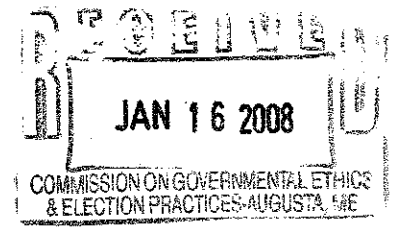
Agenda Item #1

MAINE ASSOCIATION OF HEALTH PLANS



January 15, 2008

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

Dear Mr. O'Brien:

Unfortunately my family experienced a medical emergency in the late fall – my husband had a heart attack. I have been on leave from work through December 31, 2007 and filed the annual report as soon as I returned from this leave. Because of this situation, I would ask that the commission waive the $200 fine.

Please contact me at 829-5696 if I can answer any questions.

Sincerely,

Katherine D. Pelletreau
Executive Director

Enc.

P.O. Box 2486 • Augusta, Maine 04338

Tel: 207.829.5696 Fax: 207.829.9204 e-mail: meahp@maine.rr.com

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

To: Katherine Pelletreau, Lobbyist for:
Maine Association of Health Plans

From: Gavin O'Brien, Registrar

Date: January 7, 2007

Each registered lobbyist was required to file an annual report with the Commission on Governmental Ethics and Election Practices no later than 5:00 p.m. on December 31, 2007. Any person who fails to file a timely report may be assessed a penalty of $200 for every month the report is late. You filed your annual report on 1/2/08. The penalty is $200.

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) 287-4709.

Cut Along Dotted Line

- -

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

From: Katherine Pelletreau, Lobbyist

Re: Penalty for late filing of the annual lobbyist disclosure report ($200)

Amount Enclosed: $_____

Check/M.O. No.: #_____

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

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

PHONE: (207) 287-4179 FAX: (207) 287-6775

MAINE

Welcome to the Campaign Finance Electronic Filing System Site

Menu | Home | Help | Logout | Change Password | Admin Page

1/28/2008

Home Page for Maine Association of Health Plans

LOBBYIST YEAR 2007 Refresh

REPORT TYPE	REPORTING PERIOD	DUE DATE	DATE FILED	STATUS	LAST MODIFIED	
Lobbyist/Employer Registration	12/1/2006 to 11/30/2007		1/31/2007 4:43:05 PM	Filed		Print
Annual Report	12/1/2006 to 11/30/2007	12/31/2007	1/2/2008 10:23:23 AM	Filed		Print
Non-Session Waiver	7/1/2007 to 11/30/2007		8/7/2007	Filed		Print
Notification of Termination	12/1/2006 to 11/30/2007					

Monthly Report - Short Form	N/A	MULTIPLE
Monthly Report - Long Form	N/A	MULTIPLE

Called by Gail on December 31

Last_Name	First_Name	Employer_Name	
Allen	David	Central Maine Power	done
Alusic	Lorin	Grocery Manufacturers/Food Products Association	Called & emailed
Beliveau	Severin	Schaller Anderson Incorporated	631 5565
Belliveau	Michael	Tides Center / Environmental Health Strategy Center	Called & emailed
Bickford	Julie-Marie	Maine Dairy Industry Association	called; will get it in - done
Butts	John	Associated General Contractors of Maine	Called & emailed
Buxton	Anthony	Industrial Energy Consumer Group	done
Collings	Benjamin	Penobscot Nation	Called & emailed
Cook	Kimberly	Wild Blueberry Commission of Maine	
Cook	Kimberly	Martin's Point Health Care	
Cook	Kimberly	Drive Insurance from Progressive	done
Dickstein	Carla	Coastal Enterprises, Inc.	
Diehl	Leann	American Chemistry Council	
Diehl	Leann	Central Maine Power Company	333 8240
Diehl	Leann	Central Boilers, Inc.	
Diehl	Leann	Multi-State Associates o/b/o National Electrical Manufacturers Association	
Diehl	Leann	Consumer Electronic Association	Terminated called & emailed
Diehl	Leann	MultiState Associates o/b/o Coin Laundry Association	
Doyle Jr.	John	Consumer Council System of Maine	done
Gorham	Edward	Maine AFL-CIO	Called & emailed 944 4228
Hudson	Steven	Fairpoint New England	ph. mailbox full; emailed
Mackey	Joseph	Maine Youth Camping Association	Called & emailed
Mackey	Joseph	Maine Public Broadcasting Corporation	called & emailed
Mackey	Joseph	City of Portland	
Mackey	Joseph	EDS Corporation	called & emailed
Mackey	Joseph	Town of Kennebunkport	
Mackey	Joseph	City of Auburn	
Matthews	Zack	AFSCME Council 93	called & emailed
Micoleau	Charles	UST Public Affairs, Inc.	done
Nadeau	Robert	St. Andre Home, Inc.	done
Pachios	Harold	National Council on Compensation Insurance	
Pachios	Harold	Maine State Society for the Protection of Animals	done
Pachios	Harold	Brookefield Asset Management, Inc.	
Pears	Kathryn	Maine Alzheimer's Association	done
→ Pelletreau	Katherine	Maine Association of Health Plans	called & emailed *
Public Affairs Group	.	L.L. Bean, Inc.	
Public Affairs Group	.	CIGNA Healthcare	done
Public Affairs Group	.	Maine Affordable Rental Housing Coalition	
Public Affairs Group	.	TracFone Wireless, Inc.	
Public Affairs Group	.	Mortgage Bankers Association of Maine	emailed
Public Affairs Group	.	Stateside Associates o/b/o American Legal Finance Association	done
Public Affairs Group	.	Maine Business Aviation Association	done
Purgavie	Vicki	Home Care & Hospice Alliance of Maine	called & emailed
Py	Jamie	Maine Oil Dealers Association	done
Quint	Christopher	Planned Parenthood of Northern New England	done
Robinson	Ann	American Express Travel Related Services	
Robinson	Ann	Motorcycle Industry Council, Inc.	
Robinson	Ann	Medco Health Solutions, Inc.	
Robinson	Ann	Pharmaceutical Research and Manufacturers of America	done
Robinson	Ann	Maine Biomedical Research Coalition	
Robinson	Ann	Municipal Review Committee, Inc.	
Robinson	Ann	Securities Industry and Financial Markets Association	
Robinson	Ann	Merck and Company, Inc.	
Robinson	Ann	Spectrum Medical Group	
Smith	George	Sportsmans Alliance of Maine	done
Sweet	Elizabeth	Maine Coalition to End Domestic Violence	will do now - done
Walton	Tim	Cianbro Corporation	done

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

To: Lobbyists Who Have Not Filed Annual Report

From: Gavin O'Brien, Temporary Lobbyist Registrar

Date: December 18, 2007

Re: Annual Report Due December 31 at 5:00 p.m.

All lobbyists registered for the 2007 session are required to file an annual report with the Commission, including those who have filed a non-session waiver or a notice of Termination. Since the December 30th deadline falls on a weekend, this year's report will be due on Monday, December 31 by 5:00 p.m. The annual report must be filed electronically from your homepage in the Commission's e-filing system.

The penalty for filing your annual report late is $200 per month after the deadline.

Our records indicate that you have not yet filed the report for one or more of your employers. To avoid the assessment of a penalty, please make sure you file it on or before Monday, December 31st at 5:00 p.m.

The Commission office will be open next week on December 26-28. The staff will available to assist you in that period, but please be aware that I will be out of the office and we will have only one or two employees in the office during the week. The Commission's Assistant, Cyndi Phillips, and I will be back in the office on Monday, December 31 (the deadline).

If you have any questions, please telephone us at 287-4179. Thank you.

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

PHONE: (207) 287-4179 FAX: (207) 287-6775

December 18 Reminder Letter

Pears	Ralph Buchanan	2 Round Cove Lane	Phippsburg	ME	04562
Pelletreau	Katherine	250 Greely Rd.	Cumberland	ME	04021
Perkins	Logan	P.O. Box 151	Thorndike	ME	04986
Pietroski	Joseph	P.O. Box 735	Augusta	ME	04330
Pineau	Edward	P.O. Box 297	Manchester	ME	04351
Pinkham	Christopher	489 Congress St., Ste. 300	Portland	ME	04101
Public Affairs Group	.	185 State St.	Augusta	ME	04330
Purgavie	Vicki	20 Middle St.	Augusta	ME	04330
Py	Jamie	P.O. Box 249	Brunswick	ME	04011
Quint	Christopher	51 U.S. Rte 1, Ste. C	Scarborough	ME	04074
Rathband	Jed	P.O. Box 17851	Portland	ME	04112
Robinson	Ann	P.O. Box 1058	Augusta	ME	04332-1058
Romano	Jeffrey	1 Main St., Ste. 201	Topsham	ME	04086
Rosario	Stephen	99 Washington Ave., Ste. 701	Albany	NY	12210
Sanborn	Benjamin	P.O. Box 5347	Augusta	ME	04332
Saxl	Michael	P.O. Box 5307	Augusta	ME	04332
Schulberger	Sharon	60 Gray Rd., Unit 8	Falmouth	ME	04105
Shoos	John	P.O. Box 15200	Portland	ME	04112-5200
Smith	George	205 Church Hill Rd.	Augusta	ME	04330
Smith	Rebecca	11 Parkwood Drive	Augusta	ME	04330
Soltan	Charles	P.O. Box 188	Augusta	ME	04332-5307
Spence	Ruth Anne	45 Memorial Cir., Ste. 103	Augusta	ME	04330
Spencer	Richard	P.O. Box 9781	Portland	ME	04104
Stoddard	Michael	101 Brentwood Street	Portland	ME	04103
Sweet	Elizabeth	P.O. Box 71	Hallowell	ME	04347
Tardy	Robert	P.O. Box 336	Newport	ME	04953
Thompson	Richard	9 White Birch Dr.	Readfield	ME	04355
Timberlake	Cheryl	P.O. Box 615	Augusta	ME	04332-0615
Trahey	Richard	77 Water St.	Hallowell	ME	04347
Trask	Norman	41 N.Shore Ln.	E. Winthrop	ME	04343
Turowski	Mary Anne	P.O. Box 1072	Augusta	ME	04332
Viger	Celeste	50 Moody St.	Saco	ME	04072
Walker	Daniel	P.O. Box 1058	Augusta	ME	04332
Walton	Tim	P.O. Box 1000	Pittsfield	ME	04967
Whitley	Dennise	51 US Route 1, Ste. M	Scarborough	ME	04074
Williams	John	P.O. Box 5670	Augusta	ME	04330
Wood	Gary	City Hall, 389 Congress St.	Portland	ME	04101
Worsowicz	Paul	P.O. Box 1415	Concord	NH	03302

