

Agenda

Item #8



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: May 24, 2009

Re: Request for Advice – Using Maine Clean Election Act Funds for Discussion of People’s Veto Referendum

On May 21, 2010, I received the attached request for advice from attorney Daniel

I. Billings on behalf of some Republican candidates. The letter poses two questions:

- (1) May candidates spend Maine Clean Election Act funds on paid communications to voters which discuss the tax reform referendum on the primary election ballot June 8, 2010? A sample radio ad is included in the request.
- (2) May a business owned by a candidate run radio ads in which the candidate would appear and which would discuss the negative effect on the business if Question 1 does not pass. The ad would not mention that the business owner is a candidate for office or the November election.

RELEVANT LAW AND COMMISSION GUIDANCE

Requirement to Use Maine Clean Election Act Funds for Campaign-Related Expenditures

Under 21-A M.R.S.A. § 1125(6), a candidate must use Maine Clean Election Act (MCEA) funds for “campaign-related purposes:”

All revenues distributed to a certified candidate from the fund must be used for campaign-related purposes. The candidate, the treasurer, the candidate's committee authorized pursuant to section 1013-A, subsection 1 or any agent of the candidate and committee may not use these revenues for any but campaign-related purposes. A television advertisement purchased with these revenues must be closed-captioned when closed-

OFFICE LOCATED AT: 45 MEMORIAL CIRCLE, AUGUSTA, MAINE
WEBSITE: WWW.MAINE.GOV/ETHICS

PHONE: (207) 287-4179

FAX: (207) 287-6775

captioning is available from the broadcasting station who will broadcast the advertisement. The commission shall publish guidelines outlining permissible campaign-related expenditures. (underscoring added)

Commission Guidance on Permissible Campaign-Related Expenditures

The first paragraph of the Commission's expenditure guidelines provides general guidance on what expenses are considered campaign-related:

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.

Commission Guidance on Prohibited Expenditures

The Commission's guidance prohibits candidates from using MCEA funds for certain purposes other than the candidate's election. The relevant prohibitions are:

Maine Clean Election Act funds may not be spent to:

- make independent expenditures supporting or opposing any candidate, ballot measure, or political committee; ...
- promote political or social positions or causes other than the candidate's campaign.

Contribution to a Candidate

In the Election Law, a contribution to a candidate is defined as:

A gift, subscription, loan, advance or deposit of money or anything of value made for the purpose of influencing the nomination or election of any person to state, county or municipal office (21-A M.R.S.A. § 1012(2)(A)(1)) (emphasis added)

If a candidate coordinates with an outside person or organization on an expenditure to promote the candidate's election, the candidate has received an in-kind contribution:

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. (21-A M.R.S.A. § 1015(5))

Independent Expenditures (statute attached)

Maine Election Law includes an independent expenditure reporting requirement¹ that covers certain communications to voters. (21-A M.R.S.A. § 1019-B) I tend to think that the statute would not apply to the questions posed by Mr. Billings, but I mention it here in case others wish to raise it at the May 27 meeting in connection with his second question. I view the independent expenditure reporting requirement as intended to cover communications that are sent to voters independently of the candidates mentioned in the communications. So, in my opinion, the relevant compliance question is whether the candidate has received an in-kind contribution from his or her business by coordinating with the business on the radio ad, not whether the business has made an independent expenditure.

ARGUMENTS FOR AND AGAINST THE PROPOSED EXPENDITURE

Request by Dan Billings

Attorney Dan Billings explains that “a number of Republican candidates” would like to use their MCEA funds on communications to voters discussing the tax reform referendum. The stated rationale is:

The so-called tax reform legislation that is subject to the People’s Veto vote on June 8th was a major piece of legislation that divided Democrats and Republicans during the last Legislature. The effort to place the People’s Veto question on the ballot was led by Maine GOP Chair Charlie Webster, State Senator David Trahan, and other Republicans. A number of Republican candidates believe that highlighting their position on the

¹ The requirement applies to communications to voters which expressly advocate for the election or defeat of a candidate. Also, within the last 21 days before a primary election and the last 35 days before a general election, an independent expenditure is presumed in races involving a Maine Clean Election Act candidate if a communication merely names or depicts a clearly identified candidate.

upcoming vote is important to their campaigns because it will help define the difference between them and their Democratic opponent. In some cases, the passage of the so-called tax reform legislation was one of the things that motivated the candidates in question to run for the Legislature. Also, the candidates, and the people advising them, believe that connecting the candidate to a high profile referendum question is a good way to bring public focus on the candidate's campaign early in the year. The purpose of the ads in question is to promote the candidate by using a current referendum question to get the question of the voters. (underscoring added)

Billings asks whether this is permissible under the MCEA. The request includes a script of a proposed radio ad which at least one candidate wishes to run.

Billings relies on a September 22, 2006 decision by the Commission not to take action on a complaint filed against David Babin, an MCEA candidate for State Senate. Mr. Babin was a passionate supporter of the first Taxpayer Bill of Rights initiative on the ballot in the 2006 general election. Mr. Babin used MCEA funds to run ads in a community newspaper mentioning his support for TABOR (“Join me in voting for Maine’s Taxpayer Bill of Rights.”).

A Portland resident filed a complaint alleging that Mr. Babin violated the Commission’s expenditure guidelines by spending MCEA funds to support TABOR. The Commission voted five to zero not to take action on the complaint. The complaint and minutes of the Commission’s September 22, 2006 meeting are attached.

Argument for Permitting MCEA Funds for Discussion of Tax Referendum

Dan Billings argues to the Commission that the purpose of the ad is to promote the candidates’ election and that mentioning the people’s veto referendum on the primary election ballot in June will help the candidates distinguish themselves from their Democratic opponents in the general election in November. The radio ad aligns the candidates against “the politicians in Augusta [who] voted to raise our taxes.”

The argument for permitting the proposed use of MCEA funds is that candidates who opt into Maine’s public campaign financing program should have the same privileges to choose their campaign message as legislative candidates have who are traditionally financed. Candidates in legislative races often cite their positions on

specific issues or causes as political symbols to convey to voters their overall policy views. In this case, if certain Republican candidates believe it is a winning strategy to say that the 2009 expansion of the sales tax was a bad policy by politicians who “don’t get it,” they should be allowed to pursue that message. Allowing freedom of message could be viewed as an important part of making the MCEA program viable.

Argument against Permitting MCEA Funds for Discussion of Tax Referendum

The argument against permitting MCEA funds to be used for the proposed radio ad is that the MCEA is a voluntary program which involves scarce public resources. The state should ensure that public funds are used for the purposes intended by Maine voters when they enacted the program. If voters receive messages from MCEA candidates that are perceived as promoting causes other than candidate campaigns, it could give rise to a cynical view that the MCEA program is loosely regulated and open to misuse.

On this view, it is to be expected that the State of Maine will “attach some strings” to public funds provided to candidates. All programs involving a public subsidy have some restrictions on how those funds are used by the recipients. One reasonable condition is that the state should make sure that public funds are primarily being used to promote the candidate’s election, and not other political goals. The 2010 expenditure guidelines provided adequate notice to candidates that they could not use public funds to support ballot measures. If they wanted more flexibility in their campaign spending, they could have declined to join the program.

STAFF RECOMMENDATIONS

Question 1: Use of MCEA Funds on Paid Communications Discussing Referendum

MCEA candidates can take positions on ballot questions, and express those views in forums that do not involve an expenditure of MCEA funds (*e.g.*, speaking directly to voters, candidate debates, rallies and other public forums, letters to the editor, interviews by the press, or responding to questionnaires).

The staff believes the question posed by Billings involves a difficult policy choice upon which reasonable minds may differ. The question is: what restrictions are

appropriate for the State of Maine to impose on candidates who take part in a voter-initiated public campaign financing program in order to make sure that public funds are solely used to promote candidates' election. The staff of the Commission sees valid policy arguments in both directions. On the whole, we advise against permitting MCEA funds to be spent for communications substantially similar to the proposed radio ad.

The Commission has adopted a guideline that candidates may not spend MCEA funds to support a ballot question. The first and major part of the proposed radio ad focuses on the negative impact of the tax reform and sounds like a pro-referendum ad. The final and shorter section of the ad focuses the listener's attention primarily on the candidate but also mentions the referendum again. The timing of the ad should also be taken into consideration. The ad would air prior to the primary election when the Republican candidates who use the ad are either running against another Republican candidate or are unopposed. The November election when these candidates will face a Democratic opponent is five months after the ads will air. So, the timing of the ad is more relevant to Question 1 in June than the general election in November. So, we believe there is a basis for finding that the proposed radio ad (or substantially similar communications) is inconsistent with the intent of the Maine Clean Election Act and the Commission's expenditure guidelines.

I expect that the Republican party leadership genuinely wants to find ways for their candidates to align themselves with an anti-tax, anti-Augusta message, and is not attempting to rely on candidates' public campaign funds to get the message out about the referendum. Nevertheless, the staff is concerned about unintended consequences, potential for abuse and the difficulty of line-drawing in future elections. While MCEA candidates overwhelmingly use public funds strictly for their campaigns only, the Commission has occasionally encountered situations in which candidates have used public campaign funds for other causes. The staff worries that if the Commission were to advise that communications like the proposed radio ad are acceptable uses of MCEA funds, it could encourage less scrupulous political activists in future election years to advise candidates to spend MCEA funds as a short-term funding source to get the message out about some cause or governmental decision.

