have not been predictable or easily subject to advance quantification of costs. Second, given the delays we experienced in obtaining final payment of the prior fee agreements (final payment was not received until this past fall), it seemed more appropriate to postpone the delivery of a new bill until the old bill had been paid. Third and finally, for much of the last year, discussions have been underway regarding the formation of the Maine Community Cultural Alliance, which organization was viewed as the appropriate vehicle for handling disbursements with respect to outside consulting services. The fact that MCCA is only recently "getting off the ground" is perhaps the most important reason we have not sent out a formal invoice until now.

INVOICE FOR SERVICES

May - November, 2004. Our services for this five month period fell within five basic categories during this time period, which we will describe in greater detail below. The first covered service relates to implementing the 2003 Library Bond. This category of service included meetings with the Attorney General and State Treasurer, development of appropriate descriptions of agency activity, and internal meetings and correspondence with the agencies to develop the appropriate strategy. The value of our services related to this item was \$3,345.00.

The second area of work related to advance planning for the 2005 Legislative Session, and beyond. This aspect of our work involved development of a legislative strategy, work with members of the Legislature and Administration, and a number of internal meetings and discussions with the agencies. The value of our services for this item was \$3539.00.

The third area of work related to developing a strategy to coordinate the New Century Program and the Cultural Affairs Council with the Governor's Creative Economy efforts. This work included meetings with DECD staff, the Governor, internal meetings, discussions, and correspondence with the agencies, and strategic planning. The value of our time for this area was \$1,438.00.

The fourth area of work related to implementing the Pine Tree Zone demonstration project. The aspect involved working with DECD staff and member agencies to develop a methodology for the program, plus working with the agencies to structure the program. We also provided assistance on this project in terms of messaging and outreach to the Governor and his staff. The value of our time for this service was \$1,674.00.

Finally, we worked with the agencies regarding the possibility of a special legislative session related to bonds during the summer of 2004. Our services in this area included correspondence and conversations with members of the Legislature and the Governor's Office as well as the member agencies. The value of our time for this service was \$285.00.

Adding up each of the foregoing services yields a total of \$10,281.

November 1, 2004 - June 18, 2005. Specifically, our efforts during this nearly eight month period have been focused on crafting a bond and General Fund strategy to meet the

financial needs of Maine's cultural institutions. Our efforts in this time period can be viewed in two distinct phases: (1) Phase I -- preparation for the 2005 legislative session; and (2) Phase II -- implementation of legislative plan.

Phase I. During November and December of 2004, we worked with MCCA and CAC members to establish our legislative plan. Our services included the following:

- Drafting a legislative plan
- Assisting members regarding the rollout of the Pine Tree Zone demonstration project
- Cultivating relationships with emerging leaders on cultural agency funding issues
- Facilitating meetings with Administration officials, including Governor Baldacci
- Working internally with CAC members regarding legislative strategy, related meetings, and teleconferences
- Forming MCCA.

Our fees related to Phase I totaled \$8,306.00.

Phase II. Phase II covers our services for members during the Legislature's 2005 regular session, which adjourned on June 18, 2005. Our services relate primarily to LD 786, LD 766, LD 521, LD 192, LD 756, and LD 1001, including specific activities identified in the following outline:

<u>TASK</u>	<u>DESCRIPTION</u>
Work with Baldacci administration	Schedule and participate in meetings with the Baldacci Administration. Continue meetings with Administration on a weekly basis to track progress. Cultivate support of Governor and members of the Administration.
Identify legislative sponsors	Provide on-going support to Legislators and Staff throughout the session.
Work with committees of jurisdiction and cultivate legislative champions	Target and work with key committee members. Help organize grassroots contacts to Legislature. Monitor committee action. Educate Legislators regarding the New Century Program and Creative Economy.
Provide legal support to establish MCCA	Formation of MCCA and by-laws. (IRS filing to be addressed separately).
Assist with press relations	Work with press subcommittee; assist with press events and participate in press contacts.
Coalition building	Meetings with University, R&D, Transportation, and other parties.
Attend CAC meetings, regular e-mail and telephone correspondence	

Prepare for and execute Floor fight Develop and implement floor strategy. Lobby individual members, leadership, and coordinate agency lobbying. Work with coalition partners. Use entire VD/MSS team.

Our fees related to Phase II totaled \$50,532.00.

Discount. Obviously, we recognize that \$68,813 for all work for the thirteen months from May, 2004 through June 18, 2005 is a substantial amount of money for a new organization such as MCCA. That said, we have worked hard to focus our activities on tasks that add value, avoid overlap, and advance the goal of substantially increasing the State's financial contribution to cultural institutions. In addition, our hope is to work collaboratively with MCCA regarding the expectations of members about the services we provide, and offer a discount of 25% off of our normal rates. Applied to the fees outlined above, our fee for the entire thirteen month period ending June 2005 would total \$51,609.75. We believe this total is consistent with the fee expectations we have indicated to CAC members over the past several months.

CONFLICTS OF INTEREST

On a separate track, it is important that we spend a moment to outline issues related to conflicts of interest, which is important on a going forward basis. Generally speaking, the scope of our representation of MCCA is limited to the services performed above as they may continue into the future. We are also engaged to provide basic corporate advice to MCCA related to its good standing as a corporate entity. If MCCA wishes to engage Verrill Dana, LLP and Maine Street Solutions for other services, we would be pleased to provide such services on a matter by matter basis upon mutual agreement.

Please note that Verrill Dana and Maine Street Solutions have a number of existing clients whose interests may be affected by the activities of the Maine Community Cultural Alliance. It is possible that one or more of these clients may ask us to advocate positions adverse to the positions that are adverse to positions taken MCCA or its members. We reserve the right to accept those engagements to the extent permissible under the Maine Bar Rules. Under certain circumstances, the Maine Bar Rules may compel the Firm to withdraw from the representation of one or more parties where it is not possible to continue the concurrent representation of the parties. In such cases, it is possible that we will have to withdraw from our representation of MCCA. If at any time we determine that our work for MCCA creates a conflict with an existing client, we reserve the right to withdraw from this engagement subject to our disclosure obligation to MCCA.

CONCLUSION

We hope this letter accurately spells out the past invoice and the future scope of services that Maine Street Solutions and Verrill Dana provide to MCCA. Obviously, if we need to modify these terms or the invoice in any way, please let us know.

Maine Community Cultural Alliance

July 15, 2005

Page 5

Once again, we have very much appreciated the opportunity to work with MCCA and member cultural institutions, and we look forward to working with you in the months and years ahead.

Sincerely,



James I. Cohen
Michael V. Saxl

JIC/mhw
Enc.

P:\jcohen\MCCA\Rention Ltr 2005 042005.doc .

Verrill Dana_{LLP}
Attorneys at Law

One Portland Square
P.O. Box 586
Portland, Maine 04112-0586

Telephone: (207) 774-4000
Facsimile: (207) 774-7499
E-Mail: advic@verrilldana.com

Employer ID No. 01-0176171

TO: MAINE COMMUNITY CULTURAL ALLIANCE
ATTN: STEPHEN J. PODGAJNY
23 PLEASANT STREET
BRUNSWICK, ME 04011

INVOICE 349150

July 15, 2005

RE: LEGISLATIVE
34646-4668

COPY

Legislative services for the period May 2004 through June 15, 2005, including all services related to implementing the 2003 Library Bond, coordination with the Governor's Creative Economy efforts, implementing the 2004 Pine Tree Zone demonstration project, formation of Maine Community Cultural Alliance, preparing for a potential special legislative session regarding bonds during the summer of 2004, preparation and implementation of a broad legislative plan to obtain General Fund and bond money to continue and expand the New Century Community Program, plus related meetings, document preparation, teleconferences, grassroots efforts, strategy development, and legislative outreach activities.

Total Fees	\$68,730.00
Less 25% Discount	-\$17,120.25
Sub Total	\$51,609.75
Costs Incurred thru June 15, 2005	\$289.02

Amount Due:	\$51,898.77

Payment is due upon receipt of this invoice. A late charge of 1-1/2% per month will be assessed upon all balances that remain unpaid for more than 30 days after the invoice date. Verrill Dana, LLP is committed to providing quality legal services. If you have any questions concerning this invoice or the services to which it relates, please contact your principal attorney or David E. Warren, Managing Partner.

Please detach this portion and return in the enclosed envelope with your payment. Thank you.

Verrill Dana_{LLP}
Attorneys at Law

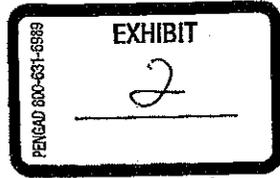
One Portland Square
Portland, Maine 04112-0586

July 15, 2005
INVOICE 349150

MAINE LIBRARY ASSOCIATION
LEGISLATIVE
34646-4668

Amount Due: \$51,898.77

Amount Enclosed: \$ _____



VERRILL DANA LLP
ONE PORTLAND SQUARE
P.O. BOX 586
PORTLAND, MAINE 04112-0586
207/774-4000

May 17, 2006
PAGE 1

MAINE COMMUNITY CULTURAL ALLIANCE
ATTN: DAVE CHEEVER, TREASURER
P.O. BOX 56
AUGUSTA, MAINE 04338

RE: LEGISLATIVE

CLIENT/CASE NO. 34646-4668/JIC

STATEMENT OF BALANCES DUE ON OUTSTANDING INVOICES

Amount due as of previous statement: \$51,898.77
Less payments received since previous statement: -\$12,000.00

Balance Forward: \$39,898.77
Summary of Open Invoices

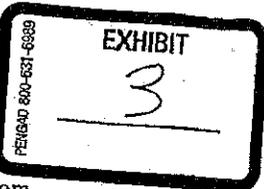
Date	Invoice	Amount	Late	Credits	Balance
07/15/05	349150	\$51898.77	\$.00	\$12000.00	\$39898.77
Current Period Late Charges:					\$598.48
TOTAL DUE:					\$40,497.25

Verrill Dana^{LLP}

Attorneys at Law

One Portland Square
P.O. Box 586
Portland, Maine 04112-0586

Telephone: (207) 774-4000
Facsimile: (207) 774-7499
E-Mail: advice@verrilldana.com



Employer ID No. 01-0176171

TO: MAINE COMMUNITY CULTURAL ALLIANCE
ATTN: DAVE CHEEVER, TREASURER
P.O. BOX 56
AUGUSTA, MAINE 04338

INVOICE 364833

September 29, 2006

RE: LEGISLATIVE

34646-4668

COPY

For legislative services rendered from June 16, 2005 to July 1, 2006 regarding bonds and General Fund appropriations for the New Century Community Program and related cultural legislation, including but not limited to attendance at meetings; preparation of documents, telephone conferences, e-mails, memorandums, and correspondence with MCAA members, Legislators and staff, the Governor and staff, and coalition partners; assistance with preparation and filing of organizational documents, by-laws, and 501 status for MCCA; presentations to coalition partners related to cultural advocacy; assistance with administrative appointments; development of long term funding strategy and Cobscook project.

Legislative Fees:	\$45,647.50
Costs Incurred:	\$736.04

Current Charges:	\$46,383.54
Previous Balance:	\$39,898.77

Amount Due:	\$86,282.31

Payment is due upon receipt of this invoice. A late charge of 1-1/2% per month will be assessed upon all balances that remain unpaid for more than 30 days after the invoice date. Verrill Dana, LLP is committed to providing quality legal services. If you have any questions concerning this invoice or the services to which it relates, please contact your principal attorney or David E. Warren, Managing Partner.

Please detach this portion and return in the enclosed envelope with your payment. Thank you.

