

Agenda

Item #1A



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

October 15, 2008

By E-Mail and Regular Mail

Tyler Clark
PO Box 243
Easton, ME 04740

Dear Mr. Clark:

As we discussed yesterday by telephone, the Maine Commission on Governmental Ethics and Election Practices received a complaint by Sue Bernard regarding a flyer for your House campaign. We received the enclosed hard copy today. On one side of the flyer is a picture of you shaking hands with Ms. Bernard at a parade. In a letter addressed to you, she states that the photo "leaves the false impression that I am supporting your candidacy." Because of her current and past employment, she does not endorse political candidates.

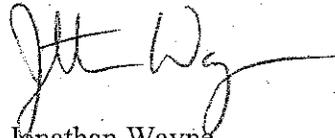
By telephone, you advised me that: you did not know the photo was of Sue Bernard until your father advised you after the mailing had been printed and sent to voters, you did not intend the photo to indicate that Ms. Bernard supported your candidacy, you provided a number of parade photographs to your printer, and the printer made the final selection of the photo with Ms. Bernard for the mailer.

Ms. Bernard requests that the Commission consider this matter. The members of the Commission are scheduled to meet on Friday, October 17 at 1:00 p.m. in Room 208 of the Cross Office Building, 111 Sewall Street in Augusta. The Commission may wish to consider whether the use of the photo is an expression of support for your election that is covered by the state's endorsement statute, 21-A M.R.S.A. § 1014-A (attached). Under this provision, candidates may not use endorsements without the authorization of the party making the endorsement. The Commission may also wish to consider whether the use of the photo is a false statement regarding her support, which could be inconsistent with the Maine Code of Fair Campaign Practices that you signed on January 30, 2008.

Tyler Clark
Page 2
October 15, 2008

Because of Ms. Bernard's limited availability on October 17, I will schedule this matter for early in an amended agenda for the meeting in the hope that you can both participate in this matter by telephone. I will be in touch with you regarding scheduling and participating by telephone. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Jonathan Wayne", with a long horizontal flourish extending to the right.

Jonathan Wayne
Executive Director

cc: Sue Bernard
Kyle R. Green

Sue Bernard
260 Westbrook Street
South Portland, Maine 04106

Jonathan Wayne, Executive Director
Maine Ethics Commission
135 SHS
Augusta, ME 04333

Oct. 13, 2008

RECEIVED

OCT 15 2008

Dear Mr. Wayne,

MAINE ETHICS COMMISSION

I'm writing to file a formal complaint to the Commission regarding the conduct of a candidate for House District 6.

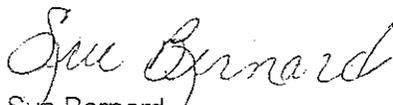
Tyler Clark (R) produced and distributed a campaign flyer (enclosed) which features a photo of us shaking hands during a parade this summer. I did not know Tyler Clark at that time nor did I know a photograph was taken. I have just become aware of his candidacy through family and friends in Aroostook County who have received his literature in the mail. Mr. Clark used this photo in his campaign without notification, endorsement or consent.

I believe the photo was used to take advantage of my recognition and reputation in Aroostook County. For more than 20 years, I was the anchor/news director of WAGM TV (which covers all of Aroostook), and for the past 6 years I have been serving as the Communications Director for the Roman Catholic Diocese of Portland. Both positions are very public in nature and both have required that I remain non-partisan. It was upsetting to see this flyer because I can not publicly support any candidate, not to mention how confusing it was to hear about this material through my family who called to ask about my involvement with Mr. Clark's campaign. Apparently, a number of people have questioned them about my (implied) support.

I don't know if the Code of Fair Campaign Practices prohibits the use of a person's photo to suggest support for a candidate without prior notification and authorization, but it should be common sense and simple etiquette. For the sake of my employment, I write to make sure my position is a matter of record. I have asked Mr. Clark to take steps to notify the public that I am not endorsing his or any campaign (letter enclosed).

