

Agenda

Item #2



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: March 21, 2011

Re: Use of MCEA Funds to Reimburse for Air Fare /2010 Candidate Patricia Jones

Patricia Jones was running for re-election to the Maine House of Representatives in 2010. In December 2010, she used \$395.80 in Maine Clean Election Act (MCEA) funds to reimburse herself for her son's air fare from Chicago to Maine. He traveled to Maine on October 31, 2010, and worked on her campaign for four days.

The circumstances are explained in the attached March 4 letter to the candidate. In that letter, the Commission staff concluded that the expenditure was not permissible, but we offered her the opportunity to ask you to make the final decision. In a March 4 e-mail response, Ms. Jones requested that you make the decision at your March 31 meeting. The Commission staff regrets that a former employee erroneously advised Ms. Jones after the general election that she could use MCEA funds to reimburse herself. We accept that there could be grounds for making an exception in this instance. Our preference would be to disallow the expenditure, even after taking into consideration the error in the staff advice.

Thank you for your consideration of this memo.

Date: January 16, 2011

To: JonathanWayne, Executive Director, Maine Ethics Commission

From: Pat Jones, 2010 Legislative Candidate District #83

Subject: Travel Payment Justification

Here is my response to the four questions you asked in the letter dated January 12, 2011.

1. What work did you son provide in support of the campaign?

My son worked on my campaign by making telephone calls to get out the vote, canvas at doors, drive me to do doors, greet constituents at the polls the day of the election, ran errands to purchase campaign materials at local stores, and repaired, made, distributed and picked up campaign signs.

2. Please provide the dates when that work began and ended.

The work began on Sunday October 31st 2010 and ended Wednesday November 03, 2010.

3. When did my son travel to Maine and from where?

My son traveled from Chicago, Illinois on Sunday October 31, 2010.

4. Please provide the dates when the ticket was purchased and when the campaign reimbursed the purchaser.

The tickets were purchased on October 7, 2010.

The purchaser was paid on December 10, 2010.

Note: I and my treasurer discussed this travel and payment with Kevin Johnson and he confirmed that this was within the Commissions expenditure guidelines for the Maine Clean Election Act funds.



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March 4, 2011

By E-Mail and Regular Mail

Hon. Patricia Jones
172 Wings Mills Road
Mount Vernon, ME 04352

Dear Ms. Jones:

Thank you for the information you provided concerning your 2010 campaign's expenditure of \$395.80 in Maine Clean Election Act (MCEA) funds to reimburse you for your son's air travel from Chicago, Illinois to Maine. The Commission staff has concluded that the expenditure was outside the Commission's 2010 Expenditure Guidelines, but you may ask the members of the Commission to make the final decision.

Applicable Law

Campaign-Related Purposes

Under the MCEA, candidates may spend public campaign funds for "campaign-related purposes." The MCEA directs the Commission to publish guidelines outlining permissible campaign-related expenditures:

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 commission shall publish guidelines outlining permissible campaign-related expenditures.

(21-A M.R.S.A. § 1125(6))

2010 Expenditure Guidelines

I have attached a copy of the Commission's 2010 Expenditure Guidelines. The guidelines do not explicitly address air fare.¹ The following provisions are relevant:

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: ... [c]ampaign travel expenses, such as fuel and tolls.

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;

(Underlining added.)

¹ The Commission staff has sought to keep the expenditure guidelines reasonable in length (two pages). The guidelines address issues that come up frequently.

Factual Background

Our understanding of the facts is as follows:

- On October 7, 2010, you purchased a ticket for your son to travel by air round-trip from Chicago, Illinois to Maine.
- In your October 20, 2010 campaign finance report, the campaign listed two unpaid debts for stamps and print ads, but the campaign did not disclose that it owed an unpaid debt to you for your son's travel.
- On Sunday, October 31, your son traveled from Chicago, Illinois to Maine – two days before the election.
- Your son volunteered for the campaign for a period of four days from Sunday, October 31 through Wednesday, November 3. During these four days, he made telephone calls to get out the vote, canvassed voters at their homes, drove you to meet voters in their homes, greeted constituents at the polls on election day, ran errands to purchase campaign materials at local stores, and repaired, made, distributed, and picked up campaign signs.
- Some time after the November 2, 2010 election, you telephoned the Commission office to find out if your campaign could use MCEA funds to reimburse you. Candidate Registrar Kevin Johnson advised you, incorrectly, that this was permissible. Subsequently, your campaign treasurer called Mr. Johnson to verify that MCEA funds could be used for this purpose. He stated that they could. (Mr. Johnson's advice to you is discussed in more detail below).
- On December 10, 2010, the campaign paid you \$395.80 to reimburse you for your purchase of air fare for your son.
- On December 11, 2010, your campaign filed a report disclosing the reimbursement.

