

Agenda

Item #9



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: January 19, 2011

Re: Staff Recommendation on Overspending by Senator Roger J. Katz

Factual Background

Roger J. Katz ran successfully for the State Senate in 2010. He has previously held municipal office in Augusta, but has not previously run for the Maine Legislature. This is his first election participating in the Maine Clean Election Act (MCEA) program.

In early November 2010, Sen. Katz telephoned Candidate Registrar Gavin O'Brien because he had been presented with an invoice for campaign printing after spending most of his MCEA funds. He said something to the effect that he was surprised to receive the invoice and did not know why he had received it so long after the purchase. Gavin asked Sen. Katz to explain the circumstances in writing and advised Sen. Katz to pay the bill with his remaining MCEA funds and to use personal funds for the balance of the debt.

In a November 11, 2010 letter, Sen. Katz explained that in June 2010 he made an initial purchase of campaign lawn signs from Modern Screen Print in Bangor. In early September 2010, a campaign volunteer placed a second order for lawn signs with the company. The amount of the purchase was \$1,245.

As the November 2, 2010 general election approached, the campaign spent most of its MCEA campaign funds. On Friday, November 5 (three days after the general election), Sen. Katz received a call from a volunteer because Modern Screen Print was calling about the unpaid debt. On November 8, 2010, the campaign received the attached invoice dated September 23, 2010. Sen. Katz writes that he had assumed that the campaign had paid the bill in September. Modern Screen Print has told Sen. Katz that the company sent the invoice in September, but the candidate believes that the campaign did not receive the bill. In his November 11, 2010 letter, Sen. Katz takes the responsibility for the error, which he explains was an innocent mistake.

Following the advice from Candidate Registrar Gavin O'Brien, Sen. Katz used \$161.87 in unspent Maine Clean Election Act funds to partially satisfy the debt, and paid the remaining amount of the bill (\$1,083.13) with personal funds.

For purposes of disclosure, I should mention that Sen. Katz is a law partner of the Commission Chair. I have not communicated with the Chair regarding this matter.

Spending Restrictions for MCEA Candidates

After a candidate has qualified for Maine Clean Election Act funding, he or she may spend only public funds received from the state and authorized by the Commission:

After certification, a candidate must limit the candidate's campaign expenditures and obligations, including outstanding obligations, to the revenues distributed to the candidate from the fund and may not accept any contributions unless specifically authorized by the commission. (21-A M.R.S.A. § 1125(6))

Spending more than is permitted – which the Commission staff refers to as overspending – is potentially a serious election violation because it could give a candidate an unfair advantage. It is therefore important for Maine Clean Election Act candidates to keep track of their total expenditures and obligations to avoid exceeding the amount which they are authorized to spend.

Notice to Roger Katz of Potential Finding of Violation, and Response by Candidate

On December 22, 2010, I sent the attached written notice to Sen. Katz, advising him that this matter would be scheduled for your January 27, 2011 meeting and that the staff would be recommending a civil penalty of \$50. On January 10, 2011, he responded that he concurs with the proposed penalty.

Staff Recommendation

The staff recommends that you find Sen. Katz in violation of 21-A M.R.S.A. § 1125(6) for spending money other than MCEA funds to promote his campaign. We also recommend assessing a civil penalty of \$50 for the violation under 21-A M.R.S.A. § 1127(1).

In recent election years, a handful of legislative MCEA campaigns have made some sort of communication or planning error, which resulted in accidental overspending. This is not surprising, considering the number of “moving parts” within a legislative campaign and the amount of activity in the final two weeks before a general election. Frequently the candidate is relying on campaign volunteers to make purchases or obligations. Often, during this period, it is not the candidate who is accounting for finances, but another person, such as a family member or treasurer.

In the 2006 and 2008 election cycles, the Commission assessed a civil penalty of \$50 against three House candidates for overspending: 2006 House candidate Anne Graham (now a State Representative), and 2008 candidates Frederick Austin and Seth Yentes.

