

Agenda

Item #6



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

To: Commissioners

From: Jonathan Wayne, Executive Director

Date: September 23, 2009

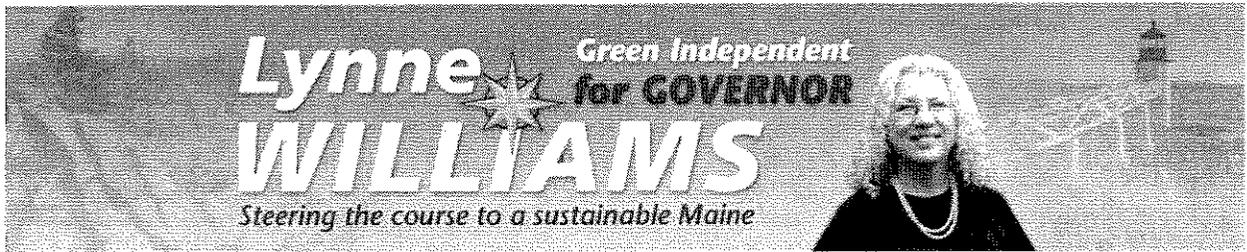
Re: Request for Advice from Lynne Williams' Gubernatorial Campaign

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On August 13, 2009, the staff of the Ethics Commission met with the 2010 gubernatorial campaign of Lynne Williams. She has declared an intention to qualify for Maine Clean Election Act (MCEA) funding. The campaign had read the 2010 candidate guidebook, was well-prepared, and had some questions. At the meeting, the Commission staff answered some questions from the campaign's manager, David Bright.

Some of the questions required further consideration, so the Commission staff subsequently attempted to answer them by e-mail. We ultimately determined that a few of the questions were novel and could have a serious impact on Ms. Williams' request for MCEA funding. So, in the attached September 3, 2009 memo, I invited David Bright to submit the questions by August 16.

We received the questions today, as we are finalizing the packet for your October 1 meeting. So, the Commission staff is unable to provide any further staff analysis to include with the packet. We will consider the questions in the next few business days before the October 1 meeting. Thank you.



**David Bright, campaign manager ([manager@LynneWilliams2010.org](mailto:manager@LynneWilliams2010.org)) 207-234-4224**

September 23, 2009

Maine Commission on Governmental Ethics & Election Practices  
135 State House Station  
Augusta, Maine 04333

Dear Commission Members.

Based on my previous conversations with staff, I respectfully submit the following questions to the Commission for its consideration at its meeting of Oct. 1, 2009. It is my intention to attend this meeting and be available for questions and further explanation.

Please note that if you have been party to any of the initial communications between the campaign, Director Wayne and Registrar Gavin, I originally had submitted four questions to staff. The staff and I are in agreement on my original question number 2, so I have eliminated that from this letter. Since my discussion with staff, I have three additional questions. The first new question I have listed as #2. The other two new questions are listed as #5 and #6. Questions 1, 3, and 4 are the original matters I discussed with staff. I've kept them in this order to help simplify any cross checking staff might need to do between this letter and my original submission.

**Question 1: Converting in-kind contributions into cash contributions.**

If a supporter offers to make an in-kind contribution to the campaign, but the campaign instead chooses to reimburse the contributor for that contribution, may the contributor then make a cash seed money contribution to the campaign in the same amount as the reimbursement and have that contribution count toward the \$40,000 seed money total needed for the campaign to secure Clean Election status?

**Discussion** When Lynne was about to do her announcement tour, we needed a banner to use as a backdrop for the TV cameras.

I contacted our designer and she sent me some artwork. I worked up a design and emailed it to a printing house in Bucksport. On the day before the tour, another volunteer who lives nearby to Bucksport went to the print shop, paid for the banner with his own funds, and saw that it got delivered to Lynne. The banner cost a little under \$100

The volunteer said he did not need to be reimbursed and that we should consider it an in-kind contribution. He is a registered Maine voter.

I told him it would be better if he expensed the banner by sending the receipt and an expense form to the treasurer and got reimbursed. That way the campaign expense would be duly reported and he could make up his own mind if and when he would make a cash seed money contribution.

When I originally asked the commission staff about this type of transaction, I used a more generic example, using a depreciable asset (a computer) instead of a disposable asset (the banner). Perhaps this resulted in some confusion on the issue. Here is the initial discussion:

**My original question:** 1. If the campaign paid \$100 to a supporter to purchase a computer from the supporter, and the supporter then paid the \$100 to the campaign, would the payment count toward the requirement to collect \$40,000 in seed money contributions?

**Staff original answer:** The staff will be recommending at the September 8 Commission meeting that the Commissioners finally adopt a rule amendment stating that only cash contributions would count toward the \$40,000 seed money requirement. Our belief is that the Legislature did not intend that in-kind contributions would count toward the \$40,000 requirement. If the Commissioners adopt that rule, the view of the Commission staff is that the \$100 provided by the supporter would not count toward the \$40,000 requirement. The proposed scenario seems contrary to the purpose of the 2009 statutory amendment that established a fundraising requirement as a further demonstration of support within the state.

