

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: February 12, 2010

Re: Request for Exception to Seed Money Restrictions by the Mitchell for Governor Campaign

The gubernatorial campaign of Elizabeth H. Mitchell intends to qualify for Maine Clean Election Act (MCEA) funding. Before the campaign qualifies, it may accept only seed money contributions of up to \$100 per contributor. The campaign unintentionally accepted four contributions over \$100 via an internet fundraising service. It returned the excessive amounts to the four contributors and did not spend them for campaign purposes. The campaign requests a waiver of these minor violations through its counsel, Kate R. Knox. She will be at the February 25, 2010 meeting to answer any questions from the Commission.

Seed Money Restrictions

While candidates are qualifying for public funding under the MCEA, they are permitted to collect "seed money contributions" within certain restrictions in order to begin their campaigns. Candidates for Governor are allowed to raise a total of \$200,000 in seed money, and can collect no more than \$100 from any contributor. Seed money is defined in the MCEA as:

Seed money contribution. "Seed money contribution" means a contribution of no more than \$100 per individual made to a participating candidate, including the candidate or the candidate's spouse or domestic partner. (21-A M.R.S.A. § 1122(9))

Waiver of Restrictions

It is not uncommon for candidates seeking to qualify for MCEA funding to inadvertently collect contributions outside the seed money restrictions (*e.g.*, the candidate pays for more than \$100 worth of goods and services or inadvertently accepts and deposits more than the maximum amount of seed money). In these circumstances, the MCEA and Commission Rules allow the Commission to waive unintentional errors provided that the candidate has not gained an unfair advantage:

21-A M.R.S.A. § 1125(2-A). Seed money restrictions. To be eligible for certification [by the Commission as a MCEA candidate], a participating candidate may collect and spend only seed money contributions subsequent to becoming a candidate and prior to certification. . . .

B. . . . A participating candidate who has accepted contributions or made expenditures that do not comply with the seed money restrictions under this chapter may petition the commission to remain eligible for certification as a Maine Clean Election Act candidate in accordance with rules of the commission, if the failure to comply was unintentional and does not constitute a significant infraction of these restrictions. . . .

Chapter 3, Section 2(3)(E) of Commission Rules

A participating candidate who has accepted contributions or made expenditures that do not comply with seed money restrictions may petition the Commission to remain eligible for certification as a Maine Clean Election Act candidate. The Commission may approve the petition and restore a candidate's eligibility for certification if the candidate successfully establishes all of the following criteria:

- (1) the failure to comply was the result of an unintentional error;
- (2) the candidate immediately returned all contributions that did not comply with seed money restrictions or paid for goods or services contributed that did not comply with seed money restrictions;
- (3) the candidate petitioned the Commission promptly upon becoming aware of the unintentional error; and
- (4) the failure to comply did not involve expenditures by the participating candidate significantly in excess of seed money total amount restrictions or otherwise constitute systematic or significant infractions of seed money restrictions.

Since 2000, the Commission has received requests for waivers of the seed money restrictions from a small number of candidates each year who have unintentionally run afoul of the restrictions. In almost all cases, the Commission has granted the requests for the waivers, which generally have not been contested.

Request for Exception by the Mitchell Campaign

The Mitchell campaign is accepting seed money contributions via the internet through ActBlue. ActBlue is an organization that provides a low-cost website fundraising service for Democratic candidates nationwide.

ActBlue offers a standardized web contribution page to participating candidates. I have attached a copy of the ActBlue contribution page for the Mitchell campaign. To reduce its costs, ActBlue does not customize the webpage to meet the specific needs of candidates, which vary from state to state. It collects a small percentage fee for each contribution received.

The Mitchell campaign has no control over who may make a contribution on the ActBlue website. ActBlue permits contributors to donate more than once, which was a contributing factor in the four seed money contributions to Senator Mitchell.

My understanding is that candidates periodically receive a transaction report from ActBlue of the contributions received on the website, as well as a transfer of the funds received (minus ActBlue's fee).

