

Agenda

Item #1

Minutes of the April 28, 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. Mavourneen Thompson; Hon. Vinton E. Cassidy; Hon. Andrew Ketterer. Staff: Executive Director Jonathan Wayne; Phyllis Gardiner, Counsel.

At 9:06 A.M., Chair Ginn Marvin convened the meeting. The Commission considered the following items:

Agenda Item #1 – Ratification of Minutes of the March 22, 2006 Meeting

Ms. Gardiner suggested that the minutes be amended to clarify that Assistant Attorney General Christopher Taub was present for Agenda Item #2 while Phyllis Gardiner was present for the other agenda items. Ms. Gardiner also recommended that the minutes regarding Agenda Item #8 reflect Mr. Ketterer's request that the Commission be updated on the status of any enforcement action.

Mr. Ketterer moved, Mr. Cassidy seconded, and the Commission voted unanimously (4-0) to adopt the minutes of the January 5th meeting as amended by Phyllis Gardiner.

Ms. Ginn Marvin thanked Michael Bigos for his work as a Commission member. Ms. Ginn Marvin welcomed new Commission member Ms. Thompson.

Mr. Bigos thanked Ms. Ginn Marvin for her leadership of the Commission and thanked Ms. Gardiner and the Commission staff for the work they have done. Mr. Bigos welcomed Ms. Thompson to the Commission.

Agenda Item #2 – Appeal of Denial of Certification/Adam Scharff

Mr. Wayne explained that Mr. Scharff sent his Maine Clean Election Act certification materials by FedEx to the Commission's mailing address rather than its physical address. As a result, the Commission did not receive these materials until two days after the deadline. Mr. Wayne said that the staff supports Mr. Scharff's qualification.

Ms. Gardiner said that Mr. Scharff's appeal requires the Commission to undertake formal hearing procedures. Ms. Gardiner recommended that Mr. Scharff be sworn in before presenting his appeal. Ms. Ginn Marvin swore in Mr. Scharff.

Mr. Scharff explained that the Federal Express office told him the certification materials would be delivered to the Commission office on Tuesday, April 18. Mr. Scharff said he did not find out until April 20 that the materials were not received on time. Mr. Scharff said that the materials were delivered to some unknown location on April 18 at 9:48 a.m. and were signed for by D. Olmstead, an individual who does not work for the Ethics Commission or state government. Mr. Scharff said that caucus director Paul Brunetti contacted him on April 19 to tell him that the Commission did not receive his certification materials. Mr. Scharff said he contacted the Commission staff on April 20th, and the staff informed him that they did not have his materials. Mr. Scharff said the package was finally delivered to the Commission office on the 20th. Mr. Scharff said that the Federal Express office in Augusta faxed a letter to the Commission claiming responsibility for the improper delivery.

Mr. Cassidy moved and Ms. Thompson seconded a motion to allow Mr. Scharff's appeal of the denial of his Maine Clean Election Act certification.

Mr. Ketterer said that many people outside of state government may not be aware of the difference between State House Station numbers and physical office addresses. Mr. Ketterer said the staff recommendation was reasonable.

The Commission voted unanimously (4-0) allow Mr. Scharff's appeal of the denial of his Maine Clean Election Act certification.

Agenda Item #3 – Unreported Expenditures by Cianbro in Support of Peter Cianchette

Ms. Ginn Marvin stated that she was recusing herself from this agenda item due to a potential conflict of interest. Ms. Ginn Marvin requested that Mr. Ketterer serve as chair in her absence.

Mr. Wayne explained that Ronald Harwood, a former employee of Cianbro Corporation, requested an investigation into Cianbro's activities in support of Peter Cianchette's 2002 gubernatorial campaign. Mr. Wayne said that Cianbro and Mr. Cianchette have been very responsive to the Commission's questions and requests regarding Cianbro's expenditures in support of the candidate. Mr. Wayne said that Cianbro and Mr. Cianchette reported the total expenditures by Cianbro in support of the campaign to be \$68,608.87. Mr. Wayne said that, due to nominal consultation between Cianbro and the Cianchette campaign, Mr. Cianchette has accepted that Cianbro's expenditures were a contribution to his campaign. Mr. Wayne said that Mr. Cianchette has filed updated campaign finance reports with the Commission that reflect those contributions.

Mr. Cianchette said that he and Cianbro conducted a thorough audit of Cianbro's records to determine which Cianbro's activities were intended to support Mr. Cianchette's campaign. Mr. Cianchette stated that he did not have personal knowledge of the contributions from Cianbro, but there was communication between Cianbro and his campaign staff. Mr. Cianchette said that he had amended all of the necessary reports and filed them with the Commission two weeks prior to the meeting.

Mr. Ketterer said that it was important to have accurate reports on file even though the election in question happened in 2002.

Ms. Thompson said that the changes to Mr. Cianchette's finance reports represent a significant increase in the amount of money spent in the 2002 gubernatorial election. Ms. Thompson

wondered if reporting the contributions from Cianbro when they were made in 2002 would have affected matching funds payments to Jonathan Carter or changed the outcome of the election. Mr. Cianchette responded that he believed he was following all the necessary laws regarding campaign finance reporting. Mr. Cianchette said that he could not have reported Cianbro's contributions in 2002 because he was not aware of them at the time.

Ms. Thompson wondered if the existing election law was sufficient to prevent future problems with reporting contributions.

Mr. Ketterer asked Mr. Cianchette if he had counsel present at the meeting. Mr. Cianchette replied that Christopher Howard was representing him.

Mr. Ketterer asked whether Mr. Cianchette believed Cianbro's activities to be an independent expenditure or an in-kind contribution. Mr. Cianchette responded that he considered them to be in-kind contributions to his campaign.

Christopher Harwood, an attorney with Pierce Atwood, said that Mr. Cianchette's lack of knowledge concerning Cianbro's activities did not exempt his campaign from reporting Cianbro's contributions.

Mr. Ketterer asked if the signs put up by Cianbro employees were provided by Cianbro or by the Cianchette campaign. Mr. Cianchette said that the signs were purchased by his campaign and distributed to various people who requested them, including Cianbro.

Mr. Cassidy asked how Mr. Cianchette arrived at the amount of Cianbro's contribution. Mr. Cianchette said that Cianbro conducted an audit of their ledgers to calculate the expenditures on labor and materials in support of the Cianchette campaign.

Mr. Cassidy asked why no members of Cianbro management thought to contact the Cianchette campaign about Cianbro's campaign activities. Mr. Cianchette said that there was no one individual at Cianbro who was responsible for organizing campaign activities, but rather a

diffuse group of employees who were volunteering for the campaign. Mr. Howard said that there should have been a better system among Cianbro management to keep track of and report the company's campaign activities.

Ms. Thompson said that the law as it existed in 2002 did not allow the Commission to assess a penalty against Cianbro for making an over-the-limit contribution to the Cianchette campaign. Ms. Thompson said it was her understanding that the Commission could only provide a written statement finding fault with the company. Mr. Wayne replied that there could be no penalty for the over-the-limit contribution, but there could be a penalty against Mr. Cianchette for failure to file a complete report by the deadline. Mr. Wayne said it was also possible for the Commission to fine Cianbro for late reporting, if the Commission considered the expenditures to be independent expenditures. Mr. Wayne said that there was a \$5,000 maximum fine per report.

Ms. Thompson said that the Commission was obligated to uphold the standards of the democratic process and the Clean Election law. Ms. Thompson asked Mr. Cianchette and Mr. Howard what they thought would be the strongest finding the Commission could make. Mr. Howard said that the correct finding, consistent with the law, would be that Cianbro made in-kind campaign contributions. Mr. Cianchette agreed, saying that it was an issue of proper reporting. Mr. Cianchette said that he filed amended reports within 2 weeks of becoming aware of the contributions from Cianbro.

Mr. Cassidy said there was no question that there were violations, but the question is whether the Commission should assess a penalty based on the seriousness of those violations.

Ms. Thompson asked if it would be right for the Commission to penalize the Cianchette campaign rather than Cianbro. Ms. Thompson requested further discussion on the role of Cianbro in influencing the campaign and whether the company should be penalized. Mr. Ketterer said that such discussion would continue after the Commission members questioned Mr. Cianchette and Mr. Howard.