September 29, 2006
INVOICE 364833

Verrill Dana^{LLP}

Attorneys at Law

One Portland Square
Portland, Maine 04112-0586

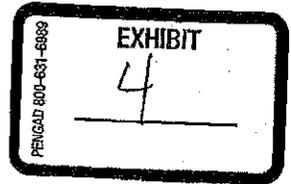
MAINE COMMUNITY CULTURAL ALLIANCE
LEGISLATIVE
34646-4668

Amount Due: \$86,282.31

Amount Enclosed: \$ _____

Verrill Dana LLP

Attorneys at Law



JAMES I. COHEN
jcohen@verrilldana.com
MICHAEL V. SAXL
msaxl@verrilldana.com

45 MEMORIAL CIRCLE
AUGUSTA, MAINE 04332-5307
207-623-3889 • FAX 207-622-3117
www.verrilldana.com

December 21, 2006

Maine Community Cultural Alliance
c/o Mr. David Cheever
P.O. Box 184
Augusta, ME 04330

Dear Dave:

Thank you for selecting Maine Street Solutions, LLC and Verrill Dana, LLP to provide legislative and strategic consulting services to the Maine Community Cultural Alliance (the "Alliance") with respect to the First Regular Session of the 123rd Maine Legislature. This letter will confirm the scope of our work and address the basic terms of our engagement.

Scope of Services. Based on our discussions with you, we understand that the scope of our engagement is to provide legislative and strategic consulting services to the Maine Community Cultural Alliance related to the following matters: (1) passage of legislation calling for a long-term bond issue for the New Century Community Program; and (2) obtaining a General Fund appropriation for the New Century Community Program in the Budget. These services will cover the time period from December 1, 2007 through June 30, 2007.

As far as specific services are concerned, we will advise the Alliance on strategic issues related to obtaining state funding for the New Century Community Program, including advising the Alliance regarding grassroots efforts and organizing contacts to lawmakers; periodic participation in meetings and phone calls with members of the Alliance and partners with the Cultural Affairs Council; assisting the Alliance and its partners in arranging and participating in meetings with legislative leadership and the Administration; advising the Alliance and its partners regarding media outreach and testimony before Legislative Committees. In agreeing to receive these services, the Alliance and its partners will designate one or more points of contact to allow Verrill Dana and MSS to simplify communications to the Alliance and its partners. The Alliance and its partners will also take the lead in document preparation, grassroots contacts and list development, and the holding of periodic meetings with members to advance the goals of the Alliance regarding its legislative agenda.

Fee Arrangement. For the specific matters identified above, we will bill the Alliance a flat fee of \$16,500 for the period to begin December 1, 2006 and end June 30, 2007. This will be billed in six monthly installments of \$2,750 per month from January through June, 2007. In

Letter to Maine Community Cultural Alliance

December 21, 2006

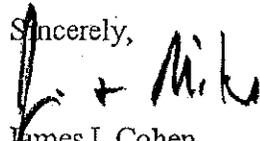
Page 2

addition, if our costs exceed 10% of the flat fee, we reserve the right to renegotiate the foregoing fee. The Alliance is responsible for all disbursements incurred for expenses, including, among other things, long-distance charges, filing fees, travel expenses, and subcontracting fees. For your information, we have enclosed a copy of the Statement of Billing Policies of Verrill Dana, LLP. If the scope of our engagement changes in any substantial manner, please note that we would need to modify the terms of this retention agreement accordingly.

Conflicts of Interest: As we have discussed, Maine Street Solutions, LLC and Verrill Dana, LLP have a number of existing clients whose interests may be adverse to Alliance from time to time, including clients such as ATT/SBC Communications, AOL, or Verizon Wireless. It is possible that one or more of those clients may ask us to advocate positions adverse to the Alliance in the future. In accepting this engagement, we understand that our representation of the Alliance is limited to the scope of services noted above, and we reserve the right to accept engagements in other matters that may be adverse to the Alliance to the extent permissible under the Maine Bar Rules. We would ask for your consent, consistent with the Maine Bar Rules, to continue to represent these other clients on unrelated matters that might be inconsistent with the interests of the Alliance, including with respect to positions we might take for either entity on legislation before the Maine Legislature. Overall, we will endeavor to ensure that the interests of the Alliance are protected within the requirements of the Maine Bar Rules, and we will work to communicate with you in the event any issues arise that could pose a potential conflict of interest.

Conclusion. We hope this letter adequately spells out our agreement for legislative and consulting services for the upcoming session. Assuming it does, we would appreciate if you could sign below and return a copy to us for our records. Once again, we have very much enjoyed working with the Alliance and look forward to working with you in the weeks and months ahead!

Sincerely,


James I. Cohen
Michael V. Saxl

MVS/evd
Enclosure

Seen and agreed to:
MAINE COMMUNITY CULTURAL ALLIANCE

By: _____
David Cheever, Clerk

Date: _____

Letter to Maine Community Cultural Alliance

December 21, 2006

Page 3

cc: Gary Nichols
Erik Jorgensen
Alden Wilson

VERRILL DANA, LLP

Statement of Representation and Billing Policies

Set forth below is a summary of Verrill Dana's standard policies with respect to legal fees and expenses.

Representation. Our representation will commence upon the opening of a billing account and shall terminate upon the issuance of the last statement for services rendered in this matter, unless our engagement letter indicates otherwise.

Legal Fees. Consistent with ethical standards applicable to our lawyers, it is our policy to charge reasonable fees for legal services. Numerous factors go into determining the fee for a given matter, the primary factors normally being our customary hourly rates and the number of hours expended. Our customary hourly rates vary according to the experience and expertise of the attorney or paralegal performing a particular service. Our present hourly rates, with certain exceptions, fall within the following ranges:

Partners	\$195 - \$450 per hour
Of Counsel	\$180 - \$475 per hour
Associates	\$125 - \$250 per hour
Paralegals	\$ 50 - \$170 per hour

We normally review and, if appropriate, revise our hourly rates on an annual basis. Adjustments are usually effective as of January 1, the beginning of our fiscal year.

Although hourly rates and number of hours are the primary factors employed in determining fees, additional factors may be considered, including: the difficulty of a particular project and the expertise required, the result obtained, the efficiency with which the result is obtained, and the extent to which a project requires special or expedited attention or precludes other legal work.

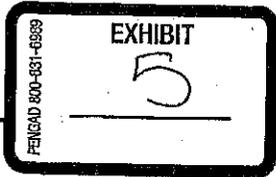
Expenses. We also impose reasonable charges for costs incurred in connection with a particular matter. These include, without limitation, charges for long distance telephone calls, fax transmissions (but not receipts), photocopying, courier services, special mailing costs, travel expenses and mileage, computer research services, court costs and deposition charges incurred in connection with litigation, corporate filing and real estate recording fees, and secretarial overtime.

Frequency of Billing. We normally submit monthly statements for services rendered. These statements generally include a description of the services performed, and a calculation of legal fees and expenses. If a client's special needs require a particular form of statement, we will make every reasonable effort to accommodate those requirements.

Payment. We ask that our clients remit payment on our statements promptly. A late charge of 1.5% per month will be assessed upon balances which remain unpaid for more than 30 days from the date of the invoice. To the extent consistent with ethical requirements, if an account is outstanding for more than 30 days, we reserve the right to terminate work until the account is brought current. While we regret ever having to take such a step, we feel that it is only fair to our clients who have paid promptly for our services to make certain that their legal needs have our undivided attention.

Retainers. For new clients, as well as for special projects for existing clients, we generally request an appropriate retainer as a deposit against fees and expenses to be incurred. Such retainers are credited against charges on a monthly basis, and we generally ask that the retainer be renewed on a monthly basis. Any balance remaining from the retainer at the conclusion of a project will be refunded promptly.

Fee Disputes. If a dispute arises with regard to fees, you have the exclusive right to invoke arbitration under Maine Bar Rule 9, Fee Arbitration. If you do not exercise your right to invoke fee arbitration under Rule 9 within 30 days after receiving written notice of your right, we may seek arbitration under the Maine Uniform Arbitration Act to resolve the fee dispute.



Verrill Dana LLP
Attorneys at Law

One Portland Square
P.O. Box 586
Portland, Maine 04112-0586

Telephone: (207) 774-4000
Facsimile: (207) 774-7499
E-Mail: advice@verrilldana.com

Employer ID No. 01-0176171

TO: MAINE COMMUNITY CULTURAL ALLIANCE
ATTN: DAVE CHEEVER, TREASURER
P.O. BOX 184
AUGUSTA, MAINE 04338

INVOICE 369218

February 8, 2007

RE: LEGISLATIVE
34646-4668

For services rendered in the above-referenced matter

Balance of Legislative Fees through November 30, 2006 per agreement with client:	\$15,000.00
Legislative Fees for December 1, 2006 to June 30, 2007 per retention letter dated December 21, 2006	\$16,500.00 -----
Amount Due:	\$31,500.00

Payment is due upon receipt of this invoice. A late charge of 1-1/2% per month will be assessed upon all balances that remain unpaid for more than 30 days after the invoice date. Verrill Dana, LLP is committed to providing quality legal services. If you have any questions concerning this invoice or the services to which it relates, please contact your principal attorney or David E. Warren, Managing Partner.

Please detach this portion and return in the enclosed envelope with your payment. Thank you.

February 8, 2007
INVOICE 369218

Verrill Dana LLP
Attorneys at Law

One Portland Square
Portland, Maine 04112-0586

MAINE COMMUNITY CULTURAL ALLIANCE
LEGISLATIVE
34646-4668

Amount Due: \$31,500.00

Amount Enclosed: \$ _____



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

November 15, 2007

By E-Mail and Regular Mail

James I. Cohen, Esq.
Verrill Dana, LLP
One Portland Square
Portland, ME 04112-0586

Michael V. Saxl, Esq.
Verrill Dana, LLP
45 Memorial Circle
Augusta, ME 04332-5307

Dear Gentlemen:

This letter is to request information which will assist the Maine Commission on Governmental Ethics and Election Practices in determining whether you conducted lobbying during late-2004, 2005, 2006, and 2007 which required you to register and file reports with the Commission as lobbyists. As explained below, failure to register and file required reports as a lobbyist is a violation of the Maine Lobbyist Disclosure Procedures Law. At the end of this letter, I make seven requests for information. Below I also explain the basis for this staff request so that it is understood by you and the members of the Commission without the need for a separate memorandum.

There is a good possibility that I will be scheduling this matter for consideration by the Ethics Commission members at their next meeting on December 7, 2007. At that meeting, I expect them to consider whether any further investigation is necessary, pursuant to Chapter 1, Section 5(2) of the Commission rules. Please provide your response to the requests no later than Thursday, November 29 so that it can be included in the packet of materials considered by the Commission for the meeting.

Initiation of this Inquiry and Current Status

On October 4, 2007, the Ethics Commission staff learned that the State Controller's office was performing an internal control audit of four state cultural agencies regarding the possibility that they circumvented administrative policies in order to pay for lobbying services. Because the subject matter of the audit intersected with the jurisdiction of this Commission (*i.e.*, the possibility of unreported lobbying), I contacted the State Controller to request a copy of the audit report when it was completed. No complaint has been filed regarding this matter.

On October 29, after receiving questions from news reporters regarding the Controller's audit report, I obtained a copy of the report. On the next day, October 30, the members

of the Ethics Commission held their scheduled monthly meeting. I briefed the Commission members on the audit report, and they authorized me to conduct preliminary fact-gathering including sending you a questionnaire. Later that day, you voluntarily telephoned me and offered to provide information needed by the Commission. On November 5, we obtained copies of the work papers for the Controller's audit, and on November 6 we interviewed David Cheever, the treasurer for the Maine Community Cultural Alliance. That same day, you provided me with your two responses to requests for information by the State Controller.