I have no problem with in-kind contributions NOT counting toward the \$40,000 seed money requirement, mostly because the value of any in-kind contribution is always subject to some interpretation of actual value. Is the used computer or the paint used to redo the office worth \$50 or \$150? With money, however, \$100 is \$100, so at the end of the day there's no question as to whether or not the amount raised was actually \$40,000 or more. Thus it would make sense to me to tell the contributor that we would rather pay her fair market value for the item or service provided, instead of receiving it for free, and then this vendor would be able to make up their own mind if they wanted to make a seed money cash contribution. However under the staff interpretation, it appears you would not allow this contribution to be credited either way, either as a cash contribution or an in-kind, even though in both cases the end result would be the contributor having transferred a net value of \$100 to the campaign.

So while my assumption was that if a supporter/vendor later made a cash contribution it would count towards the \$40,000, your staff's current position leaves me in a Catch-22 situation, as based on that response neither the in-kind nor the cash would count. So at this point, by affirming the staff's original position the Commission will have prevented this Maine citizen – an active Green Independent Party member who is a strong supporter of Lynne and clearly wants to demonstrate that support – from being able to make a seed money contribution that will count towards the \$40,000. I don't think that's what you want to do, and I don't believe it's what the legislature intended to happen.

In the long term, does the staff's current position mean that no vendor to the campaign can make a seed money contribution? What is the difference between the campaign buying \$100 worth of computers from a Maine voter and getting a \$100 contribution, or the campaign buying \$10,000 worth of computers from a Maine voter and getting a \$100 contribution from that vendor? In either transaction, the end result is the same; the contributor has transferred a net \$100 worth of cash value to the campaign. We are making a special effort to purchase campaign materials and services from small, non-corporate, independent local Maine businesses. Many of these small businesses are owned by people who have made, or who will make, a seed money contribution. I think it would be quite unfair for the staff or the Commission to not count a seed money contribution from an individual just because that person is also a vendor to the campaign.

And beyond the question of vendor/supporter/contributor is the issue of simply a supporter/contributor. For instance, consider a local supporter – who is also a Maine voter – who invites Lynne to accompany her on a waking tour at the local county fair, where the supporter and Lynne will tour the fairgrounds together and the supporter will introduce Lynne to local people. Lynne and this supporter meet outside the fair gate and the supporter pays for both admissions, telling Lynne

to consider it an in-kind contribution. The admission fee is \$8. The supporter also wants to make a seed money contribution. The supporter can then only write a check for \$92, and under the current staff position only that \$92 will count towards the \$40,000 minimum. I submit that we instead should be able to reimburse that supporter for the eight dollars, leaving the supporter then free to write a check for \$100, all of which will be counted towards the \$40,000 minimum. Again, the end result is the same; the supporter has willingly transferred a personal net asset of \$100 to the campaign.

**Question 2: Campaign vehicle expenses.**

Does the commission have any concerns with our plan to lease a campaign vehicle, as outlined below?

**Discussion:** The campaign has identified a privately owned vehicle that is available for campaign use in 2010. This vehicle is not owned by the candidate. It is owned by a supporter. The supporter has offered to lease this vehicle to the campaign, either on a per-use or monthly basis. The campaign has agreed it will pay for the fuel used in the vehicle, and report that as a campaign expense, along with the lease expenses.

The vehicles was purchased used, and by the time it is ready for use by the campaign the owner will have invested about \$3,000 in it. What basis can the campaign use to determine a fair and reasonable rental or lease of this vehicle? The supporter is not interested in making a profit, only in recovering his costs associated with allowing the campaign to use the vehicle (insurance, wear and tear, etc.)

Before this vehicle can be used, however, there are some modifications that must be made to it. The campaign has agreed to financially assist the vehicle's owner in making the modifications needed to the vehicle to make it suitable for campaign use. Some of these modifications will involve things like repainting the vehicle, while others may include the removal or installation of physical equipment on the vehicle. Our intention is that any costs incurred by the campaign in retrofitting or improving the vehicle will be paid to the vehicle's owner as part of the rental agreement (much in the way a farmer may receive a deduction in renting adjacent land if the tenant farmer agrees to pay for conservation practices to be applied to the rented land. Those improvements will continue to benefit this landowner after the lease agreement expires).

All lease payments, as well as modification costs paid to the vehicle's owner will be itemized in the campaign's reports to the commission. The lease from the agreed upon rental rate will be listed as payable, balanced by the pre-paid modification costs as a credit on the bill. At the termination of the campaign, the vehicle and any equipment applied to it will remain the property of the vehicle's owner.

**Question 3: Voter identification and Get-Out-The-Vote (GOTV) activities coordinated by the state party.**

Will the commission permit the Maine Green Independent Party to do all of the voter ID and GOTV activities routinely done by the Democratic and Republican Parties? And if the Commission will not allow this kind of activity on the part of the Green Independent Party to the same extent that it allows the other parties to operate on behalf of those parties' Clean Election candidates, why not?