Prev: Chapter 15 §318
Next: Chapter 15 §319-A

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Title 3: LEGISLATURE

Chapter 15: LOBBYIST DISCLOSURE PROCEDURES (HEADING: PL 1975, c. 576 (rpr); 1975, c. 621, §2 (rp); c. 724, (ren))

§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).]

Section History:

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).

The Revisor's Office cannot provide legal advice or interpretation of Maine law to the public. If you need legal advice, please consult a qualified attorney.

Office of the Revisor of Statutes
7 State House Station
State House Room 108
Augusta, Maine 04333-0007

This page created on: 2006-10-31

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

From: Jonathan Wayne, Executive Director

Date: February 5, 2008

Re: Request from Legal and Veterans Affairs Committee for Rulemaking

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The Joint Standing Committee on Legal and Veterans Affairs (LVA) oversees the Ethics Commission. On January 31, the LVA Committee directed the Commission to initiate a rulemaking on the issue of the "paid for" disclosure on campaign signs that a candidate purchased in a previous election and that the candidate is reusing in a current campaign. I expect to receive a letter from the LVA Committee before your February 11 meeting. I propose that you initiate the rulemaking at the February 11 meeting, because the committee would like the rule to be in effect for this election year.

Signs and other communications to voters relating to candidates (*e.g.*, mailings, flyers, and advertisements) must state "the name and address of the person who made or financed the expenditure for the communication" and a statement whether the candidate has authorized the communication. (21-A M.R.S.A. § 1014) The requirement applies to communications that were paid for by the candidate or by independent groups (*e.g.*, the political parties). Some candidates use the name of their campaign committee – rather than the candidate's personal name – in the disclosure. I have attached some examples of the disclosure that are listed in the Commission's guidebook for candidates. The purpose of the disclosure is to inform the public about the party who is responsible for the communication and to allow the public to contact that party.

At the January 31 meeting, the LVA Committee directed the Commission to adopt a rule which would apply to signs reused by candidates. Under the rule, candidates would not be required to update the disclosure as long as the address of the person financing the expenditure is accurate. The letter from the Committee may provide additional guidance to the Commission.

Rule amendment proposed for public comment

SECTION 7. EXPENDITURES

7. **Candidate Expenditures for Communications to Voters**. When candidates or their campaign committees make an expenditure to finance a communication to voters, the communications must include the name and address of the candidate, campaign treasurer or committee financing the communication and must state that the communication was authorized by the candidate, as required by Title 21-A, chapter 13, subchapter II [§ 1014]. If a candidate re-uses campaign signs which were purchased by the candidate or the candidate's committee for a previous election, the candidate is not required to update the name and address of the person financing the communication as long as the address in the disclosure is accurate.

Title 21-A, §1014, Publication or distribution of political statements

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The Office of the Revisor of Statutes also requests that you send us one copy of any statutory publication you may produce. Our goal is not to restrict publishing activity, but to keep track of who is publishing what, to identify any needless duplication and to preserve the State's copyright rights.

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

§1014. Publication or distribution of political statements

1. Authorized by candidate. Whenever a person makes an expenditure to finance a communication expressly advocating the election or defeat of a clearly identified candidate through broadcasting stations, newspapers, magazines, outdoor advertising facilities, publicly accessible sites on the Internet, direct mails or other similar types of general public political advertising or through flyers, handbills, bumper stickers and other nonperiodical publications, the communication, if authorized by a candidate, a candidate's authorized political committee or their agents, must clearly and conspicuously state that the communication has been so authorized and must clearly state the name and address of the person who made or financed the expenditure for the communication. The following forms of political communication do not require the name and address of the person who made or authorized the expenditure for the communication because the name or address would be so small as to be illegible or infeasible: ashtrays, badges and badge holders, balloons, campaign buttons, clothing, coasters, combs, emery boards, envelopes, erasers, glasses, key rings, letter openers, matchbooks, nail files, noisemakers, paper and plastic cups, pencils, pens, plastic tableware, 12-inch or shorter rulers, swizzle sticks, tickets to fund-raisers and similar items determined by the commission to be too small and unnecessary for the disclosures required by this section.
[2005, c. 301, §10 (amd).]

2. Not authorized by candidate. If the communication described in subsection 1 is not authorized by a candidate, a candidate's authorized political committee or their agents, the communication must clearly and conspicuously state that the communication is not authorized by any candidate and state the name and address of the person who made or financed the expenditure for the communication. If the communication is in written form, the communication must contain at the bottom of the communication in print that is no smaller in size than 10-point bold print, Times New Roman font, the words "NOT PAID FOR OR AUTHORIZED BY ANY CANDIDATE."
[2003, c. 510, Pt. F, §1 (amd); c. 599, §15 (aff).]

2-A. Communication. If a communication that names or depicts a clearly identified candidate is disseminated during the 21 days before an election through the media described in subsection 1, the communication must state the name and address of the person who made or financed the communication and a statement that the communication was or was not authorized by the candidate.
[2005, c. 301, §11 (new).]

3. Broadcasting prohibited without disclosure. No person operating a broadcasting station within this State may broadcast any communication, as described in subsections 1 and 2, without an oral or written visual announcement of the name of the person who made or financed the expenditure for the communication.
[1985, c. 161, §6 (new).]

3-A. In-kind contributions of printed materials. A candidate, political committee or political action committee shall report on the campaign finance report as a contribution to the candidate, political committee or political action committee any contributions of in-kind printed materials to be used in the support of a candidate or in the support or defeat of a cause to be voted upon at referendum. Any in-kind contributions of printed materials used or distributed by a candidate, political committee or political action committee must include the name or title of that candidate, political committee or political action committee as the authorizing agent for the printing and distribution of the in-kind contribution.

The use or distribution of in-kind printed materials contributed to a candidate, political committee or political action committee must be reported as an expenditure on the campaign finance report of that candidate, political committee or political action committee.
[1991, c. 839, §9 (new).]

3-B. Newspapers. A newspaper may not publish a communication described in subsection 1 or 2 without including the disclosure required by this section. For purposes of this subsection, "newspaper" includes any printed material intended for general circulation or to be read by the general public. When necessary, a newspaper may seek the advice of the commission regarding whether or not the communication requires the disclosure.
[2005, c. 308, §1 (new).]

4. Enforcement. An expenditure, communication or broadcast made within 10 days before the election to which it relates that results in a violation of this section may result in a civil fine of no more than $200. An expenditure, communication or broadcast made more than 10 days before the election that results in a violation of this section may result in a civil fine of no more than $100 if the violation is not corrected within 10 days after the candidate or other person who committed the violation receives notification of the violation from the commission. If the commission determines that a person violated this section with the intent to misrepresent the name or address of the person who made or financed the communication or whether the communication was or was not authorized by the candidate, the commission may impose a fine of no more than $5,000 against the person responsible for the communication. Enforcement and collection procedures must be in accordance with section 1020-A.
[2005, c. 542, §1 (amd).]

5. Automated telephone calls. Automated telephone calls that name a clearly identified candidate must clearly state the name of the person who made or financed the expenditure for the communication, except for automated telephone calls paid for by the candidate that use the candidate's voice in the telephone call.
[2005, c. 301, §12 (new).]

PL 1985, Ch. 161, §6 (NEW).
PL 1987, Ch. 188, §17 (AMD).
PL 1989, Ch. 504, §5,6,31 (AMD).
PL 1991, Ch. 466, §37 (AMD).
PL 1991, Ch. 839, §8-10 (AMD).
PL 1995, Ch. 483, §6 (AMD).
PL 2003, Ch. 302, §1 (AMD).
PL 2003, Ch. 510, §F1 (AMD).
PL 2003, Ch. 510, §F2 (AFF).
PL 2003, Ch. 599, §15 (AFF).
PL 2005, Ch. 301, §10-12 (AMD).
PL 2005, Ch. 308, §1 (AMD).
PL 2005, Ch. 542, §1 (AMD).