Mr. Ketterer asked if Mr. Howard represented both Cianbro and the Cianchette campaign. Mr. Howard responded that he did.

Mr. Ketterer asked about Mr. Cianchette's relationship with Cianbro. Mr. Cianchette said that he left employment with Cianbro in 1985 and was not affiliated with the company after that. Mr. Cianchette said that his father is chair of the board and his brother works for the company.

Mr. Cianchette said that there is no longer a campaign to assess a penalty against, so he would assume sole responsibility for the actions of his campaign staff.

Mr. Harwood said that was difficult to determine all of the expenditures Cianbro made toward the Cianchette campaign. Mr. Harwood said that falsification of records on Cianbro's behalf would be a Class E crime, and Mr. Cianchette purposefully avoided reporting Cianbro's contributions.

Ms. Thompson asked Mr. Harwood what his role was in the "airport hanger job." Mr. Harwood said that he served as the superintendent of tools and supply at Cianbro's Pittsfield office. Mr. Harwood said that the budget allocated to his department had money taken out to pay for the hanger job, which is how the company referred to the use of employees to put up campaign signs. Mr. Harwood said that this activity was common knowledge within the company and that employees were subject to punishment for discussing its legality.

Clarence Ayotte introduced himself as a former Cianbro employee. Mr. Ayotte said that he declined a request to put up campaign signs around Rumford, and that he had the ability to decline because he was a supervisor. Mr. Ayotte said that the request for employees to put up signs was brought up during a safety meeting, during which one employee objected and was reprimanded. Mr. Ayotte said that Mr. Cianchette is responsible for his campaign's activities. Mr. Ayotte said that the money to put up the signs came from the employees themselves due to Cianbro's profit sharing system. Mr. Ayotte said that Cianbro's contributions to the campaign probably amounted to more than \$53,000 and that that money should be returned to the employees who worked for the company at that time.

Ms. Thompson asked Mr. Harwood if the campaign work was kept secret within the company. Mr. Harwood replied that it was not a secret and that the company distributed a memo asking employees to vote for Mr. Cianchette. Mr. Harwood said that a personnel worker had campaign signs in her truck during work hours.

Mr. Ketterer said that Cianbro's employee profit sharing was not part of the issue being addressed by the Commission. Mr. Ketterer said that the Commission should limit itself to deciding on the in-kind contribution issue and the accuracy of the finance reports.

Ms. Thompson asked if the available options presented to the Commission by the staff had changed due to the comments heard during the meeting.

Mr. Wayne said that the issue turns on one sentence in the statute. Mr. Wayne, reading from the statute (21-A M.R.S.A. §1015(5)), said that Cianbro's expenditures would be in-kind contributions if there was cooperation or consultation between Cianbro and the Cianchette campaign. Mr. Wayne said that while Mr. Cianchette acknowledged that there were communications between Cianbro and his campaign, it was up to the Commission to decide whether those communications were sufficient to categorize Cianbro's activities as an in-kind contribution.

Ms. Gardiner said that a factual finding for the Commission to make would be whether Cianbro acted in consultation, cooperation or concert with the Cianbro campaign, making its activities an in-kind contribution.

Mr. Ketterer said that an in-kind contribution is difficult for many to conceptualize. Mr. Ketterer said it may be difficult to determine the total cost of Cianbro's campaign activities. Mr. Ketterer said that an independent expenditure places the burden to file a report on the person or entity making the expenditure, but the signs placed by Cianbro were provided by the Cianchette campaign.

Mr. Cassidy said that it was difficult to keep track of the activities of large campaigns. Mr. Cassidy said that it was not unusual for companies to participate in political campaigns or support candidates, but they are required to report these activities.

Ms. Thompson asked what the penalty would be against Cianbro for its lack of reporting.

Ms. Gardiner asked Ms. Thompson whether she was asking about the penalty for an over-the-limit contribution or an unreported independent expenditure. Ms. Gardiner said that under the 2002 law, Cianbro cannot be penalized for making an over-the-limit contribution.

Mr. Ketterer said that it could be the case that Cianbro disguised its campaign contributions in a deliberate attempt to circumvent the contribution limits and reporting requirements.

Ms. Gardiner said that the law was amended in 2004 to allow for civil penalties toward those who make over-the-limit contributions.

Mr. Ketterer asked the Commission members if they agreed that Cianbro made an in-kind contribution rather than an independent expenditure.

Ms. Gardiner said that if the Commission members agree that Cianbro made an in-kind contribution, they can then decide whether Mr. Cianchette's 2002 finance reports were substantially compliant.

Ms. Thompson moved, Mr. Cassidy seconded and the Commission voted unanimously (3-0) to find as a fact that there was an over-the-limit contribution made by Cianbro Corporation and received by the Cianchette campaign.

Ms. Gardiner said that the next step would be for the Commission to determine which of Mr. Cianchette's originally-filed reports were substantially nonconforming and thus late.

Ms. Thompson asked the staff for its recommendation on which reports should be considered late.

In response, Mr. Wayne suggested that the Commission may want to keep in mind two non-quantitative facts along with the reports. First, Mr. Cianchette stated that he intended to file complete reports. Second, Mr. Wayne said that the entirety of the penalty would fall on Mr. Cianchette. Mr. Wayne said that Mr. Cianchette was also responsible for reporting the in-kind contributions made to his campaign. Mr. Wayne said that the Cianchette campaign underreported the contributions it received by 24% on the 42-Day Post-General report, which could be considered an incomplete report. Mr. Wayne said that the 6-Day Pre-General underreported contributions by 13.1%. Mr. Wayne said that the other reports filed by the campaign had a much lesser percentage of missing contributions.

Ms. Thompson asked if the Commission had previously given fines for underreporting. Ms. Gardiner said that it had, but she did not know what criteria the Commission had used for deciding if an instance of underreporting warranted a fine.

Mr. Cassidy said that there was an issue before the Commission the previous fall where a candidate did not know that one of his campaign workers had failed to deliver checks. Mr. Cassidy said that the Commission had to determine if the candidate was late even though he had reason to believe the checks had been delivered.

Ms. Thompson said that the violation was more serious than just late reporting. Ms. Thompson said that Cianbro is partly to blame but cannot be fined by the Commission, so the Commission is left with the option of a late filing penalty against Mr. Cianchette.

Mr. Ketterer said that while the late filing penalty is the method the Commission must use to assess penalties, he considered the violation to be very serious. Mr. Ketterer said that the Commission should make some determination on the compliance of the five reports filed by Mr. Cianchette in 2002.

Ms. Thompson asked if Mr. Cianchette's revised contribution amounts were factually correct. Mr. Wayne replied that the numbers were provided by Cianbro and that there is no evidence that they were incorrect.

Mr. Cassidy said that while there should be some penalty, the amount remained to be determined. Mr. Cassidy said that the penalty could be a maximum of \$5,000. Mr. Cassidy said that the Commission must be fair to Mr. Cianchette but also encourage future candidates to keep track of their campaigns.

Ms. Thompson moved, and Mr. Ketterer seconded, that the Commission assess the maximum penalty of \$5,000 for faulty reporting in each of the five reports filed by Mr. Cianchette in 2002.

Mr. Cassidy said that the maximum penalty seems too high considering that Mr. Cianchette filed in a timely manner after the Commission requested amended reports. Mr. Cassidy said the Commission should also take into consideration that Mr. Cianchette will have to pay the fine on behalf of his campaign.

Mr. Ketterer said that the penalty amount should not be included in the same motion as the determination on the accuracy of the reports. Mr. Ketterer said that the 42-Day Post-Primary and 6-Day Pre-Primary should be considered substantially compliant since few in-kind contributions from Cianbro were received during those periods.

Ms. Thompson said that the maximum penalty should be assessed due to the gravity of the violations. Ms. Thompson said that it was not possible to put a dollar amount on Cianbro's influence in the election.

Mr. Ketterer said that the law only allows the Commission to assess fines if the reports were substantially noncompliant.