The communications proposed by Mr. Billings could be distinguished from those of Mr. Babin in two respects:

- Enforcement vs. advice. Mr. Babin was a first-time participant in the MCEA who was the subject of a complaint alleging misuse of public funds. The Commission voted to take no action on the complaint. This falls short of a general policy statement permitting candidates to use MCEA funds to discuss a ballot measure. The Commission may have been significantly motivated (as the staff was) by the unfairness of finding a first-time candidate in violation of spending restrictions.
- Concern of unexpected consequences. Mr. Babin's three advertisements about TABOR in the West End News were an expression one candidate's ardent support of smaller government. This request for guidance involves a number of candidates receiving common advice from party leadership and raises a greater concern of unintended consequences.

If you decide that MCEA funds cannot be used for the proposed communications concerning the tax reform referendum, you may be interested in discussing, as an alternative, whether individual candidates may spend their own money on communications advocating for tax reform legislation, provided that the communications do not mention their candidacy. This proposal, however, would introduce some of the same thorny policy questions raised by Mr. Billings second question (*i.e.*, has the candidate received an in-kind contribution because the candidate appears in a paid communication aligning themselves with a particular political issue).

Question 2: Radio Ads by Business Owned by a Candidate

In his second question, Dan Billings asks whether a business owned by a candidate can run a radio advertisement discussing the negative effects on the business if the tax reform legislation went into effect. The ad would include the voice of the candidate and would mention the candidate's name, but would not mention that the business owner is a candidate or the November general election. No script for the ad has been provided.

This question is analogous in some respects to the question posed by Rep. Saviello in agenda item #2 on May 27. It relates to a paid communication to voters that mentions a candidate's support for a ballot measure, but will not mention that he or she is a candidate. The ad will not be paid for with campaign funds of the candidate.

In the opinion of the Commission staff, the relevant question is whether the candidate has received an in-kind contribution to his or her campaign because the candidate has coordinated with his or her business on an expenditure for radio ads featuring the candidate and his views on legislation. From the perspective of the candidate's opponent, the ad could be a contribution if it provided the candidate with greater name recognition within his or her district or if it linked the candidate with an anti-tax message that could be attractive to voters.

By way of background, in October 2008, the Commission received a complaint from counsel for the Maine Democratic Party concerning Republican House candidates Les Fossel and William Dow, alleging that they had received an in-kind contribution because their businesses had run ads that promoted the owners as candidates. (In the case of Mr. Dow, the business was owned by his family.) The Commission considered the advertisements on October 27, 2008, three days after receiving the complaint. Dan Billings represented the candidates before the Commission, and Les Fossel addressed the Commission as well. In that decision, the Commission received testimony concerning whether the ads were or were not within the normal marketing practices of the businesses.

Two Commissioners commented that the advertisements were not political ads. The Commission voted five to zero that the businesses had rebutted the presumption that the expenditures were intended to influence the election.

In this case, I am not sure if you can offer definite advice to the candidate without knowing more about the content of the radio advertisement, but there may be general advice that you believe is appropriate.

Thank you for your consideration of this memo.



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.

PERMISSIBLE CAMPAIGN-RELATED EXPENDITURES

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.

PROHIBITED EXPENDITURES

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 final report for the campaign, 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.

21-A MRSA 1019-B. REPORTS OF INDEPENDENT EXPENDITURES

(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)

1. Independent expenditures; definition. For the purposes of this section, an "independent expenditure":

A. Is any expenditure made by a person, party committee, political committee or political action committee, other than by contribution to a candidate or a candidate's authorized political committee, for any communication that expressly advocates the election or defeat of a clearly identified candidate; and [2003, c. 448, §3 (NEW) .]

B. Is presumed in races involving a candidate who is certified as a Maine Clean Election Act candidate under section 1125, subsection 5 to be any expenditure made to design, produce or disseminate a communication that names or depicts a clearly identified candidate and is disseminated during the 21 days, including election day, before a primary election; the 35 days, including election day, before a general election; or during a special election until and on election day. [2007, c. 443, Pt. A, §20 (AMD) .]

[2007, c. 443, Pt. A, §20 (AMD) .]

2. Rebutting presumption. A person presumed under this section to have made an independent expenditure may rebut the presumption by filing a signed written statement with the commission within 48 hours of making the expenditure stating that the cost was not incurred with the intent to influence the nomination, election or defeat of a candidate, supported by any additional evidence the person chooses to submit. The commission may gather any additional evidence it deems relevant and material and must determine by a preponderance of the evidence whether the cost was incurred with intent to influence the nomination, election or defeat of a candidate.

[2003, c. 448, §3 (NEW) .]

3. (TEXT EFFECTIVE UNTIL 8/1/11) Report required; content; rules. A person, party committee, political committee or political action committee that makes independent expenditures aggregating in excess of \$100 during any one candidate's election shall file a report with the commission. In the case of a municipal election, a copy of the same information must be filed with the municipal clerk.

A. A report required by this subsection must be filed with the commission according to a reporting schedule that the commission shall establish by rule that takes into consideration existing campaign finance reporting requirements and matching fund provisions under chapter 14. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [2003, c. 448, §3 (NEW) .]

B. A report required by this subsection must contain an itemized account of each contribution or expenditure aggregating in excess of \$100 in any one candidate's election, the date and purpose of each contribution or expenditure and the name of each payee or creditor. The report must state whether the contribution or expenditure is in support of or in opposition to the candidate and must include, under penalty of perjury, as provided in Title 17-A, section 451, a statement under oath or affirmation whether the contribution or expenditure is made in cooperation, consultation or concert with, or at the request or suggestion of, the candidate or an authorized committee or agent of the candidate. [2003, c. 448, §3 (NEW) .]

C. A report required by this subsection must be on a form prescribed and prepared by the

commission. A person filing this report may use additional pages if necessary, but the pages must be the same size as the pages of the form. [2003, c. 448, §3 (NEW) .]

[2003, c. 448, §3 (NEW) .]

3. (TEXT EFFECTIVE 8/1/11) Report required; content; rules. A person, party committee, political committee or political action committee that makes independent expenditures aggregating in excess of \$100 during any one candidate's election shall file a report with the commission. In the case of a municipal election in a town or city that has chosen to be governed by this subchapter, a copy of the same information must be filed with the municipal clerk.

A. A report required by this subsection must be filed with the commission according to a reporting schedule that the commission shall establish by rule that takes into consideration existing campaign finance reporting requirements and matching fund provisions under chapter 14. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [2003, c. 448, §3 (NEW) .]

B. A report required by this subsection must contain an itemized account of each contribution or expenditure aggregating in excess of \$100 in any one candidate's election, the date and purpose of each contribution or expenditure and the name of each payee or creditor. The report must state whether the contribution or expenditure is in support of or in opposition to the candidate and must include, under penalty of perjury, as provided in Title 17-A, section 451, a statement under oath or affirmation whether the contribution or expenditure is made in cooperation, consultation or concert with, or at the request or suggestion of, the candidate or an authorized committee or agent of the candidate. [2003, c. 448, §3 (NEW) .]

C. A report required by this subsection must be on a form prescribed and prepared by the commission. A person filing this report may use additional pages if necessary, but the pages must be the same size as the pages of the form. [2003, c. 448, §3 (NEW) .]

[2009, c. 366, §5 (AMD); 2009, c. 366, §12 (AFF) .]

SECTION HISTORY

2003, c. 448, §3 (NEW). 2007, c. 443, Pt. A, §20 (AMD). 2009, c. 366, §5 (AMD). 2009, c. 366, §12 (AFF).

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**MARDEN, DUBORD,
BERNIER & STEVENS**

ATTORNEYS AT LAW

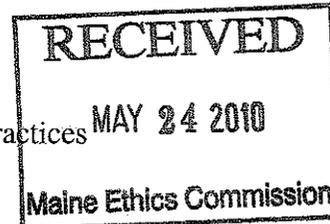
Daniel I. Billings, Esq.
dbillings@mardendubord.com

44 ELM STREET
P.O. BOX 708
WATERVILLE, ME 04903-0708
www.mardendubord.com

PHONE (207) 873-0186
FAX (207) 873-2245

May 21, 2010

Jonathan Wayne, Executive Director
Maine Commission on Governmental Ethics & Election Practices
135 State House Station
Augusta, Maine 04333-0135



RE: Question 1 on the June 8, 2010 ballot

Dear Mr. Wayne:

As we discussed on the phone earlier this week, I have been asked for advice as to whether Maine Clean Elections candidates may use Clean Elections funds for campaign advertising which, along with promoting the candidate, discuss the upcoming People's Veto question, which is Question 1 on the June 8th ballot. Attached as an example of the kind of advertising which is being considered is a script of a radio ad that at least one candidate¹ would like to run before June 8th. I would like the Commission to consider whether use of Clean Elections funds for such advertising is allowed under Maine law.

As you know, this issue has come up before. In 2006, a complaint was filed against State Senate candidate David Babin because he produced campaign ads that discussed his support for the TABOR referendum that was on the ballot that year, while also promoting his candidacy for the State Senate. At the time, the Commission found Mr. Babin's ads to be legitimate campaign expenditures that did not violate any of the laws or rules that govern use of Clean Elections funds. What is being proposed to be done now is along the same lines of Mr. Babin's 2006 ads. Though, based on my reading of the law and the Babin precedent, I believe that what is being proposed is legal, I suggested it would be best to get the Commission's advice on the matter before any Clean Elections funds were expended.

I am also aware that Democrat State Rep. Terry Hayes, a Clean Elections candidate, has been distributing a card that features her logo and picture along with fair dates on one side and information on why to vote no on Question 1 on the other side. Though the card does not say who paid for it, the card appears to be a standard campaign piece that should have been paid for using Clean Elections funds. It would be useful to find out how this communication

¹ The name of the candidate has been removed from the draft script. I would rather not publicly discuss the names of the candidates that are considering such advertising because of the impact that such public disclosure could have on the candidates' campaigns and the competitive disadvantage that could come from disclosing possible campaign expenditures before the expenditures are made.

was financed. If it was funded using Clean Elections funds, it would appear that at least one Democrat agrees that communications such as those being considered by some Republican candidates are appropriately financed with Clean Elections funds.