CHAPTER 13

Disclosure on Campaign Communications

Disclosure on Campaign Communications

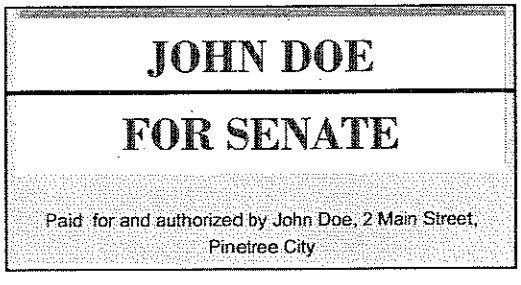
Whenever a person makes an expenditure to finance a communication expressly advocating the election or defeat of a clearly identified candidate through broadcasting stations, newspapers, magazines, campaign signs or outdoor advertising facilities, publicly accessible websites, direct mails or other similar types of general public political advertising, or through flyers, handbills, bumper stickers, and other non-periodical publications, the communication, if authorized by a candidate, a candidate's authorized political committee, or their agents, must clearly and conspicuously state that the communication has been so authorized. The communication must also clearly state the name and address of the person who made or financed the expenditure for the communication.

In addition, these requirements apply to any communication that names or depicts a clearly identified candidate and that is disseminated to voters in the last 21 days before the primary election or in the last 35 days before the general election.

The following are examples of suitable attribution statements for political communications financed:

By a Candidate

- Paid for and authorized by John Doe, 2 Main Street, Pinetree City
- Paid for and authorized by the candidate, 2 Main Street, Pinetree City (where the candidate's full name is clearly stated in the communication)

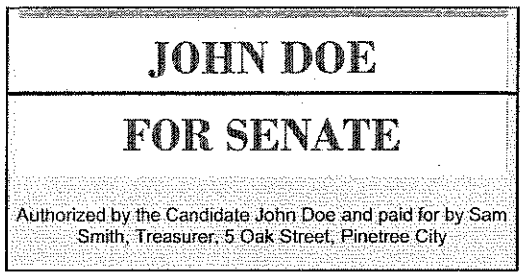


By a Candidate's Political Committee

- Authorized by the Candidate and paid for by the Committee to Elect John Doe, 2 Main Street, Pinetree City

By a Candidate's Agents

- Authorized by Candidate John Doe and paid for by Sam Smith, Treasurer, 5 Oak Street, Pinetree City;
- Paid for by the Candidate and authorized by John Jones, Chairman of Committee to Reelect John Doe, 1 Cool Street, Pinetree City



Communications Exempt from Disclosure

Certain items are exempt from the disclosure requirement because of their small size: ashtrays, badges and badge holders, balloons, campaign buttons, clothing, coasters, combs, emery boards, envelopes, erasers, glasses, key rings, letter openers, matchbooks, nail files, noisemakers, paper and plastic cups, pencils, pens, plastic tableware, 12-inch or shorter rulers, swizzle sticks, and tickets to fund-raisers. The Commission may exempt similar items if it determines those items are too small and, therefore, it would be unnecessary to include the required disclosure.

Automated Telephone Calls

Prerecorded automated telephone calls and scripted live telephone calls that name a clearly identified candidate during the 21 days before a primary election or 35 days before a general election must include the name of the person who made or financed the communication, except that the disclosure is not required for prerecorded automated calls paid for by the candidate using the candidate's voice and are made in support of that candidate.

Communications Not Authorized by the Candidate

Similar requirements apply to communications that are paid for by third-parties such as political action committees, party committees and individuals and that are not authorized by the candidates. Those communications must disclose the person who made or financed the communication and that the communication was not authorized by the candidate or campaign.

Agenda Item #3

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, Executive Director

Date: February 4, 2008

Re: Recommended Investigation of Debra J. Reagan

Debra J. Reagan was a candidate for the State House of Representatives in the 2006 elections. Her daughter, Dianna L. Hartford, was her campaign treasurer. She received $500 in seed money contributions and $4,874 in Maine Clean Election Act funds, and reported making $856 in campaign expenditures, leaving her with a post-campaign balance of $4,518.

After the election, Ms. Reagan failed to respond to notices from the Commission staff requesting the return of $4,518 in unspent campaign funds, including a telephone conversation with former Commission employee Nathaniel Brown on December 20, 2006. At its meeting on February 14, 2007, the Commission referred her to the State Attorney General for collection of the funds. At that meeting, the staff did not recommend any civil penalties for the failure to return the funds because it was primarily focused on recovering the money for the State of Maine.

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

PHONE: (207) 287-4179 FAX: (207) 287-6775

Unsuccessful Payment Plan

Subsequently, in July 2007, the staff decided to recommend that the Commission assess civil penalties against the candidate and her treasurer-daughter for failure to return the funds. The written notice of recommended penalties caused the candidate's daughter, Ms. Hartford, to telephone me on July 26, 2007 and inquire about a payment plan. That day, I sent the candidate and treasurer an e-mail setting forth some terms that would be acceptable. I suggested 12 payments to be made by the 15th day of the month. The e-mail clearly stated that the Commission needed to receive a written payment plan that was signed by the candidate or treasurer. I stated that the staff would suspend recommending any penalty as long as payments were made consistently.

The candidate replied by e-mail on July 27, 2007, stating that "I have set up automatic monthly payments of $367.00 to start August 02, 2007." Unfortunately, both of our e-mails contained a typo concerning the amount of the monthly payments, and I clarified in an August 22, 2007 e-mail that the monthly amount should be $376 per month.

In August 2007, Ms. Reagan began making monthly payments of $376 per month, but she has failed to make <u>three</u> payments:

- The Commission received payments of $376 on August 6, September 10, and November 13, 2007.
- The Commission received no payment for October 2007.
- The Commission received a payment of $376 for December 2007 which was returned for insufficient funds.
- The Commission has received no payment for January 2007.

Also, we have never received a written payment plan signed by the candidate or treasurer.

Staff Recommendation

Taking into consideration Ms. Reagan's payments from last year, the current debt owed is $3,390. Because the candidate has not provided a written payment plan and has failed to make three payments (October 2007, December 2007, and January 2008), the Commission staff no longer supports accepting a payment plan by the candidate, and wishes to propose punitive action against the candidate and treasurer. We believe it is likely that the candidate spent the $4,518 for purposes unrelated to her campaign. Two other 2006 candidates, Thomas J. Bossie and Arthur H. Clement, were assessed penalties totaling $2,000 and $1,750 (respectively) for misusing Maine Clean Election Act funds and failing to return unspent campaign funds to the Commission. We believe Ms. Reagan's actions are more serious, because Bossie and Clement returned the unspent funds under pressure from the Commission and Ms. Reagan has not. She is the only Maine Clean Election Act candidate from 2006 who has failed to return unspent campaign funds.

For the February 11, 2007 meeting, we request authority to subpoena Ms. Reagan's bank records to determine how she spent the Maine Clean Election Act funds she received from the Commission. We intend to propose taking punitive action against Ms. Reagan and Ms. Hartford at your March or April meetings. In the meantime, we intend to request payment of the entire $3,390 from the candidate and treasurer, by credit card if necessary.

011100481
12/28/2007
6533005370

This is a LEGAL COPY of your check. You can use it the same way you would use the original check.

RETURN REASON-A
NOT SUFFICIENT
FUNDS

⑆056007387⑈ '12/20/2007
0000013707758814

THIS IS WATERMARKED PAPER - DO NOT ACCEPT WITHOUT NOTING WATERMARK - HOLD TO LIGHT TO VERIFY WATERMARK

Account: CAN 1684 $376.00

DEBRA J REAGAN
11 BERNETT ST
SANFORD, ME 0002

Please Direct Any Questions
To: (800) 278-5302
ONLINE BANKING - BILL PAYMENT

36/112
0000008168

BANK OF AMERICA, N.A.