The Commission voted 1-2 to assess the maximum penalty of \$5,000 for faulty reporting in each of the five reports filed by Mr. Cianchette in 2002. Ms. Thompson voted for the motion. Mr. Ketterer and Mr. Cassidy voted against the motion and the motion failed.

Mr. Cassidy said that the penalty should be substantial but also fair. Mr. Cassidy said that \$10,000 was a good penalty amount based on these criteria.

Mr. Cassidy moved, and Mr. Ketterer seconded, that the Commission assess the maximum penalty of \$5,000 for Mr. Cianchette's 6-Day Pre-General and 42-Day Post-General reports for a total penalty of \$10,000.

Mr. Ketterer said that he disagreed with the motion because the Commission should first decide whether each report meets the requirements of the law rather than deciding on a fixed fine.

Mr. Cassidy said that the first two reports are not sufficiently noncompliant to justify a penalty. Mr. Cassidy said that he was willing to amend his original motion to make it clearer which reports were found in violation. Mr. Cassidy withdrew his motion and Mr. Ketterer withdrew his second.

Mr. Ketterer said that the Commission should first come to a finding of violation before voting on penalties.

Ms. Thompson moved, Mr. Ketterer seconded, and the Commission voted unanimously (3-0) to find that Mr. Cianchette's 42-Day Pre-General, 6-Day Pre-General and 42-Day Post-General reports from the 2002 election did not substantially comply with the law.

Ms. Gardiner said that the Commission could decide to reduce a penalty from the maximum amount of \$5,000 if the penalty is deemed disproportionate or the violation resulted from mitigating circumstances.

Mr. Wayne said that Mr. Cianchette's good-faith effort to provide accurate reports should be taken into consideration.

Mr. Ketterer said that the Commission generally assumes the accuracy of the information being reported by campaigns unless someone challenges the reports. Mr. Ketterer said that the information contained in the reports has various uses during an election, for instance in computing matching funds payments.

Ms. Thompson expressed her concern about a lack of precedents set by the Commission on proper reporting practices.

Ms. Thompson moved, Mr. Cassidy seconded, and the Commission voted unanimously (3-0) to assess penalties of \$2,000 for Mr. Cianchette's 42-Day Pre-General report, \$5,000 for the 6-Day Pre-General report, and \$5,000 for the 42-Day Post-General report.

Agenda Item #4 – Request for Advisory Opinion/Maine for Mills PAC

Ms. Ginn Marvin rejoined the meeting and resumed her role as Chair.

Mr. Wayne said that Michael Healy, treasurer of the Maine for Mills PAC, requested an advisory opinion from the Commission on whether the PAC's activities would constitute in-kind contributions to the Mills campaign. Mr. Wayne said that Mr. Healy disagreed with the Commission staff's advice to Senator Mills, who asked the PAC to disband.

Daniel Riley introduced himself as an attorney with Bernstein Shur in Portland who serves as counsel for the Maine for Mills PAC. Mr. Riley said that Senator Mills was concerned that any of the PAC's expenditures would be a contribution to his campaign. Mr. Riley disagreed, saying that they would be independent expenditures rather than in-kind contributions. Mr. Riley said that Mr. Healy wanted a definitive ruling from the Commission. Mr. Riley said that since there was no coordination between Senator Mills and the PAC, the PAC's activities could only be considered independent expenditures.

Ms. Gardiner said that the issue was whether a person giving money to the PAC was in fact contributing to the Mills campaign, since the PAC was only supporting a single candidate. Mr. Riley responded that Senator Mills had no control over how the money donated to the PAC would be used.

Daniel Billings introduced himself as a representative of the Woodcock for Governor campaign. Mr. Billings said that the campaign was satisfied with how the Commission staff handled the Maine for Mills PAC issue. Mr. Billings said that a PAC should be able to act independently from a candidate without its activities being considered in-kind contributions. Mr. Billings said that there was a question of when a PAC, like Maine for Mills, can be considered independent from a candidate's campaign. Mr. Billings said that Senator Mills mentioned Michael Healy as a supporter and a worker on his gubernatorial campaign. Mr. Billings said that the Commission should address this issue of what makes a person or PAC an agent of a campaign.

Mr. Ketterer said that the request for an inquiry was not fully developed and that there was no specific case that the Commission could address.

Mr. Ketterer moved, Ms. Thompson seconded and the Commission voted unanimously (4-0) to table Mr. Healy's request for an advisory opinion.

Agenda Item #5 – Request for Waiver of Late-Filing Penalty/Paul Volle

Mr. Wayne said that Agenda Items #5, #6, and #7 relate to the requirement that PACs re-register with the Commission every two years. Mr. Wayne said that the Commission staff had received re-registration forms from all but about 10 PACs. Mr. Wayne said that the statute provides for a penalty of up to \$250 for failing to re-register. Mr. Wayne said that Mr. Volle had three PACs registered with the Commission, but none of them filed a re-registration by the March 1 deadline. Mr. Wayne said that Mr. Volle claimed to have not received the notice detailing the re-registration requirement. Mr. Wayne said that the staff recommended a penalty of \$100 based on the Commission's previous determination against the Yarmouth Taxpayers' Association.

Mr. Ketterer moved, Mr. Cassidy seconded, and the Commission voted unanimously (4-0) to adopt the staff recommendation of a total penalty of \$100 against the three PACs organized by Paul Volle.

Agenda Item #6 – Request for Waiver of Late-Filing Penalty/South Portland Coalition

Mr. Ketterer moved, Ms. Thompson seconded, and the Commission voted unanimously (4-0) to adopt the staff recommendation of a \$100 penalty against the South Portland Coalition.

Agenda Item #7 – Request for Waiver of Late-Filing Penalty/Don't Mortgage ME

Mr. Ketterer moved, Mr. Cassidy seconded, and the Commission voted unanimously (4-0) to adopt the staff recommendation of a \$100 penalty against Don't Mortgage ME.

Agenda Item #8 – Request for Waiver of Late-Filing Penalty/Richard Wurfel

Mr. Wayne said that Mr. Wurfel sent a letter requesting a waiver of the penalty for a late lobbyist report. Mr. Wayne said that Mr. Wurfel was not a professional lobbyist but was working on one issue on behalf of the Professional Firefighters of Maine. Mr. Wayne said that the same standards should apply to Mr. Wurfel as to all other lobbyists.

Mr. Cassidy moved, Mr. Thompson seconded and the staff voted unanimously (4-0) to adopt the staff recommendation of a \$100 penalty against Richard Wurfel.

Agenda Item #9 – Assessment of Late-Filing Penalty/Alvin Schulman

Mr. Wayne said that Mr. Schulman was required to file two campaign finance reports as a candidate for Portland City Council in 2005. Mr. Wayne said that he did not file the 42-Day Post-General report on time and was referred to the Commission by the Portland city clerk. Mr. Wayne said that Mr. Schulman filed the report on March 21 when he was placed on the agenda for the previous Commission meeting.

Mr. Ketterer moved, Ms. Thompson seconded, and the Commission voted unanimously (4-0) to adopt the staff recommendation of a \$100 penalty against Alvin Shulman.

Agenda Item #10 – Referral to Attorney General for Collection of Civil Penalty/Alfred Piombino

Mr. Wayne said that Mr. Piombino filed two late reports, which accumulated a fine of \$3,314.19. Mr. Wayne said that in a conversation with Mr. Piombino, he advised him to request a waiver of the penalties. Mr. Piombino declined to request a waiver and expressed that he wished to pay off the entirety of the penalty. Mr. Wayne said that Mr. Piombino had only paid \$200 of the penalty and has since moved to New Jersey. Mr. Wayne recommended referring the collection of the penalties to the Attorney General's office.

Mr. Ketterer moved, Ms. Thompson seconded, and the Commission voted unanimously (4-0) to refer the collection of penalties against Alfred Piombino to the Attorney General.

Agenda Item #11 – Meeting Dates for May - August

The Commission members agreed to meet on May 8 if there is an appeal of a denial of Clean Election certification. Otherwise they discussed scheduling a meeting for sometime in June.

There being no further business, Ms. Ginn Marvin moved, Ms. Thompson seconded, and the Commission unanimously voted (4-0) to adjourn.

