

# Agenda

## Item #6



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: April 21, 2008

Re: Recommended Civil Penalties against David Hughes

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David Hughes was a Maine Clean Election Act (MCEA) candidate for House District 72 in the 2007 special election, after the incumbent, William Walcott, resigned. He received \$4,287 in MCEA funds for his campaign. He was required to file a post-election campaign finance report and return unspent campaign funds by December 18, 2007. The staff made eight communications to him regarding these requirements. (Please see attachment to this memo.) After receiving no response, the Commission staff scheduled the matter for the Commission's January 25, 2008 meeting.

One day before that meeting (on January 24<sup>th</sup>), Mr. Hughes came to our office, filed the post-election report, submitted a check for \$509.17 (the unspent campaign funds), and presented bank statements and other documentation of his expenditures. Mr. Hughes came to the January 25 meeting and apologized for the lateness.

On February 19, 2008, the staff requested additional documentation which the candidate supplied on March 19, 2008.

**Audit Finding – Misreporting of Seed Money Expenditure**

Because of Mr. Hughes' lateness, the Commission's staff performed an audit of his campaign to determine whether all MCEA funds were spent appropriately and reported correctly. Although the Commission is temporarily without a staff auditor, the staff attempted to use the same standards as former auditor Vincent W. Dinan employed in his audits of 2006 candidates.

The only audit finding was a minor misreporting of a seed money expenditure. When Mr. Hughes submitted his qualifying papers on October 23, 2007, he reported receiving contributions of \$275, making an expenditure of \$200 to Olympic Consulting for printed literature, and having a cash balance of \$75. As a result, the Commission reduced the amount of his MCEA payment by \$75 and paid him \$4,287.

	<b>Reported on 10/23/07</b>	<b>Actual</b>
Seed money contributions	\$275	\$275
Expenditures	\$200	\$0
Cash balance	\$75	\$275

In fact, he had a cash balance of \$275 because he had not yet made a payment to Olympic Consulting. Rather, the candidate owed Olympic Consulting an unpaid obligation of \$200 for some design work performed by the firm.

As a result, the Commission overpaid Mr. Hughes for the general election by \$200. (When a candidate receives his or her first payment of MCEA funds, the Election Law states that the first payment is reduced by the amount of any unspent seed money remaining at the end of the qualifying period.

Consistent with the Vincent Dinan's auditing of 2006 candidates, the staff recommends that the Commission find Mr. Hughes in violation of 21-A M.R.S.A. §1125(12) and Chapter 3, Section 7(2)(A) of the Commission rules for failing to report accurately his expenditures, and assess a penalty of \$50 for this violation. While this error may have been unintentional, it did result in an overpayment of MCEA funds to the candidate in the amount of \$200.

### **Recommended Penalties for Lateness**

The staff also recommends:

- *Late return of unspent campaign funds.* The Commission should assess a civil penalty of \$200 against Mr. Hughes for violating 21-A M.R.S.A. § 1125(12) and Chapter 3, Section 7(2)(B) of the Commission's rules by failing to return \$509.17 in unspent campaign funds by the December 18, 2007 deadline.

Mr. Hughes eventually returned these funds to the Commission on January 24, 2008, but it was only after repeated requests by the Commission staff and the scheduling of this matter for the January 25, 2008 meeting of the Commission which resulted in attention to this matter in the press. It is unclear whether the \$509.17 would have been returned to the Commission except for the scheduling of this matter for the January 25, 2008 meeting.

By way of comparison, the Commission assessed penalties of \$500 and \$750 against 2006 candidates Arthur Clement and Thomas Bossie (respectively) for returning unspent MCEA funds late. The staff believes your actions are less serious than candidates Clement and Bossie because you did not misuse MCEA funds. The Commission could assess a penalty of up to \$10,000 for this violation.

- *Late filing of campaign finance report.* The Commission should assess a civil penalty of \$200 against Mr. Hughes for violating 21-A M.R.S.A. § 1017(3-A)(D) by not filing the post-election campaign finance report due December 18, 2007. The preliminary penalty amount for this late filing violation based on the formula in 21-A M.R.S.A. § 1020-A(4-A) is \$1,499.24 ( $\$40.52 \times 37$  days). The staff is recommending a reduction to \$200 because of mitigating personal circumstances which were discussed at the January 25, 2008 meeting and because \$1,499.24 seems excessive for lateness of approximately one month.

The total of penalties recommended by staff is \$450. Mr. Hughes was advised of the recommended penalties in a letter dated March 28, 2008. He did not respond in writing to the proposed penalties, but it is anticipated that he will attend the Commission's meeting on April 28 to answer any questions by the Commission.