In January 2010, the Mitchell campaign telephoned the Commission staff to let us know that an individual had made two contributions via ActBlue to the Mitchell campaign totaling \$120. The campaign asked the Commission staff for advice on how to proceed. The staff recommended returning the amount of the contributions that exceeded \$100. As explained in Ms. Knox's letter, subsequently three other individuals contributed twice to the campaign and exceeded the \$100 limit by small amounts.

Staff Recommendation on Waiver Request by Mitchell Campaign

The staff recommends that the Commission grant the Mitchell campaign's request for an exception to the seed money restrictions, and preserve her ability to qualify for MCEA funding. We believe that the campaign has demonstrated that it meets the requirements in the Commission's rule. The campaign did not intend to receive contributions exceeding \$100. It reached out to the Commission staff after finding the problems, and returned the contributions promptly. The contributions exceeded \$100 by small amounts, and the campaign did not spend the excessive amounts for campaign purposes. These are not significant infractions.

Two Other Policy Questions on Seed Money Restrictions

In addition to the request by the Mitchell campaign, the Commission staff seeks your advice on two policy questions regarding seed money.

Currently, three other candidates for Governor are using websites to receive seed money contributions (Peter Mills, Pat McGowan, and John Richardson). Like Senator Mitchell, they may receive contributions totaling over \$100 through no fault of their own. Do you

have any interest in authorizing the Commission staff to use its discretion to waive future violations similar to those described in this memo? If you authorize this, we would report any such waivers to you at your next meeting or by regular mail or e-mail as you see fit.

Second, we have received a recurring question from legislative candidates who have received nearly the maximum amount of seed money they can collect. (House candidates may receive up to \$500 in seed money, and Senate candidates may receive up to \$1,500.) Occasionally, these candidates have asked whether they may deposit a contribution that would put them over the \$500 or \$1,500 maximum if they return the excessive amount to the contributor by writing a check from their campaign account.

For example, a House candidate who has received \$450 in seed money contributions has received a check for \$80. She would like to know whether she could deposit the \$80 check into her campaign account, and return \$30 to the contributor by writing a check from her campaign account.

In 2008, the Commission staff advised against this, and recommended a more cautious approach of asking the contributor to write a second check in a smaller amount. This is certainly less efficient and candidates have expressed that they don't like bothering contributors to write a second check. So, we seek your advice whether the campaigns may deposit the full contribution and return the excessive amount without seeking a waiver from the Commission.

Thank you for your consideration of this memo.

BERNSTEIN SHUR

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February 10, 2010

Commission on Governmental Ethics and Election Practices
135 State House Station
Augusta, ME 04333

Re: Seed Money Waiver Request – Mitchell for Governor

Dear Commission Members:

Pursuant to the Maine Ethics Commission Rule 96-270 (3)(E), the Mitchell for Governor campaign formally requests that the Commission grant a waiver of four inadvertent violations of the seed money contribution limits and determine that the Campaign continues to be eligible for certification under the Maine Clean Elections Act. It is our understanding that if the Campaign can show it meets the four waiver criteria under the rules, the campaign may be granted a waiver to continue the qualifying process. As set forth in the rules, a candidate's eligibility for certification may continue if:

1) *The failure to comply was the result of an unintentional error.*

All four contributions were made electronically through the ActBlue website and were unintentional errors. There is no way currently to prevent a contributor from donating more than \$100 on the website, and the violations were only discovered after reviewing a summary report provided by ActBlue. By that time, all the contributions had been processed. There simply is no way for a campaign to know when a potential contributor is exceeding the limit until after the contribution has already been made;

2) *The candidate immediately returned all contributions that did not comply with seed money restrictions or paid for goods or services contributed that did not comply with seed money restrictions;*

The Mitchell for Governor Campaign immediately returned all contributions exceeding the seed money contribution limits see below for contribution and refund timelines.