The Commission staff believes the assessment of some monetary penalty is appropriate to underscore that MCEA campaigns must keep track of their cash balance and make sure that they do not spend or obligate more than is permitted under the program. We believe a penalty of \$50 is appropriate because:

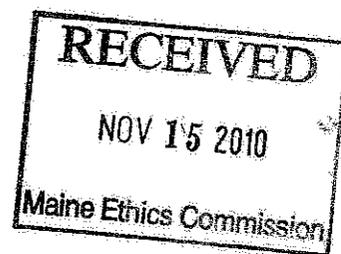
- Sen. Katz ran his first legislative campaign in 2010. This was his first campaign as an MCEA candidate.
- The Commission staff accepts that this was an unintentional violation. We know of no evidence suggesting that the candidate intended to exceed the expenditure limitations of the MCEA program.
- Sen. Katz demonstrated good faith by self-reporting the issue to Candidate Gavin O'Brien after receiving notice that the campaign owed a second payment to Modern Screen Print.
- We believe that Sen. Katz has paid \$1,083.13 from his own pocket to satisfy the debt, so he has already suffered a significant, unexpected loss due to the overspending.
- A penalty of \$50 is consistent with the Commission's actions in the cases of Anne Graham, Frederick Austin, and Seth Yentes.

The MCEA (§ 1127(1)) permits you to assess a penalty of up to \$10,000 for any violation of the program requirements. The Commission staff recognizes that the amount of the overspending (\$1,083.13) is significant, and was higher than the overspending by House candidates Anne Graham, Frederick Austin, and Seth Yentes. Nevertheless, we believe that the monetary penalty should be commensurate with the magnitude of the campaign's mistake. In this case, the Katz campaign understandably overlooked an unpaid invoice in the final weeks of a busy Senate campaign.

Thank you for your consideration of this staff recommendation.



Katz for Senate Committee
3 Westview St. Augusta, ME 04330
www.katzsenate.com



November 11, 2010

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

Dear Mr. Wayne:

Following my conversations earlier this week with Gavin O'Brien, I am writing to you to explain an error which I made with respect to my campaign finances.

Early in my campaign, back in June, I purchased campaign lawn signs from Modern Screen Print of Bangor.

In early September, I decided to purchase additional lawn signs from the same vendor. The order was placed orally to Modern Screen Print by one of my volunteers. I assumed that I would shortly be receiving a bill from the vendor, which I intended to immediately pay. Unfortunately, no bill arrived, and I failed to notice its absence.

In mid-October, I took a look at the balance in my campaign account and made decisions on spending my remaining available funds. Having received no invoice from Modern Screen Print, it did not register with me that a debt was still "out there" and proceeded to spend most of my remaining campaign funds.

Last Friday, November 5, I got a call from my volunteer indicating that a representative of Modern Screen Print was calling and inquiring about the bill for the second set of signs. I was taken aback, assuming that I had received the bill and paid it back in September. However, a check of my records indicated that that simply had not happened. On Monday, November 8, 2010, I received a copy of what I believe was the original bill from Modern Screen Print, a copy of which is attached hereto as "Exhibit A". A representative of the vendor has told me that their records indicate this invoice had been mailed to me back in September to the same address. Again, I do not believe that the bill was actually received.

November 11, 2010
Jonathan Wayne, Executive Director
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Having now received the Modern Screen Print bill, this places me approximately \$1,000 over my spending limit.

I respectfully tell you that this was an innocent mistake on my behalf; having said that, it was a mistake which should not have happened and the error is entirely my own personal responsibility. I deeply regret that events transpired in this manner and that the "second" purchase of signs went unaccounted for in my own mind until Modern Screen Print made inquiries following the election.

On direction of Mr. O'Brien, I will be paying the Modern Screen Print bill as follows:

- A portion representing the remaining campaign funds I have, and
- The balance to be paid by me personally.

I would be happy to provide any information or answer any additional questions you might have.

Sincerely,



Roger J. Katz
rkatz@lipmankatzmckee.com

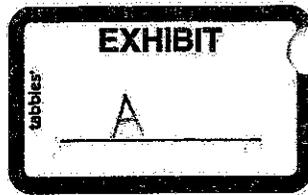
RJK/cam
Enclosure

PS: If this matter is to be scheduled before the Commission, I respectfully request that it be scheduled on the December agenda, as I have a mandatory all day Orientation Session for new legislators on November 30, 2010. Thank you.



