

Agenda

Item #4



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

To: Commission Members
From: Jonathan Wayne, Executive Director
Date: October 9, 2008
Re: Late Independent Expenditure by the Maine Democratic Party

This is to follow up on the late filing of an independent expenditure report by the Maine Democratic Party in support of Senate candidate Peter Bowman, which I mentioned to you at the conclusion of your September 29 meeting. The party has paid a routine penalty of \$328.30, and the staff recommends that you take no further action regarding the late report.

Summary of Independent Expenditure Reporting Requirement

When organizations such as political parties mail communications to voters which expressly advocate for the election of a candidate, they are required to file an independent expenditure report stating the exact amount spent in support of the candidate. If more than \$250 is spent in support of the candidate, the organization must file the report within 24 hours of making the expenditure. Generally, the expenditure is considered made when the organization enters into an obligation to make a payment for the communication – not when the vendor is actually paid. Independent expenditures often trigger matching funds to opposing candidates who are participating in the Maine Clean Election Act.

Express advocacy as defined in the Commission rules. It can be legitimately confusing whether a communication constitutes express advocacy. Communications that do not contain express advocacy are sometimes referred to as issue advocacy.

The Maine Democratic Party's First Late Independent Expenditure Report

In the last two weeks, the Maine Democratic Party has filed two independent expenditure reports late. On September 26, 2008, the party filed the attached report that it had spent \$4,690 on a mailing in support of Peter Bowman, the Democratic State Senator in District 1. According to the party, it made the expenditure on September 18. So, the report should have been filed on September 19, and it was filed seven days late on September 26.

The party's Executive Director, Arden P. Manning, has submitted a letter explaining that the party has instituted an internal process for ensuring the prompt reporting of

independent expenditures. Under the process, if a communication requires the reporting of an independent expenditure, the party files the report within 24 hours of Mr. Manning's approval of the communication – sometimes even before the party has entered into an obligation to make a payment.

The party has a different internal control process for issue advocacy communications that do not require the filing of an independent expenditure report. Mr. Manning states that a party staff member mistakenly believed that the Peter Bowman mailer was issue advocacy, so the communication was put on the issue advocacy track, and did not enter the independent expenditure approval process. The staff member approved the communication on September 18 as issue advocacy. Mr. Manning writes that he uncovered the mistake on September 25, and the party filed the report on September 26.

When the Commission staff received the independent expenditure report on September 26, 2008, it authorized Senator Bowman's opponent, Mary Andrews, to spend \$4,690 in matching funds. The Maine Democratic Party has not yet sent to voters the mailing in support of Peter Bowman. So, Ms. Andrews has received her \$4,690 in matching funds as a result of the reporting of the Bowman mailer, even though Sen. Bowman has not received the benefit of the mailing.

The staff notified the party that the routine late-filing penalty for the late independent expenditure receipt was \$328.30. The Maine Democratic Party has paid this penalty.

Possible Additional Penalty for First Late Report

In addition to the routine penalty of \$328.30, the Commission is authorized under the Maine Clean Election Act (21-A M.R.S.A. §1127(1)) to assess a separate penalty of up to \$10,000 when an independent spender fails to file a report that results in the delayed payment of matching funds. If you are so inclined, you could assess an additional penalty under § 1127(1) because the late filing of the independent expenditure report delayed the payment of \$4,690 in matching funds to Mary Andrews by seven days.

The staff does not recommend the assessment of a civil penalty under 21-A M.R.S.A. § 1127(1) for two reasons. First, Mary Andrews has received her \$4,690 in matching funds at least two weeks before Senator Peter Bowman will receive the benefit of the mailing. Second, as described below, the Maine Democratic Party was late in filing a second independent expenditure report, for which the routine penalty amount is \$5,000. This is a significant civil penalty which the party will have to pay unless it requests a waiver of the penalty and you decide to grant a waiver.

Second Late Report (Not Ripe for Your Consideration)

On October 8, 2008, the Maine Democratic Party filed a second independent expenditure report late which disclosed two payments totaling \$13,194 for mailings in support of Deborah L. Simpson in Senate District 15. The party has acknowledged that the report should have been filed earlier. It has offered a preliminary explanation by telephone that

its mailhouse may have modified the language in the mailing without authorization from the party that converted the mailing from issue advocacy to express advocacy. It has requested an explanation from its mailhouse.

The staff has prepared the routine penalty notice for the second late report. Based on the formula in the Election Law, the amount of the preliminary penalty is \$5,000 which is the maximum routine penalty for a late independent expenditure report. The Maine Democratic Party may choose to ask for a waiver of the \$5,000 penalty on the argument that the mistake was made by its mailhouse. If a waiver is requested, the issue would come before you at a future meeting.

Thank you for your consideration of this memorandum.