**Discussion:** We want the Maine Green Independent Party to be able to do for its gubernatorial, state house and state senate candidates exactly the same things the Maine Democratic and Republican Parties do for their gubernatorial, state house and state senate candidates (many of them Clean Election

candidates). That is, set up a coordinated campaign, with paid staff (who will work much more than 40 hours over the course of the election cycle) to do the following types of things:

1) Direct volunteers to help identify voters likely to vote for Green Party candidates (though such means as telephone calls asking voters questions such as "if the election were held today would you vote for Democrat Elizabeth Mitchell, Republican Les Otten, Green Independent Lynne Williams, independent Samme Bailey, independent Eliot Cutler or independent John Whitcomb? In districts where there is a Green Independent candidate further down the ballot they would go through the same exercise, by name.)

2) Once having identified voters who definitely or likely to vote for Green candidates, work to get those voters to actually vote, by helping them vote absentee, checking to see if they have voted absentee, and if not calling them prior to an on election day to urge them to get out to vote.

3) Prior to election time put out candidate-supplied signs for Green Party candidates

4) Maintain offices from which can be distributed Green Party candidate-supplied literature.

5) Organize door-to-door canvasses to distribute candidate-supplied literature on behalf of Green Party candidates.

6) Organize demonstrations at major events such as television debates between the candidates

7) Coordinate activities on candidates' behalf at fairs, parades and festivals.

8) Promote individual candidates through tabling and booths at state fairs and similar events.

9) Coordinate party-building activities, which may include candidate-specific activities, on college campuses

Note that these activities all DO involve mentioning or promoting individual candidates by name. These are all things the Democrats and Republicans do on a regular basis and generally come under the heading of the "Coordinated Campaign." Their sole purpose is to get their party's candidates elected. I am most familiar with the Democratic model, where each major candidate, and a representative of the legislative candidates, has a "seat at the table" to help direct these activities, but the coordinated campaign paid staff are paid for by the party and their salaries are reported on the campaign reports filed by the party, not the reports filed by the candidates.

**Question #4: Showing appreciation for support and seed money contributions.**

A) Can we give someone a T-shirt, coffee mug, baseball cap or other piece of campaign paraphernalia in appreciation and/or as a thank-you for a seed money contribution? (I assume you are aware that campaigns rarely "sell" such items because if they did they would have to collect, pay, and report sales taxes on the transactions. As a result, all campaigns "give" these items away in appreciation for a contribution, with bigger contributions often being more "appreciated.")

B) If the Williams campaign has a performer to do a benefit concert, and either charges no admission or charges everyone admission but does not consider that admission charge a seed money contribution, can the Williams campaign "invite" a limited number of people (most of whom will be seed money contributors or potential seed money contributors) to a private reception with the artist before or after the concert?

C) Can the Williams campaign do a joint event with the Maine Green Independent party, with the Party getting the gate receipts? Can the Party show its appreciation through a gift or reception ticket to someone who makes a seed money contribution to any of its candidates?

**Question #5: Accepting generally available free services and products.**

May the campaign take advantage of discounts and free offer?

**Discussion:** I understand it is acceptable for the campaign to use interest it earns on money kept in its bank account. Is it also permissible for the campaign to accept and take advantage of commercial offers that are generally made available to the public? I'm asking about such things as:

- Cash coupons from a Staples Reward program.
- Free car washes after a fuel fill up
- Promotional free offers that come unsolicited from such vendors as eFax, Google Ad Words, Go to My PC, or manufacturers of campaign paraphernalia such as pens and campaign buttons.
- Purchases made with Buy one-get one free offers.
- Discounts from service vendors who want to encourage us to continue to use their services

**Question #6: Procedures in the event there is not enough Clean Election money.**

If the Commission determines that there will not be enough Clean Election money to support all the gubernatorial candidates who qualify, it is our understanding that at that point Clean Election candidates will be authorized to do additional fund-raising. Under what rules will that fund-raising be allowed to operate?

**Discussion:** Will Clean Election candidates have a cap on how much they can raise? If so, will that cap make a provision for the cost of the additional fund raising?

Will contributors be allowed to contribute the same amount to a Clean Election candidate as they could contribute to an independently financed candidate?

Will Clean Election campaigns be allowed to accept contributions from non-individuals (PACs, unions, etc.)?

Will there be any restrictions on offering items of value in exchange for a contribution?

Thank you for your consideration in these matters.



David Bright  
Campaign Manager  
Williams Campaign Committee

cc: Lynne Williams  
Robert W. Armstrong III



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

To: David Bright, Campaign Manager for Gubernatorial Candidate Lynne Williams  
Cc: Lynne Williams  
Robert Armstrong, Campaign Treasurer  
Anna Trevorow, Chair, Maine Green-Independent Party (by e-mail)  
From: Jonathan Wayne, Executive Director  
Date: September 3, 2009  
Re: Requesting Advice from the Members of the Ethics Commission

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Thank you for the opportunity to meet on August 13 with the campaign of Lynne Williams for the office of Governor. Please do not hesitate to contact the staff of the Maine Ethics Commission if you have any more questions as the campaign's manager regarding qualifying for Maine Clean Election Act (MCEA) funding. This is in response to your August 26, 2009 e-mail in which you requested an opportunity to raise three questions directly with the members of the Commission.