Controller's Audit Report

In June 2007, the Controller's office received an allegation that some state cultural agencies had attempted to revive a private organization, the Maine Community Cultural Alliance, in order to pay for lobbying of the Maine Legislature from late 2004 to 2007. The focus of the audit appears to be on four independent commissions – the Maine Arts Commission, the Maine Historic Preservation Commission, the Maine Library Commission, and the Maine State Museum Commission. Three other organizations cooperated with the activities that are the subject of the audit: the Maine State Archives (a bureau of the Secretary of State's Office) and the Maine Humanities Council and the Maine Historical Society (private entities which may receive some public funding).

These seven offices take part in the Maine State Cultural Affairs Council. Under 27 M.R.S.A. § 555, the Council was created in 1989 to serve as a forum for interagency cooperation and planning among the cultural agencies. The alliance structure was intended to improve communications, enhance coordination of work, and facilitate planning and administration for each of the participating agencies. The chairs and vice-chairs of the seven agencies are the members of the Council, along with a chair that is appointed by the Governor. The Council has no staff other than the employees of the cultural agencies. The directors of these agencies are non-voting, ex officio members of the council. One of the concerns in the audit is that the directors of the four agencies – operating with others as a working group of the Cultural Affairs Council – encouraged the hiring of your firm for lobbying or other services without getting a formal authorization by a vote of the Council.

In their response to a draft version of the audit report, the four agency directors stated that that no public dollars had been spent on lobbying. You provided two responses to questions posed by the Controller's auditor on September 25, 2007 and October 3, 2007, in which you explain that you provided "legal and strategic services (largely pro bono)." (9/25/07 letter, page 1)

The final report contained findings that the agencies had deviated from standards for state government agencies in a number of respects. The audit report found:

- The agencies do not have a financial administrative structure sufficient to ensure compliance with state and federal policies.

- Public funds were used in an inappropriate manner. The agencies' transfer of public funds to a nonprofit organization to pay for legislative advocacy was not accurately reflected in the agencies' budgets. The audit report noted that amounts paid to the Maine Community Cultural Alliance were recorded in state accounting records as membership dues, but the organization did not have an adopted schedule for dues assessment.
- The procuring of your services did not comply with the procurement regulations for administrative agencies of the state of Maine.

The audit report made a number of recommendations regarding the financial and administrative oversight of the cultural agencies.

Any inappropriate use of public funds or circumvention of state procedures is a serious concern and is being given due consideration by other departments of state government. Those issues are not within the jurisdiction of this Commission. This inquiry is focused exclusively on whether you lobbied for the Maine Community Cultural Alliance (or any of the public or private cultural agencies named above) for more than 8 hours in a calendar month which would have required you to register as lobbyists.

Maine Community Cultural Alliance

The audit documents suggest that the Maine Community Cultural Alliance was an active private organization in the 1990's. It was incorporated in December 2004 as a nonprofit corporation, with Jennifer Hoopes, Esq., of your firm listed as the incorporator and registered clerk. The statement of purpose in the Alliance's articles of incorporation described its activities as: "The primary activities of the corporation shall be to promote in the Maine legislature the importance of cultural resources in Maine, including museums, libraries, historic preservation, and the arts; and to lobby for increased funding for Maine cultural resources." The articles contemplated 3 - 20 members of a board of directors; however, no board members were ever formally identified in filings with the Secretary of State. In fact, the two annual reports filed with the Secretary of State by your firm indicate that the positions of corporation officers and directors were vacant in 2005 and 2006. The Alliance was administratively dissolved by the Secretary of State in 2007 for failure to file an annual report.

I interviewed David Cheever on November 6, 2007 to better understand the history of the Maine Community Cultural Alliance. He stated that in the summer of 2005 he was approached by the directors of the cultural agencies. They asked him to invite certain individuals to become board members of the Maine Community Cultural Alliance to promote cultural activities in Maine. Part of the financial activities of the Alliance, as proposed by the agency directors, would be paying down the debt already owed to your firm and to fund future advocacy efforts. Some of the individuals he contacted were interested in getting involved in an arts advocacy organization, but not in the particular conception suggested by the agency directors. Mr. Cheever stated that there were some

meetings with the agencies' directors to discuss the organization of the Alliance, but no board of directors ever met because one was never formed.

One aspect of this inquiry that is a little unusual is the lack of clarity as to who was your client. It is understandable that in November 2004, you expected the Maine Community Cultural Alliance to be a functioning organization. As time passed and you sent an engagement letter and invoices in July 2005, May, September, and December 2006, and February 2007, the absence of any organizational development could have raised concerns on your part as you continued to provide services. (The organization did not have a board or officers, and there was no formal authorization by a board of directors to retain your services.) For purposes of this request for information, the Commission staff will refer to the Maine Community Cultural Alliance as your client, although it is possible that the actual parties of interest for which you were providing legislative services were individuals, state agencies, or private nonprofit organizations associated with the Maine State Cultural Affairs Council.

Legal Requirements for Lobbyists to Register and File Reports

The purpose of Maine's Lobbyist Disclosure Procedures Law is to provide the public with information about who has been paid to influence the legislative process.

The Legislature also recognizes that [citizens' petitioning of state government] must be carried out openly so that other citizens are aware of the opinions and requests made in this manner. Legislative decisions can fully reflect the will of all the people only if the opinions expressed by any citizen are known to all and debated by all, and if the representatives of groups of citizens are identified and their expenditures and activities are regularly disclosed. (3 M.R.S.A. § 311)

Individuals qualify as lobbyists if they have been employed by another party for the purpose of lobbying and if they have engaged in lobbying for more than 8 hours in a calendar month. The definition of lobbyist is:

10. Lobbyist. "Lobbyist" means any person who is specifically employed by another person for the purpose of and who engages in lobbying in excess of 8 hours in any calendar month, or any individual who, as a regular employee of another person, expends an amount of time in excess of 8 hours in any calendar month in lobbying. "Lobbyist" does not include a lobbyist associate. (3 M.R.S.A. § 312-A(10))

If an individual performs a limited amount of lobbying for a client which does not exceed 8 hours in a calendar month, the individual is not required to register as a lobbyist – even if the lobbyist has performed a large amount of “non-lobbying” services in a single month.

The Lobbyist Disclosure Procedures Law defines "Employer" and "Employment" as:

5. Employer. "Employer" means a person who agrees to reimburse for expenditures or to compensate a person who in return agrees to provide services. Employer includes any political action committee as defined in this section which communicates through or uses the services of a lobbyist to make campaign contributions or to influence in any way the political process.

6. Employment. "Employment" means an agreement to provide services in exchange for compensation or reimbursement of expenditures. (3 M.R.S.A. §§ 312-A(5) - (6))

Individuals who qualify as lobbyists must register with the Commission by filing a registration form (3 M.R.S.A. § 313) and must file monthly and annual lobbyist reports. (3 M.R.S.A. § 317)

As you are aware, the definition of "lobbying" for purposes of the Lobbyist Disclosure Procedures Law does not include many services which the lay public might presume are part of lobbyists' everyday work. The following definition was in effect through September 19, 2007:

9. Lobbying. "Lobbying" means to communicate directly with any official in the Legislature for the purpose of influencing any legislative action or with the Governor for the purpose of influencing the approval or veto of a legislative action when reimbursement for expenditures or compensation is made for those activities. It includes the time spent to prepare and submit to the Governor, a Legislator or a legislative committee oral and written proposals for, or testimony or analyses concerning, a legislative action. (3 M.R.S.A. § 312-A(9))

This definition does not include, for example, time spent by a lobbyist in meetings with a client discussing legislation; time which a lobbyist spends monitoring legislation; time spent in the State House waiting for an opportunity to communicate with an official or to monitor a legislative meeting; and time spent performing legal or quantitative research that is never provided to the Legislature or Governor. Even though these activities relate to legislation and are billable to a client (for lobbyists who charge on an hourly basis), for better or worse these activities fall outside the statutory definition of lobbying.

The definition of lobbying includes the qualifying clause "when reimbursement for expenditures or compensation is made for those activities." If someone is petitioning the Legislature outside of a paid employment relationship (*e.g.*, because they care personally about an issue of public policy), the communication is not lobbying.

The Commission is authorized to assess a penalty for any person who is required to register and file reports as a lobbyist and who fails to do so:

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. (3 M.R.S.A. § 319(1))

The basis for this inquiry is to gather facts necessary for the Commission members to determine whether you were required to register and file reports under 3 M.R.S.A. §§ 313 and 317, and, if so, whether any penalty should be assessed under 3 M.R.S.A. § 319(1).

Discounted and Paid Services

Based on the documents disclosed in the audit, the Commission staff has attempted to learn the history of your invoices for services rendered and your later decisions to discount those services. This section summarizes the staff's current understanding. Below, in Request #5 we invite you to correct any misperceptions.

Services Provided Through June 15, 2005. In mid- to late-2004, you entered into an understanding with the agency directors or others that you would provide services to the Maine Community Cultural Alliance relating to legislation and other matters. To the best of our knowledge, you did not propose a scope of engagement in writing in 2004 or 2005. On or around July 15, 2005, you mailed an invoice and a letter describing your services that had been provided through June 15, 2005. In the letter, you explained the timing of the invoice and stated that "we have essentially been working with [a] clear but informal understanding that we would be compensated for our services." The letter stated that \$68,813 worth of services were provided and "offer[ed] a discount of 25% off of our normal rates." With regard to the discounted fee of \$51,609.75, you stated that "We believe this total is consistent with the fee expectations we have indicated to CAC [Cultural Affairs Council] members over the past several months." At the conclusion of the letter you stated: "Obviously, if we need to modify these terms or the invoice in any way, please let us know."

On or around November 5, 2005, you received a \$12,000 payment from the Maine Community Cultural Alliance.

Services Provided in 2005-06. You continued to provide services in the second half of 2005 and through the 2006 legislative session. You stated in your October 3, 2007 response to the Controller's office that on July 6, 2006 you sent an e-mail to David Cheever stating that you expected to discount those services delivered after June 15, 2005

and that you would continue to provide a portion of your services on a *pro bono* basis. On or around September 29, 2006, you sent an invoice for work performed after June 15, 2005 which totaled \$45,647.50 in "Legislative Fees" and \$736.04 in costs, for a total of \$46,383.54.

In your October 3, 2007 response, you explained that "[l]ater in 2006" Verrill & Dana agreed to mark down the remaining amount owed for pre-2007 services to \$15,000. You received no payments during calendar year 2006 for work related to the Maine Community Cultural Alliance.

Services Provided in 2007. In late 2006, there appears to have been a decision to charge a flat fee of \$16,500 for services that would be provided in 2007 (rather than a fee based upon an hourly rate). You sent a retention letter dated December 21, 2006 proposing the \$16,500 amount. As far as I know, no one affiliated with the Maine Community Cultural Alliance signed the retention letter.

You were thus owed a combined total of \$31,500 for pre-2007 and 2007 services. You received a \$2,500 payment from the Maine Community Cultural Alliance on or around January 24, 2007. Exhibit A to the audit report suggests that, in addition, you received \$16,500 from the Maine Humanities Council and the Maine Historical Society in 2007. Your September 25 response (page 3) seems to suggest that you received only \$14,000 from those two organizations. You stated that the remaining \$15,000 balance due was "dissolved" (no longer owed) when the Alliance was dissolved by the Secretary of State for failure to file an annual report. The following table summarizes this history:

	2004 - 2005 Services	2006 Services	2007 Services
Value of services (based on hourly rate + costs)	\$69,019.02	\$46,383.54	---
Discount included in initial invoice	-\$17,120.25	\$0	---
Initial amount invoiced	\$51,898.77	\$46,383.54	\$16,500.00 ¹
11/5/05 payment	-\$12,000.00		
Additional late fee charged in May 2006	\$598.48 ²		
Amount due in 9/29/06 invoice	\$39,898.77	\$46,383.54	
Discount for pre-2007 work	-\$71,282.13 ³		
Amount owed per late-2006 agreement	\$15,000.00		\$16,500.00
Amount paid in 2007		\$2,500 from MCCA; \$14,000 (or \$16,500) from two nonprofits	

¹ This amount was contained in a 12/21/06 retention letter, but no invoice for this amount was present in the working papers of the audit.