Respectfully submitted,

Jonathan Wayne
Executive Director

Minutes of the June 12, 2006 Meeting of the
Commission on Governmental Ethics and Election Practices
Held via conference call.

Present: Chair Jean Ginn Marvin; Hon. Vinton E. Cassidy; Hon. Andrew Ketterer;
Staff: Executive Director Jonathan Wayne, Paul Lavin, Martha Demeritt;
Commission Counsel: Phyllis Gardiner;
Complainant: Jennifer Duddy; For the Complainant: Jane Amero.

At 2:20P.M., Chair Ginn Marvin convened the meeting. The Commission considered one item:

Request for Consideration of Mike Mowles for Legislature Campaign Flyer

Chair Ginn-Marvin opened the hearing by introducing the complaint by Jennifer Duddy, Republican candidate for House District 121, who believes a campaign flyer recently mailed by her primary opponent Michael Mowles is misleading. She also pointed out that Mr. Mowles has indicated to staff that this hearing was happening too soon, he would not be able to participate in the hearing, and that he needed time to appoint legal counsel. Chair Ginn-Marvin then asked Executive Director Wayne to summarize the complaint and discuss how the Commission should proceed.

Executive Director Wayne summarized the complainant's request for Commission review. A mailer was sent out recently by the Mike Mowles campaign in House District 121 which includes language of endorsement by United States Senators Olympia Snowe and Susan Collins. This endorsement language was made when Mowles ran for the Maine House of Representatives in the 2004 general election against a Democrat, not in this primary and may appear to be misleading. Section 1014-A of Title 21-A states, "A candidate may not use an endorsement unless the endorser has expressly authorized its use." There is no suggestion that these quotations were made for 2006 use.

Counsel Gardiner asked if we had obtained any statements from Senators Snowe or Collins.

Ms. Demeritt described her conversation with Steve Abbott, chief of staff for Senator Collins. Mr. Abbott orally indicated to Ms. Demeritt that Senator Collins has not endorsed any state races in Maine whatsoever in 2006. Ms. Demeritt also read an e-mail she received from Senator Snowe's campaign manager, Lucas Caron, indicating that Senator Snowe did not endorse any candidates for office in Maine during the primary.

Ms. Duddy indicated that this flyer came to her attention on June 11, 2006 when a campaign volunteer making Get Out The Vote (GOTV) calls informed her that a voter told the volunteer that Senators Snowe and Collins had endorsed Mowles. She proceeded to get several copies of this mailer from a couple of her neighbors and proceeded to advise her GOTV volunteers about it. She subsequently discovered that indeed others who had received the flyer had been misled into thinking that Maine's Senators had endorsed Mowles.

Ms. Duddy believes the critical statement is: *See what people are saying about...Mike Mowles.* This statement, she believes, is effectively perceived to be nothing short of an endorsement for his campaign. She said this flyer has compromised the entire election and should not be misconstrued. Based on Mr. Mowles' letter to the Commission staff responding to her complaint, his comments are disingenuous. Ms. Duddy believes that this was an unauthorized endorsement. She thinks the Commission should make a finding of violation of endorsement, levy a penalty and issue a press release.

Ms. Amero, a campaign volunteer for the Duddy campaign, made GOTV calls to voters she personally knew in HD 121, not cold calls. Prior to making the calls on the afternoon of June 11th she was told by Ms. Duddy about the flyer. Ms. Amero made calls to those known to her and stated "I am supporting Jennifer Duddy on June 13th and hope you would do the same." If the voters response to that statement was less than warm, she proceeded to describe the mailer and explain that the statements from Maine's Senators were not made for the 2006 primary, but instead for the 2004 general election which she personally confirmed by calling the chiefs of staff for Senators Snowe and Collins on June 11th.

Counsel Gardiner asked Ms. Amero if any of those who received the flyer had interpreted it not as an endorsement. Ms. Amero responded that her politically astute neighbor understood that it was not an endorsement for the 2006 primary, but other people who were less familiar with campaigns, even though they saw the October 2004 date may not realize it was an endorsement for that campaign only.

Counsel Gardiner asked how many voters Ms. Amero contacted thought it was an endorsement. Ms. Amero responded "at least 10, maybe a few more."

Chair Ginn-Marvin pointed out that the font for the date of the endorsements (October 2004) on the flyer appears to be substantially smaller than the rest of the text on the document.

Ms. Amero stated that she only mentioned the flyer to voters if they did not note their commitment to candidate Duddy. She also stated that to construe Senator Snowe's last sentence "I urge you to elect Mike Mowles to the Maine House of Representatives" to be anything but an endorsement is disingenuous, the endorsement is very clear. The use of a small font for the date of the quotation does not negate the endorsement.

Mr. Cassidy asked whether or not there is any precedent for this kind of complaint. Both Counsel Gardiner and Executive Director Wayne indicated that there was not to the best of their recollection.

Mr. Cassidy also asked what the penalty would be and how the law addresses this particular matter. Counsel Gardiner responded stating that §1014-A states that there could be a civil forfeiture of no more than \$200.

Mr. Ketterer asked if the respondent received notice of today's hearing. Mr. Lavin indicated that Commission staff had received a statement from Mr. Mowles, who was notified of the today's meeting as soon as he determined that there would be three Commission Member's available to hear the complaint.

Executive Director Wayne summarized the letter received from Mr. Mowles which requests that the Commission take up this matter at a later date because:

- (1) He was not supplied with a written copy of the complaint.
- (2) He was not told when the complaint was made and in what fashion.
- (3) Ample notice had not been given so that he could be properly represented before the Commission.
- (4) He wished to be represented by an attorney for this matter.
- (5) His attorney will need proper time to prepare for the hearing.

Mr. Mowles also stated in his letter that the dates of the quotations included on the flyer are clearly marked as October 2004. He believes that for these statements to be construed as an endorsement of the June 2006 primary is inaccurate. Furthermore, he states it is important to show primary voters that he has earned the trust and support of the two U.S. Senators in the past is highly relevant to this primary and the selection of a viable nominee for 2006.

Executive Director Wayne, at the urging of the chair, gave the staff interpretation of the facts. First, it is procedurally permissible to make a decision at this meeting, although it is an odd situation that the respondent has declined to be heard except for his submitted letter. Second, based on his own reading of the flyer, that although the quotes parenthetically mention October 2004, when you read the other side, with the names of other supporters on it, a sophisticated recipient will understand that these quotes were not meant for this year, but others may be misled.

While Mr. Wayne sympathizes with Ms. Duddy, he does not recommend the Commissioners send out a press release, as that would be a major departure from the Commission's previous practices. He went on to state that the members should be concerned about the appearance of a rushed decision.

Chair Ginn-Marvin said that the timing of this meeting is germane to the primary election to be held tomorrow (June 13th) and that it is the role of the Commission to take swift action for all complaints filed before an election. While a \$200 finding of violation does not change things, she believes that the Commission's duty is to act expeditiously.

Counsel Gardiner suggested that the Commission could make a preliminary or final finding on whether the flyer constitutes an endorsement and defer a penalty to the next regularly scheduled meeting of the Commission so that Mr. Mowles can be heard.

Mr. Ketterer stated that based on the presentation, the person who did this mailing did so recently and did it in a calculated manner so that the opposing candidate would not have the time to respond. He feels that this flyer was intended to be an endorsement. The intent was to show that the Senators were not endorsing a Republican woman. He believes that it warrants a finding of violation on the points that Executive Director Wayne mentioned. He also did not believe a press release from the Commission was necessary. If he so chooses, Mr. Mowles could file a motion to reconsider, as others have done in the past. However, Mr. Ketterer does not give great weight to Mr. Mowles' inability to appear at this hearing.

Mr. Ketterer discussed making a motion to find the endorsement in violation of §1014-A and defer the penalty until a later date.

Mr. Cassidy agreed that a flyer sent at the 11th hour was intended to mislead the voters. He also would like to deal with the penalty at a later meeting.

Mr. Ketterer made a motion that a finding of violation of §1014-A be made based on the definition of endorsement in §1014-A, that the quotations constituted endorsements, and that they were not authorized by the endorsers, and that any penalty be discussed at a later date.

The Commission voted (3-0) to find the Mowles campaign in violation of §1014-A and consider any penalties at the next meeting of the Commission on June 22nd.