I would appreciate it if the Commission would consider this ethical question, whether or not there is any action to take.

Thank you for your time and consideration,


Sue Bernard

Sue Bernard
510 Ocean Avenue
Portland, ME 04103

Tyler Clark
P.O. Box 243
Easton, ME 04740

10/13/08

Dear Mr. Clark,

It has come to my attention that you have distributed a flyer for your House District campaign which prominently features a photo of me shaking your hand. The photo was apparently taken during the parade that took place in Fort Fairfield this past summer. The photo leaves the false impression that I am supporting your candidacy. I want you to know that I am not in a position to endorse your campaign or any other. In fact, the photo was taken and used in your political materials without attempting to receive my authorization or consent.

It was essential in my former position as news anchor and director of WAGM TV (covering your district and all of Aroostook County) and in my current position as Communications Director for the Roman Catholic Diocese of Portland (which encompasses the entire state), that I remain non-partisan. It has always been and is still an ethical requirement that I cannot publicly endorse any candidate. The problem is not greeting a politician who extends his hand—the problem is appearing in a campaign ad for a candidate.

I am requesting that you stop mailing the flyer. In the interest of full disclosure, it would also be very helpful to me if you would send a press release to the local media explaining that you used my photo to promote your campaign without permission. It is not my intention to harm your campaign, but only to clarify any misconceptions.

Since my work experience has made me recognizable, I must take action to maintain my non-partisan status in the community in order to satisfy requirements of my employment. To that end, I will be sending a copy of this letter to the Maine Ethics Commission to have my position on record and to request that the Commission address this matter. I will also be contacting the local media seeking their help to rectify any misunderstanding caused by the mailing.

I want you to know I've been struggling with this letter and wish that I never had to write it, but I believe everyone deserves the courtesy of being informed and being asked before their name or likeness is used in a political promotion.

Thank you in advance for your understanding and I look forward to hearing from you regarding your intentions at your earliest convenience.

Sincerely,



Sue Bernard
Communications Director
Roman Catholic Diocese of Portland

cc. Jonathan Wayne
Executive Director
Maine Ethics Commission

for the purposes of researching the views of voters are not required to include the disclosure.

[2007, c. 443, Pt. A, §9 (AMD) .]

SECTION HISTORY

1985, c. 161, §6 (NEW). 1987, c. 188, §17 (AMD). 1989, c. 504, §§5, 6, 31 (AMD). 1991, c. 466, §37 (AMD). 1991, c. 839, §§8-10 (AMD). 1995, c. 483, §6 (AMD). 2003, c. 302, §1 (AMD). 2003, c. 510, SF1 (AMD). 2003, c. 510, SF2 (AFF). 2003, c. 599, §15 (AFF). 2005, c. 301, §§10-12 (AMD). 2005, c. 308, §1 (AMD). 2005, c. 542, §1 (AMD). 2007, c. 443, Pt. A, §9 (AMD).

21-A §1014-A. Endorsements of political candidates

1. Definition. For purposes of this section, "endorsement" means an expression of support for the election of a clearly identified candidate by methods including but not limited to the following: broadcasting stations, newspapers, magazines, outdoor advertising facilities, direct mails or other similar types of general public political advertising or through computer networks, flyers, handbills, bumper stickers and other nonperiodical publications.

[1995, c. 43, §1 (NEW) .]

2. Authorization. A candidate may not use an endorsement unless the endorser has expressly authorized its use. The communication must clearly and conspicuously state that the endorsement has been authorized. If applicable, the communication must also satisfy the requirements of section 1014.

[1995, c. 43, §1 (NEW) .]

3. Civil forfeiture. A candidate who uses an endorsement without the authorization of the endorser violates this section and is subject to a civil forfeiture of no more than \$200.

[1995, c. 43, §1 (NEW) .]