21-A §1127. Violations

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

21-A §1127. Violations

1. Civil fine. In addition to any other penalties that may be applicable, a person who violates any provision of this chapter or rules of the commission adopted pursuant to section 1126 is subject to a fine not to exceed \$10,000 per violation payable to the fund. The commission may assess a fine of up to \$10,000 for a violation of the reporting requirements of sections 1017 and 1019-B if it determines that the failure to file a timely and accurate report resulted in the late payment of matching funds. This fine is recoverable in a civil action. In addition to any fine, for good cause shown, a candidate, treasurer, consultant or other agent of the candidate or the committee authorized by the candidate pursuant to section 1013-A, subsection 1 found in violation of this chapter or rules of the commission may be required to return to the fund all amounts distributed to the candidate from the fund or any funds not used for campaign-related purposes. If the commission makes a determination that a violation of this chapter or rules of the commission has occurred, the commission shall assess a fine or transmit the finding to the Attorney General for prosecution. Fines paid under this section must be deposited in the fund. In determining whether or not a candidate is in violation of the expenditure limits of this chapter, the commission may consider as a mitigating factor any circumstances out of the candidate's control.

[2005, c. 542, §6 (AMD) .]

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

[1995, c. 1, §17 (NEW) .]

SECTION HISTORY

IB 1995, c. 1, §17 (NEW). 2003, c. 81, §1 (AMD). 2005, c. 301, §33 (AMD). 2005, c. 542, §6 (AMD).



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SEP 26 2008

MAINE ETHICS COMMISSION

IE #2

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

INDEPENDENT EXPENDITURE REPORT - 2008 GENERAL ELECTION

Name of Person/Committee Making Expenditure(s) Maine Democratic State Committee
Mailing Address 16 Winthrop St. PO Box 5258
City, Zip Code Augusta 04332 Telephone 622-6233

Please check the appropriate box for the report you are filing and complete the notarized affidavit and attached schedules. Reports must be filed on Saturday or Sunday if that is when they are due by faxing the report to the Commission (287-6775). The Commission must receive the signed original report within 5 days after the fax was received.

INDEPENDENT EXPENDITURES OF MORE THAN \$250 PER CANDIDATE

- Independent expenditures of more than \$250 per candidate per election must be reported to the Commission within 24 hours of making the expenditure.
Once the aggregate amount per candidate exceeds \$250, any additional expenditures, regardless of amount, must be reported within 24 hours.

[X] Report of Independent Expenditure over \$250 per Candidate

INDEPENDENT EXPENDITURES OF MORE THAN \$100 AND UP TO \$250 PER CANDIDATE (SELECT ONE REPORT)

- If the total of expenditures per candidate exceeds \$100 but is not more than \$250, the expenditures must be reported according to the schedule below.
Once the amount per candidate exceeds \$100, all subsequent expenditures must be reported, regardless of amount, up to \$250 per candidate. Once the amount spent per candidate exceeds \$250 in the aggregate, independent expenditures must be reported within 24 hours.
Do not include expenditures that you listed in previously filed reports.
During the 13-day period before an election, all independent expenditures must be reported within 24 hours.

GENERAL ELECTION REPORTS

Table with 2 columns: Reporting Period, Filing Deadline. Rows include: Through July 5 (July 15), Through September 30 (October 10), Through October 21 (October 24), October 22 - November 4 (Within 24 Hours), Through December 9 (December 16).

OTHER

- Amendment to report dated:
Other (specify):

I CERTIFY THAT THE INFORMATION IN THIS REPORT IS TRUE, CORRECT AND COMPLETE.

Signature of PAC or Party Treasurer, or Other Authorized Person Making Expenditure(s)

Date 9/26/08



INDEPENDENT EXPENDITURE REPORT – 2008 GENERAL ELECTION

AFFIDAVIT

STATE OF

Maine

COUNTY OF

Kennebec

John A. Knutson JOHN A. KNUTSON, being duly sworn, attests that he/she made each of the expenditures listed in the attached report independently, and not in cooperation, consultation, or concert with, or at the request or suggestion of, the candidates named in the report or the authorized committees or agents of the candidates.

[Signature]
(Signature of Affiant)

Sworn to before me, this 11 day of September 2008

[Signature]
(Notary Public/Attorney at Law)

7-11-2009

Schedule B-IE-1

CANDIDATE(S) SUPPORTED/OPOSED

- Please list all candidates that were the subjects of independent expenditures.
- If more than one candidate was the subject of the expenditure, allocate the expenditure among the candidates.

Office sought by candidate (including district # or county)	Candidate's name	Indicate whether expenditure was made in support of or in opposition to the candidate	Amount expended this reporting period for each candidate
SD 1	Peter Bowman	Support	\$4,690
Total expenditures for all candidates this reporting period. This amount should equal the total independent expenditures listed on Schedule B-IE-2, Line C. ⇒			\$4,690

Schedule B-IE-2

PAYMENTS AND OBLIGATIONS

- Please indicate the date, payee, expenditure type, and amount of each expenditure.
- If you are reporting an agreement or obligation to make a future payment, please check (✓) the box next to the expenditure type.