December 10, 2007

RETURN REASON - A
NOT SUFFICIENT FUNDS

RETURN REASON - A
NOT SUFFICIENT FUNDS

Pay THREE HUNDRED SEVENTY SIX AND 00/100 DOLLARS $*******376.00

To The Order Of

MAINE ETHICS COMMISSION
135 STATE HOUSE STA
AUGUSTA, ME 04333 0135

Void After 180 DAYS.
Signature On File
This check has been authorized by your depositor

Wayne, Jonathan

From: debbyp@metrocast.net
Sent: Friday, July 27, 2007 10:43 AM
To: Wayne, Jonathan
Cc: debbyp@metrocast.net; dianna_hartford@yahoo.com; Gardiner, Phyllis; Lavin, Paul
Subject: Re: Request for Written Payment Plan

Thank you Jonathan.
I have set up automatic monthly payments of $367.00 to start August 02, 2007. It takes about 4 days for my bank to process and send the check, so the 15th of each month due date is appreciated.
Please alert me as soon as possible if you have not received the first payment by August 10th, as sometimes the first payment of a new payee setup may take a few extra days to be processed.
Thank you.
Sincerely,
Debby Reagan
11 Bennett St.
Sanford, ME 04073
(207)324-7510

> Earlier today, I discussed with Dianna Hartford what would be an
> acceptable payment plan of $4,512 in unspent campaign funds owed by
> the Reagan campaign. This e-mail is to explain the terms that would
> be acceptable to the Commission.
>
> The Commission requires a written payment plan that is signed by Ms.
> Reagan or Ms. Hartford. It must be signed, not in e-mail form. We
> require monthly payments of $362 (one twelfth of the owed amount)
> received by the Commission on a specified date each month. Ms.
> Hartford has stated that the campaign prefers the 15th of the month.
> That is acceptable to us.
>
> As long as monthly payments of $376 are made on time, the Commission
> staff will suspend the recommended civil penalty of $2,500. If the
> campaign is more than 5 days late on more than two occasions, the
> agreement will be void and the staff will recommend the $2,500 penalty
> against the candidate and the treasurer and will request that the
> Attorney General's Office commence a civil lawsuit to collect both the
> unpaid amount and the $2,500 penalty.
>
> Please send payments to:
>
> Maine Ethics Commission
> 135 State House Station
> Augusta, ME 04333
>
> If possible, please include "CAN 1684" or "Reagan penalty" in the memo
> or description portion of the payment checks. That is not absolutely
> necessary, however, because the staff will know what each monthly
> payment of $362 is for.
>
> I have copied Assistant Attorney General Phyllis Gardiner and
> Assistant Director Paul Lavin on the e-mail so that they are aware of
> this development.
>
>
> cc: candidate file
>
>
>
>
>
>

Name: Ms. Debra J. Reagan
District #: 143
2006 House

2006 Vendor: n/a yes (no)
If no, 2006 Vendor Form Received: yes (no)

Home Phone: (207)432-2199
Work Phone: (207)
Cell #:
E-Mail: debbyp@metrocast.net
Fax#: (207)

Notes

12-20-06 phoned & spoke to Debra to return funds MB

DEBRA J. REAGAN

CANDIDATE'S FULL NAME

02/05/2008

Date Submitted

SCHEDULE F
SUMMARY SECTION
(MAINE CLEAN ELECTION ACT CANDIDATES)

CASH ACTIVITY

	TOTAL FOR THIS PERIOD	TOTAL FOR CAMPAIGN
1. CASH BALANCE FROM LAST REPORT (if any)	4,518.00	
2. SEED MONEY CONTRIBUTIONS (Schedule A)	+ 0.00	5,374.00
3. MAINE CLEAN ELECTION ACT Payments (Schedule A)	+ 0.00	+ 0.00
4. SALE OF CAMPAIGN PROPERTY (Schedule E, Part II)	+ 0.00	+ 0.00
5. OTHER CASH RECEIPTS (interest, etc.)	+ 0.00	+ 0.00
6. *MINUS* EXPENDITURES (Schedule B)	- 0.00	- 856.00
7. CASH BALANCE AT CLOSE OF PERIOD (lines 1 + 2 + 3 + 4 + 5 - 6)	= 4,518.00	

OTHER ACTIVITY THIS REPORTING PERIOD

8. IN-KIND SEED MONEY CONTRIBUTIONS (Schedule A-1)	0.00	0.00
9. TOTAL UNPAID DEBTS AT CLOSE OF PERIOD	0.00	

OFFICE OF ATTORNEY GENERAL

State House Station 6
Augusta, Maine 04333-0006
Phone: 626-8830

FAX: 287-3145
email:
phyllis.gardiner@maine.gov

Memorandum

TO: **Commission on Governmental Ethics and Election Practices**

CC: **Carl Lindemann**

FROM: **Phyllis Gardiner, Assistant Attorney General**

DATE: **February 10, 2008**

SUBJECT: **Carl Lindemann's Request for Commission Action**

Since I will not be able to attend the Commission meeting on Monday, February 11, 2008, I am writing to provide some procedural advice regarding the most recent request filed by Mr. Carl Lindemann, dated February 7, 2008.

As you are aware, Mr. Lindemann has a Rule 80C action pending in Superior Court, challenging the Commission's decision of December 22, 2006 that the Maine Heritage Policy Center ("MHPC") is not a political action committee ("PAC"). Among the arguments raised by Mr. Lindemann in his petition for judicial review of that decision are claims that the Commission was biased as a result of former Commissioner Ginn Marvin's role as a board member and treasurer of the MHPC while she served on the Commission, notwithstanding that she recused herself from all proceedings regarding the complaint about MHPC's status. This issue has been fully addressed in briefs filed by both parties with the court. We are now awaiting oral argument before the Superior Court decides the matter.

Although the Commission ruled in December 2006 that MHPC did not meet the definition of a PAC, it simultaneously determined that the organization was legally obligated to file a report of any contributions or expenditures on the TABOR initiative campaign, pursuant to 21-A M.R.S.A. §1056-B. MHPC complied with that directive by filing such a report in January, 2007. On March 5, 2007, Mr. Lindemann filed a request for a new investigation into the accuracy and completeness of this report. That request was initially considered by the Commission at a meeting on May 14, 2007, and after some discussion the members voted 2 to 1 to postpone (or "reschedule") any further consideration of the request until after the Superior Court had ruled on Mr. Lindemann's petition in the case described above. Mr. Cassidy made the motion; Mr. Friedman seconded it; and both of them voted in the affirmative. Ms. Thompson voted in the negative. Ms. Ginn Marvin recused herself from the discussion of this matter. The

minutes of the meeting reflect the majority's view that it would make sense to defer investigation into the adequacy or accuracy of the section 1056-B report since, if the Superior Court were to rule that MHPC is a PAC, MHPC would be required to file a PAC report. Since a PAC report, by definition, is broader in scope than a section 1056-B report, its filing would thereby moot the second request for investigation.

Separate from his section 1056-B request, Mr. Lindemann raised issues last summer concerning Ms. Ginn Marvin's qualifications to serve as a Commission member based on his allegations that she was serving simultaneously as an officer of a "political committee" and had engaged in fundraising for that committee, in violation of Title 1 M.R.S.A. §§ 1002(2) & (6). He raised these concerns in correspondence addressed to the Governor and Legislative leadership first, and then brought the matter to the Commission. The Chair initially determined, based on advice from staff and counsel, that the Commission did not have jurisdiction to rule on the qualifications of a fellow Commission member, or to enforce the provisions of section 1002(2) & (6). He thus declined to put the matter on the agenda. At the meeting on August 13, 2007, after some discussion about whether the full Commission should decide the jurisdictional issue, a motion was made to accept the staff's view that the Commission has no jurisdiction over a complaint to disqualify a Commission member. This motion was adopted on a 4-0 vote, with Ms. Ginn Marvin abstaining.

More recently, Mr. Lindemann has argued to the Commission that it should adopt rules governing the handling of complaints against Commission members. The Commission declined that request, as a matter of policy, and adopted revisions to the Chapter 1 procedural rules at the meeting on January 15, 2008, without including any such provision. Mr. Lindemann now cites to a statement made by Jonathan Wayne in the cover memorandum to those rule changes, which was addressed to Commission members and included in the packet for the January 15 meeting. Mr. Wayne suggested in that memorandum that any complaints that may arise concerning Commission members could simply be dealt with on a case-by-case basis, without the need for procedural rules. In his February 7 letter Mr. Lindemann suggests that, in renewing his complaint about Ms. Ginn Marvin's conduct, he is attempting to invoke this case-by-case procedure.

Mr. Lindemann, however, has already been afforded an opportunity to try to persuade the Commission to act on his complaint regarding Ms. Ginn Marvin's conduct and qualifications, or to refer the matter to another agency or authority. Having already concluded that the Commission lacks jurisdiction to act on this complaint, you are not now under any legal obligation to reconsider that decision, or to treat this as a new complaint.

To the extent that Mr. Lindemann wishes to raise issues of bias or improper procedure based on Ms. Ginn Marvin's role on the Commission, as those issues relate to the Commission's handling of the section 1056-B investigation request, he is free to do so when the Commission takes up that request again following the Superior Court's ruling on his Rule 80C appeal. To take up that request now would require reconsideration of the motion to reschedule his request for an investigation of the 1056-B report. Such a motion would have to be made by one of the Commission members who voted in the majority on May 14, 2007. The same process would be required to reconsider the vote of August 13, 2007 on jurisdiction.

Mr. Friedman noted at the conclusion of the May 14, 2007 meeting, as recorded in the minutes, with respect to the vote to reschedule the request for an investigation into the MHPC's section 1056-B filing:

> the vote to delay does not cast any doubt on the validity of the complaint. The complaint is worthy of hearing, but the Commission needs to be concerned with administrative economy. The Commission will look at every aspect of the complaint when the time is right.

Notwithstanding the Chair's expressed willingness to give full and fair consideration to Mr. Lindemann's request when the time is ripe, if Mr. Lindemann no longer wishes to have the Commission investigate the section 1056-B filing by MHPC due to his allegations of bias, then he is free to withdraw the request for the investigation. If he wishes to file a complaint about Ms. Ginn Marvin's conduct with another agency or office, then, as pointed out in Mr. Wayne's February 4 email to him, Mr. Lindemann is at liberty to do so.