The so-called tax reform legislation that is subject to the People's Veto vote on June 8th was a major piece of legislation that divided Democrats and Republicans during the last Legislature. The effort to place the People's Veto question on the ballot was led by Maine GOP Chair Charlie Webster, State Senator David Trahan, and other Republicans. A number of Republican candidates believe that highlighting their position on the upcoming vote is important to their campaigns because it will help define the difference between them and their Democrat opponent. In some cases, the passage of the so-called tax reform legislation was one of the things that motivated the candidates in question to run for the Legislature. Also, the candidates, and the people advising them, believe connecting the candidate to a high profile referendum question is a good way to bring public focus on the candidate's campaign early in the year. The purpose of the ads in question is to promote the candidate by using a current referendum question to get the attention of the voters.

A second related question that I would like the Commission to consider is whether a Maine Clean Elections candidate can appear in ads for the business the candidate owns that talks about the impact that Question 1 would have on the candidate's business. The candidate in question owns and operates a business that would be directly and negatively affected by the tax changes that would go into effect if Question 1 is defeated. The candidate in question would like to run radio ads for his business which discusses Question 1 and talks about the affect the subject legislation would have on his business and other businesses. The ad would be voiced by the candidate and mention the candidate's name, but would not mention that the candidate is a candidate for office or the November election.

With the June 8th vote now less than three weeks away, I ask that this issue be placed on the agenda for the Commission's May 27, 2010 meeting. Thank you for your attention to this matter an please let me know if you need any further information.

Very truly yours,


Daniel I. Billings

RADIO SPOT - DRAFT

Last year, in the midst of a terrible economy, with people out of work, afraid of losing their jobs, and concerned about the future...

THE POLITICIANS IN AUGUSTA VOTED TO RAISE OUR TAXES

WHATS WORSE... They think we are too stupid to figure it out...

Luckily, men and women across Maine initiated a People's Veto that will appear on the June 8 ballot as Question 1

A YES vote on Question 1 will repeal new or additional taxes on nearly 100 items, including:

Amusement, entertainment, and recreation services

Installation, repair, and maintenance services

Meals and lodging

Candy

AND EVEN... CAR REPAIRS

This is XXXX XXXXX, candidate for the State Senate in District X. I'm running for the legislature because the Legislature in Augusta just doesn't get it...

I will bring change to the Legislature, but first, I am voting YES on Question 1 to send a message to Augusta that enough is enough.

[Disclaimer]

Babin Deaton



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

Agenda

Meeting of September 22, 2006

9:00 a.m., Commission Offices, 242 State Street, Augusta, Maine

ROUTINE BUSINESS

1. Ratification of minutes of the August 23, 2006 meeting

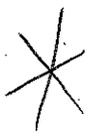
NEW BUSINESS

2. Request for Matching Funds Because of RGA Advertisements

The LaMarche for Governor campaign has requested matching funds based on two television advertisements mentioning Chandler Woodcock sponsored by the Republican Governors Association. The LaMarche campaign argues that the advertisements expressly advocate the election of Chandler Woodcock, and may have been coordinated with the Woodcock campaign. The RGA and the Woodcock campaign deny that the advertisements contain express advocacy and that there was any coordination.

3. Complaint regarding House Democratic Campaign Cmte Flyer for Charlie Priest
Amy McKenna, a Republican candidate for the Maine House of Representatives in Brunswick filed an inquiry regarding a flyer distributed by the House Democratic Campaign Committee (HDCC) in support of her opponent, Charlie Priest. Ms. McKenna complains that the flyer lacks the required disclosure indicating whether the flyer was authorized by the candidate, and asks whether she would be entitled to matching funds. The HDCC responds that it produced the flyer independently of the candidate, and that its total cost was under \$8.00. *Staff recommendation: the staff recommends finding the HDCC in violation for not including the proper disclosure on the flyer, assessing no penalty for the violation, and awarding no matching funds to Ms. McKenna.*

4. Complaint regarding Maine Democratic Party Mailings for Rep. Janet Mills
John N. Frary, the chair of the Franklin County Republican Party, has requested that the Ethics Commission examine two mailings paid for by the Maine Democratic Party which he believes promotes the candidacy of Rep. Janet Mills: an invitation to a community meeting, and a postcard encouraging constituents to telephone her regarding legislative issues. The Maine Democratic Party responds that the two mailings were not contributions to her campaign or independent expenditures in support of her candidacy. *Staff recommendation: the staff recommends taking no further action on the complaint.*



5. Complaint regarding Expenditures by Senate Candidate David Babin

David Babin is a Maine Clean Election Act (MCEA) candidate for State Senate, District #8, in Portland. The Ethics Commission received a complaint from William D. Dobrowolski relating to advertising purchased by the Babin campaign in a community newspaper. He complains that Mr. Babin used his MCEA funds to support the Taxpayer Bill of Rights (TABOR) citizen initiative and is thereby violating a restriction in the Commission's official guidelines for the use of MCEA funds. *Staff recommendation: the staff believes that the views expressed by the candidate on TABOR were part of his campaign, and recommends taking no action on the complaint.*

6. Request for Advisory Opinion from Democratic and Republican Parties

Counsel for the Maine Democratic and Republican parties request an advisory opinion on several issues regarding the consequences of party committees' provision of paid staff to advise candidates and making independent expenditures, the role of political action committees in supporting candidates, and the issue of when a Legislator's acceptance of a contribution from a lobbyist occurs. Commission staff has prepared a proposed opinion for the Commission's consideration.

7. Request for Penalty Waiver/Lynda Quinn

Lynda Quinn was a write-in candidate in the Republican primary election for Somerset County Commissioner, District #3. She spent \$623.28 of her personal money for the primary election. She received the required number of votes to become her party's nominee in the general election. As a candidate, she was required to file a campaign finance report on July 25. She filed it 24 days late on August 18. The preliminary amount of the penalty for the late filing is \$149.63 based on the statutory formula. Ms. Quinn requests a waiver of the penalty because she had no written guidelines about financial reporting before the penalty. *Staff recommendation: the staff recommends reducing the penalty by 50% to \$74.86. Because she was a write-in candidate and the staff did not know of her candidacy, she did not receive a late-filing notice sent three days after the July 25 deadline.*

8. Request for Penalty Waiver/Edward Blais

Edward Blais was a write-in candidate in the Republican primary election for Cumberland County Sheriff. He received the required number of votes to become his party's nominee for the general election. As a candidate he was required to file a campaign finance report on July 25. He filed it 10 days late on August 4. The report disclosed that he received \$1,150 in cash contributions, \$222.00 in in-kind contributions, and made \$40.44 in expenditures. The preliminary amount of the penalty for the late filing is \$115.00 based on the statutory formula. Mr. Blais requests a waiver of the penalty because he had difficulty finding out from the Secretary of State's Office whether he had received sufficient votes to be a general election candidate. *Staff recommendation: the staff recommends reducing the penalty by 50% to \$57.50. Because he was a write-in candidate and the staff did not know of his candidacy, he did not receive a late-filing notice sent three days after the July 25 deadline.*



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

To: Commission Members and Counsel
From: Jonathan Wayne, Executive Director
Date: September 14, 2006
Re: Complaint Against David Babin

Complaint by William D. Dobrowolski

David Babin is a Maine Clean Election Act (MCEA) candidate for State Senate, District #8, in Portland. He is running against the incumbent, Sen. Ethan Strimling. The Ethics Commission received the attached complaint from William D. Dobrowolski relating to advertising purchased by the Babin campaign in a community newspaper in Portland, the West End News. He complains that Mr. Babin has used his MCEA funds to support the Taxpayer Bill of Rights (TABOR) citizen initiative and is thereby violating a restriction in the Commission's official guidelines for the use of MCEA funds:

Maine Clean Election Act funds may not be spent to: ... make independent expenditures supporting or opposing any candidate, ballot measure, or political committee.

Mr. Dobrowolski states that "[t]here is nothing in those ads that promote [Babin's] run for the senate seat, but rather advocate a positive vote for TABOR." He specifically complains about three advertisements in the August 4-16 edition of the West End News, and one ad in the following edition dated August 18-30.

Response by David Babin

Mr. Babin has met with the Commission staff twice, submitted a number of examples of his campaign materials (attached), and responded in writing through his attorney, Daniel I. Billings. He states that:

- The advertisements contain a prominent picture of Mr. Babin, along with the candidate's name and "Babin State Senate" logo, which all advance his candidacy.
- Mr. Babin has made his support of TABOR a central part of his campaign, and has expressed his views on TABOR in order to promote his campaign.
- Mr. Babin has run ads which discuss his positions on other issues.
- It is a traditional campaign purpose to promote the candidate's view on the important issues of the day, including citizen initiatives.
- Mr. Babin is a serious candidate who is not running a sham candidacy.

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

Staff View and Recommendation

The staff appreciates the concern of Mr. Dobrowolski that MCEA funds should not be used for electoral purposes other than to advance the campaign of the candidate receiving the funds. As a general matter, it is a legitimate concern and the staff believes the Commission should not shrink from taking action in instances where MCEA funds clearly have been used contrary to the Commission's guidelines. In addition to the provision of the expenditure guidelines quoted above, one other provision has relevance to this complaint:

Maine Clean Election Act funds may not be spent to: ... promote political or social positions or causes other than the candidate's campaign

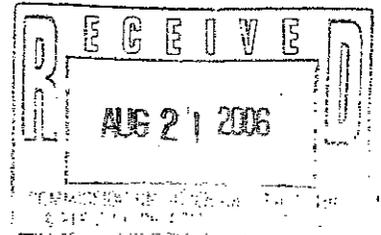
After considering these ads in the context of Mr. Babin's broader campaign, however, the staff does not believe there was any misuse of public funds. Candidates are free to adopt whatever positions they want, and it is not surprising that some 2006 candidates would explain their views on TABOR in order to influence the electorate. Candidates' detailed views on TABOR have already been part of a number of candidates' campaigns, including the Republican primary election. While the views expressed by David Babin may have the effect of encouraging a positive vote on TABOR, they also promote the candidate to voters who share his views. A review of his written campaign materials shows that while his views on TABOR are a primary theme of his campaign, he is not a single-issue candidate.