## **Attachment**

### **Notice to David Hughes (DH) of December 18, 2007 Deadlines for Repaying Unspent Campaign Funds and Filing a Post-Election Campaign Finance Report**

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

CANDIDATE'S FULL NAME

SCHEDULE B  
EXPENDITURES

- Enter the date, payee, expenditure type, and amount for each expenditure made during the reporting period.
- For expenditure types which require a remark, enter a description of the goods and services purchased.
- Expenditures made with a candidate's or an authorized individual's personal funds must be reimbursed within the same reporting period as the expenditure. Enter the vendor as the payee and the purchase date. Report the name of the individual who made the payment in the remarks section. Report goods and services purchased by others for which no reimbursement will be made as an in-kind contribution on Schedule A-1.
- Only enter expenditures that have actually been paid. Enter unpaid debts and obligations on Schedule D.
- If the campaign pays a lump sum or retainer to a consultant, all campaign-related expenditures paid by the consultant with campaign funds must be itemized as if the campaign itself made the expenditure.

Expenditure Types Requiring <b>NO</b> Remark		Expenditure Types Which <b>REQUIRE</b> Remark	
ADS	Print media ads only (newspapers, magazines, etc.)	CNS	Campaign consultants
CON	Contribution to other candidate, party, committee	EQP	Equipment (office machines, furniture, cellphones, etc.)
FOD	Food for campaign events, volunteers	FND	Fundraising events
MHS	Mail house (all services purchased)	OTH	Other (bank fees, entrance fees, small tools, wood, etc.)
OFF	Office rent, utilities, phone and internet service, supplies	PRO	Other professional services
PHO	Phone banks, automated telephone calls	SAL	Campaign workers' salaries and personnel costs
POL	Polling and survey research	TRV	Travel (fuel, mileage, lodging, etc.)
POS	Postage for U.S. Mail and mail box fees		
PRT	Printing and graphics (flyers, signs, palmcards, t-shirts, etc.)		
RAD	Radio ads, production costs		
TVN	TV or cable ads, production costs		
WEB	Website design, registration, hosting, maintenance, etc.		

DATE EXPENDITURE MADE	NAME OF EACH PAYEE	EXPENDITURE TYPE (use code from above)	REMARK (if the expenditure type requires a remark, describe all goods and services purchased)	AMOUNT
10/22/07	Olympic Consulting	PRT		\$200.00
Total expenditures (this page only) ⇒				\$200.00
(combined totals from all Schedule B pages must be listed on Schedule F, line 5)				



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

March 28, 2008

**By E-Mail and Regular Mail**

Mr. David Hughes  
34 Howe Street  
Lewiston, ME 04240

**Re: Notice of Recommended Penalties and Opportunity to Respond**

Dear Mr. Hughes:

This is to notify you of your opportunity to respond to the Ethics Commission staff's penalty recommendations concerning your 2007 special election campaign. The recommendations will be considered by the Commission at its meeting on Monday, April 28 at 9:00 a.m. We request that you be present at the Commission's meeting to respond to the findings and recommended penalties. At the meeting, the staff intends to recommend:

- (1) The Commission should assess a civil penalty of \$200 against you for violating 21-A M.R.S.A. § 1125(12) and Chapter 3, Section 7(2)(B) of the Commission's rules by failing to return \$509.17 in unspent campaign funds by the December 18, 2007 deadline. You eventually returned these funds to the Commission on January 24, 2008, but it was only after repeated requests by the Commission staff and the scheduling of this matter for the January 25, 2008 meeting of the Commission which resulted in attention to this matter in the press.
- (2) The Commission should assess a civil penalty of \$200 against you for violating 21-A M.R.S.A. § 1017(3-A)(D) by not filing the post-election campaign finance report due December 18, 2007. The preliminary penalty amount for this late filing violation based on the formula in 21-A M.R.S.A. § 1020-A(4-A) is \$1,499.24 ( $\$40.52 \times 37$  days). The staff is recommending a reduction to \$200 because of mitigating personal circumstances which were discussed at the January 25 meeting.
- (3) The Commission should assess a civil penalty of \$50 against you for violating 21-A M.R.S.A. § 1125(12) and Chapter 3, Section 7(2)(A) of the Commission rules by failing to report accurately your expenditures. In your seed money report filed on October 23, 2007, you reported making a \$200 expenditure dated October 22, 2007 to Olympic Consulting and reported a cash balance of \$75. In fact, although you may have owed that firm a debt of \$200, you had made zero expenditures at that time and had a cash balance of \$275. The misreporting caused the Commission to overpay you by \$200 for the 2007 special election.

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

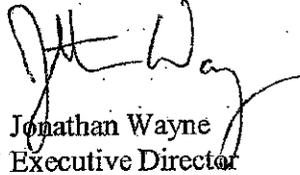
PHONE: (207) 287-4179

FAX: (207) 287-6775

The recommended penalties against you total \$450. Please be aware that the Commission is authorized under 21-A M.R.S.A. §1127(1) to assess penalties of up to \$10,000 for each violation of the Maine Clean Election Act or the Commission's rules, including violations (1) and (3) above. It is possible that at the April 28 meeting, the Commission could assess penalties that are significantly higher than those recommended by the staff.

You are also welcome to respond in writing. Since the matter is scheduled for the April 28 meeting, I would need to receive your response on the morning of Friday, April 18, so that I could distribute the response to the Commission members. Please telephone me at 287-4179 if you have any questions. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Jonathan Wayne". The signature is stylized and cursive, with the first name "Jonathan" and last name "Wayne" clearly visible.

Jonathan Wayne  
Executive Director