Short of a motion to reconsider one of the matters that has already been decided by the Commission, there is no procedural mechanism to deal with Mr. Lindemann's February 7 request, nor is there any legal obligation for the Commission to do so at this juncture. The Commission has jurisdiction to deal with only one pending request by Mr. Lindemann, and that request has been scheduled for consideration after the Superior Court rules on the PAC question.

I hope this outline is useful to you. If you need clarification of any of the above, please let me know. Thank you, and I'll look forward to seeing you at the next Commission meeting.

cc: Jonathan Wayne, Executive Director
Paul Lavin, Assistant Director

Carl Lindemann

P.O. Box 171
Portland, Maine 04112

Phone 207-774-1936
Email Carl@cyberscene.com

February 7, 2007

Dear Commissioners Marsano, Shiah, Thompson & Youngblood:

I am contacting you directly as per the procedure for handling complaints against Commissioners set out my Executive Director Wayne in the staff's letter concerning January agenda item #5 dated January 15, 2008.

I have attached letters and e-mail documenting an exchange between myself and the Executive Director concerning the outstanding case against former Commission Chair Ginn Marvin and her political committee, the Maine Heritage Policy Center (MHPC) for failing to file a 1056-B report that is "true, correct and complete." I am requesting is that the Commission determine by formal vote whether or not the Commission is the appropriate venue for the complaint. If the Commission determines that it is inappropriate for the Commission to investigate and adjudicate a case against a fellow Commissioner, I ask that the Commission cede jurisdiction in this matter and refer it to the Attorney General to craft an appropriate process. If the Commission decides that it is appropriate, it is necessary that the reasons for such an unusual view be made explicit. The need for addressing this procedural issue now is detailed in the communications attached.

I have contacted you directly because of a failure to follow the procedure Mr. Wayne set out. He stated that "members of the Commission" were to be part of this process. Instead, Commission Chair Friedman has taken it upon himself to resolve the conflict issue concerning his predecessor unilaterally. The matter was apparently settled behind closed doors and any opinion of the Executive Director or the Assistant AG has not been expressed publicly. It is unimaginable that the Commission did not intend to cede its authority in such matters to the sole discretion of the Chair, perhaps without even informing you of these actions.

In any case I request, once again, that the Commission address this issue formally and publicly during the Commission meeting on Monday, February 11 under "other business." In addition, it would also be appropriate for the Commission to revisit the suggestion for a rule change that would automatically refer complaints made against Commissioners to outside authorities. The need to do so should be all-too-apparent now, and this could be considered alongside the other rule change now on Monday's agenda.

Sincerely,

cc Wayne, Lavin, Gardiner, Billings, and Friedman
encl.

Carl Lindemann

P.O. Box 171
Portland, Maine 04112

Phone 207-774-1936
Email Carl@cyberscene.com

January 31, 2008

Jonathan Wayne, Executive Director
Maine Commission on Governmental Ethics & Election Practices
135 State House Station
Augusta, Maine 04333

Dear Executive Director Wayne:

I request that the Commission make a determination at its next meeting about a key procedural issue in the case pending before the Commission regarding former Commission Chair Ginn Marvin, treasurer of Maine Heritage Policy Center. This is necessitated by new information that corrects factual errors made in your earlier arguments concerning the conflict of interest surrounding her dual, conflicting role serving on the Commission while also serving as an officer of a political committee.

As I stated in my complaint of March 5:

> Complicating this matter is Commissioner Jean Ginn Marvin's role as treasurer for MHPC. The treasurer has a fiduciary responsibility to see to it that the organization's 1056-B filing is 'true, correct and complete.' As such, the review necessary to fulfill the Commission's statutory duty is, of necessity, a review of her conduct.

No one has challenged the validity of this point. In fact, Ms. Ginn Marvin's response to the complaint confirmed it. After she stepped away from her role as Chair of the Commission during this agenda item at the May 14th, 2007 meeting, she remained in the room to participate as treasurer of her political committee. In fact, Ms. Ginn Marvin's responsibility as MHPC's treasurer is heightened by her position on the Ethics Commission. She had a dual duty to see to it that her political committee faithfully followed her Commission's order to file a report that is "true, correct and complete."

In addition, this case has an additional ramification for Ms. Ginn Marvin that is material to the Commission. One of the findings will be the expenditures her organization made for fundraising in the Taxpayer Bill of Rights (TABOR) ballot initiative. One anomaly in MHPC's 1056-B filing is that it shows that the political committee raised and expended funds, yet reports zero expenditures for fundraising. This is in direct contradiction to testimony from the organization's President and CEO who, when describing the TABOR initiative, exclaimed "what a better time to raise money!" Also, their fundraising solicitations and "thank you" form letter for the TABOR campaign demonstrate this unreported expenditure. The significance for Ms. Ginn Marvin is that <u>such fundraising is specifically prohibited to Commissioners</u> under MRSA 1 § 1002(6).

Previous Responses to this Issue:

During the May 14th, 2007 meeting, then-acting Chair Friedman summarily dismissed the inherent conflict of interest of having the Commission investigating and adjudicating a case about a fellow Commissioner. Commissioner Friedman stated "We've heard that before." Apparently, he was referring to your dismissal of these concerns in your letter of November 29, 2006. There, you stated that:

> She (Commissioner Ginn Marvin) was a member of the MHPC board when the Governor appointed her at the suggestion of the legislative leadership, so apparently the issue was not viewed as a disqualifying conflict at the time of her appointment.

As we now know, Ms. Ginn Marvin failed to disclose her board membership on MHPC. The Governor and legislative leadership were denied the ability to properly assess her qualifications in this light. The upshot is that your reasoning on the conflict of interest issue was based on misinformation. To put this in Commission Chair Friedman's terms, the Commission has not heard any of this before.

Evidence of the Conflict of Interest:

That there is an irresolvable conflict of interest here should be apparent on general terms – Commissioners trying a case about a fellow Commissioner. In addition, numerous events surrounding the Commission's relationship with Ms. Ginn Marvin as well as actions taken regarding her demonstrate an irrevocable conflict of interest. Here are a few examples.

First, let's look at your dealings with Ms. Ginn Marvin:

1. By her own account made at the Commission meeting on January 19 last year, you have dutifully served as a direct report to Ms. Ginn Marvin for some two years and enjoyed a close relationship built on almost daily contact.

2. During the July 16 meeting, she personally credited you with returning her to the role of Chair after Commissioner Ketterer's departure.

3. You have made significant errors in your professional duties regarding Ms. Ginn Marvin. I have already mentioned your initial error presuming that she had been properly cleared to serve on the Commission. Then, during this case, you misstated 21-A M.R.S.A. § 1003, the standard for having the Commission launch an investigation as "….if the reasons stated for the request show sufficient grounds for believing that a violation ***has occurred***." (emphasis added) . This statement of the law, in a case directly calling into question the legality of actions undertaken by your boss, was fundamentally and entirely wrong. The standard for determining when the Commission should undertake an investigation is "….if the reasons stated for the request show sufficient grounds for believing that a violation ***may have occurred***." (emphasis added)

4. At the July 16 meeting of the Commission, you made a summary dismissal pronouncement about the allegations challenging Commission Chair Ginn Marvin's conduct and qualifications to serve. Since, you have not substantiated or affirmed your assertion that Commission Chair Ginn Marvin was not an officer of a political committee, an automatic disqualification for service on the Commission.

Second, the episode culminating at the August 13 session with Commission Chair Friedman presiding over what was purportedly a discussion of a discussion about Commissioner Ginn Marvin's qualifications and conduct is a portrait of an agency in crisis due to a conflict of interest. How Ms. Ginn Marvin – despite my objections – participated in this "discussion" was telling. Commission Chair Friedman stated:

> What we're discussing is a general rule or policy and procedure that this Commission has the authority to discuss - whoever discusses it. It's not directed to anyone at this point in time. It's just a simple, uh, dialog, so to speak among us to figure out where we're going today from here. Whether or not we're going to have a further discussion or whether or not we will not.

What was Ms. Ginn Marvin's decisive contribution to this discussion about no one in particular? She announced she was leaving the Commission, so pursuing issues of her conduct and qualifications were "a waste of time." Her personal declaration shows Commission Chair Friedman's claim that they were "discussing…a general rule or policy and procedure" was factually inaccurate. In fact, it shows his conduct here regarding Ms. Ginn Marvin was arbitrary and capricious, abusive of his discretion, committed errors of law and was affected by bias.

This is not an exhaustive list of instances that demonstrate why it is simply not reasonable to claim that the Commission can appropriately process this case. I am happy to provide additional examples as needed. However, this should be sufficient to establish that the Commission would be acting arbitrarily and capriciously, abusing its discretion, committing errors of law and is affected by bias to insist on investigating and adjudicating Commissioner Ginn Marvin's case. Given this, whatever final determination the Commission might make here would legitimately be subject for review pursuant to Rule 80C of the Maine Rules of Civil Procedure. This is clear even prior to discussing the merits of the case.