I believe the Commission and its staff should be on guard for individuals seeking to advance a political agenda who qualify for MCEA funds only in order to finance that agenda and not a campaign for political office. That does not appear to be true in Mr. Babin's case, however.

Staff Recommendation

The Commission staff recommends taking no further action on the complaint.

William D. Dobrowolski
132 Partridge Circle
Portland, Maine 04102
August 18, 2006



Mr. Jonathan Wayne, Executive Director
Maine Commission on Governmental Ethics
And Election Practices
135 State House Station
Augusta, Maine 04333

Complaint Against David J. Babin

Dear Mr. Wayne,

Mr. Babin is a candidate for the Maine State Senate seat in District 8 and, according to your records, is funded by the Clean Election Act funds. In that case, he should be abiding to the Commission's Guidelines on Permissible Expenditures of MCEA Funds for candidates.

Previously I sent to you copies of three ads of David Babin that appeared in "the West End NEWS", August 4 -16, 2006 that concerned me. I am now enclosing three copies of his ads that appear in the August 18 -30, 2006 of the same paper. I ask that you pay specific attention to the one marked with an "X" since this ad has absolutely nothing to do with his election bid.

The basis for the complaint is found on Page 55 of the Guidelines that reads "*Maine Clean Election Act funds may not be spent to: ...make independent expenditures supporting or opposing any candidate, ballot measure, or political committee*". I believe that the first three ads sent to you and the new one marked with an "X" all relate to the Tax Payer Bill of Rights which will appear on the ballot this November. There is nothing in those ads that promote his run for the senate seat, but rather advocate a positive vote for TABOR.

Because I feel strongly about the Clean Election Fund and its proper use, please accept this letter as a formal complaint against David J. Babin. I can be reached at the above address, or by telephone at 774-5480.

Sincerely,

William D. Dobrowolski

THE WEST END NEWS

FREE

Who Supports Sports Reports? We Support Short Sports Reports!

Volume 6, Number 13 Portland, ME August 18-30, 2006

Photo: Doug Emerson



BABIN

STATE SENATE

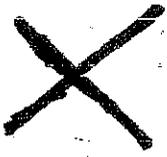
The Good News!

Maine's Taxpayer Bill Of Rights

- Responsible growth of government without any cuts in services.
 - Sensible, predictable and fair taxation policies for all Mainers.
 - Solid protection for schools, infrastructure fire & police depts.
- Maine's Taxpayer Bill Of Rights puts the power in our hands. Tax and Spend liberal legislators, union bosses and career "not-for-profit" bureaucrats are totally dependent on tax increases. Get ready for "chicken little" opponents spewing lies to scare you in their attempts to drain you of your hard earned dollars.

"Join me in voting for Maine's Taxpayer Bill Of Rights"

Paid for and authorized by David J. Babin, 123 Cumberland Avenue, Portland



the West End NEWS

FREE

"The NEWS Never Takes a Vacation!"

Volume 6, Number 12 Portland, ME August 4-16, 2006

Photo: Doug Emerson



BABIN

STATE SENATE

...the sky will not fall

- ✓ SENSIBLE and PREDICTABLE growth of government
- ✓ Responsible use of OUR tax dollars
- ✓ SECURITY for our schools, our seniors and truly needy
- ✓ End Maine's OPPRESSIVE tax burden

Maine's Taxpayer Bill Of Rights NEVER requires a budget cut.

"Join me in voting for Maine's Taxpayer Bill Of Rights"

Paid for and authorized by David J. Babin, 123 Cumberland Avenue, Portland

the West End NEWS

FREE

"The NEWS Never Takes a Vacation!"

Volume 6, Number 12 Portland, ME August 4-16, 2006

Paid for and authorized by David J. Babin, 123 Cumberland Avenue, Portland

Photo: Doug Emerson

BABIN

STATE SENATE

MAINE: A state of ECONOMIC DISASTER.

- ✓ Highest Tax Burden in the country
- ✓ 49th in small business survival
- ✓ Our young people leaving for opportunities at 4 times the national average

"It doesn't have to be this way."

Election after election the democrats FAILED to deliver real tax relief.
 LD-1 has been a failure for Portland: skyrocketing taxes and rents.
 The "Circuit Breaker program" is not enough.

"Join me in voting for The Taxpayer Bill of Rights.
 It's just what Maine needs!"



THE WEST END NEWS

FREE

"The NEWS Never Takes a Vacation!"

Volume 6, Number 12 Portland, ME August 4-16, 2006

BABIN

STATE SENATE



"I support MAINE'S TAXPAYER BILL OF RIGHTS"

Portland NEEDS a senator that supports real tax relief. Seniors and low wage earners are being taxed out their homes. Small businesses struggle to survive our oppressive tax climate.

- ✓ It's NOT a "tax cap".
- ✓ It's NOT a cut to any service or program.
- ✓ Our schools, fire and police departments will NOT be CUT
- ✓ Do NOT fall for the LIES of AARP, UNION BOSSES and MMA

Maine's Taxpayer Bill Of Rights NEVER requires a budget cut.

Paid for and authorized by David J. Babin, 123 Cumberland Avenue, Portland

**MARDEN, DUBORD,
BERNIER & STEVENS**

ATTORNEYS AT LAW

WILLIAM P. DUBORD
ALTON C. STEVENS
J. WILLIAM DRUARY, JR.
ROBERT M. MARDEN
DAVID E. BERNIER
DANIEL I. BILLINGS
DANIEL W. MARRA

ROBERT A. MARDEN
(of Counsel)

44 ELM STREET
P.O. BOX 708
WATERVILLE, ME 04903-0708

(207) 873-0186
FAX (207) 873-2245
E-MAIL: mdbs@gwi.net
<http://www.maine-lawfirm.com>

ALBERT L. BERNIER
(RETIRED)
F. HAROLD DUBORD
(1891-1964)
RICHARD I. DUBORD
(1921-1970)
HAROLD C. MARDEN
(1900-1994)

September 8, 2006

HAND DELIVERED

Vincent W. Dinan, Staff Auditor
State of Maine Commission on Governmental Ethics & Election Practices
135 State House Station
Augusta, Maine 04333-0135

RE: Complaint against David J. Babin

Dear Mr. Dinan

I am writing on behalf of David Babin in response to your request for a written response to William Dobrowolski's complaint concerning the content of campaign ads that Mr. Babin placed in *The West End NEWS*.

We reject Mr. Dobrowolski's claim that "[t]here is nothing in those ads that promote [Mr. Babin's] run for the Senate seat" and that the ads constitute an independent expenditure in support of the Taxpayer Bill of Rights. Each of the ads prominently features Mr. Babin's picture and his "Babin State Senate" logo at the top of the ad. These features of the ads promoting Mr. Babin's candidacy are the things that are most likely to be noticed by someone looking through the paper. Mr. Babin has run similar ads which discuss his positions on other issues. The ads at issue here also feature text describing Mr. Babin's position on the Taxpayer Bill of Rights and his reasons for his reasons for holding that position. The ad also urges readers to join Mr. Babin in voting for Maine's Taxpayer Bill of Rights. This language alone does not transform the ad from a Babin for State Senate ad into an independent expenditure for the Taxpayer Bill of Rights because the primary purpose of the ad is to promote Mr. Babin's candidacy for the State Senate.

The Expenditure Guidelines for 2006 Maine Clean Election Act Candidates state that expenditures for campaign related purposes are those which are traditionally accepted as necessary to promote the election of a candidate for political office. It should not be disputed that using campaign funds to promote a candidate's view on the important issues of the day is traditionally accepted as necessary to promote the election of a candidate for political office. The fact that a particular issue is to be decided by referendum does not mean that the issue is

one which will not be discussed by candidates. In fact, we have a history in Maine of candidates who have initiated referendums and then made the referendum issue a central part of their campaigns. In 1972, Robert Monks initiated a referendum to eliminate "the big box" which allowed for straight ticket voting and made that an issue in his campaign for the U.S. Senate. In 1982, Charles Cragin initiated a referendum to enact income tax indexing and made that issue a central part of his campaign for Governor. It is also common for candidates for office to be asked about and to take positions on issues that are to be decided by referendum. In this case, Mr. Babin has made his support for the Taxpayers Bill of Rights a central part of his campaign.

Though the expenditure guidelines state that Maine Clean Election funds may not be spent to make independent expenditures supporting or opposing a ballot measure, the guidelines do not state that a candidate may not express a view on a referendum question as part of an expenditure promoting that candidate's candidacy. That is what has been done here.

It should also be noted that one of Mr. Babin's opponents, Ethan Strimling, has been a vocal opponent of the Taxpayer Bill of Rights. This fact illustrates that the Taxpayer Bill of Rights is an issue of importance that is appropriate for discussion as part of a campaign for the State Senate.

It is my view that the limitation on using Clean Elections funds for independent expenditures is intended to prevent sham candidates who qualify for Clean Elections funds with the intention of using the money for a purpose other than promoting their candidacy. David Babin is a serious candidate who has run before and who is working hard to win the election. He is using Clean Elections funds to further his candidacy. It is not the role of the Commission to pass judgment on the campaign strategy, political positions, or statements made by Clean Elections candidates.