Expenditure Types			
LIT	Printing and graphics (flyers, signs, palmcards, etc.)	PRT	Print media ads only (newspapers, magazines)
MHS	Mail house (all services purchased)	RAD	Radio ads, production costs
PHO	Phone banks, automated telephone calls	TVN	TV or cable ads, production costs
POL	Polling and research survey	WEB	Website design, registration, hosting, maintenance, etc.
POS	Postage for U.S. Mail and mail box fees	OTH	Other (include description)

Date of expenditure	Payee, address, zip code	Expenditure type	✓	Amount
9/18/08	Oursor Beychok Johnson 352 Napoleon St., Baton Rouge, LA 70802	MHS		\$4,690
A. Expenditures for this page =>				\$4,690
B. Total for all other Schedule B-IE-2 pages (if any) =>				\$4,690 0
C. Total independent expenditures for this reporting period (A+B). <i>This amount should equal the total amount for all candidates listed on Schedule B-IE-1.</i> =>				\$4,690

VICTORY 2008
MAINE
Democratic
Change starts with me in Maine
PARTY

John Knutson, Chairman
Marianne Stevens, Vice-Chair
Susan Cook, Secretary
Christopher Rheault, Treasurer
Patsy Crockett, Assistant Treasurer

550 Forest Avenue ■ Suite 101 ■ Portland, ME 04101 ■ P 207.772.4353 ■ www.mainedems.org

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OCT - 9 2008

MAINE ETHICS COMMISSION

Jonathan Wayne
Maine Ethics Commission
242 State St
Augusta, ME 04333

Arden Manning
Maine Democratic Party
PO Box 5258
Augusta, ME 04330

Dear Jonathan Wayne,

I am writing to describe in detail the events that occurred, which led to the Maine Democratic Party filing a late independent expenditure report on September 26th, 2008. I would like to begin by stressing the rigorous internal controls which have been implemented at the Maine Democratic Party over the last two years. This organization often produces independent expenditure communications, and I have worked to implement a transparent and strict process. The internal process is very clear; the staff may work with a vendor on a concept and discuss prices, universes of people to contact, and strategy. However, once they agree on a product, it is presented to me, and I consult with our legal counsel. Then, I either approve or suggest changes to the piece. Once I finally approve an Independent Expenditure, it is our protocol that the clock starts ticking and we have twenty-four hours to report, as the time at which the staffer contacts the vendor is at this point out of my control. Very often, this twenty-four hour clock will start 'ticking' well before we have even seen a final bill from the vendor or paid them for their services and clearly before the communication has been disseminated.

With regard to the independent expenditure in question, a mail piece supporting Peter Bowman for State Senate, there was an internal mistake and miscommunication which resulted in a late filing. But, I want to stress that we uncovered the mistake ourselves and reported the communication. Our internal controls for issue advocacy communications follow a different path and this particular communication was presented along with several other issue advocacy pieces and was not sent on the proper independent expenditure track. Essentially, this communication was approved in concept mistakenly as issue advocacy on September 18th along with a host of other issue communications. Because of this misunderstanding, I did not remind the staffer that there were 24 hours during which we had to report the communication at issue.

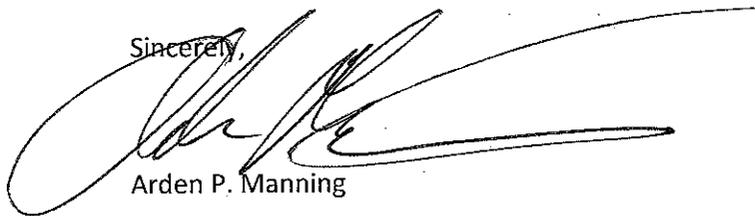
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On September 22nd, staff contacted the vendor and approved the printing of a number of issue advocacy communications, including the Bowman communication at issue. On September 23rd, the Maine Democratic Party cut a check to the vendor to pay for these communications. On September 25th, when I was going through Party expenses and talking with the staff who are tasked with working on State Senate races, I uncovered the mistake. I informed the staff involved that this communication was clearly an Independent Expenditure and within 24 hours we reported. Our staff has held this particular communication. We do not intend to send this mail piece out until this issue has been resolved with the Ethics Commission.

Despite the fact that we reported this expense late, we followed the law and our internal protocol and reported the date of the "expenditure" as the date that I first agreed to the series of mail pieces. Considering that our staff gave the approval to the vendor on September 22nd; we could have made the argument that we should report the date as the 22nd instead of the 18th. We reported the date as September 18th in order to be consistent with our protocol and with the full understanding that reporting on the 18th would incur a larger penalty.

In closing, I called Jonathan Wayne the day that the Independent Expenditure was filed. I explained the situation to him and agreed that pursuant to the law, we should incur a penalty. I feel that the actions of the Maine Democratic Party in catching an internal mistake, quickly reporting it to the Maine Ethics Commission, and halting the dissemination of the communication at issue mitigate any harm that may have arisen as a result of the late filing. Throughout this entire process we have endeavored to be as transparent and open with the commission staff as possible. I hope that this description of our internal process helps to inform the commission and assures them of our continued commitment to strict adherence to the law.

Sincerely,



Arden P. Manning

Executive Director, Maine Democratic Party