MODERN SCREENPRINT

69 Hillside Ave., Bangor, Me. 04401 • 945-6284



Invoice

DATE	INVOICE NO.
9/23/2010	69627

SOLD TO
2010 Katz for Senate 3 Westview St. Augusta, ME 04330 Bill Browne, Treasurer

SHIP TO

CUSTOMER P.O. NO.	TERMS	SHIP VIA	JOB NUMBER
	Due on receipt	Pick-up	33413

QTY	DESCRIPTION	UNIT PRICE	AMOUNT
500	28" x 22" FOLDOVER SIGNS SCORED TO 14" x 22" 2	1.69	845.00
500	COLOR IMPRINT METAL SIGN FRAMES	0.80	400.00
<i>Sales Tax is charged until a valid Maine Resale Certificate is received.</i>			Subtotal \$1,245.00 Sales Tax (0.00) \$0.00 Pmts. \$0.00

Fax Number 207-945-6328 E-mail modernscreen@prodigy.net Web Site modernscreenprint.com	TOTAL \$1,245.00
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All Orders Subject To A 10% Overrun or Underrun - Industry Allowance.
 A 1.5% Service Charge Per Month Will Be Added On All Balances Remaining After 30 Days (18% A.P.R.)

Received By _____



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

December 22, 2010

Hon. Roger J. Katz
Lipman Katz & McKee
P.O. Box 1051
Augusta, ME 04332-1051

Dear Senator Katz:

Thank you for your November 11, 2010 letter concerning the expenditures for your campaign for State Senate. In the letter, you explained that you did not initially receive a bill from Modern Screen Print in the amount of \$1,245.00 for signs that a campaign volunteer bought in September 2010. After spending most of your campaign funds, the campaign was contacted on November 5, 2010 about the unpaid bill. After receiving advice from Candidate Registrar Gavin O'Brien, you used \$161.80 in unspent Maine Clean Election Act funds to partially satisfy the debt, and paid the remaining amount of the bill (\$1,083.13) with personal funds. Based on your letter and a review of your final campaign finance report, the staff of the Ethics Commission has made a preliminary finding that your 2010 campaign spent \$1,083.13 more than was permitted under the Maine Clean Election Act.

At the January 27, 2010 meeting of the Ethics Commission, the staff will recommend that the members of the Commission find the campaign in violation and assess a civil penalty of \$50 for the violation. The meeting will be held at 11:00 a.m. at the Commission's office at 45 Memorial Circle (two hours later than our usual start time.) As explained below, you will have an opportunity to respond to the proposed finding of violation and penalty at the meeting and/or in writing.

Limits on Spending by Maine Clean Election Act Candidates

After a candidate has qualified for Maine Clean Election Act funding, he or she may spend only public funds received from the state and authorized by the Commission:

After certification, a candidate must limit the candidate's campaign expenditures and obligations, including outstanding obligations, to the revenues distributed to the candidate from the fund and may not accept any contributions unless specifically authorized by the commission. (21-A M.R.S.A. § 1125(6))

Spending more than is permitted – which the Commission staff refers to as overspending – is potentially a serious election violation because it could give a candidate an unfair

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

PHONE: (207) 287-4179

FAX: (207) 287-6775

advantage. It is therefore important for Maine Clean Election Act candidates to keep track of their total expenditures and obligations to avoid exceeding the amount which they are authorized to spend.

Ethics Commission's Consideration of this Matter

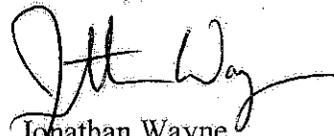
At the January 27 meeting of the Commission, the staff will recommend that the Commission find that you violated 21-A M.R.S.A. § 1125(6) by spending money other than your Maine Clean Election Act funds to promote your campaign. We will also recommend that the Commission assess a penalty of \$50. The recommended penalty is relatively small because the overspending was unintentional.

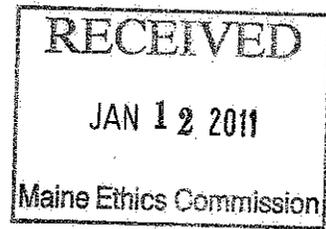
The staff recommends that you attend the January 27 meeting to answer any questions of the Commissioners. If you would like, you may also respond to the proposed penalty in writing. If we receive a written response by Friday, January 14, I will include the response in a packet of materials that is mailed to the Commission members in advance of the meeting. Please feel free to fax it to 287-6775 or e-mail it to me at Jonathan.Wayne@maine.gov. Our office will be closed on January 14 because of a government shut-down day.

Please be aware that the Commission will have the discretion to assess a penalty that is greater or less than the staff recommendation, or to assess no penalty at all. Under 21-A M.R.S.A. § 1127(1), the Commission may assess a penalty of up to \$10,000 for a violation of the Maine Clean Election Act.

Please telephone me at 287-4179 if you have any questions.