Very truly yours,



Daniel I. Billings

e-mail: dbillings@ewi.net

Amended Minutes of the September 22, 2006 Meeting of the
Commission on Governmental Ethics and Election Practices
Held in the Commission's Meeting Room,
PUC Building, 242 State Street, Augusta, Maine

Present: Chair Jean Ginn Marvin; Hon. Vinton E. Cassidy; Hon. Michael P. Friedman; Hon. Andrew Ketterer; Hon. A. Mavourneen Thompson. Staff: Executive Director Jonathan Wayne; Phyllis Gardiner, Counsel.

At 9:10 A.M., Chair Ginn Marvin convened the meeting. The Commission considered the following items:

Agenda Item #1 – Ratification of minutes of the August 23, 2006 meeting

Mr. Ketterer moved, Ms. Thompson seconded, and the Commission voted unanimously (5-0) to adopt the minutes as printed.

Agenda Item #2 – Request for Matching Funds Because of RGA Advertisements

The LaMarche for Governor campaign requested matching funds based on two television advertisements mentioning Chandler Woodcock sponsored by the Republican Governors Association ("RGA"). The LaMarche campaign argued that the advertisements were express advocacy in support of Mr. Woodcock, and were coordinated with the Woodcock campaign. The RGA and the Woodcock campaign argued that the advertisements did not contain any express advocacy and that there was no coordination with the Woodcock campaign. The Commission also considered an advertisement paid for by the Maine Democratic Party which the RGA contended should be found to be express advocacy in support of Governor Baldacci if the Commission determined that the RGA's advertisement contained express advocacy.

Mr. Ketterer made a motion to deny the LaMarche campaign's request for matching funds based on the RGA ad and to make a factual finding that none of the ads as were seen by the Commission during the meeting constituted express advocacy or were coordinated with the campaigns. Mr. Cassidy seconded the motion. The motion was approved by a vote of four in favor and one opposed. Ms. Ginn Marvin, Ms. Thompson, Mr. Ketterer, and Mr. Cassidy voted in favor of the motion. Mr. Friedman voted in opposition.

[A transcript of this item has been made available to the Commission members for their review. The transcript is available to the public on the Commission's website or upon request.]

Mr. Ketterer moved, Mr. Friedman seconded, and the Commission voted unanimously (5-0) to adopt the staff recommendation and take no action.

Agenda Item #5 – Complaint regarding Expenditures by Senate Candidate David Babin

Mr. Wayne said that the Commission staff received a complaint from William Dobrowolski about advertising he saw in a community newspaper, the *West End News*, that was run by state senate candidate David Babin. Mr. Wayne said that the content of the ad related to the Taxpayer Bill of Rights. Mr. Wayne said that Mr. Dobrowolski argued that the ads were in support of TABOR rather than campaign-related ads in support of the candidate and that the ads were an improper use of Maine Clean Election Act (MCEA) funds. Mr. Wayne said that Mr. Babin responded that the ads were a legitimate use of MCEA funds.

David Babin introduced himself as the Republican candidate for state senate district 8. Mr. Babin said that all of his ads include his picture and campaign logo. Mr. Babin said that he was a strong supporter of TABOR, with this position distinguishing him from the opposing candidates. Mr. Babin said that he was known in the Portland area for being an advocate of TABOR.

Dan Billings, who said that he was representing Mr. Babin, said that the Commission's guideline on ads was reasonable. Mr. Billings said that the Commission should not try to edit the content of ads or make determinations on which issues could be highlighted by Clean Election candidates. Mr. Billings said it would be a legitimate concern if someone was running for office solely to promote a referendum. Mr. Billings said that Mr. Babin's picture and logo were prominent in the ads. Mr. Billings said that Mr. Babin ran ads on other issues that followed a similar format. Mr. Billings said that it was not uncommon for candidates to attach themselves to prominent issues.

Steven Scharf said that he had done some work for the Babin campaign. Mr. Scharf said that he supported Mr. Babin's request that the complaint be dismissed. Mr. Scharf said that Mr. Babin had been known as a supporter of TABOR and assisted in gathering signatures for the initiative. Mr. Scharf said that Mr. Babin was in a three-way race for state senate, and the TABOR issue could have a large influence on the outcome of the election.

Mr. Ketterer moved, Mr. Cassidy seconded, and the Commission voted unanimously (5-0) to adopt the staff recommendation and take no further action.

The Commission decided to take up Item 7 out of order before returning to Item 6.

Fossett and
Dow Decision



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

**SECOND Amended Agenda
Meeting of October 27, 2008**

9:00 a.m., Room 208, Burton M. Cross Office Building,
111 Sewall Street, Augusta, Maine

1. Ratification of Minutes of the September 29 and October 10, 2008 Meetings

2. Request for Waiver of Late-Filing Penalty/Maine Democratic Party

The Maine Democratic Party filed an independent expenditure report 20 days late, and requests a waiver of a \$5,000 late-filing penalty.

3. Rule-Making on Seed Money Maximum for Gubernatorial Candidates

At the Commission's July 28, 2008 meeting, it decided to accept public comment on a proposed change to the Commission's rules that would increase the maximum amount of seed money contributions which gubernatorial candidates seeking Maine Clean Election Act funding could receive from \$50,000 to \$100,000. The Commission received oral and written comments on the proposed change. *Staff recommendation: based on the fundraising by recent traditionally financed candidates for governor, the staff recommends increasing the maximum to \$150,000.*

4. Update on Criminal Prosecutions of Debra Reagan and Bruce Ladd

2006 candidate Debra Reagan was indicted in July 2008 for theft and misuse of entrusted property in connection with her spending of Maine Clean Election Act funds. 2008 candidate Bruce Ladd was indicted in July 2008 for two counts of aggravated forgery and a third count of attempted theft by deception for his activities in attempting to qualify for public financing earlier this year. The Commission's counsel will provide an update on the criminal prosecutions.

4A. Complaints regarding Sponsorship Disclosure and Joint Advertising

The Commission received four complaints from Democratic candidates against Senator Douglas M. Smith and House candidate Paul T. Davis regarding a joint advertisement and missing disclosure on road signs. The complaints have been mostly withdrawn, but the Commission may wish to provide more specific guidance regarding the issues raised in the complaints.

4B. Complaint Regarding Campaign Literature and Signs

House candidate James Martin filed a complaint against his opponent, Thomas Mooney, regarding his campaign signs, campaign expenditures, and the content of his palm card.

4C. Request for Additional MCEA Funds as a Contested Candidate/Rep. Patsy Crockett

Rep. Patsy Crockett is a Maine Clean Election Act candidate for re-election to the House of Representatives in District 57, who is opposed only by a write-in candidate. She requests additional Maine Clean Election Act funds as a contested candidate.

5. Update on 2008 Audits

The Commission's auditor will update the Commission on audits of Maine Clean Election Act candidates who were defeated in the 2008 primary election.

6. Supreme Judicial Court Decision on Constitutionality of Endorsements Statute

On October 21, 2008, the Maine Supreme Judicial Court issued a decision striking the State's endorsements statute (21-A M.R.S.A. § 1014-A) as unconstitutional.

7. Schedule for Commission Meetings in 2009

8. Complaint Regarding Use of Somerset County Resources for Filing Independent Expenditure Reports with the Ethics Commission

Chuck Quintero has filed a complaint that the Maine Republican Party filed three independent expenditure reports with the Ethics Commission using a facsimile machine belonging to the Somerset County Jail. He asks that the Commission consider whether this is an appropriate use of public resources.

9. Complaint by Maine Democratic Party Concerning Business Advertising

The Maine Democratic Party filed a complaint against House candidates William C. Dow and Les Fossel. The complaint argues that advertising featuring the names and photographs of the candidates paid for by their businesses should be considered contributions to their political campaigns, and should result in matching funds to the Democratic opponents.

10. Complaint by Maine Democratic Party Concerning Expenditures by Maine Senate Republican Committee and Others

The Maine Democratic Party has filed a complaint regarding campaign expenditures by the Maine Senate Republican Committee (MSRC), missing disclosure from a mailing by Sen. Lois Snowe-Mello, and a reimbursement made to the MSRC by Senate candidate Tom Dunne.

11. Request for Advice Regarding Use of Maine Clean Election Act Funds to Rent a Shuttle Bus for Transporting Voters

House candidate Belinda Gerry inquires whether she and other Maine Clean Election Act candidates in the Auburn-Lewiston area may use public campaign funds to rent a shuttle

bus to transport voters to polling places. *Staff recommendation: without further supporting information from the candidate, the staff recommends against permitting this use of Maine Clean Election Act funds.*

12. Complaint Regarding Use of Recreational Vehicle with Advertising to Promote Candidate's Campaign

House candidate Stanley Ginish complains that advertising on a motor home or trailer that he alleges was purchased or rented for campaign purposes constitutes a contribution to the campaign of his opponent, DeAnne Rogan. Ms. Rogan responds that her mother put two signs purchased by the campaign on her recreational vehicle, and the advertising involved no further expenditures. *Staff recommendation: unless the complainant provides further evidence of expenditures made to promote Ms. Rogan's campaign, the staff recommends dismissing this complaint.*

Other Business

EXECUTIVE SESSION

If necessary

ADJOURNMENT

Center, 317 Main St., Yarmouth, 846-9559.

Museums

Saturday 10/11

Portland Fire Museum Open House, historical films, horses, exhibits, 9 a.m.-3 p.m., \$5 donation/\$3 children, 157 Spring St., Portland, 772-2046.

Ongoing

Children's Museum of Maine, ongoing cultural, educational, fun and active workshops for kids and parents, 142 Free St., Portland, call 828-1234 or visit kittetails.com for details.