4. Enforcement. The full amount of the forfeiture is due within 30 days of the commission's determination that an endorsement has been used without the endorser's authorization. The commission is authorized to use all necessary powers to collect the forfeiture. If the full amount of the forfeiture is not collected within the 30 days after the commission has determined that a violation of this section has occurred, the commission shall report to the Attorney General the name of the person who has failed to pay. The Attorney General shall enforce the violation in a civil action to collect the full outstanding amount of the forfeiture. This action must be brought in the Superior Court for the County of Kennebec or the District Court, 7th District, Division of Southern Kennebec.

[1995, c. 43, §1 (NEW) .]

SECTION HISTORY

1995, c. 43, §1 (NEW).

21-A §1014-B. Push polling

1. Push poll defined. For purposes of this section, "push poll" means any paid telephone survey or series of telephone surveys that are similar in nature that reference a candidate or group of candidates other than in a basic preference question, and when:

A. A list or directory is used, exclusively or in part, to select respondents belonging to a particular subset

RECEIVED

2008 Election Year



MAINE ETHICS COMMISSION

FEB 4 2008

COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES

Mail: 135 State House Station, Augusta, Maine 04333

Office: 242 State Street, Augusta, Maine

Website: www.maine.gov/ethics

Phone: 207-287-4179

Fax: 207-287-6775

2008 MAINE CODE OF FAIR CAMPAIGN PRACTICES

(21-A M.R.S.A. § 1101(2))

I shall conduct my campaign and, to the extent reasonably possible, insist that my supporters conduct themselves, in a manner consistent with the best Maine and American traditions, discussing the issues and presenting my record and policies with sincerity and candor.

I shall uphold the right of every qualified voter to free and equal participation in the election process.

I shall not participate in and I shall condemn defamation of and other attacks on any opposing candidate or party that I do not believe to be truthful, provable and relevant to my campaign.

I shall not use or authorize and I shall condemn material relating to my campaign that falsifies, misrepresents or distorts the facts, including, but not limited to, malicious or unfounded accusations creating or exploiting doubts as to the morality, patriotism or motivations of any party or candidate.

I shall not appeal to and I shall condemn appeals to prejudices based on race, creed, sex or national origin.

I shall not practice and I shall condemn practices that tend to corrupt or undermine the system of free election or that hamper or prevent the free expression of the will of the voters.

I shall promptly and publicly repudiate the support of any individual or group that resorts, on behalf of my candidacy or in opposition to that of an opponent, to methods in violation of the letter or spirit of this code.

I, the undersigned candidate for election to public office in the State of Maine, hereby voluntarily endorse, subscribe to and solemnly pledge to conduct my campaign in accordance with the above principles and practices.

Jan 30, 2008

Date

Tyler Clark

Candidate's Signature

State Legislature District 6

Office Sought and District

Tyler Clark

Printed Name

Tyler Clark is Committed to Building a More Prosperous Maine.

"Legislators in Augusta have broken their promise of no new taxes or tax increases. Now they have given us school consolidation which is going to raise our taxes and take away local control of our schools. This is unacceptable.

I will go to Augusta to hold the line on spending, reduce our taxes and fees and return local control to our rural schools."

—Tyler Clark



Pro-Jobs Pro-Opportunity

Abolish School Consolidation

Governor Baldacci's School Consolidation plan has taken away local control of our schools and increased our taxes to pay for something that none of us want. I will fight to repeal it.

No New Taxes or Tax Increases

Augusta must stop using our citizens like a personal ATM. It is time to reduce spending and hold the line on taxes.

Less Spending, Lower Taxes

Just like Maine families do each day, Augusta must prioritize budget needs over budget wants in order to reduce state spending and provide tax relief to all Mainers.

Create Good Paying Jobs & A Stronger Economy

Limiting state spending will allow us to reduce taxes and fees and provide businesses the opportunities to grow, create good paying jobs and boost our economy.

Lower Health Insurance Costs

Fewer regulations and taxes would result in more insurance companies doing business in Maine, creating more competition, more choices and lower prices for all of us.

**NOVEMBER 4TH.
ENERGY. INTEGRITY**

ElectClark08.com