² This amount was shown on a 5/17/07 statement of balances due, but not reflected in your 9/29/06 invoice.

³ There is a slight discrepancy between the \$71,282.13 discount referred to in Mr. Cohen's 9/25/07 response and the amount of 2006 fees and costs shown in the 9/29/06 invoice.

The Controller's audit concluded that your gross billing totaled \$131,902, that your firm forgave \$103,402, and that you received \$28,500. (This presumes you received only \$14,000 from the Maine Historical Society and the Maine Humanities Council in 2007).

Evidence Suggesting Lobbying Work

The staff has not reached a preliminary view regarding whether you were required to register as lobbyists, but a few factors raise that concern and require the Commission to request more detailed information:

- (1) Documents disclosed in the audit suggest that you performed a sizeable volume of work for the Maine Community Cultural Alliance – particularly in 2005. While I fully understand that some portion of the services you provided may not qualify as lobbying, the overall amount of work raises the question of whether your lobbying work alone may have exceeded 8 hours in a calendar month, which would have triggered a requirement to register and file reports.
- (2) According to your invoices and unsigned engagement letter, one major focus of your services was legislation in the 122nd and 123rd Legislatures. Some of the documents (particularly a July 15, 2005 letter, described below) indicate that you did directly communicate with Legislators, staff, and the Governor for the purpose of influencing legislation.
- (3) You were compensated for your services, even if the bulk of charges were forgiven in July 2005 and late-2006, or were considered dissolved in 2007.

The audit documents suggesting that some lobbying services were provided include:

(1) *July 15, 2005 invoice and letter explaining your services.* Your July 15, 2005 letter describes the services you provided from May 2004 to June 15, 2005. Some of the services described include direct communications with Legislators, staff, or the Governor that fall within the statutory definition of lobbying in 3 M.R.S.A. § 312-A(9) including:

- “conversations with members of the Legislature”
- “Provide on-going support to Legislators and Staff throughout the session”
- “Target and work with key committee members. ... Educate Legislators regarding the New Century Program and Creative Economy.”
- “Develop and implement floor strategy. Lobby individual members, leadership, and coordinate agency lobbying.”
- “outreach to the Governor”
- “Facilitating meetings with Administration officials, including Governor Baldacci”
- “Cultivate support of Governor and members of the Administration”

During the 2005 regular session, the firm provided \$50,532 worth of services. While this reflects services provided by both of you and perhaps others over a 5 ½ month period, it

does require us to ask for information that would verify whether either of you spent more than 8 hours in a month on lobbying during the 2005 session or at other times.

(2) *September 29, 2006 invoice and December 21, 2006 engagement letter.* Your September 29, 2006 invoice seems to suggest direct communications that could qualify as lobbying: “For legislative services rendered from June 16, 2005 to July 1, 2006 regarding bonds and General Fund appropriations for the New Century Community Program and related cultural legislation, including but not limited to attendance at meetings; preparation of documents, telephone conferences, e-mails, memorandums, and correspondence with MCAA members, Legislators and staff, the Governor and staff ...” (Emphasis added.) In addition, your December 21, 2006 proposed engagement letter, anticipates “assisting the Alliance and its partners in arranging and participating in meetings with legislative leadership and the Administration” and “organizing contacts with lawmakers.” While this may have referred to meetings between the agency directors and Legislators, it is possible that you participated in meetings with Legislators in 2007 on behalf of this client as you had previously.

(3) *Verrill & Dana Website.* The profile page for Mr. Cohen on the website of Verrill Dana LLP (not referred to in the audit) lists a number of “Representative Matters,” including “Represented a coalition of Maine libraries and cultural institutions before the Maine Legislature on issues regarding bonds and state funding.”

(4) *Articles of Incorporation of the Maine Community Cultural Alliance.* As noted above, lobbying for increased funding is one of the expected activities stated in the purpose statement in the articles of incorporation for the Maine Community Cultural Alliance: “The primary activities of the corporation shall be to promote in the Maine legislature the importance of cultural resources in Maine, including museums, libraries, historic preservation, and the arts; and to lobby for increased funding for Maine cultural resources.”

(5) *Statements of directors of cultural agencies.* Several statements of the directors of the cultural agencies or affiliated persons describe the purpose of the Maine Community Cultural Alliance as being focused on influencing legislative action.

- The Spring 2005 newsletter from Alden C. Wilson, former Director of the Maine Arts Commission, stated: “The Maine Community Cultural Alliance, active in the 1990s, is in the process of being reformed as a 501(c)(4) nonprofit organization, dedicated to legislative action.”
- Maine Library Association Minutes, September 13, 2006: “David Cheever explained the legislative initiative of the CAC [Cultural Affairs Council] which include funding for New Century Grants and support for the work of the Maine State Cultural Building Task Force. ... The Maine Community Cultural Alliance, a 501 c (6) organization, has been resurrected to provide support for the work of the CAC.”

- Maine Library Association Minutes, March 9, 2007: "The lobbyist will cost \$10,000 - \$11,000. Mike Saxl is the lobbyist working on this legislation [LD 793] and he is also the former Speaker of the House. ..."
- Maine Library Commission Minutes, March 27, 2007: "A number of library groups or associations have contributed \$10,000 for lobbying activities. A second meeting with Mike Saxl and Jim Cohen from Verrill and Dana will be held on March 30 to finalize advocacy plans for LD 793."
- Maine InfoNet Board Meeting Minutes, April 18, 2007: "New Century went from a 25 million request to 5 million At the Hearing all of the bonds were folded into one bond and is now a general legislative request. ... It is good to have Mike Saxl with us on this, it was not in the package until Beth Edmonds and Mike Saxl went to see the Governor. ..."

Your Preliminary Explanation regarding Lobbyist Registration

In your October 3, 2007 response to the Controller's Office, you explained why you were not required to register as lobbyists:

As far as whether lobbyist registration was required for certain activities provided by Verrill Dana to MCCA, the answer is no. Very simply, lobby registration is triggered when an individual engages in direct communications with the Legislature about a pending legislative matter, for compensation, for eight or more hours in a month. At no point did Mike Saxl or I engage in "direct communications" as defined in the law in an amount equal to or above the eight hour monthly threshold, and thus lobby registration was not required for MCCA.

With respect to the particular nature of the services provided by Verrill Dana to MCCA, there was a broad range of services that went well beyond "direct communications." Our services included: (1) attendance by phone or in person at numerous meetings of the Cultural Affairs Council; (2) legislative monitoring activities not defined as lobbying, including the provision of reports regarding the calendar of activities within the Legislature; (3) corporate and legal work to form MCCA; (4) legal advice related to State bonding requirements; (5) public outreach efforts related to the New Century Program; and (6) broad strategic advice related to the expenditure of funds related to arts and culture. ...

Requests for Information

Request #1. Please affirmatively state – for each month from May 2004 through June 2007 – the number of hours you and others in your firm spent communicating with officials in the legislative branch (including Legislators, staff, and legislative candidates) or the Governor for the purpose of influencing legislative action on behalf of the Maine Community Cultural Alliance (or any of the public or private cultural agencies named above). Provide a separate monthly total for Michael Saxl, for James Cohen, and for any other employee of the firm who lobbied for the client. Include in the total for each month time spent preparing proposals, testimony, and analyses that were submitted to covered officials. Please include all time spent on these communications and preparations, even if your view is that this work ultimately was uncompensated because it was later discounted.

Request #2. Please affirmatively state – for each month from May 2004 through June 2007 – the number of hours you and others in your firm spent on services other than lobbying (as defined in 3 M.R.S.A. § 312-A(9)) for the Maine Community Cultural Alliance (or any of the public or private cultural agencies named above). Provide a total for Michael Saxl, a total for James Cohen, and a combined total for all other employees of the firm who provided non-lobbying services for the client.

Request #3. Please describe your firm's internal record-keeping system which you use to track time spent lobbying or providing other services for your legislative clients, and what procedures are in place to ensure that attorneys register with the Commission when they have lobbied for more than eight hours in a calendar month. Do you make any notation in the system for time spent lobbying? Does the system notify you when you have lobbied for more than 8 hours in a calendar month, or is it the lobbyist's responsibility to monitor when he or she has exceeded the threshold?

Request #4. Please provide the time records (including descriptions of work) from your record-keeping system that support your responses to #1 and #2. The Commission staff would use these records to verify the accuracy of your responses to #1 and #2 and does not anticipate including your time records in the regular packet of materials distributed to Commission members.

Request #5. Please verify whether the statements in the section above entitled "Discounted and Paid Services" are accurate, and please correct any misstatements or misunderstandings in that discussion.

Request #6. In your October 3, 2007 response (quoted above), you state that you were not required to register as a lobbyist because you did not perform more than 8 hours of lobbying in a calendar month. Does this response rely on a presumption that all compensation you received was entirely for non-lobbying services? In other words, in your view if you had been fully compensated by the Maine Community Cultural Alliance

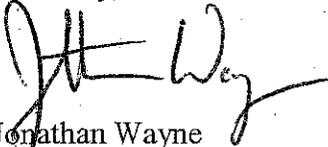
(or any of the public or private cultural agencies named above) for 100% of the services you provided, would you have been required to register as a lobbyist?

Request #7. The audit records include a March 27, 2007 retention letter to Jamie Ritter of the Joint Library Legislation Committee proposing a flat fee of \$10,000 to provide legislative assistance and strategic advice on a single bill, L.D. 793. Mr. Ritter is a member of Maine Library Commission. Was the \$10,000 you received compensation solely for your work on L.D. 793 or also compensation for work you performed in 2007 or earlier for the Maine Community Cultural Alliance? Lobbying on the New Century Community Program would seem to benefit the member-organizations of the Maine Library Association, and the April 18, 2007 minutes of the Maine InfoNet Board express approval for your efforts on the New Century program and discuss L.D. 793. Your July 15, 2005 letter also suggests a connection between work done for the Alliance and 2004 work performed for the Maine Library Association.

In addition, please provide any other information which you believe would be relevant for the Commission members to consider in reaching a decision whether any further investigation is necessary.

Please e-mail me at Jonathan.Wayne@maine.gov or telephone me at 287-4179 if you have any questions about this request.

Sincerely,



Jonathan Wayne
Executive Director

cc: Phyllis Gardiner, Commission Counsel
Gene R. Libby, Esq.

Verrill Dana_{LLP}

Attorneys at Law

JAMES I. COHEN
PARTNER
jcohen@verrilldana.com

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www.verrilldana.com

January 7, 2008

Jonathan Wayne
Executive Director
Maine Commission on Governmental Ethics
and Election Practices
135 State House Station
Augusta, ME 04333-0135

Dear Mr. Wayne:

Thank you for your letter to Valerie Wright dated December 7, 2007 regarding the Maine Community Cultural Alliance. In that letter, you asked that we provide answers to two additional questions, which are provided below:

- 1. Does the time summarized in Exhibit 6 cover all work performed by Verrill Dana during the time period for the Maine Community Cultural Alliance, and all individuals, governmental agencies, and nonprofit organizations associated with the Maine Cultural Affairs Council?**

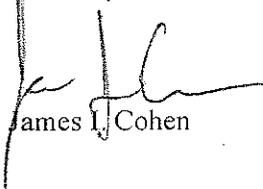
Answer: Please note that there were a handful of clerical errors in Exhibit 6 as previously submitted. We have corrected these typos, and a revised version is attached. With respect to the revised Exhibit 6, the answer to the question noted above is "yes."