The Commissioners will be able to consider your questions at their meeting on Thursday, October 1<sup>st</sup> in Room 208 of the Burton M. Cross Office Building, 111 Sewall Street in Augusta. The meeting will begin at 9:00 a.m., but your matter will be considered sometime after 9:00 due to other business. The agenda will be posted to our website around one week before the October 1<sup>st</sup> meeting, and at that time I can give you a better idea about when to arrive.

OFFICE LOCATED AT: 242 STATE STREET, AUGUSTA, MAINE  
WEBSITE: [WWW.MAINE.GOV/ETHICS](http://WWW.MAINE.GOV/ETHICS)

PHONE: (207) 287-4179

FAX: (207) 287-6775

### **Form of Your Questions**

Rather than asking the Commissioners to re-read our prior e-mail correspondence, I suggest that you put your three questions in the form of a single memo that tells the Commissioners everything they would need to know in order to answer your questions. Please e-mail the memo to me at [Jonathan.Wayne@maine.gov](mailto:Jonathan.Wayne@maine.gov). It would be most helpful if I can receive it by Wednesday, August 16.

### **Preliminary Concerns of Commission Staff**

For your information, below I have explained some concerns of the Commission staff regarding two of your questions.

#### *1. Purchasing Goods or Services from Individuals who Subsequently Make Seed Money Contributions*

As a pre-condition to receiving Maine Clean Election Act funding for Governor, Ms. Williams must collect \$40,000 in seed money contributions. As I informed you on August 13, the Commission staff will be recommending a rule amendment which would clarify that only cash contributions count toward the requirement, because we believe that was the intention of the Legislature. If the Commissioners adopt that rule amendment, in-kind contribution of goods or services would not count toward the \$40,000 requirement.

At our August 13 meeting, you asked the following hypothetical question: if a supporter of Ms. Williams comes forward with a good (such as computer) that the supporter could donate to the Williams campaign, could that supporter sell the good to the campaign and

subsequently make a seed money contribution of \$100 in cash? The staff's concern which underlay Gavin O'Brien's August 26 e-mail to you was that it sounded as though the supporter in the hypothetical question first presented themselves to the campaign as a potential in-kind donor (not as a professional vendor), and the individual's subsequent cash contribution was dependent on the campaign buying the good from the supporter. In that hypothetical situation, the Commission staff would have some reservations about counting the supporter's payment of \$100 as a cash seed money contribution toward the \$40,000 requirement.

In your August 27 e-mail, you described an actual situation that seems somewhat different from how we understood the original question. In connection with Ms. Williams' announcement as a candidate in July 2009, a supporter purchased a parade banner from a Bucksport print shop for a little under \$100 and gave it to the campaign as an in-kind contribution. That supporter now wishes to make a \$100 cash contribution that would count toward the \$40,000 requirement. The Commission staff sees no problem with the Williams campaign reimbursing that particular supporter for his purchase, and later receiving a \$100 cash contribution from the supporter that would count toward the \$40,000 requirement. That seems completely acceptable to us because in this specific situation:

- the \$100 cash contribution that the supporter would like to make to the Williams campaign is independent of the reimbursement,
- there is no indication that the \$100 contribution would be financed by any money received from the campaign, and
- it is not uncommon for gubernatorial campaigns to occasionally reimburse their supporters for purchases they have made for the campaign.

When you present the question to the Commissioners, please describe the factual situation that you foresee actually happening in the future, and whether it would be on a large or small scale.

*2. Your Participation in the Green-Independent Party's 2010 Campaign Activities*

You asked whether you, as the campaign manager for Ms. Williams' 2010 campaign, could participate in campaign activities of the Green-Independent Party to promote Lynne Williams in the 2010 general election. Some of the party's efforts would involve expenditures of money, such as payments to staff or for automated telephone calls. For purposes of this question, I will presume that Ms. Williams will be the Green Party nominee for Governor in the 2010 general election, even though there is another Green candidate who has registered with the Commission for the same office.

As a general matter, the Green-Independent Party may spend money in 2010 to support Lynne Williams as the party nominee for Governor (including for activities and communications that identify Ms. Williams by name) as long as those expenditures are made independently of Ms. Williams, her campaign committee, and their agents. A compliance concern could be raised, however, if the campaign cooperated with or was consulted on the party's expenditures to promote Ms. Williams.

Under 21-A M.R.S.A. § 1015(5), "Any expenditure made by any person in cooperation, consultation or concert with, or at the request or suggestion of, a candidate, a candidate's political committee or their agents is considered to be a contribution to that candidate."

So, if you were part of a team of individuals who made decisions about how the Green Party spent money to promote Lynne Williams and other party nominees, the party's expenditures could constitute a contribution to the Williams campaign because of your coordination as Ms. Williams' campaign manager.

In posing the question to the Commission, please be as specific as you can concerning what expenditures you would expect the Green-Independent Party to make in 2010 to promote Lynne Williams as its nominee for Governor and what cooperation or consultation you would like to provide as the campaign manager for Lynne Williams.