Mr. Ketterer asked that the record reflect he worked with the complainant at the Attorney General's (AG) office where she was an employee and that he may have hired her. He was not willing to recuse himself because the nature of their relationship was strictly professional, that he has not been at the AG office for six years, and that he may have hired her eight or nine years ago.

Chair Ginn-Marvin also stated that she knew both the complainant and the respondent and lives in the district, but can be unbiased in this case because she does not know either of them particularly well.

The meeting adjourned at 3:05 p.m.

Respectfully submitted,

Jonathan Wayne
Executive Director

Agenda

Item #2



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

To: Commission Members
From: Jonathan Wayne, Executive Director
Date: June 13, 2006
Re: Mailings by Rep. Kevin Glynn

Request for Inquiry

Kevin Glynn currently represents District #124 in the Maine House of Representatives, which includes part of South Portland (see attached map). He cannot run for re-election because of term limitations. Instead, he is the Republican candidate for State Senate, District #7 which includes South Portland, Cape Elizabeth, and part of Scarborough (see attached map of district). In addition to Rep. Glynn, there are two other candidates for the Senate in the district: Lynn Bromley, a Democrat (the incumbent), and Keith Louis, the Green Independent candidate. All three are participating in the Maine Clean Election Act (MCEA).

On April 28, 2006, Rep. Lawrence Bliss sent an e-mail to the Commission staff stating that he had received at his home, addressed to "Resident," a four-page "Constituent Outreach Newsletter" by Rep. Glynn. Rep. Bliss said that he received three voicemail messages from his own constituents who wanted to know why they had received a constituent newsletter from Rep. Glynn. (Rep. Glynn's newsletter states: "Thank you for the opportunity to serve you in the Maine House of Representatives.")

Rep. Bliss asserted that the newsletter: "should be listed as a campaign expense, and it should have included IN WRITING that it was paid for and authorized by his campaign committee, rather than by the Maine Legislature."¹ (emphasis in original) He submitted to the Commission the copy of the newsletter which he received (see attached). Subsequently, a staff person for Senate Democratic candidates submitted a second copy of the April newsletter along with a similar newsletter mailed by Glynn on February 27, 2006 (see attached).

In addition to the April and February newsletters, Rep. Glynn apparently sent two mailings in 2005, in part, to households outside his current district:

- a preview of the questions on the November 2005 general election ballot; and

¹ Rep. Bliss also states the State of Maine should not pay for Rep. Glynn to distribute his information to parts of South Portland outside his own district. The use of legislative resources for political purposes is not within the jurisdiction of the Commission, and this issue might be better considered by an office of the Legislature.

- a survey requesting the recipient to respond to questions concerning issues in the 2006 legislative session that would be of interest to the recipient. (The recipient was invited to fill out the survey, and the postage for the response was prepaid.)²

Payment for Mailings

We have not received from Rep. Glynn complete information about the costs of the mailings.

- *February newsletter.* Rep. Glynn's counsel, Daniel I. Billings, states that Rep. Glynn paid for the entire cost of the February newsletter using his legislative pay and his constituent service allowance. Although the staff requested them, Rep. Glynn has declined to disclose the in-district or out-of-district cost of this newsletter. He has not provided the requested invoice and U.S. Postal Service forms for this newsletter.
- *April newsletter.* Dan Billings states that Rep. Glynn paid for the out-of-district cost of the April newsletter using his legislative pay and his constituent service allowance. He submitted the attached invoice to the Clerk of the House for reimbursement for the in-district newsletters. (We received the attached invoice from the Clerk of the House. It is a revised version of the invoice Glynn submitted for the 2005 ballot preview mailing.) That invoice has not been paid. He has not provided the requested U.S. Postal Service forms for the April newsletter.
- *2005 Legislative Issues Survey.* We do not know the cost of this mailing or how it was paid. The Commission staff tentatively withdrew its request for this information, because this survey was mailed before Rep. Glynn technically became a candidate
- *2005 Ballot Preview.* We received the attached invoice from the Clerk of the House, which may represent the cost of the in-district mailing. I believe the invoice was paid by the Clerk of the House, and that will be confirmed for the June 22 meeting. Other than this invoice, we do not know the cost of the mailing or how it was paid.

² The Senate Democratic campaign staff also provided an example of the legislative issue survey but not the ballot preview.

Commencement of Kevin Glynn's Campaign for Senate

The Election Law defines "candidate" as:

any person who has filed a petition under either sections 335 and 336 or sections 354 and 355 and has qualified as a candidate by either procedure, or any person who has received contributions or made expenditures or has given his consent for any other person to receive contributions or make expenditures with the intent of qualifying as a candidate

21-A M.R.S.A. §1(5)(emphasis added).

On February 8, 2006, Rep. Glynn received his first seed money contribution of \$100 for his Senate campaign. On February 19, 2006, he purchased money orders to use as qualifying contributions under the Maine Clean Election Act. He registered as a candidate with the Commission on March 2, 2006.

It appears that at least as of February 8, Rep. Glynn had become a "candidate" as defined in 21-A M.R.S.A. §1(5) because on that date he received a contribution with the intent of qualifying as a candidate. Notably, this was almost three weeks before he mailed the February 27 newsletter.

Although the February and April newsletters were mailed after Rep. Glynn became a candidate for Senate District 7, the voter survey and ballot question mailings sent in 2005 apparently predate his becoming a Senate candidate as defined in statute. Nonetheless, it certainly could be argued that these two earlier mailings promoted Rep. Glynn's Senate campaign by increasing his name recognition within the Senate district and by gathering information about issues of interest to voters.

Advice from Commission Staff re: Mailings

During the week of April 10, Rep. Glynn came to the Commission office with a draft copy of the April newsletter in order to obtain guidance on whether the content of the newsletter would be considered a campaign-related communication and the cost considered a reportable expenditure related to his Senate campaign. He said that this newsletter was similar to others he sent to his constituents in the past. Rep. Glynn asked that the content of the newsletter be reviewed by the Commission's Assistant Director, who reviewed the newsletter and determined that its content was not campaign-related and was usual for Legislators' constituent mailings. Rep. Glynn also said that it was his past practice as a Legislator to send newsletters to people outside of his district. However, Rep. Glynn's portrayal of the mailing's distribution did not lead the Assistant Director to believe that the mailing would go outside Rep. Glynn's district to any significant degree. Based on the information he provided, the Commission staff advised Rep. Glynn that the cost of the April newsletter would not be considered part of the campaign.

In retrospect, the Commission staff erred in offering that advice without requesting more factual information from Rep. Glynn (*e.g.*, to what degree would the newsletter be sent beyond the district). The question was posed just before the April 18 Maine Clean Election Act deadline – our busiest week of the election cycle.

On April 19, Rep. Glynn came to the office a second time with a letter confirming his understanding of the staff's guidance from the previous week. Presumably, Rep. Glynn relied on the advice he received in sending out the April newsletter. For this reason, you may feel constrained not to consider the April newsletter to be a campaign contribution or expenditure. In general, the Commission employees attempt to give the best advice that they can given the facts that are presented to them, and on the whole we get into relatively few disputes with candidates regarding our advice. We do encounter situations such as this, however, where we reconsider advice given, based on new information or further internal review of the matter.

Partial Response Provided by Rep. Glynn

The Commission staff sent a preliminary request for information to Rep. Glynn on May 5. Upon further consideration, the Commission staff submitted a revised request on May 10 which focused on the February and April newsletters. Dan Billings submitted a six page letter dated May 22 in response. I refer you to the letter.

Rep. Glynn declined to provide certain information requested by the Commission staff, including:

- the number of households outside his district that received the February and April newsletters;
- the cost of the February and April newsletters (with in- and out-of-district costs identified); and
- an invoice for the February newsletter and the postal records for the mailing of both newsletters.

While Rep. Glynn objects to the scope of these requests, the Commission staff believes that the requested information is relevant to a determination whether his expenditures for the February and April newsletters are campaign contributions or expenditures that should have been included in campaign finance reports.