Sincerely,


Jonathan Wayne
Executive Director



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January 10, 2011

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

Dear Mr. Wayne:

I am in receipt of your letter of December 22, 2010, with respect to the unintentional overspending in my campaign. I understand that the staff is recommending that the Commission assess a penalty of \$50. I am writing to tell you that I concur with the proposed penalty.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Katz".

Roger J. Katz

rkatz@lipmankatzmckee.com

RJK/cam

6. Restrictions on contributions and expenditures for certified candidates. After certification, a candidate must limit the candidate's campaign expenditures and obligations, including outstanding obligations, to the revenues distributed to the candidate from the fund and may not accept any contributions unless specifically authorized by the commission. Candidates may also accept and spend interest earned on fund revenues in campaign bank accounts. 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-captioning is available from the broadcasting station who will broadcast the advertisement. The commission shall publish guidelines outlining permissible campaign-related expenditures.

[2009, c. 105, §1 (AMD) .]

6-A. (TEXT EFFECTIVE UNTIL 9/1/11) Assisting a person to become an opponent. A candidate or a person who later becomes a candidate and who is seeking certification under subsection 5, or an agent of that candidate, may not assist another person in qualifying as a candidate for the same office if such a candidacy would result in the distribution of revenues under subsections 7 and 8 for certified candidates in a contested election.

[2007, c. 443, Pt. B, §6 (NEW) .]

6-A. (TEXT EFFECTIVE 9/1/11) Assisting a person to become an opponent. A candidate or a person who later becomes a candidate and who is seeking certification under subsection 5, or an agent of that candidate, may not assist another person in qualifying as a candidate for the same office if such a candidacy would result in the distribution of revenues under subsections 7 and 8-A for certified candidates in a contested election.

[2009, c. 302, §12 (AMD); 2009, c. 302, §24 (AFF) .]

6-B. Expenditures as payment to household members.

[2009, c. 302, §13 (RP) .]

6-C. Expenditures to the candidate or family or household members. Expenditures to the candidate or immediate family member or household member of the candidate are governed by this subsection..

A. The candidate may not use fund revenues to compensate the candidate or a sole proprietorship of the candidate for campaign-related services. [2009, c. 302, §14 (NEW).]

B. A candidate may not make expenditures using fund revenues to pay a member of the candidate's immediate family or household, a business entity in which the candidate or a member of the candidate's immediate family or household holds a significant proprietary or financial interest or a nonprofit entity in which the candidate or a member of the candidate's immediate family or household is a director, officer, executive director or chief financial officer, unless the expenditure is made:

- (1) For a legitimate campaign-related purpose;
- (2) To an individual or business that provides the goods or services being purchased in the normal course of the individual's occupation or the business; and

21-A MRSA §1127. VIOLATIONS

 **1. Civil fine.** In addition to any other penalties that may be applicable, a person who violates any provision of this chapter or rules of the commission adopted pursuant to section 1126 is subject to a fine not to exceed \$10,000 per violation payable to the fund. The commission may assess a fine of up to \$10,000 for a violation of the reporting requirements of sections 1017 and 1019-B if it determines that the failure to file a timely and accurate report resulted in the late payment of matching funds. In addition to any fine, for good cause shown, a candidate, treasurer, consultant or other agent of the candidate or the political committee authorized by the candidate pursuant to section 1013-A, subsection 1 found in violation of this chapter or rules of the commission may be required to return to the fund all amounts distributed to the candidate from the fund or any funds not used for campaign-related purposes. If the commission makes a determination that a violation of this chapter or rules of the commission has occurred, the commission shall assess a fine or transmit the finding to the Attorney General for prosecution. A final determination by the commission may be appealed to Superior Court in accordance with Title 5, chapter 375, subchapter 7 and the Maine Rules of Civil Procedure, Rule 80C. Fines assessed or orders for return of funds issued by the commission pursuant to this subsection that are not paid in full within 30 days after issuance of a notice of the final determination may be enforced in accordance with section 1004-B. Fines paid under this section must be deposited in the fund. In determining whether or not a candidate is in violation of the expenditure limits of this chapter, the commission may consider as a mitigating factor any circumstances out of the candidate's control.

[2009, c. 302, §23 (AMD) .]

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

[1995, c. 1, §17 (NEW) .]

SECTION HISTORY

IB 1995, c. 1, §17 (NEW). 2003, c. 81, §1 (AMD). 2005, c. 301, §33 (AMD). 2005, c. 542, §6 (AMD). 2009, c. 302, §23 (AMD).