Thank you.



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

To: Commission Members  
From: Jonathan Wayne  
Date: September 29, 2009  
Re: Proposed Responses to Questions from the Lynne Williams Campaign

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In late August 2009, David Bright, campaign manager for 2010 gubernatorial candidate Lynne Williams, expressed interest in obtaining advice from you on three campaign finance issues. Ms. Williams is seeking to qualify for Maine Clean Election Act funding by, among other things, collecting \$40,000 in seed money contributions. On September 3, 2009, I sent him the attached memo inviting him to submit the questions. I advised him that it would be helpful to receive the questions by September 16<sup>th</sup>.

On September 23, the Commission staff received the three questions plus three additional ones. Now that we have had an opportunity to review them, they seem to break down into two categories:

- Some of the questions are fairly straightforward. For these questions, we have written the attached draft advice letter for your consideration on October 1
- Some of the questions present novel issues or require interpretation. Those questions are discussed in this memo. If you wish to formulate some advice for the Williams campaign at your October 1 meeting, the Commission staff would be pleased to take whatever action you would like.

### **Question 1: Converting in-kind contributions into cash contributions**

In the 2009 session, the Legislature enacted a new requirement that gubernatorial candidates are required to collect a minimum of \$40,000 in seed money contributions in order to qualify for Maine Clean Election Act funding. (21-A M.R.S.A. § 1125(5)(C-1)) The Commission staff's understanding of the requirement is that it was intended to be an additional threshold for candidate to make as a showing of *financial* support within the state. In keeping with that understanding, at the September 8 meeting, you adopted the new requirement in the Commission's rules, and in doing so clarified that the requirement could only be satisfied through cash contributions.

**Required seed money for gubernatorial candidates.** In addition to the other requirements for certification, a candidate for Governor seeking to qualify for Maine Clean Election Act funding shall collect at least \$40,000 in seed money contributions from registered voters in Maine. Only cash seed money contributions count toward the \$40,000 requirement. The candidate shall obtain documentation of the contributions as required by the Act [§1125(2-B)]. (Chapter 3, Section 2(3)(C))

Mr. Bright has inquired about collecting seed money contributions in different scenarios and whether the seed money contributions in those instances would count toward the \$40,000 requirement. In the view of the Commission staff, Mr. Bright seems to be conflating one scenario about which the staff has concerns with two scenarios which seem perfectly consistent with the new requirement (contributors who have received reimbursements from the campaign, and contributors who are associated with professional vendors which have sold goods to the campaign).

*Reimbursement Scenarios.*

Mr. Bright describes an actual situation in which a supporter of the campaign paid for a \$100 banner which the campaign had ordered from a vendor and has been reimbursed for that expense by the campaign. He also describes a hypothetical situation in which a supporter pays for the candidate's admission to a county fair and is later reimbursed by the campaign. In these examples of supporters who have been reimbursed for their purchases on behalf of the campaign, the Commission staff sees no problem with the supporter subsequently making a \$100 seed money contribution that would be counted toward the \$40,000 minimum requirement.

*Professional vendors which have sold goods to the campaign*

If a vendor is in a profession or business of selling goods and services, and the campaign has purchased good or services from the vendor, the Commission staff sees no problem with individuals associated with the vendor subsequently making a \$100 seed money contribution to the campaign that would count toward the \$40,000 requirement.

*Converting in-kind contributions to cash contributions*

Mr. Bright raises the additional scenario of "Converting in-kind contributions into cash contributions." The staff is concerned that this method of collecting seed money contributions may circumvent the legislative purpose of the new \$40,000 requirement. In this scenario:

- a supporter of the campaign offers to make an in-kind contribution of a good or to volunteer services to the campaign

- the campaign instead chooses to “reimburse” the contributor for that good or service or “purchase” the goods or services from the contributor
- the supporter then makes a cash seed money contribution in the same amount as “reimbursement” received by the campaign.

This scenario raises some concerns for the Commission staff because the campaign would be taking an in-kind contribution of a tangible good or volunteered services and converting it into a cash seed money contribution for the purpose of meeting the seed money contribution requirement. In this scenario, the campaign contends that there is no difference between a cash contribution from the supporter who originally intended to make an in-kind contribution or to volunteer services but who makes a cash contribution with cash received from the campaign in exchange for the in-kind contribution or volunteered service, and a cash contribution from a professional vendor who provides goods or services to the campaign in the normal course of business. The Commission staff has reservations about this scenario because it may be inconsistent with the intent of the statute and of the rule amendment prohibiting in-kind seed money contributions from qualifying toward the \$40,000 minimum.

**Question 3: Voter identification and Get-Out-The-Vote (GOTV) activities coordinated by the state party**

Mr. Bright has questions about whether a representative of the Williams campaign could coordinate with activities by the Maine Green Independent Party that involves expenditures to paid party staff or outside vendors. His question is based on his perception of how the Democratic and Republican Parties have conducted paid activities to promote their candidates in past elections. The same requirements apply to all three

party committees, and there is no difference in how the Ethics Commission will enforce these requirements to all three parties.