- 2. Since James I. Cohen did not sign your November 30 response, we ask that he provide written confirmation that to the best of his knowledge Exhibit 6 is an accurate summary of the services he provided.**

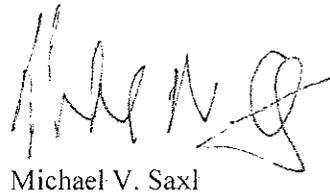
Answer: Mr. Saxl signed the November 30 letter on Mr. Cohen's behalf with his approval as confirmed by his signature below. To the best of his knowledge, Exhibit 6 is an accurate summary of the services he provided.

We hope the foregoing adequately answers the questions posed, and we look forward to meeting with you next week.

Sincerely,



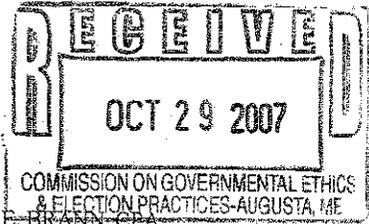
James I. Cohen



Michael V. Saxl

JIC/mhw
cc: Valerie A. Wright

STATE OF MAINE
DEPARTMENT OF ADMINISTRATIVE AND FINANCIAL SERVICES
OFFICE OF THE STATE CONTROLLER
14 STATE HOUSE STATION AUGUSTA, ME 04333-0014



EDWARD A. KARASS
STATE CONTROLLER



TERRY E. BRANN, CPA
DEPUTY STATE CONTROLLER

October 26, 2007

Rebecca M. Wyke, Commissioner of Administrative & Financial Services
3rd Floor Cross Office Building
Station #78
Augusta, Maine 04333-0078

Commissioner Wyke:

We have completed our audit of the relationship amongst several Cultural Agencies of State Government, the Maine Cultural Affairs Council, the Maine Community Cultural Alliance, a private non-profit corporation, and Verrill Dana, LLC. While the money involved to date is less than \$5,000 of State and Federal money, we find this relationship to be odd in its nature. There is no clear separation between the State, its employees, and the MCCA. Also, we find there to be too many vagaries surrounding the activity that has been engaged in by all involved including the role of the MCCA's contract with its vendor.

We have provided you with a narrative of the events and description of the relationship as we understand it. The participation by representatives of the State has been acknowledged through our interviews with the principals and also confirmed by our audit evidence.

We have provided the Directors of the four primary Cultural Agencies with our conclusion, findings, and recommendations regarding this complicated relationship. We have taken their comments into consideration in the final version of the report. It is fair to say that there is substantial disagreement between the Office of the State Controller and the Directors of the Library, Museum, Arts Commission, and Historic Preservation Commission regarding the findings and recommendations we put forth for their consideration and action.

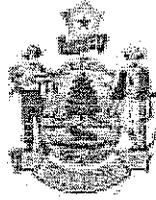
I would be happy to discuss the result of this phase of a multi - phase internal control audit of the Cultural Agencies with you at your earliest convenience.

Sincerely,


Edward A. Karass, CGFM
State Controller

STATE OF MAINE
DEPARTMENT OF ADMINISTRATIVE AND FINANCIAL SERVICES
OFFICE OF THE STATE CONTROLLER
14 STATE HOUSE STATION AUGUSTA, ME 04333-0014

EDWARD A. KARASS
STATE CONTROLLER



TERRY E. BRANN, CPA
DEPUTY STATE CONTROLLER

October 26, 2007

Alden Wilson, Director
Gary Nichols, Director
Earle Shettleworth, Director
J.R. Phillips, Director
Donna McNeil, Deputy Director

Thank you for your thoughtful comments regarding the draft of the Audit Report. I met with my senior staff to review your comments with the goal of incorporating as many of your suggested changes as possible and to clarify those areas that you believed required clarification. Your suggestions have helped to make this a better product for all of us.

From here, the report is transmitted to Commissioner Wyke for her review as well as discussion with all concerned. I would encourage you to make an appointment with her to discuss any concerns that you may have regarding the audit.

I have read through your comments regarding the audit process. Unfortunately, an audit of this type and scope is outside the normal audit procedure and protocol. It is somewhat adversarial in nature with communication typically going in one direction. I have reviewed your comments regarding the meeting of September 12, 2007 with my staff. We have a different recollection of the events on this date.

I am also assuring you that the auditor did not have any finding and conclusions developed before the initial meeting with you. Sometimes, when information is not immediately volunteered, investigatory methods must be employed.

Once again, thank you for your thoughtful comments. They are a help to understand the dynamics as we continue with the Internal Control Audit of your agencies.

Sincerely,

Edward A. Karass, CGFM
State Controller

Internal Audit Review of the State of Maine's Relationship to the Maine Community Cultural Alliance and Verrill Dana, LLC

Background and Scope

In late June, 2007, several individuals came forward with allegations of possible wrongdoing and unethical behavior on the part of the state cultural agencies. We met with these individuals several times to make sure we had a clear understanding of the issues being presented. We then began examining objective evidence to determine if these allegations had any merit. Our initial work supported the basic facts of the allegations and also brought to light additional issues which require further inquiry. Therefore, we broadened the scope of our review to include a general internal control review of the cultural agencies. This report summarizes the findings related only to the allegations concerning the financial operations and financial relationships between the Cultural Agencies, the Maine Community Cultural Alliance, and Verrill Dana, LLC.

Maine Cultural Affairs Council

The Maine Cultural Affairs Council (CAC) consists of a chair of the Cultural Affairs Council (appointed by the Governor), the chairs and vice-chairs of the Maine Arts Commission, Maine Historical Preservation Commission, Maine Library Commission, Maine State Museum Commission, Maine State Archives Advisory Board, Maine Humanities Council, and Maine Historical Society. Non-voting members consist of the directors of the seven cultural agencies and the governor's liaison.

The Maine Community Cultural Alliance

The allegation concerned the implementation of a process to circumvent the prohibition of using state or federal funds to pay for lobbying activities by creating a corporation through which to process these payments. While the Articles of Incorporation filed with the Secretary of State on December 14, 2004 for the Maine Community Cultural Alliance (MCCA) and the terms of an unsigned engagement letter with Verrill Dana, LLC seem to indicate lobbying/advocacy activities were contracted for, the Office of the State Controller does not draw any conclusions regarding this issue. To have a fair perspective on the financial activities involved requires reviewing the full context of related activities over more than two year's time.

History and Context

The Maine Community Cultural Alliance was an active organization in the 1990's whose primary purpose was to promote the activities of the various cultural organizations that were represented on the board. With the enactment of the New Century Communities Program in 1999 (PL 1999, C. 401, PL2001, C401), the organization became dormant because this new program was really the result and culmination of the group's work.

During 2004, members of the Cultural Affairs Council began discussions with Verrill Dana, LLC. According to the terms of an unsigned engagement letter provided by Verrill Dana, LLC to the MCCA and members of the Cultural Affairs Council, Verrill Dana was to provide advice on legislative matters and strategy initiatives to promote the Cultural Agencies' agenda before the Governor and Legislature. The specific participants from the Cultural Affairs Council who were directly involved in this venture are vague regarding specific meeting dates and topics of discussion. We have been unable to locate any meeting minutes of the Cultural Affairs Council from this time period.

As a result of meetings amongst Verrill Dana, LLC, the Directors of the Cultural Agencies, other members of the CAC, and others representing community based cultural agencies, on December 14, 2004, Articles of Incorporation for the Maine Community Cultural Alliance as a 501(c)(4) organization were filed with the Maine Secretary of State to revive the MCCA. The audit evidence suggests that the decision to revive the MCCA was made with the full knowledge and participation of the directors of the several cultural agencies who were in place at this time.

Control of the organization's finances was vested in the treasurer of the MCCA. As we conducted our field work, we could not locate any documents related to an initial funding plan or budget for the organization. We have been unable to locate any official roster of board members or any meeting minutes for the Maine Community Cultural Alliance. However, Verrill Dana, LLC was working on behalf of the Alliance during the second half of 2004 and the first half of 2005 according to the engagement letter.

As late as March 2006, Verrill Dana, LLC and employees of the State of Maine (Cultural Agencies) were continuing to refine the mission of the MCCA and the relationships between Verrill Dana, LLC and the Cultural Agencies. As noted in a series of emails on March 24, 2006 that were passed amongst Verrill Dana, LLC, Treasurer of MCCA, and the Director of the Arts Commission:

1. Agency directors and Verrill and Dana representatives will continue to review legislation for advocacy purposes.
2. We agree that the Cultural Affairs Council office will serve as a central resource for monitoring and communications regarding legislative initiatives.
2. We agree that the Cultural Affairs Council office should serve as a collection site for and substantial generator of correspondence, legislative testimony, op ed drafts, and other written materials as .
3. We agree that Verrill and Dana will continue as consultants to the Community Cultural Alliance on matters of tactics and strategies relating to pending and proposed legislation and major fundraising initiatives.
4. We agree that the Cultural Affairs Council and its designees should remain active with the Executive Department's Creative Economy Initiative, including engaging with the redevelopment efforts relating to the Brunswick Naval Air Station.
5. We agree that the Cultural Affairs Council should encourage and advise the Community Cultural Alliance to seek grant support from national foundations that are interested in innovative methods to preserve and promote culture.

We note at this point in our narrative and understanding of the events surrounding the MCCA, the Cultural Agencies, and Verrill Dana, LLC, that prior to February 27, 2006, the Treasurer of MCCA was a private citizen; however, on February 27, 2006, the Treasurer of MCCA was hired by the Maine State Library (MSL), a state agency, as a Planning and Research Associate II while continuing his duties as treasurer and registered agent for the MCCA. The exchange of the aforementioned emails took place nearly one full month after this person accepted state employment.

The initial funding of the MCCA resulted in the Maine Arts Commission contributing \$3,000 (Federal Funds), the Maine State Museum contributing \$1,000 (General Fund) and other non-state organizations contributing a net total of \$14,944. Of the total funds available of \$18,944, \$14,500 was paid to Verrill Dana, LLC, and \$2,221.57 was used for a survey and other corporate expenses. On April 5, 2007, \$2,222.43 was returned the State of Maine and deposited to the Cultural Affairs Council's Other Special Revenue Account – New Century Program/Library instead of the accounts of origination. In light of the subsequent disbursements to Verrill Dana, LLC, we argue that the Arts Commission and the Maine State Museum contributed state funds to the MCCA with the knowledge that these funds would be directly used to pay for costs incurred by MCCA for Verrill Dana's services. The Arts Commission used federal funds for its contribution and the Maine State Museum used general fund money. According to Federal guidance in OMB A-87 (cost principles for State, Local, and Indian

Tribal Governments), the costs of membership in an organization substantially engaged in promotional activities are unallowable and the \$3,000 in federal funds used to pay dues to MCCA should be returned to the federal government. We question the disposition of the funds that were returned to the State of Maine and deposited to the New Century Program/Cultural Affairs Council's account. Please refer to Exhibits A & B for the flow of monies to the MCCA and its financial transactions.

Verrill Dana, LLC submitted its first invoice to the Maine Community Cultural Alliance for \$51,898.77 in July of 2005. The Maine Community Cultural Alliance and Cultural Affairs Council were unprepared for this significant invoice because of poor control, little monitoring of Verrill Dana, LLC's efforts, and lack of a signed engagement letter to limit the scope of their work. During the course of our audit, we could not locate any specific tangible work product, such as a report or written strategy plan, created by Verrill Dana, LLC as a result of this engagement except for the Articles of Incorporation and the by-laws for the MCCA.