At the May session, Commission Chair Friedman cited "agency efficiency" repeatedly as a guiding principle in his leadership. In this situation, insisting that the Commission continue to operate here with an irrevocable conflict of interest is inherently contrary to that principle. At best, it is grossly inefficient for the Commission waste its own time and that of the courts. At worst, it undermines the very purpose of the commission. As stated in MRSA 1 § 1001, the purpose of the Commission is foster "faith and confidence in the integrity of the election process" for the people of Maine. Having the Commission administer a colleague's case is corrosive to any such confidence.

Yours very truly,

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

February 1, 2008

By E-Mail and Regular Mail
Carl Lindemann
PO Box 171
Portland, ME 04112

Dear Mr. Lindemann:

Thank you for your letter of January 31, 2008. The Commission's Counsel, Assistant Director, and I have reviewed it. We are having difficulty determining what you are asking the Commission to do. This is a request for clarification.

Complaint #1

By way of background, you filed your first complaint with the Commission in October 2006, arguing that the Maine Heritage Policy Center (MHPC) qualified as a political action committee (PAC). On December 20, 2006, the Commission determined that the MHPC was not a PAC because it did not have as its major purpose advocating for the TABOR ballot initiative. On January 19, 2007, your counsel initiated a Rule 80C proceeding in the Maine Superior Court requesting review of the Commission's determination. My understanding of the status of that proceeding is that it has been fully briefed, and that oral argument has not been scheduled.

Complaint #2

Also on December 20, 2006, the Commission determined that the MHPC was required to file a financial report under 21-A M.R.S.A. § 1056-B regarding financial activity in support of TABOR. The MHPC filed the report on January 22, 2007. On March 5, 2007, you requested that the Commission investigate whether the § 1056-B report was accurate and complete. At a meeting on May 14, 2007, the Commission voted 2-1 to postpone consideration of your request until after the Maine Superior Court decided on your Rule 80C proceeding.

Because former Commission member Jean Ginn Marvin served on the board of directors of the MHPC, she has consistently recused herself from any matter relating directly to the MHPC. To my knowledge, she has not influenced the Commission's deliberations or the staff's recommendations in any way. Her term on the Commission expired in April 2007, and she participated in Commission meetings as a holdover member until August 13, 2007.

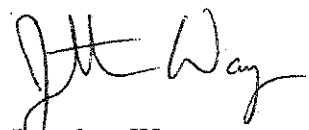
Your Request of Yesterday

In your letter of yesterday, it appears that you are asking the Commission to take some action in light of new information, but it is not clear what action you are requesting. Could you please state specifically what action you are asking the Commission to take and the reasons the Commission should take that action?

For example, if you are requesting that the Commission consider your March 5, 2007 request before the Superior Court has decided on your Rule 80C proceeding, please explain why. If you are requesting that the Commission refer some matter to a different authority, please identify the matter, the other authority, and why the Commission should take that action.

Thank you for the anticipated clarification.

Sincerely,



Jonathan Wayne
Executive Director

cp
cc: Assistant Attorney General Phyllis Gardiner, Commission Counsel
Daniel I. Billings, Esq.

Carl Lindemann

P.O. Box 171
Portland, Maine 04112

Phone 207-774-1936
Email Carl@cyberscene.com

February 4, 2007

Jonathan Wayne, Executive Director
Maine Commission on Governmental Ethics & Election Practices
135 State House Station
Augusta, Maine 04333

Dear Executive Director Wayne:

Thank you for your request for clarification. My apologies for not being more explicit.

What I am requesting is that the Commission to make a formal vote to determine whether or not the Commission is the appropriate venue for the complaint I brought to it on March 5 and that was an agenda item for the May 14 session. If the Commission determines that it is inappropriate for the Commission to investigate and adjudicate a case against a fellow Commissioner, then I ask that the Commission refer it to the Attorney General to craft an appropriate process. If the Commission decides that it is appropriate, it is necessary that the reasons for such an unusual view be made explicit.

If it helps to clarify matters, I would add these additional points to my arguments and evidence detailed in my previous communication. First, I said that Commission Chair Friedman's citation of your reasons to summarily dismiss the conflict of interest issue is invalid given that your judgment on the matter was based on factually incorrect information. I would also add that your summary dismissal of the issue was improper even if you had the facts right. That there was no factual basis for the flawed reasoning simplifies matters here. In addition, the Commission itself never actually had a chance to discuss the conflict of interest as our correspondence on the matter between November 27–30, 2006 shows. I am attaching that correspondence here.

Finally, during the May 14 discussion, Mr. Friedman either did not understand or refused to accept the distinction between a typical recusal and this unusual case where the recused Commissioner remained in the room to address a complaint. At the December meeting, Mr. Friedman inaccurately recollected the facts claiming that Ms. Ginn Marvin had recused herself AND had left the room. This indicated that he now understands the significance of her remaining in the room on May 14. As such, he should also understand why it is a necessary step in processing such unusual cases to determine whether the Commission can act in any way other than referring the case.

Does this provide what you need? This is a simple matter that can be settled expeditiously at the February 11th Commission meeting.

Regarding the other items in your communication, I appreciate your update on the appeal underway, but none of this has any bearing here if the actions regarding this taken by the Commission on May 14 were not properly processed.

In addition, I do take exception to this assertion you make in your letter:

> (Ms. Ginn Marvin) has consistently recused herself from any matter relating directly to the MHPC. To my knowledge, she has not influenced the Commission's deliberations or the staff's recommendations in any way.

These statements are not factually accurate. Let me detail at least four examples:

1. Commissioner Ginn Marvin participated in deliberations over rescheduling the date for the MHPC case on December 12, 2006. My attorneys raised objections of the propriety of this given the conflict of interest and asked that she recuse herself and leave the room. She remained on the panel throughout this discussion of the conflict of interest. Her mere presence "influenced the Commission's deliberations."

2. At the January 19 meeting last year, Commissioner Ginn Marvin, by formal vote of the Commission, participated in discussions about proposed legislation regarding 1056-B reports. The Commission had just determined that MHPC was a regulated entity and ordered it to file such a report. In other words, MHPC enjoyed the advantage of having a seat on the Commission to help craft how it would be regulated. As it happens, the proposed legislation you offered that day, if applied retroactively, would have exempted one organization from reporting in the previous cycle – Commissioner Ginn Marvin's political committee, MHPC.

   Another detail here is worth noting. During the session, you were questioned as to whether you had followed the due process of soliciting suggestions to inform the legislative proposals put forth in MRSA 1 § 1009. You stated that you had made such a solicitation. However, my FOAA after revealed that, contrary to your statements, you had not done so. It is unclear what informed your proposal that was of particular benefit to your former boss' political committee. It is reasonable to believe that she influenced your recommendation here either directly or indirectly.

3. After your *sua sponte* restoration of Commissioner Ginn Marvin to her previous role as Chair (and while you were processing my complaint that named her specifically), she presided over a case that directly related to her political committee. In fact, a political operative, likely operating as an agent for MHPC, brought the case. This complaint against Democracy Maine, *et alia*, was the fulfillment of MHPC's declared strategy to respond to its failure to report its activities in the TABOR ballot initiative (see attached letter of Nov. 30, 2006, page 2). In the interest of promoting transparency, Democracy Maine fully disclosed its finances at the meeting as it might if it were determined to be a PAC and compelled to do so. Also note that you, *sua sponte*, brought additional complaints against Democracy Maine, above and beyond those brought by the complainant.

   As Commission Chair Ginn Marvin presided, her political committee's attorney came forward to testify – purportedly as a private citizen. Mr. Billings put forward the suggestion that the question of whether Democracy Maine should make a PAC report should be postponed till the appeal of the Commission's final determination about MHPC was settled. He seemed oblivious to the fact that Democracy Maine had unexpectedly just provided such a report. His actions at this session are inexplicable

except when understood as part of a strategy to delay investigation and adjudication of Commission Chair Ginn Marvin's political committee. Did she "influence" these deliberations "in any way"? She presided over them.

4. Commission Chair Ginn Marvin sat behind me during my testimony about her and MHPC at the May 14 meeting. Do you maintain that the spectacle of Commission Chair Ginn Marvin sitting in the same field of view for her colleagues during testimony about her political committee's dubious 1056-B report did not influence the Commission's deliberations in any way? This gets to the heart of the matter – and makes clear the Legislature's wisdom in denying officers of political committees the ability to serve on the Commission.

Finally, your description of Ms. Ginn Marvin's departure from the Commission glosses over the reality. You give the impression that she happened to stay as a holdover for a few months while replacement candidates were located. There was no indication that she had any intention to leave the Commission till the news story exposing her failure to properly disclose her board membership on a political committee was published. You may recall that she expressed surprise when Assistant Attorney General Gardiner unexpectedly set in motion Ginn Marvin's removal as Chair on the day of publication. Apparently, she had reason to expect that she would be enjoying that position for an indefinite period before being ousted amidst a public scandal raising questions (still unanswered) about her conduct and qualifications as a Commissioner.

Yours Very Truly,

cc Lavin, Gardiner, Billings
encl.