*Coordinated expenditures.* Under 21-A M.R.S.A. §1015(5):

Any expenditure made by any person in cooperation, consultation or concert with, or at the request or suggestion of, a candidate, a candidate's political committee or their agents is considered to be a contribution to that candidate.

So, an organization (such as a political party) may engage in direct advocacy for a candidate as long as there is no consultation or coordination with the candidate, or her campaign committee or agents. If, however, there has been consultation or cooperation, the expenditures by the third-party organization constitute a contribution to the candidate.

*Exempt activities by a political party.* Certain activities by a state political party are exempt from the statutory definition of "contribution" to a candidate in 21-A M.R.S.A. § 1012(2)(B). In the view of the Commission staff, the Williams campaign's participation in these activities by the party would not constitute receiving a contribution:

- the campaign's receipt of lists of registered voters and voter identification information from the party
- the party's expenditures for communications to voters which mention three or more candidates (a slate card)
- overseeing volunteers for campaign activities involving three or more candidates
- party holding campaign events for three or more candidates
- encouraging individuals to vote or register to vote without mentioning a candidate.

Mr. Bright describes nine types of activities by paid staff of the Democratic and Republican Parties to promote their candidates. According to him, “each major candidate” has had a “seat at a table” as the parties decide on these expenditures.

Mr. Bright apparently has some experience with how the Democratic Party has promoted its candidates. We would urge caution, however, in accepting his factual premise that representatives of the candidates are directly involved in the spending decisions by the Maine Democratic and Republican Parties. Our general understanding is that the Democratic and Republican Parties understand that coordinated expenditures are contributions to their candidates, so they make efforts to insulate their candidates from any allegation that they have accepted an impermissible contribution by participating in party expenditures.

Also, it bears mentioning that this is a question by the Williams campaign, not by the Green Independent Party. The Commission staff is unsure how Mr. Bright can state behalf of the Green Independent Party in fact intends to engage in these activities in 2010. The Commission has received no representation from the Green Independent Party that it intends to engage in the nine types of financial. I have left a voicemail message for Anna Trevorrow, the Chair of the Green Independent seeking clarification about the party’s intended activities. She has not returned my call, but I will keep trying.

Also, it should be noted that the activities described by Mr. Bright involve the expenditures of large amounts of money. The Green Independent Party is not as well

established as the other two parties and may not have the financial resources in 2010 to engage in the kinds of activities described by Mr. Bright. My quick review of the campaign finance reporting by the Maine State Green Independent Party in 2006, the last gubernatorial election, indicates that in all of 2006 it spent roughly \$5,000 for all purposes combined.

**Question 4(B). Holding a benefit concert and collecting seed money**

This question relates to a concert organized by the Williams campaign. Mr. Bright inquires whether the campaign could organize a benefit concert by a musical performer and either

- charge no admission
- charge admission that would not be considered a seed money contribution.

In either scenario, the campaign asks whether it could invite a limited number of people to a private reception with the artist. In the August 23 meeting, the campaign mentioned as an example a nationally known musical artist who has endorsed Green Party candidates in the past. Presumably, the musical artist would be volunteering their time, but concerts typically involve other costs such as the forum for the event.

According to 21-A M.R.S.A. § 1125(2-A), “[t]o be eligible for certification, a participating candidate may collect and spend only seed money contributions subsequent to becoming a candidate and prior to certification.” The staff view is that this requirement would prohibit the campaign from collecting a fee from concert attendees that would not be considered a seed money contribution.

The campaign also inquires about charging no for attendance and inviting attendees to make a seed money contribution. The new \$40,000 seed money requirement is intended to demonstrate a showing of financial support for the candidate. The proposed scenario raises some concerns for the Commission staff that it might be hard to know whether attendees who had received a valuable benefit of a free concert by a national performer would be making the payment as gratitude for the concert or because the attendee wished to support the campaign of Ms. Williams. Nevertheless, it may be difficult for the Commission to find the statutory basis to advise Ms. Williams that these payments are not contributions to the campaign in this instance. One possible suggestion is that the campaign collect seed money at the concert on a strictly voluntary basis (such as having a table set up at the venue), and not out of a sense of obligation from the attendees.

Thank you for your consideration of these questions by the Williams campaign.

September \_\_, 2009

David Bright, Campaign Manager  
Williams Campaign Committee  
4262 Kennebec Road  
Dixmont, ME 04932

Dear Mr. Bright:

This letter is in response to your September 23, 2009 request for advice from the Maine Commission on Governmental Ethics and Election Practices on behalf of the campaign of Lynne Williams for Governor in 2010.

Ms. Williams has declared her intention to qualify for Maine Clean Election Act (MCEA) funding. Under the MCEA program, candidates must meet certain eligibility requirements such as collecting 3,250 qualifying contributions and collecting at least \$40,000 in seed money contributions from registered Maine voters. In the 2010 elections, these qualifying activities must conclude by April 1, 2010. By that date, the candidate must turn in his or her qualifying papers to the Commission for the Commission to certify whether the candidate has met the eligibility requirements to receive MCEA funding for their campaign.