From the initial round of funding for the Maine Community Cultural Alliance, the council was able to pay Verrill Dana, LLC \$12,000 at the end of 2005. In November, 2006, the Maine Humanities Council and Maine Historical Society paid an additional \$3,000 each to the MCCA, but this money was returned three months later. The Maine Humanities Council subsequently sent the \$3,000 directly to Verrill Dana, LLC, along with an additional \$5,000 in March, 2007.

There was no further activity conducted by the Maine Community Cultural Alliance other than a final payment of \$2,500 to Verrill Dana, LLC in January, 2007. Of the almost \$132,000 in gross billing for this engagement, Verrill Dana, LLC discounted, wrote off or classified as pro bono a total of \$103,000 at the conclusion of the engagement.

We assert that it is likely there was a general acknowledgement and understanding that state agencies are not allowed to fund and participate in private non profit corporations to act on their behalf in the manner described here in. Nevertheless, the council decided that the best way to achieve their goals was through this independent non-profit corporation. Reference to the MCCA and efforts to revive it are clearly stated in the minutes of the Maine Library Commission in July, 2006. Additionally, in the February 8, 2007, minutes of the Arts Commission, Rebecca Conrad, Deputy Chair, "reported the Maine Community Cultural Alliance (MCCA) is a private organization that... had been working on obtaining a 501 (C) 3 status. The mission of the organization would be to provide advocacy for the cultural agencies. The Cultural Affairs Council has put this idea on hold for the time being."

In the minutes of the March 9, 2007, Arts Commission meeting, the Vice Chair reported that, "Creative Maine the former Maine Community Cultural Alliance is a working group that was developed to advocate for the cultural agencies. On March 26, the Cultural Affairs Council will discuss the status of the Creative Maine."

Findings

▪ Internal Control over Financial Administration

Our review of the events and circumstances surrounding the intricate relationship amongst all of the parties involved in this series of events has revealed material weaknesses in the internal control structure of the administration of the Cultural Agencies' finances.

We believe that the Agencies do not have a financial administrative structure of sufficient sophistication and independence to adequately advise or challenge as the case may be, the financial decisions that are made on a daily basis to ensure compliance with state and federal fiscal policies, procedures, and law.

▪ **Misuse of State Funds**

While in this series of events only a few thousand dollars of state money is directly connected to the funding of the activities of the MCCA, we believe the funds have been used in an inappropriate manner. Our review of the budgets enacted by the Legislature for these agencies did not reveal an identifiable request for an appropriation or allocation of funds to be used for funding of a private non profit corporation to be set up to pay the costs of the retention of advocacy or other strategic services on behalf of the Cultural Agencies. We do note that the payment of the state and federal funds to the MCCA was recorded in the State's official accounting records as dues paid to the MCCA. We could not find an adopted schedule for dues assessment by the Board of the MCCA as there was no Board in place.

A review of Maine Law reveals that the Legislature did anticipate that agencies would, in fact, engage in advocacy to promote their programs, agendas, and budget requests in various settings in the legislative arena. PL 1993, c. 691 clearly stated the requirements for state employees:

Within 5 days of the convening of a regular legislative session, a state employee or an independent agency employee must register at the office of the commission as described in section 316-A if:

- 1. Legislative designee. The employee is designated by the head of a department or agency to serve as the primary legislative designee for that department or agency; and**
- 2. Lobbying requirements. The job description of the employee contains lobbying requirements.**

An employee registering under this section is exempt from all other requirements under the law regarding lobbyists.

▪ **Non Compliance with Title 27, §557**

With direct respect to those agencies comprising those known as the cultural agencies and the programs of these organizations, the Legislature enacted PL 1989, c. 700, Part B, § 42 creating the Cultural Affairs Council which would act as a coordinator for several cultural agencies to, among its duties, report to the Governor and legislature on an annual basis as required by Title 27, § 557 which states:

§557. Annual report

The Maine State Cultural Affairs Council shall annually report to the Governor and the Legislature. The directors shall provide the necessary information and assist the council in the preparation of this report. This report shall include the following:

- 1. Receipts and expenditures. The receipts and expenditures on the accounts of the cultural agencies;**
- 2. Acquisitions. The number of acquisitions by the cultural agencies, specifying those obtained by purchase, donation or exchange;**
- 3. Program accomplishments. The accomplishments of the programs within the cultural agencies;**
- 4. Program needs. The program needs of the cultural agencies; and**
- 5. Improvements. Suggestions for improvement of the individual programs within the cultural agencies and for the improvement of delivery of cultural services in the State.**

We could not locate any reports by the Council that would satisfy the requirement of the law.

▪ **Inadequate Control over Compliance**

- The Directors on behalf of the Cultural Affairs Council should have consulted with the office of the Attorney General to determine the appropriateness of participating in the establishment and funding of an outside corporation that would receive and expend money for legislative advocacy as described in its charter.
- The Directors should have sought a budgetary request from the Legislature with the assistance from the Commissioner of Administrative and Financial Services to address their financial obligation to MCCA and to Verrill Dana, LLC as the final recipient of the flow through of money from the MCCA and the State.
- The Cultural Affairs Council and the agencies represented by the Council should refrain from any similar relationships in the future where there is no clear separation between the State of Maine, its employees or agents, and the external body. The scope and authority of the council to enter into any binding agreements on behalf of the State should comply with Maine Law and procurement regulations to ensure that all agreements and the manner in which they are executed meet standards as set forth in Financial Order 10, FY88/89 dated April 1, 1989, and all legal requirements.

Conclusion

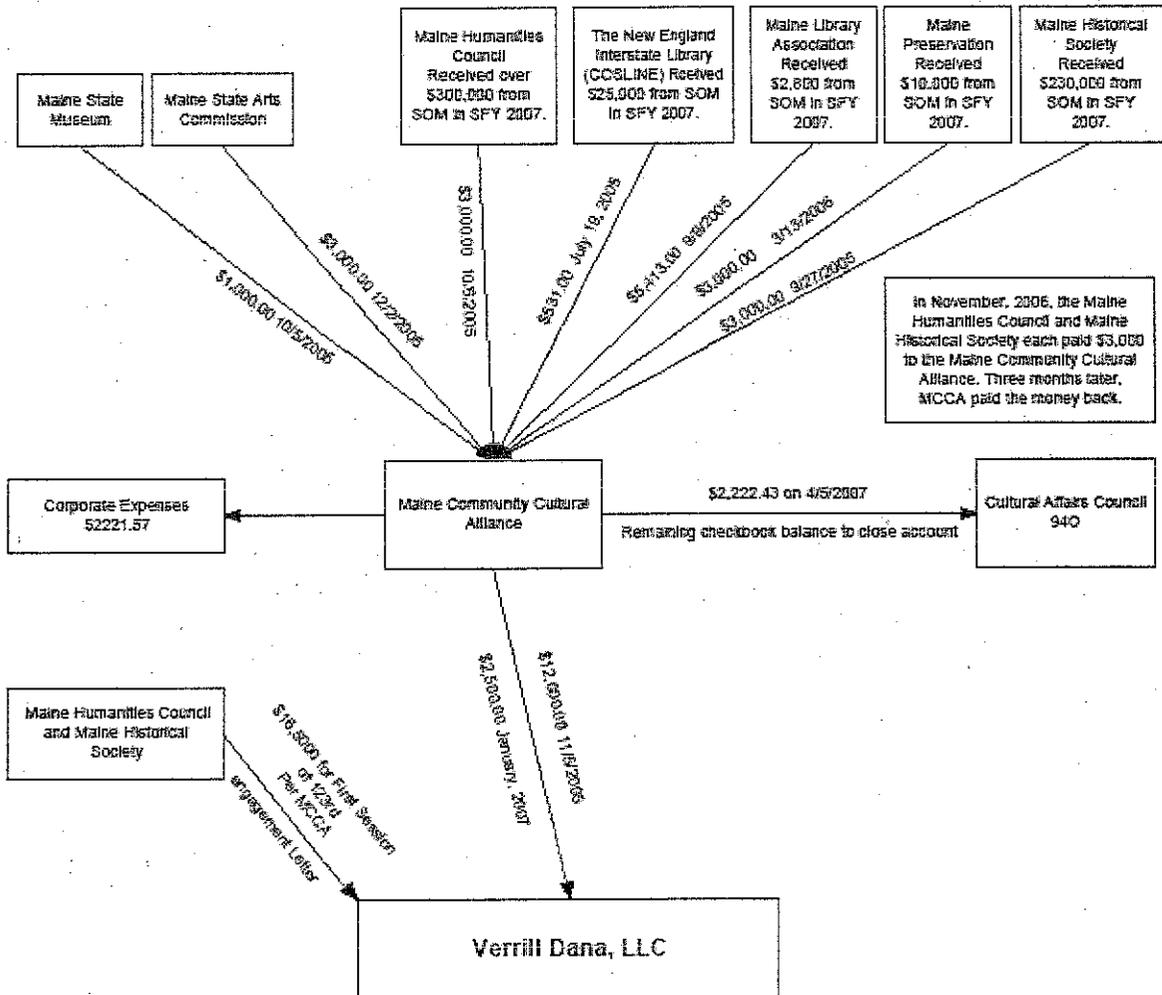
There should be no doubt, in our opinion, that the effort to revive the Maine Community Cultural Alliance was poorly thought out and managed in almost every aspect.

Recommendations

- Whenever a state official or legislatively authorized body commits or expends funds for any purpose, an agreed upon service or product is identified and received consistent with current state purchasing requirements.
- The funds deposited to the New Century Library Program from the refund of "dues" from the MCCA be returned to the accounts of origination and that a legislative appropriation be sought to restore the federal funds used for the purposes of funding MCCA activities in violation of Federal Circular OMB A - 87.
- The financial administration of the Cultural Agencies with the exception of the Archives be transferred to an established service center under supervision of the Commissioner of Administrative and Financial Services to ensure adequate financial controls are put into place and complied with by the Cultural Agencies as well as the financial stewards of the service center.
- The Directors of the Cultural Agencies review Executive Order #10 FY88/89 dated April 1, 1989. The Directors will review the Executive Order with the employees of their respective agencies, commission members, and the Cultural Affairs Commission members to ensure that there is an understanding and appreciation of the standards that all employees and representatives of Maine State Government must adhere to in the conduct of their business.
- The Directors of the Cultural Agencies consult with their assigned attorney in the Office of the Attorney General and with their liaison in Office of the State Controller whenever they are unsure of the legality or the appropriateness of any planned expenditure in advance to ensure that the rules, regulations, and laws are not violated.

Exhibit A

Maine Community Cultural Alliance Financial Transactions



Agenda

Item #5



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: January 15, 2008
Re: Adoption of Proposed Rule Changes

At its meeting on October 30, 2007, the Ethics Commission voted to invite public comment on proposed changes to the Commission Rules drafted by staff. The Commission held a public hearing at the December 7 meeting and interested persons were invited to submit comments through December 17.

The staff recommends that you adopt the proposed rule amendments without further changes. The changes to Chapter 1 would be considered "routine technical," which means that your adoption of them would be final. The changes would become effective upon filing with the Secretary of State after they are reviewed by the Office of the Attorney General for form and legality. The changes to Chapter 3 would be considered "major substantive," which means that your adoption of them would be provisional. The Legislature would have an opportunity to review them before they become effective.

I have attached:

- Comments by Carl Lindeman
- Proposed amendments to Chapter 1 rules and statement of factual and policy basis
- Proposed amendments to Chapter 3 rules and statement of factual and policy basis for amendments

The Commission received comments from only one individual, Carl Lindeman, which are attached. He recommends that the provision regarding complaints outside the Commission's jurisdiction (proposed Chapter 1, Section 4(4)) be amended so that "ANY complaint about a Commissioner or member of the Ethics Commission staff should be automatically referred to an appropriate authority outside of the Commission."