Carl Lindemann

P.O. Box 2228
Cedar Park, Texas 78630

Phone: 512-528-1516; 207-318-7093 (cell)
Email: Carl@cyberscene.com

November 27, 2006

BY FACSIMILE, ELECTRONIC MAIL & FIRST CLASS MAIL
Jonathan Wayne
Executive Director
Maine Commission on Governmental Ethics & Election Practices
135 State House Station
Augusta, Maine 04333

RE: Maine Heritage Policy Center/Jean Ginn Marvin

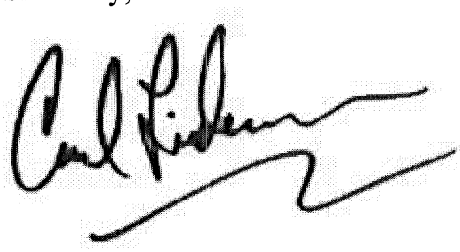
Dear Mr. Wayne,

Following the meeting of the Commission on October 31st, I was shocked to discover that Commission Chair Jean Ginn Marvin has a far more involved relationship with Maine Heritage Policy Center than was previously known to me. In addition to serving on the Board of Directors of MHPC, she currently serves as that organization's Treasurer. In light of the nature of the pending complaint against MHPC before the Board, and the new evidence presented, Ms. Ginn Marvin's testimony before the Commission will be unavoidable in the context of any reasonable investigation into MHPC's finances. Even if she is somehow not deemed by the Commission to be relevant witness, there can be no dispute about her inability to be impartial in this matter. For these reasons, Ms.Ginn Marvin must not be permitted to participate in any investigation, deliberation or decision-making by the Commission in the context of the pending complaint against the MHPC, nor can she be permitted to have access to, or be privy to, any internal discussions, investigation, documents or deliberations within the Commission about this matter.

It also plainly apparent that a simple recusal by Ms. Ginn Marvin in this case is insufficient to fully address and remedy the appearance of impropriety flowing from her position as Chair of the Commission. How can it be that Ms. Marvin is permitted to hold the position of Chair of the Commission on Governmental Ethics & Election, while contemporaneously serving as board member and treasurer of an organization whose activities are subject to regulation by the Commission? Does not this obvious conflict compel Ms. Ginn Marvin to resign her post as Chair of the Commission, or, alternatively, to immediately resign her position as Treasurer and Board Member of MHPC? I respectfully request that you and the Commission members carefully consider these questions and take the appropriate action.

Thank you for your prompt consideration of and attention to this important matter.

Sincerely,



Carl Lindemann

cc: Jonathan Crasnick, Executive Director of Democracy Maine
Daniel I. Billings, Esq., Attorney for Maine Heritage Policy Center

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

November 29, 2006

Carl Lindemann
General Delivery
Calais, ME 04619

Dear Mr. Lindemann:

This letter is to respond on behalf of the Ethics Commission staff to your letter of November 27 regarding Jean Ginn Marvin's participation in the complaint you have brought against the Maine Heritage Policy Center (MHPC).

As you will recall, at the October 31 meeting Ms. Ginn Marvin recused herself from participating in Agenda Item #10 because she is on the MHPC board. Her recusal was not required under the Commission's statute or rules, but she voluntarily recused herself to avoid any perception that she had a conflict of interest. She intends to recuse herself from this issue at the December 12 meeting as it relates specifically to the MHPC.

In the view of the Commission staff, Ms. Ginn Marvin's membership on the MHPC board is not a conflict of interest that would require her to step down from the Commission. She was a member of the MHPC board when the Governor appointed her at the suggestion of legislative leadership, so apparently the issue was not viewed as a disqualifying conflict at the time of her appointment. In case you did not read them before writing your November 27 letter, I have attached 1 M.R.S.A. §1002(2) and (6) which address qualifications for Commission membership and prohibited activities.

Since Maine is not a populous state and members of the Commission are appointed by political leaders, members of the Commission occasionally have had political or other affiliations that have prevented them from participating in a particular matter. The appropriate remedy is recusal from that item, not disqualification from service on the Commission altogether. Disqualification would greatly reduce the number of people who would be eligible to serve on the Commission.

I also wish to respond to some comments by you and your advisor John Branson that have been conveyed to me by news reporters, because they reflect a misunderstanding of the Commission's operations. The employees of the Commission make recommendations and gather preliminary factual information independently of the Commission members. We believe we perform our jobs as civil servants best if we do not take into consideration the political or organizational affiliations of the members. As long as we are fair and even-handed, we believe we have the members' support in making these decisions independently. If the staff's actions to date regarding your

complaint have appeared cautious, it has been in an effort to consider valid constitutional concerns, to receive comments from other affected organizations, and to provide the best advice to the Commission about an area of the campaign finance law that is relatively new and in need of clarification. Your complaint has been and will continue to be considered in an open-minded, impartial manner by the Commission staff and members.

I will include your November 27 letter and this response in the materials that the Commission considers for the December 12 meeting. Please feel free to raise any continuing concerns with the Commission members at that time, and to telephone me at 287-4179 if you have any questions about this response.

Sincerely,

Jonathan Wayne
Executive Director

cc: Daniel I. Billings, Esq.
Jonathan Crasnick
Phyllis Gardiner, Esq.
John D. Branson, Esq.

Title 1, §1002, Commission on Governmental Ethics and Election Practices

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§1002. Commission on Governmental Ethics and Election Practices

1. Membership.
[2001, c. 470, §1 (amd); T. 1, §1002, sub-§1, paragraph F (rp).]

1-A. Membership. The Commission on Governmental Ethics and Election Practices, established by Title 5, section 12004-G, subsection 33 and referred to in this chapter as the "commission," consists of 5 members appointed as follows.

A. By December 1, 2001 and as needed after that date, the appointed leader from each political party in the Senate and the appointed leader from each political party in the House of Representatives jointly shall establish and advertise a 30-day period to allow members of the public and groups and organizations to propose qualified individuals to be nominated for appointment to the commission. [2001, c. 470, §2 (new).]

B. By January 1, 2002 and as needed after that date, the appointed leader from each political party in the Senate and the appointed leader from each political party in the House of Representatives each shall present a list of 3 qualified individuals to the Governor for appointment of 4 members to the commission. The appointed leadership from each party in both bodies of the Legislature jointly shall present a list of 3 qualified individuals to the Governor for appointment of a 5th member to the commission. [2001, c. 470, §2 (new).]

C. By March 15, 2002, the Governor shall appoint the members of the commission selecting one member from each of the lists of nominees presented in accordance with paragraph A. These nominees are subject to review by the joint standing committee of the Legislature having jurisdiction over legal affairs and confirmation by the Legislature. No more than 2 commission members may be enrolled in the same party. [2001, c. 470, §2 (new).]

D. Two initial appointees are appointed for one-year terms, 2 are appointed for 2-year terms and one is appointed for a 3-year term, according to a random lot drawing under the supervision of the Secretary of State. Subsequent appointees are appointed to serve 3-year terms. A person may not serve more than 2 terms. [2001, c. 470, §2 (new).]

E. The commission members shall elect one member to serve as chair for at least a 2-year term. [2001, c. 470, §2 (new).]

F. Upon a vacancy during an unexpired term, the term must be filled as provided in this paragraph for the unexpired portion of the term only. The nominee must be appointed by the Governor from a list of 3 qualified candidates provided by the leader of the party from the body of the Legislature that suggested the appointee who created the vacancy. If the vacancy during an unexpired term was created by the commission member who was appointed from the list of candidates presented to the Governor by the leaders of each party of each body of the Legislature jointly, the nominee must be appointed from a list of 3 qualified candidates provided jointly by the leaders of each party of each body of the Legislature. Nominees appointed pursuant to this paragraph are subject to review by the joint standing committee of the Legislature having jurisdiction over election practices and legislative ethics and to confirmation by the Legislature. [2005, c. 295, §1 (amd).]

G. Upon a vacancy created by an expired term, the vacancy must be filled as provided in this paragraph. The nominee must be appointed by the Governor from a list of 3 qualified candidates provided by the leader of the party from the body of the Legislature that suggested the appointee whose term expired. When a vacancy is created by an expired term of the commission member who was appointed from the list of candidates presented to the Governor by the leaders of each party of each body of the Legislature jointly,

Title 1, §1002, Commission on Governmental Ethics and Election Practices

the nominee must be appointed from a list of 3 qualified candidates provided jointly by the leaders of each party of each body of the Legislature. Nominees appointed pursuant to this paragraph are subject to review by the joint standing committee of the Legislature having jurisdiction over election practices and legislative ethics and to confirmation by the Legislature. [2005, c. 295, §1 (amd).]

H. For the purposes of this subsection, "political party" has the same meaning as "party" as defined by Title 21-A, section 1, subsection 28. [2001, c. 470, §2 (new).]

[2005, c. 295, §1 (amd).]

2. Qualifications. The members of the commission must be persons of recognized judgment, probity and objectivity. A person may not be appointed to this commission who is a member of the Legislature or who was a member of the previous Legislature, who was a declared candidate for an elective county, state or federal office within 2 years prior to the appointment, who now holds an elective county, state or federal office, who is an officer of a political committee, party committee or political action committee or who holds a position in a political party or campaign.

[2005, c. 271, §1 (amd).]

3. Oath. Each member shall, within 10 days of his appointment, take an oath of office to faithfully discharge the duties of a commissioner in the form prescribed by the Constitution. Such oath shall be subscribed to by the commissioner taking it, certified by the officer before whom it is taken and immediately filed in the Office of the Secretary of State.