Before certification, the candidate may collect and spend seed money contributions, which are cash or in-kind donations of up to \$100 from individuals. The candidate may collect up to \$200,000 in seed money contributions. After certification, the candidate may spend only MCEA funds to promote his or her campaign and cannot accept any cash or in-kind contributions.

#### **Question 2: Campaign vehicle expenses**

You asked whether the Commission has any concerns with the campaign's plan to lease a campaign vehicle as outlined in your September 23<sup>rd</sup> letter. In general, the campaign may spend seed money or MCEA funds on vehicle transportation.

*Accepting an in-kind contribution.* According to 21-A M.R.S.A. § 1125(6), candidates may not accept any contributions after being certified to receive MCEA funding. Under Chapter 1, Section 6(4) of the Commission's Rules: "[u]nless specifically exempted under Title 21-A M.R.S.A. §§ 1012 and 1052 or this section, the provision of any goods or services without charge or at a charge that is less than the usual and customary charge for such goods and services is an in-kind contribution."

To avoid receiving an in-kind contribution, we suggest that you propose a reasonable rate for the lease by researching the fair-market value of a lease of a similar vehicle. The Commission staff will look at any proposal you care to provide.

*Paying for modifications to the vehicle.* You mentioned that the campaign would provide financial assistance to the owner of the vehicle for modifications to the vehicle. You proposed that the lease payments would include the cost of these modifications. Under the MCEA expenditure guidelines, MCEA funds could not be used for the modifications to a vehicle that would be returned to another owner for their personal use. The campaign could, however, pay for the modifications with seed money contributions received by the campaign. It may be useful if you present a list of the exact modifications to the Commission or its staff.

**Question 4(A): Showing appreciation for support and seed money contributions**

Under the new seed money requirement, Maine voters who provide a seed money contribution to the campaign must make an acknowledgement that they have not been reimbursed for the seed money contribution. You have asked whether the campaign can give to a seed money contributor a t-shirt, coffee mug, baseball cap, or other piece of campaign paraphernalia. The items you listed have nominal value and would not invalidate the acknowledgement. If you wish to provide more valuable items, you may wish to check with the Commission or its staff.

**Question 4(C): Joint Event Between Williams Campaign and Maine Green Independent Party**

You also asked whether the Williams campaign could cooperate with the Maine Green Independent Party to hold an event, with the party accepting money received at the gate. If you are proposing that the Williams campaign would spend MCEA funding on the event, please keep in mind that it is a violation of the Commission's MCEA expenditure guidelines for a candidate to spend MCEA funds on party-building. It would be acceptable for the candidate or representatives of the campaign to appear at a party event, however. It is unclear from your question what role the Williams campaign would have in the event, so you will have to provide the Commission with more details concerning the planned event before we can give you a specific answer.

As mentioned above, it would be acceptable for the Williams campaign to purchase gifts of nominal value for seed money contributors. The Green Independent Party should avoid providing gifts to seed money contributors as this could be seen as an election-related expense by the Party that would be a contribution to the campaign.

**Question 5: Accepting discounted services and products**

Under the Commission's rules, Chapter 1, Section 6(4) of the Commission Rules, "[u]nless specifically exempted under Title 21-A M.R.S.A. §§ 1012 and 1052 or this section, the provision of any goods or services without charge or at a charge that is less than the usual and customary charge for such goods and services is an in-kind

contribution.” It would not be considered an in-kind contribution if the campaign receives discounts that are available to the general public. It appears that all the examples you list fit within that category, although the last point, “Discounts from service vendors who want to encourage us to continue to use their services,” could be an in-kind contribution depending on the circumstances. If a vendor extends this discount exclusively to the campaign and it is not a standard discount available to other customers, then it would be an in-kind contribution according to the rule above.

**Question 6: Procedures in the event there is not enough Clean Election money**

At its meeting on September 8, 2009, the Commission decided to accept public comment on amendments to the Commission’s rule regarding permitting candidates to raise campaign contributions. The proposed rule amendment is attached. The Commission will be holding a public hearing as part of its meeting on November 19, 2009. The Williams campaign or the Green Independent party is welcome to provide comments on the proposed rule amendments and to otherwise follow the rule-making to receive advice on this subject.

Thank you for your questions. We would be happy to respond to any concerns or provide additional advice on specific situations as they arise during the campaign.

Sincerely,

Jonathan Wayne  
Executive Director



## 2010 EXPENDITURE GUIDELINES

### For Maine Clean Election Act Candidates

Candidates must spend Maine Clean Election Act (MCEA) funds for campaign-related purposes and not for other purposes such as the candidate's personal benefit, party-building, or to promote another candidate's campaign.

- Expenditures for "campaign-related purposes" are those which are traditionally accepted as necessary to promote the election of a candidate to political office. Candidates using MCEA funds must also take into account the public nature of the funds, the underlying objectives of the MCEA, and the reasonableness of the expenditures under the circumstances. In Maine, traditional campaign expenses have included:
  - Printing and mailing costs;
  - Political advertising expenses;
  - Campaign communications such as signs, bumper stickers, T-shirts, or caps with campaign slogans, etc.;
  - Office supplies;
  - Campaign events (e.g., food, rent of tent or hall, etc.);
  - Campaign staff expenses;
  - Campaign travel expenses, such as fuel and tolls; and
  - An entry fee for an event organized by a party committee, charity, or community organization or an ad in an event publication, as long as the expenditure benefits the candidate's campaign.
  