The Commission is authorized to “undertake audits and investigations to determine the facts concerning ... contributions by or to and expenditures by a ... candidate” (21-A M.R.S.A. §10013(1)) and may “administer and investigate any violations of the requirements for campaign reports and campaign financing” (1 M.R.S.A. §1008(2))

Letters to Honor Roll Students

The Commission also has received a separate complaint from Sally Sutton regarding letters sent to her children by Rep. Glynn, congratulating them for making the honor roll at South Portland High School. She lives outside Rep. Glynn's House District, but within

the Senate District which he is now seeking to represent. She objects to the use of legislative resources being used for what she interprets to be campaign purposes. Attorney Daniel I. Billings has submitted a response on behalf of Rep. Glynn, explaining that Rep. Glynn has sent these types of letters to students both within and outside of his House district over time, and has always paid for them out of his legislative salary and constituent allowance.

Applicable Legal Provisions

The Election Law and Commission Rules do not contain any specific guidance for distinguishing a Legislator's communication to constituents from campaign literature. Thus, the only guidance comes from the statutory definition of campaign contributions and expenditures. The Election Law defines "expenditure" as:

A purchase, payment, distribution, loan, advance, deposit or gift of money or anything of value made for the purpose of influencing the nomination or election of any person to political office

21-A M.R.S.A. §1012(3)(A)(1) (emphasis added). Campaign contribution is defined similarly:

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 or for the purpose of liquidating any campaign deficit of a candidate

21-A M.R.S.A. §1012(2)(A)(1) (emphasis added).

Thus, by definition, if an individual who is running for office purchases goods or services for some purpose other than influencing a nomination or election (such as communication to constituents or other Maine residents), the purchase is by definition not a campaign expenditure.³

Also, the Election Law broadly considers expenditures by sources other than the campaign for "campaign materials" to be a contribution to the candidate: "The financing by any person of the dissemination, distribution or republication, in whole or in part, of any broadcast or any written or other campaign materials prepared by the candidate ... is considered to be a contribution to that candidate." 21-A M.R.S.A. §1015(5).

Rep. Glynn's counsel argues that the Commission should look only at the content of the newsletter to determine whether their costs should be considered campaign expenditures. The Commission staff believes this approach is too narrow. Instead, the staff

³ Also excluded from the definition of expenditure is: "Any communication by any person that is not made for the purpose of influencing the nomination of election, or election, of any person to state or county office." (21-A M.R.S.A. §1012(3)(B)(6))

recommends applying the statutory definitions above and considering whether the printing and mail costs of the out-of-district newsletters⁴ were “purchase[s] ... made for the purpose of influencing [Rep. Glynn’s] nomination or election” The Commission may wish to consider a number of factors, including:

- when the mailings were sent in relation to the initiation of Rep. Glynn’s campaign;
- what is the content of the mailings (while not completely determinative, the language of the newsletters is certainly relevant);
- to what degree did the February and April newsletters go to residents of Senate District #7 outside Rep. Glynn’s current legislative district (he has not provided this information);
- does Rep. Glynn have a long history of sending mass mailings to residents outside his House district (Mr. Billings indicates that Rep. Glynn did not send mailings outside of South Portland prior to 2005); and
- what other purpose did Rep. Glynn have in sending the February and April newsletters to residents outside his district.

If the Commission were to conclude that the printing and mail costs were contributions to Rep. Glynn’s campaign, it could consider whether to find Rep. Glynn in violation and, if so, what remedies are available to cure a violation after the fact. Candidates who voluntarily participate in the Maine Clean Election Act agree to restrictions on campaign contributions and expenditures. These restrictions are necessary to maintain the level playing field of the public financing program. After the Commission has certified a candidate under the MCEA, the candidate “must limit the candidate’s campaign expenditures and obligations ... to [MCEA funds] and may not accept any contributions unless specifically authorized by the commission.” 21-A M.R.S.A. §1125(6). Prior to certification, the candidate may accept only seed money contributions from individuals -- up to \$100 per contributor (including from the candidate). 21-A M.R.S.A. §1122(9). Rep. Glynn was certified on April 7, 2006.

Broader Policy Question

The Commission may also wish to give preliminary consideration to the more difficult question of whether mass mailings from an incumbent Legislator to his or her current constituents would be considered, under any circumstances, a campaign contribution or expenditure. A statute or major substantive rule offering guidance on the distinction may assist incumbent Legislators seeking re-election in avoiding accusations of non-compliance.

For your information, I have attached a memo dated June 16, 2004 by the counsel to the Senate President addressing whether State Senators could use legislative resources on communications with residents in towns that were “new” to their districts due to

⁴ The Commission staff recommends that the in-district portion of the February and April newsletters be accepted as constituent communications – not campaign expenditures.

redistricting. One relevant conclusion in the memo is: "Communicating with a specific Maine citizen is clearly supported by Senate expenditures, but a bulk mailing to the citizen of *new town* is not. The only bulk mailings supported by the Senate are to current constituents." (page 3, 1st paragraph, italics in original)

Options for Commission Action

The Commission staff sees three general directions in which the Commission could proceed:

(1) The Commission could take no action with respect to Rep. Glynn other than cautioning him that in the future out-of-district mailings could be viewed as campaign expenditures. This might be appropriate because:

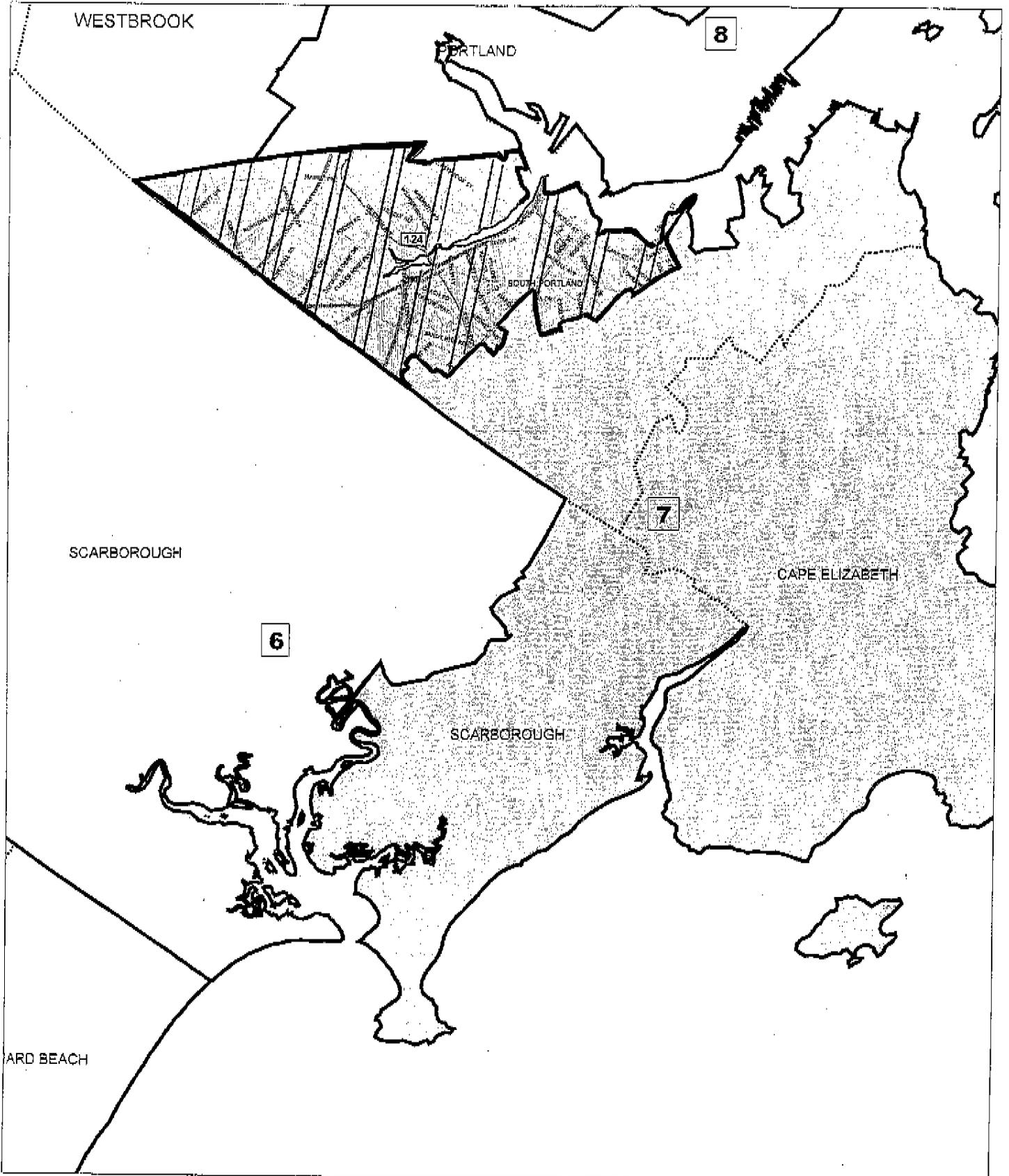
- Rep. Glynn presumably relied on the Commission staff's advice in sending out the April newsletter, and should not be disadvantaged by relying on that advice; and
- You may be hesitant about make a ruling in the difficult policy area of distinguishing campaign literature from Legislator's communications to residents.