[1975, c. 621, §1 (new).]

4. Legislative per diem. The members of the commission are entitled to receive legislative per diem according to Title 5, chapter 379.

[IB 1995, c. 1, §2 (amd).]

5. Employees. The commission shall employ an executive director and such other assistance as may be necessary to carry out its duties. The commission also shall retain a general counsel or a computer analyst as an employee of the commission, based on the staffing needs of the executive director. If the commission employs a general counsel, the general counsel may not hold any other state office or otherwise be employed by the State. The commission shall select the executive director by an affirmative vote of at least 4 commission members.

[2003, c. 381, §1 (amd).]

6. Prohibited activities. A member of the commission may not engage in political fund-raising to promote the election or defeat of a candidate, passage or defeat of a ballot measure or endorse a political candidate. This prohibition does not apply to fund-raising for campaigns or endorsement of candidates at the county or municipal level or out-of-state nonfederal elections.

[2005, c. 271, §2 (new).]

MRSA , §T.1 SEC 1002/1/F (AMD).
PL 1975, Ch. 621, §1 (NEW).
PL 1983, Ch. 812, §1 (AMD).
PL 1989, Ch. 503, §B1 (AMD).
PL 1991, Ch. 86, § (AMD).
PL 1991, Ch. 880, §1 (AMD).
IB 1995, Ch. 1, §1,2 (AMD).
PL 2001, Ch. 430, §1 (AMD).
PL 2001, Ch. 470, §1-3 (AMD).
PL 2003, Ch. 381, §1 (AMD).
PL 2005, Ch. 271, §1,2 (AMD).
PL 2005, Ch. 295, §1 (AMD).

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*Admitted to practice in Maine, Massachusetts & the District of Columbia.

November 30, 2006

BY FACSIMILE, ELECTRONIC & FIRST CLASS MAIL
Jonathan Wayne
Executive Director
Maine Commission on Governmental Ethics & Election Practices
135 State House Station
Augusta, Maine 04333

RE: Carl Lindemann/ Maine Heritage Policy Center

Dear Executive Director Wayne:

I am writing in response to your letter to my client, Carl Lindemann dated November 29, 2006. While my client is appreciative of your initial consideration of the issues raised by Jean Ginn Marvin's continued membership on the Commission, he respectfully disagrees with your conclusion, specifically, that Ms. Ginn Marvin's continued service on the Commission does not present a conflict of interest requiring her to step down. At the outset, I note that you did not respond to one of the fundamental concerns raised in Mr. Lindemann's November 27th letter on this subject—that the pending complaint regarding the financial and campaign activities of the Maine Heritage Policy Center ("MHPC") pending before the Commission, and the new evidence recently presented, renders Ms. Ginn Marvin an extremely material witness by virtue of her position as *treasurer* and board member of the MHPC during the critical time period in question. I cannot conceive of any way to handle or investigate the current matter properly without taking Ms. Ginn Marvin's testimony, or without requesting her direct cooperation in the production of relevant financial documents in her possession, custody or control as treasurer of the investigated entity.

If the Commission decides to address and resolve this obvious conflict by not calling Ms. Ginn Marvin as a witness or subpoenaing documents in her possession, custody or control, then serious questions and concerns will unavoidably be raised in the mind of the public regarding the integrity of any investigation of the MHPC conducted by the Commission. If the Commission does what it should and subpoenas Ms. Ginn Marvin's testimony, along with documents in her possession custody and control as treasurer of MHPC, but *without* requiring Ms. Ginn Marvin to step down, then a different

yet equally troubling impression will be created for the public with regard to the fairness and integrity of any investigation of the MHPC the Commission undertakes.

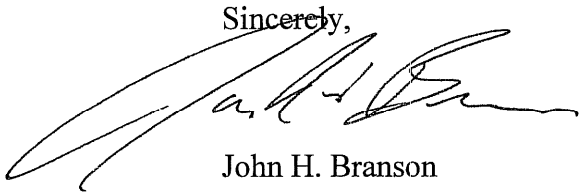
Finally, I wish to offer another compelling reason as to why Ms. Ginn Marvin's simple recusal from the pending investigation of the MHPC does not resolve the larger conflict created by her continued service on the Commission. You must be aware by now that the investigation of the MHPC in this matter will likely compel the Commission to examine the activities of other organizations to ensure their compliance with Maine law regarding campaign finance and reporting. Indeed, the MHPC has thus far made no secret that it seeks to distract and deflect attention from its own activities by suggesting to the Commission that other organizations were doing the exact same things that it was, without filing reports to the Commission. While I am not presently aware of any other organizations in Maine that have engaged in activities similar to those of the MHPC currently in question without establish a political action committee or filing the reports required under 21-A M.R.S.A. §1056-B, the MHPC has every right to ask the Commission to look into that. In the context of any and all future investigations of the activities of other organizations that flow from Mr. Lindemann's initial complaint, does Jean Ginn Marvin intend to actively preside and participate as a Commission member? Because the investigation of these other entities is such a critical aspect of the MHPC's strategy of defense in this case, and may ultimately affect the judgment of the Commission with regard to MHPC's activities, would not Ms. Ginn Marvin be required to recuse herself from all future investigation under 21-A M.R.S.A. § 1001 et seq. by virtue of her position as treasurer and board member of MHPC? Would not this be true whether or not Ms. Ginn Marvin ultimately decides to resign from her current positions with MHPC?

For the foregoing reasons, Mr. Lindemann's position is that, pursuant to 1 M.R.S.A. § 1002(2), Ms. Ginn Marvin cannot possibly serve with the required "objectivity" in the context of any investigations that the Commission may undertake in the arena of campaign finance and reporting under 21-A M.R.S.A. § 1001 et seq. Moroever, so long as Ms. Ginn Marvin remains on the Ethics Commission, the Commission will be unable to ensure, both in substance *and* appearance, a full, fair and impartial investigation of the current MHPC matter and all future matters regarding the campaign finance and reporting activities of other organizations subject to regulation by the Commission. Please understand that Mr. Lindemann's interest in this matter has now gone beyond the activities of MHPC of which he complained, in large measure owing to the very cool and unenthusiastic response to his initial complaint, and the fact that he was asked, as a precursor to any investigation by the Commission, to produce the kind of evidence that in theory could only be obtained by the Commission *as the result of* an investigation. For these reasons, Mr. Lindemann is interested not merely in ensuring that the laws are enforced in this particular case, but also that they be enforced for the benefit

of the public, and the integrity of the democratic process in Maine, in years and elections yet to come.

Thank you for your full and complete consideration of the concerns underlying Mr. Lindemann's position with regard to this matter.

Sincerely,



John H. Branson

cc: Carl Lindemann
Phyllis Gardner, Esq.
Daniel I. Billings, Esq.
Jonathan Crasnick

Subject: Request to Commission in January 31 Letter
Date: Tue, 5 Feb 2008 17:09:55 -0500
X-MS-Has-Attach:
X-MS-TNEF-Correlator:
Thread-Topic: Request to Commission in January 31 Letter
Thread-Index: AchoQ9WehyLGTleHQvKDW+yVKpQwpQ==
From: "Wayne, Jonathan" <Jonathan.Wayne@maine.gov>
To: "Carl Lindemann" <carl@TrueDialog.org>,
"Carl Lindemann" <carl@cyberscene.com>
Cc: "Gardiner, Phyllis" <Phyllis.Gardiner@maine.gov>,
"Lavin, Paul" <Paul.Lavin@maine.gov>,
<Dib9@aol.com>,
"Michael P. Friedman" <mfriedman@rudman-winchell.com>
X-OriginalArrivalTime: 05 Feb 2008 22:13:45.0648 (UTC) FILETIME=[5FECD300:01C86844]
X-Nonspam: Whitelist

Thank you for your February 4 letter clarifying your January 31 request.

On March 5, 2007, the Ethics Commission received your request that the Ethics Commission investigate whether the § 1056-B report of the Maine Heritage Policy Center (MHPC) was accurate and complete. It was included in a packet of materials which the Commission members received for the May 14, 2007 meeting, along with a memo from the Commission staff. You had a full opportunity to address the Commission at the May 14, 2007 meeting to argue in favor of the request. Jean Ginn Marvin recused herself from the Commission's consideration of the item.

At the May 14, 2007 meeting, the members voted 2-1 to postpone considering the request until after the Maine Superior Court decides on your Rule 80C petition regarding the Commission's previous determination that the MHPC did not qualify as a PAC. The Commission took this action because of the inefficiency of conducting an investigation about compliance with 21-A M.R.S.A. § 1056-B when the Superior Court might take the view that the MHPC was required, instead, to make broader disclosure as a PAC.

Because the Commission has acted on your March 5, 2007 request and is awaiting a decision by the Maine Superior Court before taking the matter up again, the Commission Chair has directed me not to put your January 31, 2008 request on the agenda for the Commission's meeting on February 11, 2008. You will have an opportunity to present arguments in support of your request, including addressing any procedural issues, after the Superior Court rules and the matter is again ripe for consideration by the Commission. In the meantime, if you believe that the March 5, 2007 complaint would be properly filed with the State Attorney General's Office, that is an action that you would be at liberty to take.