Staff Determination

After consulting with the Commission's auditor, the staff believes the expense is outside the Commission's 2010 Expenditure Guidelines. In general, the guidelines define "campaign-related expenditures" as those "which are traditionally accepted as necessary to promote the election of a candidate to political office." The Commission's staff does not believe that buying round-trip air fare has been "accepted as necessary" for the election of a candidate to the Maine House of Representatives. We regard the purchase of air fare as unnecessary and very rare for a legislative campaign. We are unaware of another instance of a legislative candidate paying for air fare since candidates' expenditures were recorded in a database in 2002.

Hon. Patricia Jones

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March 4, 2011

Advice by Kevin Johnson

The Commission staff recognizes your good intentions in telephoning the Commission's office before your campaign reimbursed you on December 10. We regret that Kevin Johnson provided you with advice that it was an acceptable expenditure of MCEA funds. Mr. Johnson was a "project employee" who worked for the Commission for one year during 2010. In general, he had a good track record of providing sound advice to 2010 candidates that was consistent with the Commission's policies. In this instance, however, he erred in viewing the air fare as analogous to fuel, tolls, and other transportation expenses regularly incurred by legislative candidates. He should have checked with other employees (the Assistant Director or me) before advising you on this unusual issue.

It is rare that the Commission staff reverses its own advice. Nevertheless, we are doing so in this case to avoid a bad precedent and because you asked about the permissibility of the expenditure after the campaign was over. If you had received the advice before purchasing the ticket, we would feel obliged to allow the expenditure.

Opportunity to Disagree with Staff Determination

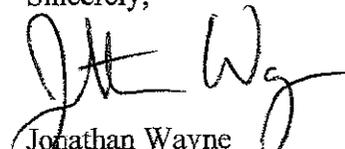
If you believe that the Commission ought to accept the \$395.80 expenditure because it was campaign-related or because of Mr. Johnson's advice, you are welcome to request that the members of the Commission make a decision on the acceptability of the expenditure when they meet on March 31, 2011. The meeting will begin at 9:00 a.m. at our office at 45 Memorial Circle in Augusta. If you would like to make the request, please submit it in writing by Friday, March 18, 2011. Also, if you would like to use the March 31 meeting to comment on the staff's administration of the MCEA program, you are welcome to do that as well.

Repaying the \$395.80

If you accept the staff determination, we ask you repay \$395.80 to the Maine Clean Election Fund. We will accept any payment plan that has the debt fulfilled within 18 months (for example, \$25 per month). Alternatively, the Commission may accept repayments of MCEA funds by credit card.

If you have any questions concerning this staff determination, please telephone me at 287-4179 or e-mail me at Jonathan.Wayne@maine.gov.

Sincerely,



Jonathan Wayne
Executive Director



2010 EXPENDITURE GUIDELINES For Maine Clean Election Act Candidates

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

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.

Wayne, Jonathan

From: PAT JONES [pjone000@roadrunner.com]
Sent: Friday, March 04, 2011 5:59 PM
To: Warren and Christine Bartlett; Wayne, Jonathan
Subject: Re: Letter on Son's Travel

Yes, I would like to ask the Commission to make the final decision. Please put my name on the agenda. Thanks.

----- Original Message -----

From: Wayne, Jonathan
To: pjone000@roadrunner.com
Sent: Friday, March 04, 2011 17:23
Subject: Letter on Son's Travel

Ms. Jones,

I have attached a letter to you notifying you that the Ethics Commission staff concludes that the payment for your son's air travel is outside the Commission's 2010 Expenditure Guidelines. If you would like to ask the Commissioners to make the final decision on the permissibility of the expenditure for air fare – or you would like to speak to the Commissioners about the administration of the Maine Clean Election Act program – I will schedule it for the next meeting of the Commission. That meeting will be on Thursday, March 31 at 9:00 a.m. at the Commission's office.

I am also planning on scheduling your January 20, 2011 request for a waiver of the late-filing penalty for the monthly lobbyist report for the same meeting.

If I can answer any questions, please let me know. My number is 287-4719.

Jonathan Wayne
Executive Director
Maine Ethics Commission
135 SHS
Augusta, ME 04333
287-4179