In the view of the staff, *automatic* referral to an outside authority is not necessary. Complaints against Commission members are rare, and can be handled on a case-by-case basis. If members of the Commission believe that a complaint about a member should be referred to an outside authority, they may choose to do so. If a complainant believes that the Commission or an individual member has not responded to a complaint correctly, the complainant may take any action he or she believes is appropriate, including forwarding it to a different office.

Thank you for your consideration of the proposed rule changes.

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

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: December 17, 2007
RE: Proposed Rule Changes

This is to follow-up on my written comments submitted for the October 30th Commission meeting and the brief discussion of these matters at the December 7 session.

Reviewing the comments and concerns from Commission Chair Friedman and Commissioner Marsano, I see that I need to clarify the scope of my concern that I believe can be addressed by appropriate rule-making.

The matter is how to address conflicts of interest that arise requiring Commissioners to leave the Commission. This is different from the parallel issue of associations and affiliations that would require a Commissioner to step away from specific cases. However, it may be that the appropriate rule-making remedy could apply to both.

As we discussed, the specific incident giving rise to this need for rule-making is the conflict of interest former Commission Chair Ginn Marvin had while serving as an officer (the Treasurer) of Maine Heritage Policy Center (MHPC). There is strong evidence to suggest that MHPC is appropriately understood as a "political committee." Maine Ethics Law is explicit that being an officer of a political committee disqualifies service on the Commission, much as holding an elective county, state or federal office does. The question is how to apply and enforce a clear boundary imposed by the legislature about those not qualified to serve on the Commission.

How this conflict is different in kind from those that can be remedied by recusal in individual cases becomes clear in practice. Commission Chair Friedman noted that, to the best of his recollection, his predecessor had recused herself from every case concerning MHPC and had left the room during discussions of these cases. What's different is that Ginn Marvin was not just "associated" with MHPC. As the Treasurer of the organization, she was a party to the complaints brought before the Commission. Ginn Marvin was specifically named in the follow-up complaint heard by the Commission last spring and remained in the room during the case. This odd situation shows the exceptional nature of the conflict – the recused Commissioner should normally leave the room. Here, as a named party in the complaint, the Commissioner should remain. Can the Commission properly investigate and adjudicate complaints about a fellow Commissioner? Perhaps the legislature understood this problematic dynamic and wished to avoid such situations. Here, disqualifying officers of political committees and other regulated entities from service on the Commission achieves that goal.

I should add that both Assistant Attorney General Gardiner and Executive Director Jonathan Wayne initially offered opinions that MHPC was not a political committee. Since, they have received substantial evidence demonstrating that it is. The only response has been Mr. Wayne's call for emergency legislation to change the qualification because, he says, the current definition including the political committee prohibition is too broad. Does that mean that they now agree that Ginn Marvin served as a Commissioner while also serving as the officer of a political committee? If it serves the Commission's interests, you may wish to determine that point-of-fact. If you like, I am happy to provide the documentary evidence provided to the Commission previously demonstrating MHPC's identity as a political committee.

There are other troubling outcomes that are of concern to the Commission that underscore the need for rule-making here. The staff had been alerted to additional problematic dynamics raised by Ginn Marvin's service in November 2006. Executive Director Wayne was asked about cases that might be brought by her organization against other entities as part of its declared strategy to deflect attention. Mr. Wayne failed to respond to this concern. In March, Ginn Marvin chaired a case brought by an MHPC operative. The outcome of that case, suggested by MHPC's attorney who happened to be in attendance, was soon used as a precedent for suspending investigation and adjudication of my follow-up case against MHPC. The end result is that the public continues to be denied any clarity about MHPC's involvement in a key political contest of 2006. That the Commission was improperly constituted helps explain this outcome.

My October 30th comments detail the "It Just Sits There" rule/doctrine that Assistant Attorney General Gardiner invoked in response to allegations about the conduct and qualifications of former Commission Chair Ginn Marvin. Then, the Commission claimed a lack of jurisdiction, and failed to refer the matter elsewhere. What I propose is that ANY complaint about a Commissioner or member of the Ethics Commission staff should be automatically referred to an appropriate authority outside of the Commission.

Commissioner Marsano expressed concern over how the claim of a conflict, used inappropriately to sidestep service, is dereliction of duty. In the same way, claims of a lack of jurisdiction, too, where allegations "just sit there" could be a dereliction of duty. What I suggest is a simple way to ensure that issues concerning Commissioners are dealt with appropriately and expeditiously.

-END-

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.~~ 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 12th 14th 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.



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

DRAFT

To: Administrative Procedure Officer
Office of the Secretary of State of Maine

From: Jonathan Wayne, Executive Director

Date: January 25, 2008

Re: Amendments to Routine Technical Rules in Chapter 1 of the Commission's Rules
(94-270 C.M.R. Chapter 1)

**STATEMENT OF FACTUAL AND POLICY BASIS FOR AMENDMENTS
AND SUMMARY OF AND RESPONSE TO COMMENTS**

Chapter 1, Section 1(19) – Definition of “Write-In Candidate”

Factual and Policy Basis: The proposed amendment to the definition of “write-in candidate” would bring it into conformity with the definition in the Election Law at 21-A M.R.S.A. § 1(51).

Comments: The Commission received no comments on the proposed rule.

Chapter 1, Section 2(2)(A) – Commission Hours of Operation

Factual and Policy Basis: The proposed insertion clarifies that – when permitted by statute – documents may be filed with the Commission outside of normal business hours electronically or by facsimile. For example, the Election Law permits candidates to file campaign finance reports electronically under 21-A M.R.S.A. § 1017(10) and to file written campaign finance reports by facsimile under 21-A M.R.S.A. § 1020-A(4-A).

Comments: The Commission received no comments on the proposed rule.

Chapter 1, Section 3(4) – Providing Official Notice of Commission Meetings

Factual and Policy Basis: The Commission's regular practice is to provide notice of upcoming meetings to interested individuals by mailing a copy of the agenda seven days before the meeting. The proposed changes to the Commission's rules are not intended to significantly modify the Commission's current practice, but rather to state more clearly those individuals and groups that must receive the notice.

Comments: The Commission received no comments on the proposed rule.

Chapter 1, Section 4(2)(C) – Handing of Maine Clean Election Act Violations

Factual and Policy Basis: The proposed insertion clarifies that the procedures for handling complaints about campaign finance reporting violations also apply to complaints about violations of the Maine Clean Election Act.

Comments: The Commission received no comments on the proposed rule.

Chapter 1, Sections 4(2)(E) and 4(4) – Matters Outside the Commission’s Jurisdiction

Factual and Policy Basis: Current Section 4(2)(E) provides a procedure by which the Commission staff can administratively reject a complaint that is outside the Commission’s jurisdiction, provided that the staff notifies the Commission members of the rejection at their next meeting. The proposed changes move this language to a new subsection 4(4) in order to emphasize that the rejection procedure applies not just to allegations of campaign finance violations, but also to other topics that are outside the Commission’s jurisdiction (e.g., complaints about the content of political speech or misconduct by executive branch officials).

Comments: The Commission received a comment from Carl Lindemann that a complaint about a member of the Commission or staff should automatically be referred to an appropriate authority outside of the Commission.

Response: The Commission has chosen not to adopt the proposed concept in this rulemaking. Complaints against Commission members are rare, and can be handled on a case-by-case basis. If members of the Commission believe that a complaint about a member should be referred to an outside authority, they may choose to do so. If a complainant believes that the Commission or an individual member has not responded to a complaint correctly, the complainant may take any action he or she believes is appropriate, including forwarding it to a different office.

Chapter 1, Section 5(1) – Preliminary Fact-Finding by Commission Staff

Factual and Policy Basis: Under the current rule, the Commission staff is authorized to gather facts preliminarily in order to recommend to the Commission whether there appears to be a violation of law or whether a fuller investigation is necessary. The proposed changes would clarify that the staff can engage in preliminary fact-finding on its own initiative – even if no complaint has been filed with the Commission. Also, consistent with the exception to the Executive Session statute at 1 M.R.S.A. § 405(6)(E) for consultations with counsel, the amendment confirms that the Commission could discuss the issuance of a subpoena with its Counsel in executive session when premature public knowledge of the investigation would place the Commission or another investigatory office at a substantial disadvantage.

Comments: The Commission received no comments on the proposed rule.

Chapter 1, Section 7(5) – Campaign Reimbursements to Maine Clean Election Act Candidates

Factual and Policy Basis: Under the proposed amendment, if a Maine Clean Election Act candidate uses his or her personal funds for a campaign expenditure, the campaign must reimburse the candidate within the time period covered by the campaign finance report.

Comments: The Commission received no comments on the proposed rule.

Chapter 1, Section 7(7) – Non-Express Advocacy Expenditures

Factual and Policy Basis: Political action committees (PACs) are required to file regular campaign finance reports with the Commission. Among the financial activities that must be disclosed, PACs must report expenditures made “on behalf of” candidates as well as general operational expenses:

4. Itemized expenditures. An itemization of each expenditure made on behalf of any candidate, campaign, political committee, political action committee and party committee or to support or oppose a referendum or initiated petition, including the date, payee and purpose of the expenditure; the name of each candidate, campaign, political committee, political action committee or party committee on whose behalf the expenditure was made; and each referendum or initiated petition supported or opposed by the expenditure. (underlining added)

7. Other expenditures. Operational expenses and other expenditures in cash or in kind that are not made on behalf of a candidate, committee or campaign. (21-A M.R.S.A. §§ 1060(4) and (7))

Similar reporting requirements apply to party committees (state, county, and municipal) under 21-A M.R.S.A. § 1017-A(2) and (3).

Some PACs and party committees report the costs of political mailings as operating expenditures on Schedule B-1 of their campaign finance reports. This disclosure does not seem to comply with 21-A M.R.S.A. § 1060(4) because it does not identify the candidate(s) supported. Also, if the expenditure benefits more than one candidate (e.g., a payment to a printer to send mailings into three legislative districts), the reporting of the payment as an operational expenditure does not break down the amount spent per candidate.

The proposed change would clarify that even if a communication does not expressly advocate the election of a candidate, the costs of the communication must be reported on Schedule B of the reporting form and must specify the candidate supported and the amount spent to support that candidate.

Comments: The Commission received no comments on the proposed rule.

Chapter 1, Section 9 – Filing Schedule for Accelerated Reports

Factual and Policy Basis: This rule sets forth the filing schedule for “accelerated reports” which are required for some traditionally financed candidates who have Maine Clean Election Act opponents. The proposed rule amendments modify the filing schedule to be consistent with statutory changes made by Chapter 443 of the Public Laws of 2007.

Comments: The Commission received no comments on the proposed rule.

Chapter 1, Section 10(3)(A) – Filing Schedule for Independent Expenditure Reports

Factual and Policy Basis: As defined by the Election Law (21-A M.R.S.A. § 1019-B), independent expenditures are payments for communications to voters that are made independently of candidates by third-parties such as PACs and party committees. Section 10(3)(A) sets forth the filing schedule for reporting independent expenditures between \$100 and \$250 per candidate. The proposed changes to the rule are in accordance with 2007 changes to the Election Law, under which the pre-election report for PACs and party committees covers through the 14th day before the election.

Comments: The Commission received no comments on the proposed rule.

Chapter 1, Section 10(5)(first paragraph) and (5)(D) – Rebuttable Presumption

Under 21-A M.R.S.A. § 1019-B(2), if a political group distributes a communication to voters in the final weeks before an election that names or depicts a clearly identified candidate, the cost of the communication is presumed to be an independent expenditure and the group must file a report of the expenditure unless the group successfully rebuts the presumption before the Commission. In accordance with 2007 changes to the Election Law, the proposed amendment increases the general election period during which this presumption applies from 21 days before the election to 35 days.