- Candidates may not use MCEA funds for personal expenses. This means candidates may not borrow from or use MCEA funds for personal or other non-campaign expenses, even if temporarily and with the intention of repaying the funds. Personal expenses are for goods and services that the candidate would otherwise purchase independently of the campaign, such as:
  - Day-to-day household food items and supplies;
  - Vehicle and transportation expenses unrelated to the campaign;
  - Mortgage, rent, or utility payments for the candidate's personal residence, even if part of the residence is being used by the campaign; and
  - Clothing, including attire for political functions such as business suits or shoes.
  
- Maine Clean Election Act funds may not be spent to:
  - make independent expenditures supporting or opposing any candidate, ballot measure, or political committee;
  - assist in any way the campaign of any candidate other than the candidate for whom the funds were originally designated;
  - contribute to another candidate, a political committee, or a party committee, other than in exchange for goods and services;
  - pay a consultant, vendor, or campaign staff, other than in exchange for campaign goods or services;
  - make a thank-you gift (including a gift card) to a volunteer or supporter;
  - compensate the candidate for services provided by the candidate;
  - make a donation to a charity or a community organization, other than in exchange for campaign goods or services;
  - promote political or social positions or causes other than the candidate's campaign;
  - pay civil penalties, fines, or forfeitures to the Commission, or defend the candidate in enforcement proceedings brought by the Commission; or
  - assist the candidate in a recount of an election.

## ■ Guidelines on Selected Issues

- *Electronics and Other Personal Property.* Goods purchased with MCEA funds that could be converted to personal use after the campaign (e.g., computers, fax machines, and cellular telephones) must be reported on Schedules B and E of the candidate reporting form. No later than 42 days after the general election, the goods must be sold at fair market value and the proceeds returned to the Maine Clean Election Fund. Candidates are welcome to lease electronic and other equipment.
- *Food.* Candidates may spend a reasonable amount of MCEA funds on food for campaign events or to feed volunteers while they are working. Legislative candidates may not use MCEA funds to purchase food that is consumed only by the candidate and/or the candidate's spouse. Gubernatorial candidates may use MCEA funds to purchase meals for the candidate and/or the candidate's spouse if associated with travel for campaign purposes.
- *Car Travel.* MCEA campaigns may reimburse the candidate or campaign workers for their car travel, as long as the person reimbursed has kept a travel log. For 2010, the campaign may make a travel reimbursement up to the number of miles traveled (as reported in the log) multiplied by \$0.44. Campaigns must keep the travel logs for two years, and provide them to the Commission if requested. Candidates and their spouses or domestic partners may spend any amount of their personal funds for campaign travel without seeking reimbursement. Other individuals may spend up to \$100 of their personal funds to pay for travel without making a contribution to the campaign.
- *Lodging.* Candidates may use MCEA funds to pay for lodging if necessary for campaign purposes, but must keep lodging expenses reasonable.
- *Post-Election Notes and Parties.* Candidates may spend up to the following maximum amounts of MCEA funds on post-election parties, thank you notes, or advertising to thank supporters or voters: \$250 for State Representative candidates, \$750 for State Senate candidates, and \$2,500 for gubernatorial candidates. Candidates may also use personal funds for these purposes.
- *Campaign Training.* Candidates may use MCEA funds for tuition or registration costs to receive training on campaigning or policy issues.
- *Salary and Compensation.* Candidates may use MCEA funds to pay for campaign-related services by staff or consultants, provided that compensation is made at or below fair market value and sufficient records are maintained to show what services were received. Documentation must include a description of the labor performed by the staff member or consultant, and an itemization of any goods or services purchased from other vendors including date, vendor, and amount.

## Required Record-Keeping

The MCEA requires participating campaigns to keep bank or other account statements for the campaign account covering the duration of the campaign. For every expenditure of \$50 or more, the campaign must also keep: (1) an invoice from the vendor stating the particular goods or services purchased, and (2) a cancelled check, cash receipt, or other acceptable proof that the vendor received payment. For any services provided to the campaign by a vendor for which the campaign paid \$500 or more for the election cycle, the campaign must keep an invoice, timesheet, or other document specifying in detail the services the vendor provided, the amount paid and the basis for the compensation paid by the campaign. Please select a treasurer who will be responsible about keeping these records.

## Auditing and Compliance

In 2010, the Commission staff will audit all gubernatorial candidates receiving MCEA funding and at least 20% of MCEA legislative candidates. The staff will review all receipts and expenditures disclosed by MCEA candidates in campaign finance reports. The Commission frequently requests additional information from candidates to verify that public funds were spent for campaign-related purposes. Candidates who misuse public funds may be required to repay some or all public funds received, may be liable for civil penalties, and may be referred to the State Attorney General for possible criminal prosecution.