Museum at Portland Head Light, daily 10 a.m.-4 p.m., 1000 Shore Road, Cape Elizabeth, 799-2661 or portlandheadlight.com.

Museum of African Culture, 13 Brown St., Portland, 871-7188 or museumafricanculture.org.

Neal Dow Memorial, Federal-style mansion built in 1829 for Maine politician, abolitionist and prohibitionist, original silver, china, portraits and furniture, 714 Congress St., Portland, free, 773-7773.

Portland Fire Museum, every Friday 12-8 p.m., \$5 adults, \$2 children age 7+, 157 Spring St., Portland, portlandfiremuseum.com.

Springpoint Lighthouse, summer house schedule Saturdays 11 a.m.-3 p.m. through Oct. 11, call ahead 699-2676, springpointlight.org.

Tate House Museum, "Highlighting Functional Elegance" through Oct. 11, house tours Tuesday-Saturday, 10 a.m.-4 p.m., \$10; garden tours every Wednesday, \$7 adult, \$5 senior, \$2 child; 1267 Westbrook St., Portland; 774-6177 or tatehouse.org.

Wadsworth-Longfellow House, \$8 adult, \$7 senior/student, \$3 child, Maine Historical Society, 489 Congress St., Portland, 774-1822 or mainehistory.org.

continued next page

WILLIAM C. DOW



Invested in mutual funds? We need to talk.

William C. Dow, President of Dow Investment Group, LLC, is a leading expert on how to invest in mutual funds. He has helped thousands of investors maximize their returns and minimize their risk. Dow Investment Group, LLC, is a leading provider of investment advisory services. We will help you understand how to invest in mutual funds and how to make the most of your investment. Call today for a free consultation.

Call today for a free consultation. We will help you understand how to invest in mutual funds and how to make the most of your investment. Call today for a free consultation.

William C. Dow, President of Dow Investment Group, LLC, is a leading expert on how to invest in mutual funds. He has helped thousands of investors maximize their returns and minimize their risk. Dow Investment Group, LLC, is a leading provider of investment advisory services. We will help you understand how to invest in mutual funds and how to make the most of your investment. Call today for a free consultation.

Call today for a free consultation. We will help you understand how to invest in mutual funds and how to make the most of your investment. Call today for a free consultation.

DOW
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Sound advice for generations.

958 US Route 30, Portland, ME 04105 • 707-378-1577 • 707-578-0083
 1000 Congress St., Portland, ME 04102 • 707-378-1577 • 707-578-0083
 1000 Congress St., Portland, ME 04102 • 707-378-1577 • 707-578-0083

October 9, 2008

Arts & Entertainment Calendar

from previous page.

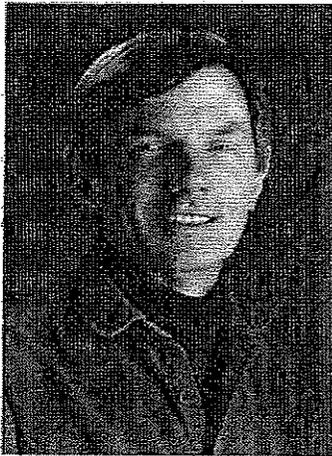
Portland Harbor Museum, "Four Stories Inside the Portland Harbor Museum Collection," through Nov. 30, Southern Maine Community College, Portland, South Portland.

Falmouth Heritage Museum, by appointment only, 60 Woods Road, Falmouth, 781-4727.

Fifth Maine Regiment Museum, 600 S. 7th St., Falmouth, 781-4727.

Blue Forest

36 Northern FORECASTER



LES FOSSEL

RESTORATION
RESOURCES

KEEP WARM — SAVE MONEY

Although we've built our reputation on the fine restoration of early houses, in fact we've been making old buildings energy efficient for 33 years. It's time we share what we've learned. We hope this information helps you save money this winter - and for many years to come.

The enclosed **ENERGY SAVINGS CHART** should help you save time and money:

Rows printed in **GREEN** are most likely to save you money this year.

Rows printed in **ORANGE** have a longer payback.

Rows printed in **RED** are not likely to save you money.

The items on the chart are also grouped by type:

The 1st group will lower your winter heating costs.

The 2nd group will lower your appliance operation costs.

The 3rd group will lower your hot water heating costs.

We have tried to give costs for the average house and condition. We have used conservative figures, so your savings will be in the range we suggest. Since every house is different, the work you need to do and your savings will also vary. You probably can do much of this work yourself. If you can't, think about who you know who can help. If you need further suggestions, contact us and we'll see what we can do.

If you need financial help for necessary energy improvements, or for energy assistance, the programs available are summarized on the back page.

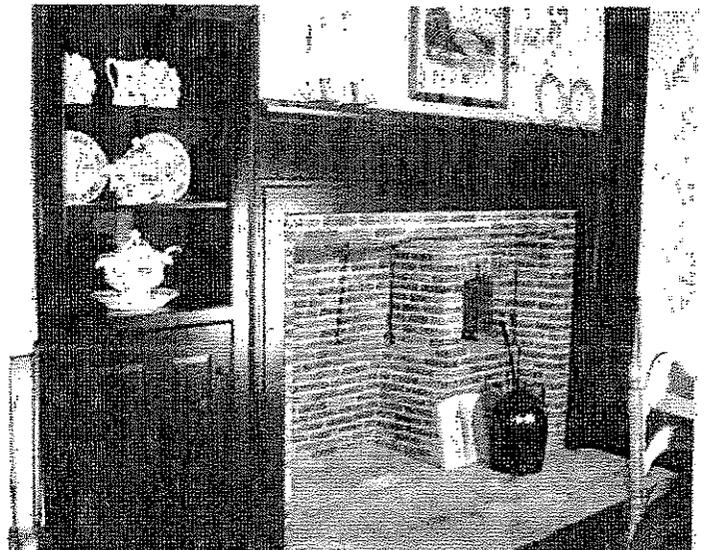
If you own an old house and want to plan for the longer term, contact us. You can visit our website, www.oldhouserestoration.com, or request our information package. Our 12 employees work exclusively on old buildings. We guarantee our work permanently against defects of workmanship and materials. We are a very good value if you have an old house and respect its traditional appearance.

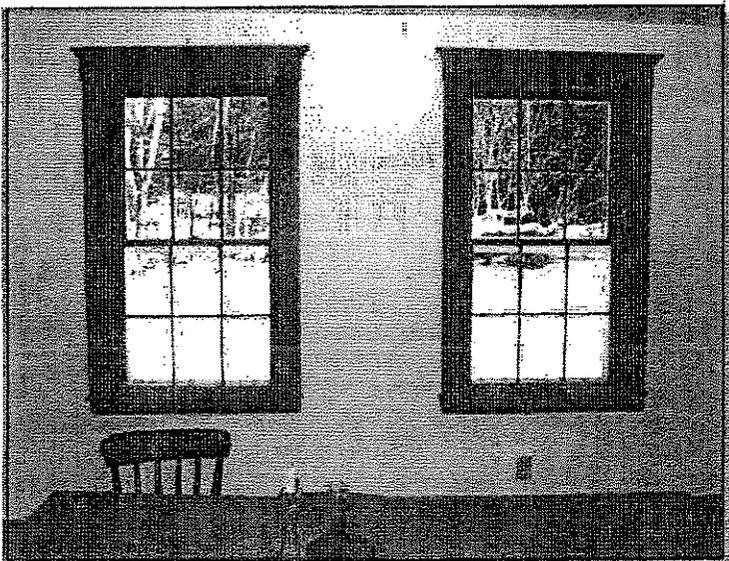
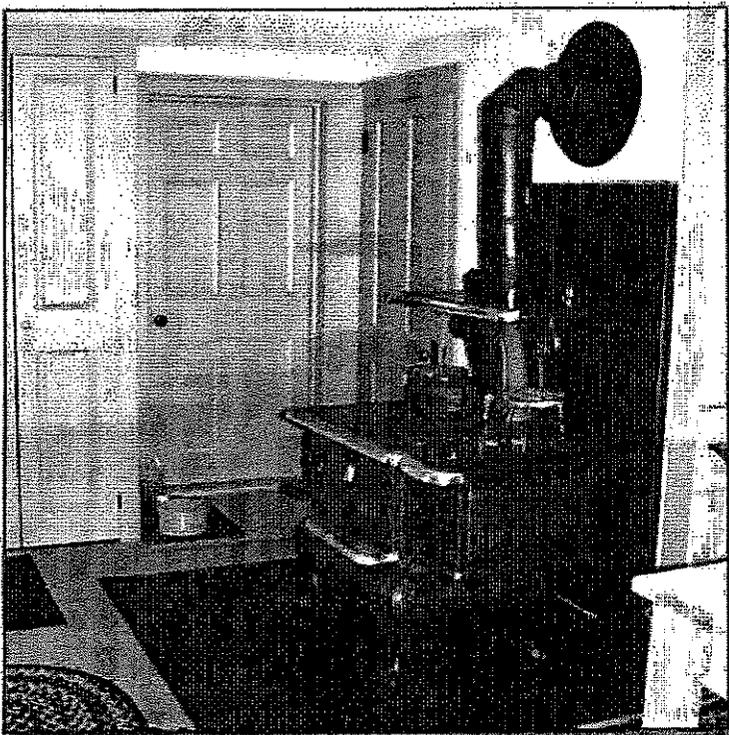
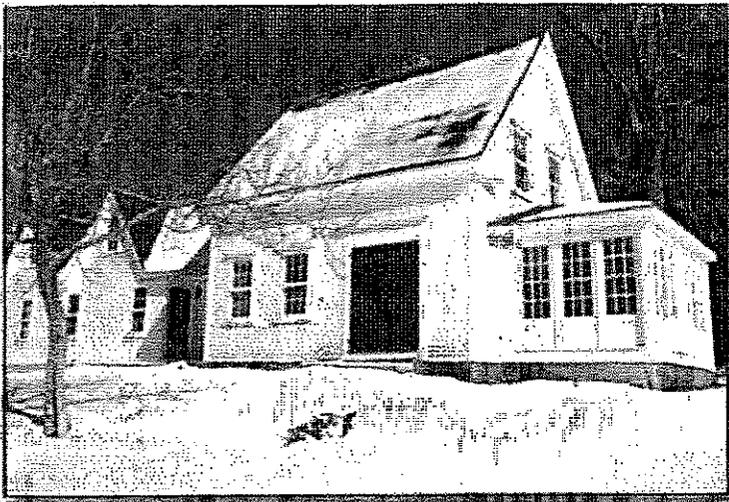
Where Home Energy Dollars Go

Heat	40%
Appliances & Lights	35%
Water Heater	13%
Other	12%

Cheap Ways to Save Money

1. Close storm windows, doors, & dampers.
2. Seal up cracks so the heat stays in.
3. Heat only the parts of the house you use.
4. Insulate all your pipes & warm air ducts.
5. Install interior storm windows.
6. Install a programmable thermostat.
7. Increase your attic insulation to R-49.