- Chris Dorr
2315 SE 60th Avenue

Portland, OR 97126

Contributed: \$95 on 10/2/09 and \$25 on 12/31/09

Campaign refunded \$20 on 1/16/10

Violation discovered when preparing January 19th contribution report

- Jennifer Fowler-Greaves
661 Allen Avenue
Portland, ME 04103
Contributed: \$50 on 12/31/09 and \$100 on 1/19/10
Campaign refunded \$50 on 2/3/10
Violation discovered when entering contribution information from ActBlue report

- John Reuthe
924 Cross Hill Road
Vassalboro, ME 04989
Contributed: \$100 on 8/29/09 and \$20 on 1/13/10
Campaign refunded \$20 on 2/3/10
Violation discovered when entering contribution information from ActBlue report

- John Morris
222 Storer Mountain Road
Waldoboro, ME 04572
Contributed: \$100 on 12/28/09 and \$50 on 2/8/10
Violation discovered in examination of ActBlue online report – contribution not yet transferred to campaign from ActBlue. We are working with ActBlue to unwind excessive contribution.

3) *The candidate petitioned the Commission promptly upon becoming aware of the unintentional error;*

The Mitchell for Governor Campaign has been in contact with Commission staff regarding the seed money violations and taken their direction about how to remedy these inadvertent violations.

4) *The failure to comply did not involve expenditures by the participating candidate significantly in excess of seed money total amount restrictions or otherwise constitute systematic or significant infractions of seed money restrictions.*

These violations did not involve expenditures of any kind and are limited to a very specific situation with an online contribution vendor. No other violations have occurred.

Given the above information, we believe the Mitchell for Governor Campaign meets the criteria set forth for a waiver of the seed money violations and ask the Commission to find that the Campaign may remain eligible for certification. I will be present at the February 25th meeting and would be happy to answer any questions either prior to or at that meeting.

February 10, 2010
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Sincerely,

Kate R. Knox

KRK/pjh



Contribute now to Elizabeth Mitchell (ME-Gov)

I would like to contribute:

- \$10.00
 \$20.00
 \$30.00
 \$40.00
 \$50.00
 \$100.00
 \$

I would like to make this contribution:

- Once.
 Each month, for the next months.

Payment Information



We accept Visa, Mastercard, American Express, and Discover.

Stored your information with ActBlue Express?

<input type="text"/>		<input type="text"/>	
First Name		Last Name	
<input type="text"/>			
Credit Card Number			
<input type="text"/>			
Home Address		Expiration Date	
<input type="text"/>		1 2009	
<input type="text"/>		Phone	
<input type="text"/>		<input type="text"/>	
City		State	Zip
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Country			
United States			
<input type="text"/>			
E-mail			
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(See our [privacy policy](#).)

Employment Information

Campaign finance law requires us to collect and report your occupation and employer. In some cases, **without this information we will be forced to refund your contribution**. Please do not leave blank or enter "N/A".

<p>Occupation</p> <input type="text"/> If not employed, please enter "not employed". Complete even if self-employed.	<p>Employer</p> <input type="text"/> If not employed, please enter "none". If self-employed, please enter "self".
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Contribution Eligibility

I confirm that the following statements are true and accurate.

- I am a United States citizen or a permanent resident alien.
- This contribution is made from my own funds, and funds are not being provided to me by another person or entity for the purpose of making this contribution.
- I am making this contribution with my own personal credit card and not with a corporate or business credit card or a card issued to another person.
- I am not a federal contractor.
- I am at least eighteen years old.
- I have not and will not accept any reimbursement for this contribution.
- I have received nothing of value in exchange for this contribution.

Please Leave Us a Tip

ActBlue does not make a profit off your contribution. We're a political non-profit whose mission is to help Democrats win.

If you find this a helpful service, please kick in a little bit extra to support our efforts — think of it like a tip in a restaurant or a taxi.

No tip \$5.00 (5% tip) \$10.00 (10% tip) Other: \$

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Contributions are not tax-deductible for federal income tax purposes.

Federal law requires us to use our best efforts to collect and report the name, mailing address, occupation and employer for individuals whose contributions exceed \$200 in a calendar year.

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