The staff believes this would be a reasonable outcome, but it does leave unresolved the concern that the two other candidates in the race, Lynn Bromley and Keith Louis, may have been disadvantaged by Glynn's expenditures on the February and April mailings outside his district which arguably promoted his campaign.

(2) The Commission could determine that the out-of-district February and April newsletters are in-kind contributions by Rep. Glynn to his campaign. Since such contributions would be in violation of the Maine Clean Election Act, the Commission could require that Rep. Glynn use his Maine Clean Election Act funds to reimburse him for the February and April newsletters. Alternatively, you may wish to exclude the April newsletter due to his reliance on Commission staff advice or you may wish to include the 2005 mailings in the determination.

(3) A more serious option is to find Rep. Glynn in violation of the seed money restrictions and the post-certification prohibition on spending money other than MCEA funds. These violations could result in a financial penalty or call into question his qualification for public funding. The Commission staff recommends against this option, because of the lack of legal guidance in this area regarding constituent communications and the fact that he sought and relied on staff advice. Requiring Rep. Glynn to use his limited MCEA funds to reimburse him for the newsletters would be a sufficient remedy if the Commission finds a violation.

House District 124 and Senate District 7





Representative Kevin Glynn

109 Huntress Ave.
South Portland, Maine
Phone: (207) 799-5319
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Website: www.glynn.org

Legislation to Prohibit Local Petitioning Gains Committee Approval

AUGUSTA - By a margin of 11 to 2, the State and Local Government Committee voted to support an amended version of LD 1481. As amended, the bill prohibits municipalities from nullifying or amending a land use-related municipal permit by the subsequent enactment or modification of a local ordinance. This amendment effectively prohibits municipalities from retroactively impacting any project for which permits have been issued.

at its January 18th meeting, the Maine Municipal Association's Legislative Policy Committee voted to oppose this legislation.

This legislation could have had an impact on the City Council intervention in the Irving Oil tank farm issue in South Portland a few years ago. This legislation could also take rights away from town councils and boards of selectmen significantly impacting the way planning issues are dealt with in local towns.



After reviewing the amendment

Supplemental Budget Passes with Strong Bipartisan Support

For much of the legislative session, when talk in the State House hallways turned to the pending supplemental budget, the common wisdom was "no deal."

In other words, folks didn't think Democrat and Republican members of the Joint Standing Committee on Appropriations and Financial Affairs would reach an agreement on how to dispose of the roughly \$150 million in surplus state revenues that came to light in December. Common wisdom was wrong. Instead, the Appropriations Committee, after three months of long hours and detailed negotiations, successfully brought their compromise supplemental budget (found in LD 1968) to the House and Senate floors.

continued on page 3...

Maine Court Rules TABOR Ineligible for the November Ballot

AUGUSTA- Maine Secretary of State Matthew Dunlap said a Superior Court judge has rendered a decision that would block a statewide vote on a far-reaching proposal to curb government spending in Maine.

Dunlap and a citizen challenger have been at odds over whether a Taxpayer Bill of Rights initiative based on Colorado's voter-approved constitutional amendment should have been greenlighted for voter consideration.

A state lawyer arguing for Secretary of State Matthew Dunlap asserts that Dunlap had the discretion to count petition signatures submitted by proponents after a statutory filing deadline.

But lawyers for Kathleen McGee, a veteran ...

continued on page 2...

Maine Court Rules TABOR Ineligible for November Ballot

from page 1...

political activist who challenged Dunlap's action, maintain that the Secretary of State's acceptance of the late petitions was illegal.

Dunlap said the dispute stemmed from a conflict between statute and the Maine Constitution, which outlines a different filing deadline. Dunlap said his office would review the decision by Justice Donald Marden and consider whether to appeal.

"There was an apparent conflict between the statute and the Constitution," Dunlap said in an impromptu interview. "The court has taken an affirmative stand that we were in error and ultimately they are the final arbiter."

On Feb. 21, Dunlap ruled that enough valid petition signatures were submitted last fall to place the spending cap proposal on Maine ballots later this year unless lawmakers approve the measure first.

Dunlap, while clearing the way for legislative consideration and a potential popular vote, also disclosed that the citizen initiative campaign led by anti-tax activist Mary Adams would have failed if state officials had not chosen to accept some petitions after the statutory deadline for filing.

The so-called TABOR initiative would limit annual spending increases for state and local governments

and schools to the rate of inflation plus increases in population. The proposal calls for the return of 80 percent of excess revenues to taxpayers, with 20 percent going to a rainy day government fund.

Voter approval would be required to increase taxes or fees or to weaken the spending cap. Maine's Constitution requires that, in a year like this when the Legislature opened on Jan. 4, petitions are to be filed with the Secretary of State on or before the 25th day after lawmakers convene.

The Constitution also says "no signature older than one year from the written date on the petition shall be valid."

State law establishes a date of issuance, in this case, Oct. 21, 2004, on which the Secretary of State provides an approved form of a petition to an applicant and mandates that signed petitions must be filed within one year.

The decision has been appealed to the Supreme Court and a decision will be handed down soon.

Source: Dunlap says Superior Court ruling sides with petition challenger. FRANCIS X. QUINN. Portland Press Herald. April 4, 2006



Dirigo plan to self-insure under review by Insurance Committee



The Joint Standing Committee on Insurance and Financial Services has begun to review the state's proposal to self-fund DirigoChoice, the Dirigo Health insurance product.

Many issues surrounding the bill have yet to be clarified. One of the most significant issues involves the

financial solvency of the plan, specifically who would be responsible for the payment of claims if the plan reserves are inadequate to pay those claims. The proposed amendment that was presented to the committee would allow the Dirigo savings off-

set payment, which is supposed to fund the Dirigo subsidies and which is already the subject of much controversy, to be used to fund the plan reserves.

While the proposal seeks legislative authorization to self-fund DirigoChoice, it would not require any additional legislative approval to implement the self-funded plan.

When the Dirigo Health legislation was first proposed in 2003, it was touted by the Baldacci administration as a "public-private partnership." Now that the realities of the market have impacted the viability and affordability of the DirigoChoice product, the administration appears to be seeking to avoid that market, rather than explore changes that could benefit the entire market.

Source: Maine Chamber of Commerce

Supplemental Budget Passes with Strong Bipartisan Support

from page 1...

The votes were impressive, and near unanimous, and in only five days the compromise budget moved from agreement to printing to enactment and signature by the Governor.

Everyone involved deserves recognition, from the Appropriations Committee chairs and minority leaders, to House and Senate leadership on both sides of the aisle, to the Governor and his staff. The success of the supplemental budget involved compromise on all sides, and most importantly, a determination to find common ground, most especially when the going got tough.