Start at the top and work your way down the list
1 year payback, you should save money this winter

What/Where	Save	Cost	Pay
Furnace	3%	\$ 100	1
Ducts / Baseboard	2%	\$ -	1
Warm Air Ducts	2%	\$ -	1
Storm Windows	2%	\$ -	1
Fireplaces	2%	\$ -	1
Windows	2%	\$ -	1
Warm Air Filters	2%	\$ 20	1
Thermostat	10%	\$ 90	1
Electric Outlets	2%	\$ 30	1
Storm, Interior	3%	\$ 50	1
Foundation	2%	\$ 50	1
Exterior Doors	2%	\$ 20	1
Attic Entrance	2%	\$ 10	1
Baseboard	2%	\$ 10	1
Ducts or Pipes	4%	\$ 100	1
Cellar Bulkhead	2%	\$ 50	1
Windows	2%	\$ 50	1
Shades & Curtains	2%	\$ 120	2
Attic floor	20%	\$ 630	3
Storm Doors	1%	\$ 300	4
Storm Windows	2%	\$3,000	4
Exterior Walls	7%	\$1,400	5
Heat Distribution	20%	\$2,800	5
Foundations	5%	\$1,500	8
Furnace	20%	\$6,000	10
Window Sash	1%	\$4,000	20
Light Bulbs	25%	\$ 4	2
Clothes Washer	60%	\$ 200	4
Dishwasher	50%	\$ 200	4
Refrigerator	50%	\$ 300	4
Freezer	60%	\$ 200	4
Water Lines	5%	\$ 10	1
Showers, Faucets	10%	\$ 20	1
Boiler	15%	\$ 400	1
Electric	30%	\$1,000	2
Gas	30%	\$1,000	2

HEATING SYSTEM

APPLIANCES

HOT WATER

Thanks to Nick Caristo for helping create this spreadsheet.

HOW TO REACH US

E-mail fossel@oldhouserestoration.com

crossing out items that you've accomplished. By the time you've done the green line items that have a er and for many years to come. Good Luck!

Back	Who	What You Need To Do	Other Benefits, Considerations
r	Professional	Have your furnace serviced.	Will last longer & operate more safely.
r	Homeowner	Vacuum warm air ducts or baseboard fins.	Keeps dust down.
r	Homeowner	Close warm air ducts in unused spaces.	Keep these areas separate from warmer rooms.
r	Homeowner	Make sure they all are fully closed.	Make sure weep holes are kept open.
r	Homeowner	Make sure the dampers are closed.	Keeps out birds & bats. Save more with fireplace cover.
r	Homeowner	Make sure the locks are closed to cut drafts.	Keeps storm windows from fogging up.
r	Homeowner	Replace 2-3 times on warm air furnaces.	Furnace will last longer.
r	Professional	Install programmable thermostat.	7 day schedule, or weekday & weekend.
YRS	Homeowner	Install gasket & childproof plugs.	Makes electrical outlets safer around small children.
YRS	Homeowner	Install plastic storms on window frame.	Cuts outside noise. Can be temporary or permanent.
YRS	Homeowner	Seal masonry cracks, cellar windows, & sills.	Reduces water infiltration.
YRS	Homeowner	Adjust to close tightly, weather-strip.	Reduces outside noise.
YRS	Homeowner	Weather-strip, insulate.	Keeps condensation out of attic.
YRS	Homeowner	Caulk between the floor and the baseboard.	Lessens condensation inside walls.
YRS	Homeowner	Insulate in unheated areas.	Heat comes up faster, reduces condensation.
YRS	Homeowner	Insulate bulkhead door & seal cracks.	Cellar entrances need a bulkhead and a door.
YRS	Homeowner	Weather-strip, seal & adjust for tight fit.	Reduces outside noise.
YRS	Homeowner	Install on window frame.	Cuts noise. Decorative. Price varies. Can reduce light.
YRS	Professional	Insulate to R-49.	Fewer ice dams. Professionals are a better value.
YRS	Professional	Install on all exterior doors.	Keeps door sill dry. Allows a screen option.
YRS	Professional	Install over windows, replace if worn out.	Stops driving rain, protects sash. Keep weep holes open.
YRS	Professional	Insulate to R-19 (blow in fiberglass).	Reduces outside noise, Cellulose holds more moisture.
YRS	Professional	Zone heat by area with thermostats.	Can vary heat by areas used. Easier with baseboard heat.
YRS	Professional	R-10 inside above & outside below grade.	Drier cellar, no frost heaves. Waterproof below grade.
YRS	Professional	Install new furnace.	More efficient & reliable. Wood pellet fuel is cheapest.
YRS	Professional	Replace existing window sash.	Poor Value. Storms windows are cheaper & better.
YRS	Homeowner	Install compact florescent bulbs.	Last 10 times longer. Replace most used bulbs first.
YRS	Professional	Buy & install Energy Star appliance.	Uses up to 75% less water. Front load type best.
YRS	Professional	Buy & install Energy Star appliance.	Uses up to 80% less water.
YRS	Professional	Buy & install Energy Star appliance.	Freezer on bottom most efficient.
YRS	Professional	Buy & install Energy Star appliance.	Chest type most efficient, upright more convenient.
YRS	Homeowner	Insulate with seam facing down.	Faster heat, hot & cold water. Less condensation.
YRS	Homeowner	Install low flow units.	Hot water will last thru more showers.
YRS	Professional	Install electronic water controller.	With baseboard heat. Best during heating season.
YRS	Professional	Install tankless hot water heater.	Electric is less expensive.
YRS	Professional	Install gas hot water heater.	Vented heaters are better.

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Call Les Fossel at 586-5680 Write Restoration Resources PO Box 525 Alna, ME 04535

HOME ENERGY LOANS

MaineHousing's Home Energy Loan Program (HELP) offers loans at a low fixed rate of only 3.95% (4.194% APR) for home improvements that increase home energy efficiency. Loan amounts range from \$2,800 to \$30,000, with loan terms of up to 15 years. (Rates and terms are subject to change.) For loans repaid over 15 years, the monthly payment would be \$7.37 for every \$1,000 borrowed. There is no down payment on a HELP loan. A property appraisal may be required, but often is not.

HELP loans may be used to finance:

- Home energy audits
- Insulation, air sealing, and weather stripping
- Heating system repair or replacement
- Energy Star rated windows and appliances
- Storm doors and storm windows
- Ventilation and moisture controls
- Roof repairs (if attic is insulated to R38)

Heating system improvements may include furnace cleaning and tune-ups, replacement burners and/or fuel storage tanks, and replacement systems and supplemental heating systems if they meet certain efficiency standards. Efficient wood stoves, wood pellet systems, geothermal heat pumps, and solar thermal hot water systems are among the possible heating system improvements.

Am I Eligible?

You may be eligible for a HELP loan if:

- You own and occupy a 1 to 4-unit home.
- Your total monthly debt payments are 45% or less of your total monthly income
- Your total home loans, including the energy loan, do not exceed 106% of your home's value (100% or less for mobile homes).

While household income limits apply, most Maine homeowners are income eligible for a HELP loan.

How Do I Apply?

You may apply at any of the following lenders:

Bath Savings Institution (800) 447-4559
Camden National Bank (800) 860-8821
The First, N.A. (800) 564-3195

LOW INCOME HOME ENERGY ASSISTANCE

Program Summary

The Low-Income Home Energy Assistance Program (LIHEAP) provides money to help low-income homeowners and renters pay for heating costs.

Am I Eligible?

The amount of assistance you may get from LIHEAP is based on your household size and income, energy costs, and other factors. You may be eligible for assistance if your total household income falls within 170% of the federal poverty guidelines.

If your heat is included in your rent, you may still apply for LIHEAP. If you have less than ¼ tank of heating fuel or are in danger of having utility services disconnected and you have no way to pay your energy company, LIHEAP also may make an emergency fuel payment for you so that you will stay safe and warm. If you are eligible for LIHEAP, you also may qualify for other programs that require LIHEAP eligibility:

- If you receive residential electric service from an electric utility and you are not living in government subsidized housing, you may be eligible for assistance with your electric bills from your electric utility's Low Income Assistance Plan (LIAP).
- If you pay your own electric bill, you may be eligible for a new, energy-efficient refrigerator from MSHA's Appliance Replacement Program.
- If your home is not as energy efficient as it could be, you may qualify for home improvements through our Weatherization Program.
- If your heating system is in need of repair or replacement, you may qualify for the Central Heating Improvement Program (CHIP).