Comments: The Commission received no comments on the proposed rule.

Chapter 1, Section 10(5)(B)(1) – Exception for News Stories

Factual and Policy Basis: The Election Law contains an exception to the definition of the term “expenditure” for a newspaper or broadcast station’s costs for news stories and editorials relating to an election. The exception was amended by the Legislature in 2007 so that it does not cover a newspaper or broadcast station owned or controlled by the candidate’s immediate family. The proposed change to Section 10(5)(B)(1) reflects that change. As a result, payments for a communication to voters in the last 35 days before a general election made by a news outlet owned or controlled by a member of a candidate’s family may be presumed to be an independent expenditure under 21-A M.R.S.A. § 1019(B)(2).

Comments: The Commission received no comments on the proposed rule.

Chapter 1, Section 11 – Filing Schedule for § 1056-B Reports

Factual and Policy Basis: Section 11 sets forth the filing schedule for organizations that do not qualify as PACs but which spend more than \$1,500 to influence a ballot question. The proposed changes conform the schedule to 2007 statutory amendments to the PAC filing schedule.

Comments: The Commission received no comments on the proposed rule.

PROPOSED AMENDMENT TO CAMPAIGN FINANCE REPORTING FORM

Factual and Policy Basis: The Election Law requires that any changes to the campaign finance reporting form used by candidates must be made through a rulemaking. (21-A M.R.S.A. § 1017(6))

The Commission staff proposes to eliminate Schedule E of the form for candidates who are traditionally financed (*i.e.*, funding their campaigns through accepting traditional campaign contributions). Schedule E 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 to disclose how such property or equipment is disposed of.

The staff proposes eliminating the schedule because the Election Law does not require that this information be reported by privately financed candidates, so the Commission's legal basis for requesting this disclosure is not clear. Schedule E would continue to be required for Maine Clean Election Act candidates who have purchased this equipment with public funds.

Comments: The Commission received no comments on the proposed rule.

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 Comptroller 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.



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

DRAFT

To: Administrative Procedure Officer
Office of the Secretary of State of Maine

From: Jonathan Wayne, Executive Director

Date: January 25, 2008

Re: Amendments to Routine Technical Rules in Chapter 1 of the Commission's Rules
(94-270 C.M.R. Chapter 3)

**STATEMENT OF FACTUAL AND POLICY BASIS FOR AMENDMENTS
AND SUMMARY OF AND RESPONSE TO COMMENTS**

Chapter 3, Section 5(3)(G) – Maximum Matching Funds (major substantive)

Factual and Policy Basis: To be consistent with 2007 statutory changes, the proposed amendment states that the maximum amount of matching funds paid to a candidate for Governor for a general election is equal to the amount initially paid to that candidate for the election (currently \$600,000).

Comments: The Commission received no comments on the proposed rule.

Chapter 3, Section 7(1)(A) – Separate Bank Account for Seed Money (major substantive)

The proposed amendment clarifies that all campaign funds of a Maine Clean Election Act candidate (including seed money) must be segregated in a separate bank account and not commingled with the candidate's personal funds, as already required by 21-A M.R.S.A. § 1016(1).

Comments: The Commission received no comments on the proposed rule.

Agenda

Item #6



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

Second Draft

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 organization later submits the legislation as a ballot question or receives contributions or makes expenditures to influence in any way the ballot question, 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 ballot 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.



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

2nd
Opportunity
to Comment

MEMORANDUM

To: Filers of § 1056 Reports
Other Interested Parties

From: Jonathan Wayne, Executive Director

Date: December 20, 2007

Subject: Second Opportunity to Comment on Ballot Question Reporting

At its meeting on December 7, the Ethics Commission considered proposed guidance on ballot question reporting (under Section 1056-B) drafted by the staff. After issuing an opportunity to comment on November 14, 2007, the staff received one written comment and one informal question. In response, the Commission staff proposed amended advice. The changes are noted in the attached second draft by shading and strike-outs.

One issue that the staff struggled with is the circumstance of an organization that pays personnel or other costs to draft legislation *without* the intention that it would be submitted as a ballot question and – some time later – that legislation is submitted to the Secretary of State as a ballot question (either by the original drafting organization or another organization that may or may not be coordinating with the drafting organization). In that circumstance, should the original costs of drafting the legislation be considered an expenditure made “for the purpose of initiating, promoting, defeating or influencing in any way a ballot question” that must be reported under 21-A M.R.S.A. § 1056-B? (underlining added)

Please feel free to comment on any part of the proposed guidance, including the changes made in early December. The Commission will consider the proposed guidance at its meeting on Friday, January 25, 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 Monday, January 14, so that the staff can consider them and 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.

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

PHONE: (207) 287-4179

FAX: (207) 287-6775

Wayne, Jonathan

From: Carl Lindemann [carl@TrueDialog.org]
Sent: Friday, January 11, 2008 11:45 AM
To: Wayne, Jonathan
Cc: Lavin, Paul; Gardiner, Phyllis
Subject: Re: Second Opportunity to Comment on Section 1056-B Reporting

Attachments: Lindemann - TrueDialog Comments on 1056-B 1_11_08.pdf



Lindemann -
ueDialog Comment.

Dear Jonathan,

See attached. Unfortunately, I've just discovered that I will be unable to attend the Commission session on the 25th. However, I do plan to attend the next session shortly after on the 11th.

Regarding my comments on proposed rule changes sent previously, it would be helpful if consideration of those could be postponed till the February session.

Thank you.

Carl Lindemann
True Dialog.org
P.O. Box 171
Portland, ME 04112
<http://www.TrueDialog.org>
(207) 774-1936

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: January 11, 2008
RE: Second Opportunity to Comment on Ballot Question Reporting

As I mentioned in my comments in person at the Commission, I had put this issue at a lower priority for the fact that Jonathan Wayne had already put in motion proposals to the legislature that will gut 1056-B reporting. I commend the staff's interest in seeking to improve 1056-B reporting, but I don't see how this will have much practical value either way given the Executive Director's other efforts. I do wonder why there is no mention of how Ethics Commissions in other states handle these matters.

In any case, the scenario here may be interesting but it bears little resemblance to the actual events that apparently raised the issue. Mr Wayne states:

One issue that the staff struggled with is the circumstance of an organization that pays personnel or other costs to draft legislation *without* the intention that it would be submitted as a ballot question and – some time later – that legislation is submitted to the Secretary of State as a ballot question

This is what Maine Heritage Policy Center (MHPC) testified happened in its efforts to pass the Taxpayer Bill of Rights ballot initiative that was defeated in 2006. They claimed they had submitted only model legislation as some kind of academic exercise. Then, they say, outsiders built on this to carry it forward. However, a review of news reports and MHPC's Bill Becker's own published writings reveals otherwise. In 2003, Becker publicly declared his organization's purpose to pass tax and expenditure limitation laws (TELS) immediately after being hired on to MHPC (see attached). So the intention is clear, regardless of MHPC's false and misleading testimony. Note that the staff also produced evidence that showed that other aspects of Mr. Becker's testimony was false. Regardless, the Commission decided to continue to take Mr. Becker and Dan Billings, MHPC's legal representative, at their word.

If the Commission is interested in looking for lessons from these events, the core issue is how the Commission voted to not investigate the matter. It failed to conduct a fact-finding to determine whether or not the intent was present. The mission states that the Commission is to "investigate violations of the campaign finance reporting laws." Here, it voted to not carry out that mission. Perhaps rules should be crafted to prevent such dereliction of duty.

Retroactive Determinations

On other notes, the notion of past expenditures retroactively falling into reportable categories seems to offer practical challenges. This may be worthy of further consideration because of Commission Chair Friedman's position stated during the MHPC case. He stated that the determination of MHPC's status as a Political Action Committee could only be made over two election cycles. The actions the entity took promoting TABOR from 2003-2006 would be those of a PAC if it repeated those activities in the future. Now, MHPC has brought forward the "model" legislation as it did before and looks to be getting set for such a repeat performance. At what point will this trigger an investigation to determine PAC status?

-END-

Sun Journal

Significant changes sought in economic policies

Sunday, February 16, 2003

Maine government has chronically proven that it is unable to apply fiscal discipline to the budget process. Legal limits must be placed on policymakers.

We live in one of the finest places in the nation - our great state of Maine. Our magnificent and immense natural resources, our safe and varied communities, combined with the determination and grit of Maine people, makes the state a place about which books are written and movies are made.

Yet Maine is on the verge of significant population and economic decline. If we do not direct our elected (and non-elected) officials to make significant, structural changes in our long-held policies on taxes, economic development, and regulations that we place on both our people and businesses, Maine will see more closings, more layoffs, and more businesses deciding to locate their operations somewhere outside our borders. That potential end result will have a devastating effect on each of us in a very real way.

Conservatives have long held that there are certain key elements to a thriving and robust economy: lowering the tax burden, encouraging responsible free market competition among the business community and limiting the amount of unfunded and overly burdensome regulations placed upon both individuals and corporations.

As it relates to the states, these beliefs are based upon factual data that show the competitive advantage in those states that have embraced this fundamental understanding. States such as Colorado, Florida, and our neighbor New Hampshire, have seen a significant growth in population, business development and, as a result, tax revenue.

The Maine Heritage Policy Center has emerged as a leading Maine voice for these honorable views of the conservative philosophy - and as such is once again reminding Mainers of their strong, independent and participatory Maine heritage.

MHPC is a new nonprofit, nonpartisan research and educational organization whose mission is to formulate and promote conservative public policies based on the principles of free enterprise; limited, constitutional government; individual freedom; and traditional American values - all for purpose of providing public policy solutions that benefit the people of Maine.

In the critical area of the economy, we all heard the rhetoric during the recent gubernatorial contest regarding Maine's high tax rate, and that the business community is finding it hard to live and work here. While the campaign may be over, that reality still exists.

In a 2002 study published by the Tax Institute, Maine was the last - the lowest, the bottom - of the list in terms of tax-friendly states. Maine's individual tax burden (combining a Maine resident's state, local, property, sales and excise taxes), as a percentage of personal income, was 13.6 percent - the highest in the union!

These are facts that we can no longer ignore. These types of well-publicized reports cannot and do not bode well for Maine's prospect at attracting new businesses to the state. Remember that along with those businesses come dozens or hundreds or thousands of new people to Maine who would buy houses, cars, food and, yes, pay taxes.

Mainers must be adamant in their strong opposition to any tax increases; in fact, we must push for significant, structural reform that decreases the overall tax burden on Maine's people and businesses. Such reform must include property tax caps, such as are already in place and working well in Bath. Additionally, tax and expenditure limitations should be passed, as they have been by a majority of the states. TELs legally limit a state's ability to increase either taxes and/or expenditures. Maine's state government has chronically proven that it is unable to

apply fiscal discipline to the budget process, as each of us must do with our own families or businesses. Therefore, legal limits must be placed on policymakers.

The Maine Heritage Policy Center provides objective, fair and grounded analyses of public policy issues facing the state. The need for an organization of MHPC's nature is based on the principles of balance.

Mainers need to hear all ideas that could influence and shape the course of our state. MHPC provides research and analysis with the utmost integrity, drawing on both local and national experts to offer solutions and to promote effective and responsible public policy models that already occur within Maine.

Our Maine heritage is based on grit, determination and ingenuity. Those characteristics together provide the ideal foundation for promoting positive change that will ensure a more secure future for our state.

Bill Becker of Portland is the Executive Director of The Maine Heritage Policy Center.



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

1st Opportunity
to Comment

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.

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

PHONE: (207) 287-4179

FAX: (207) 287-6775

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
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