How Do I Apply?

To apply for LIHEAP and to be automatically considered for the Low Income Assistance Plan and the Appliance Replacement, Weatherization and Central Heating Improvement programs, call MSHA at (800) 452-4668, or visit the website: www.bundlemeup.org or www.mainehousing.org/ENERGYPrograms.aspx

Applications for LIHEAP are accepted from July 1 to April 30 of each year. At the time of application, you should be prepared to provide:

- Names and social security numbers of all people in your household.
- Proof of gross household income for the last 3 or 12 months (wages, social security, unemployment, pension, and disability payments are all considered to be income).
- Proof of address (a rent receipt, lease, deed, or property tax bill).
- Recent copies of your energy and utility bills.

Les Fossil
Restoration Resources
PO Box 525
Alna, ME 04585
www.oldhouserestoration

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

Amended Minutes of the October 27, 2008, Meeting of the
Commission on Governmental Ethics and Election Practices
Held in Room 208, Burton M. Cross Office Building,
111 Sewall Street, Augusta, Maine

Present: Michael Friedman, Esq., Chair; Hon. Francis C. Marsano; Hon. Edward M. Youngblood; Hon. Mavourneen Thompson; Walter F. McKee, Esq. Staff: Executive Director Jonathan Wayne; Phyllis Gardiner, Counsel.

At 9:02 a.m., Chair Michael Friedman convened the meeting.

The Commission considered the following items:

Agenda Item #1. Ratification of Minutes of the September 29 and October 10, 2008 Meetings

Mr. Marsano moved to accept the September 29 and October 10, 2008, meeting minutes as drafted. Mr. McKee seconded. The motion passed unanimously (5-0).

Agenda Item #2. Request for Waiver of Late-Filing Penalty/Maine Democratic Party

Mr. Wayne explained that this issue concerned a Senate race between Sen. Lois Snowe-Mello, the incumbent Republican candidate, and Rep. Deborah Simpson, the Democratic candidate. He said the Maine Democratic Party (MDP) had originally planned to send a mailer intended as an issue advocacy piece regarding Rep. Simpson; however, due to vendor error, the mailer contained express advocacy, as defined by the Commission's rules. He said that, as a result of this error, the Maine Democratic Party was required to file an independent expenditure report. He said their report was filed late, resulting in a \$5,000 penalty assessed to the Maine Democratic Party. He said the Maine Democratic Party is requesting a waiver because the mailer was changed by the vendor without their knowledge.

Mr. Daniel W. Walker, Esq., counsel to Maine Democratic Party, explained that MDP filed an independent expenditure report for Senate candidate Deborah Simpson on October 8, 2008. He said the report was late

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

PHONE: (207) 287-4179

FAX: (207) 287-6775

Ms. Gardiner stated that her interpretation of this statute is that it relates to state employees and does not fall within the Commission's jurisdiction.

Mr. McKee moved that the complaint be dismissed since the Commission has no jurisdiction. Ms. Thompson seconded. The motion passed unanimously (5-0).

Mr. Roy said he wanted to set the record straight. He is not an employee of Somerset county or the Somerset County Jail. He said he is an elected official, a sitting county commissioner of Somerset county.

 **Agenda Item #9. Complaint by Maine Democratic Party Concerning Business Advertising**

Mr. Wayne explained that the Maine Democratic Party filed a complaint against House candidates William C. Dow and Les Fossil. The complaint argues that advertising featuring the names and photographs of the candidates paid for by their businesses should be considered contributions to their political campaigns, and should result in matching funds to the Democratic opponents. He also said Daniel Billings was representing William Dow.

Daniel Walker, counsel for the Maine Democratic Party, said the concern is where the line falls between promoting a business in advertising and promoting a candidate. He reviewed the law and how it applies to the advertising. He said the expenditure definition in Section 1012 3(A)1, says for "the purpose of influencing the nomination or election of any person to political office." Mr. Walker reviewed the elements in the so-called business ad that were different from other ads that Dow Investments used in newspapers and which he thought were made for the purpose of influencing the election. He said this ad should be considered an expenditure in Mr. Dow's campaign.

Mr. Walker reviewed Mr. Fossil's direct mail piece in which he refers to energy conservation and low cost energy assistance programs. He said Mr. Fossil has a home restoration business and is using the same picture for his business advertisements that he uses for campaign ads. Mr. Walker stated that Mr. Fossil is using his business to promote his candidacy. He further stated that when a business ad is purchased only during the campaign season, it is obviously for campaign purposes.

Mr. Friedman asked how a small business owner who purchases ads for his business could run for the Legislature and not be exposed to this type of complaint. He said looking at the advertisements under

discussion, he does not see them as political ads. He also said candidates should not be required to purchase a different photo from their business ads for their political ads. He said a business owner running for the Legislature should be able to run political ads without being subject to a complaint.

Mr. Walker said there is a fine line and these ads cross that line.

Dan Billings, Esq., on behalf of Mr. Dow and Mr. Fossel, said his view of the law is the same as Mr. Walker's; however, based on information provided, these advertisements are in keeping with past practices of both businesses. Mr. Billings referred to Mr. Dow's response in which Mr. Dow provided a detailed invoice from the media vendor dated January 7, 2008, which does work for his company, Dow Investments. He said the media plan goes through the entire year and was put together before Mr. Dow considered running for office. He said these ads are part of their general business practices and were not intended to influence the election. Mr. Billings also stated that Mr. Walker has brought forward this complaint on behalf of the Democratic Party and he would be interested to know whether the opponents in these races have taken issue with these ads. Mr. Billings said he has noticed Mr. Fossel's business ads in the Lincoln News for years.

Ms. Thompson said Mr. Dow's letter indicated an advertising budget but it did not state when the ads were run.

Mr. Billings could not confirm the dates of the ads; however, he said the ads were placed for the entire year.

Mr. Fossel read from a prepared statement (attached) and passed out some campaign literature and business ad examples. He said that his opponent has not raised any objection to his advertisements. He said he sends out business newsletters periodically throughout the year to people in his district and beyond. He said his concern with being involved in this complaint is that it will negatively affect his business. He said newsletters are the most effective forms of advertising available.

Mr. Billings stated that these expenditures are businesses expenditures and are not intended to influence the election.

Mr. Phil Roy, treasurer of the Maine Republican Party, said a small business owner who does advertising on a normal basis should not be found in violation. He further said new legislation should be looked at with regard to this issue. He recommended the Commission take this up for discussion after the election.

Ms. Alison Smith, MCCE, said regarding the Dow complaint, the Commission needs to decide whether this could be considered a coordinated expense which would be an independent expenditure.

Mr. Friedman said if these are strictly business ads, then the rebuttable presumption phase would not come in to play.

Ms. Smith said rebuttable presumption is a safety valve for business owners to be able to run for office and still run business ads. She said the issues raised by the Dow ad are different because he is not the sole proprietor in the business.

Mr. McKee stated that the presumption has been rebutted by the statements today. He said he does not see political ads here.

Mr. McKee moved that the Commission find that regarding the Dow communication, Mr. Dow has rebutted the presumption that this expenditure was made to influence the election. Mr. Marsano seconded. The motion passed unanimously (5-0).

Mr. McKee moved that the Commission find that regarding the Fossel communication, Mr. Fossel has rebutted the presumption that this expenditure was made to influence the election. Mr. Marsano seconded. The motion passed unanimously (5-0).

Agenda Item #11. Request for Advice Regarding Use of Maine Clean Election Act Funds to Rent a Shuttle Bus for Transporting Voters

Mr. Wayne explained that House candidate Belinda Gerry inquired whether she and other Maine Clean Election Act candidates in the Auburn-Lewiston area may use public campaign funds to rent a shuttle bus to transport voters to polling places. He said the MCEA guidelines state that funds are to be used for the purpose of promoting an individual candidate. He stated that the Commission staff recommends against permitting this use of Maine Clean Election Act funds.

May 27, 2010

BERNSTEIN SHUR

COUNSELORS AT LAW

146 Capitol Street
PO Box 5057
Augusta, ME 04332-5057

Kate R. Knox
207 228-7229 direct
kknox@bernsteinshur.com

May 26, 2010

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

Re: **NO HIGHER TAXES FOR MAINE PAC** response to Request for Advice –
Using Maine Clean Election Funds for Discussion of People’s Veto Referendum

Dear Commissioners:

I write in my capacity as counsel to the No Higher Taxes for Maine PAC (NHT PAC) to urge the Commission to disallow the use of Maine Clean Election Act funds for paid communications to voters which discuss referendum campaigns. NHT PAC believes that allowing MCEA funds to be used for such purposes will undermine the intent of the law, will potentially open the door for abuse and will create a nebulous line which will be difficult for candidates to understand and for the Commission to enforce.

Candidates who participate in the Maine Clean Elections Act program are clearly advised that funds may not be spent to “promote political or social positions or causes other than the candidate’s campaign.”¹ The proposed radio ad script provided to the Commission is clearly designed primarily to express opposition to the upcoming tax reform referendum – not to promote the candidacy or position of the named candidate.

While NHT PAC firmly believes that all candidates have the right to express their views on referendum questions, they do not have the right to use MCEA funds to promote those views. As noted by Commission staff, MCEA candidates have many opportunities to make their positions known through forums, debates, letters to the editor, etc. – they are free to express their opinion in many ways – but they should not be free to use limited public monies for any purpose outside of clearly promoting their own candidacy.

Thank you for your consideration of our views.

Sincerely,

Kate R. Knox, Esq.
Counsel, No Higher Taxes for Maine PAC

¹ 2010 Expenditure Guidelines for Maine Clean Election Act Candidates