The supplemental budget is not perfect - no compromise is - and many priorities did not win funding (including the business community's desire to see last year's BETR cut reinstated). But what was funded won the support of almost all lawmakers. The highlights included:

- \$29 million for Maine's budget reserve fund (raising the reserve to a total of \$100 million, after hitting zero four years ago);
- \$41 million for additional state funding of local education, continuing the state's commitment to move toward 55 percent state funding of local education;
- \$15 million for road and bridge repairs (avoiding additional bonding that Republicans felt would unwisely add to the state's borrowing load);

- \$19 million for funding Part D Medicare prescription drug needs for Maine citizens;
- \$17 million for partial payment of the state's obligations to Maine's hospitals; and,
- A series of tax policy changes, including state conformity to federal income tax law governing health savings accounts and student loan interest deductions, adjustments in resale certificate requirements, creation of new investment incentives for film production and pollution-reducing boilers, and a provision to protect visiting aircraft from unintended taxation.



With final enactment of the supplemental budget, prospects for additional funding of pending legislation grow dimmer. No doubt many bills will be amended to postpone an effective date or eliminate new spending. Those that can't be amended to avoid a spending increase may well fail.

In the final days of the session, dollars will be scarce. But even with most additional revenue committed, the bipartisan good will surrounding the supplemental budget will hopefully remain as the session moves to conclusion. With a number of difficult issues still in the legislative process, Maine's business community will be encouraged that consensus legislative solutions are back in vogue.

Source: Maine Chamber of Commerce

About Kevin Glynn

Kevin Glynn is serving his fourth term in the Maine Legislature representing District 124, the western section of South Portland. Glynn has been a member of the Insurance and Financial Services Committee and is currently the ranking Republican member. He also serves on the Health & Human Services Committee. Rep. Glynn was chosen for the Joint Select Committee on Health Care Reform in the 121st Legislature. This committee was instrumental in refining and improving



Rep. Kevin and Lorie Glynn

the Governor's bill known as Dirigo Health Care and worked to provide affordable health insurance to small businesses and individuals and to control health-care costs in Maine.

Glynn is a Director of Information Systems for Counseling Services, Inc. in Saco, a community mental health center. Rep. Glynn is a former South Portland City Councilor. He and his wife, Lorie, reside in South Portland.

Representative Kevin Glynn

Constituent Outreach Newsletter • April 2006



Home: 799-5319 / State House: 287-1440

e-mail: glynn@maine.rr.com

109 Huntress Avenue, South Portland, Maine 04106

Visit my website at:

<http://www.glynn.org>

Thank you for providing me the opportunity to serve you in the Maine House of Representatives. It continues to be a great honor and privilege. I always welcome your comments and concerns as your feedback is extremely valuable.

If you have questions on the items listed in this newsletter or any other state-related issue, please feel free to contact me by phone at 799-5319, e-mail at glynn@maine.rr.com or by mail at 109 Huntress Avenue, South Portland, Maine 04106.

Representative Kevin Glynn
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Rep. Glynn Works to Allow Legal Immigrants to Buy Health Coverage in Maine

AUGUSTA - State Rep. Kevin Glynn said he is confident that his emergency health insurance bill will pass committee and sail smoothly through the Legislature. His bill, LD 1734, makes it possible for legal immigrants to buy health insurance in Maine.

"As incredible as it may seem, it is now impossible for legal immigrants to qualify to buy a health insurance plan in Maine, said Rep. Glynn, a Republican from South Portland. "The problem began 14 years ago, when Maine installed a guaranteed issue mandate on insur-

ance. They feared that people would flock here for insurance when they could not get it anywhere else, so they made the requirements very stringent - so stringent that they precluded any immigrant from meeting the qualifications."

Rep. Glynn said that the victimized group consists of legal immigrants who have been streaming to Maine in recent years from Somalia, Uganda and other African countries, as well as from China and elsewhere.

Story continues on page 2...

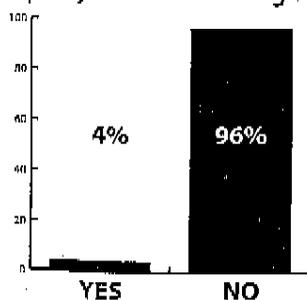


From Left to Right: Alawi Elmo (Somali Community Development of Maine), Abdimajid Sharif, Rep. Kevin Glynn (R-South Portland), Dr. Kolawole Bankhole, MD, MS (Office of Minorities in the City of Portland Maine)

Did You See Property Tax Reform This Year?

Results of Representative Glynn's Poll

A recent questionnaire sent out by Representative Glynn resoundingly shows that most Southern Maine homeowners saw no property tax relief from Governor Baldacci's trumpeted property tax relief legislation in LD 1.



Story continues on page 3...

Glynn Brings the Fights for Noise and Traffic Problem Abatement to Augusta

A proposed expansion of Interstate 295 could put local homeowners in South Portland even closer to the highway and may cause a significant increase in their noise pollution.

South Portland residents and the Maine Department of Education (MDOT) have clashed over the funding of a noise barrier that could help to alleviate the problem. The MDOT would contribute around \$350,000 towards the \$1.5 million project. This leaves around \$1.15 million to be paid by the City of South Portland.

Representative Glynn has introduced legislation to change the funding formula to allow for greater reimbursement.

Rep. Glynn Works to Allow Legal Immigrants to Buy Health Coverage in Maine

from page 1...

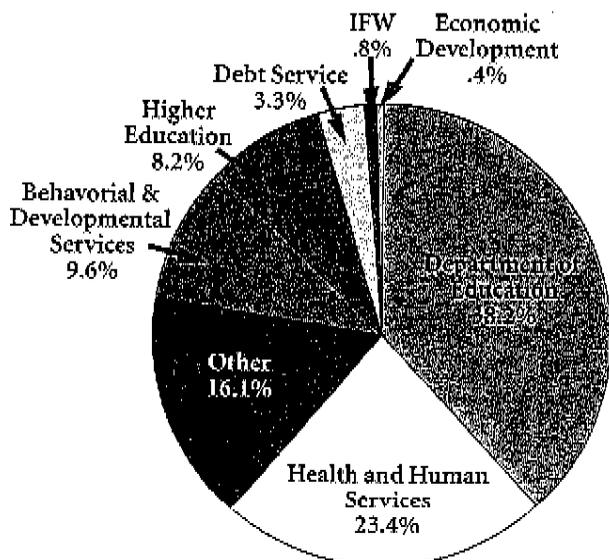
"As far as we know, Maine is the only state that discriminates against immigrants," he said. "Maine's human rights law bans discrimination based on national origin, so the state is actually violating its own human rights law. We have been in violation for years, and just because nobody called them on it does not make it right."

LD 1734 amends Maine law to make it easier for immigrants to prove that they live in Maine and plan to stay in Maine. It expands the criteria for eligibility to purchase health insurance coverage to include a valid passport or visa, a sworn affidavit declaring a person's intent to reside in this state, and a state identification card in lieu of a driver's license.

At a public hearing before the Insurance and Financial Services (IFS) Committee on January 26, Somali elders testified that they had been denied health insurance, but that Maine government bureaucrats seemed eager to sign them up for Medicaid - free medical care paid for by taxpayers. "These people do not want welfare," said Rep. Glynn. "They work. They just want to be able to buy health insurance like everyone else."



Where Are Your Tax Dollars Really Going?



Total State Expenditures by Category/Department

The total Maine State budget for 2005 was \$6,315,153,748. Of these billions of dollars, almost 40% of those went to the Department of Education and 23% of those went to the Department of Health and Human Services.

Where do your tax dollars go after they reach these two departments? The Department of Education uses their funding to support higher education, the teacher retirement program, as well as sending money back to your local schools. Last year, they sent almost \$740 million dollars back to local schools.

The Department of Health and Human Services uses their budget to fund \$377 million to MaineCare as well as another \$215 million to fund other programs.

Glynn Fights for Noise and Traffic Abatement



from page 1...

Specifically, the proposal allows all homes negatively impacted by the expansion that surpassed decibel level of 67 to be considered for state funding. Additionally, the funding per home will be raised from \$20,000 to a higher number adjusted for inflation.

"This bill will make the difference between South Portland taxpayers being responsible for most of the noise abatement project or having the state pay for the damages being caused by their road expansion. It is unfair for the MDOT to expand the road and increase the noise without paying the cost of protecting the homeowners. I am going to fight to make sure that South Portland gets their fair share" said Glynn.

City Councilor James Hughes recently held a community forum between the MDOT and city councilors, residents, and the legislative delegation. As a result of that meeting, Representative Glynn has filed for this emergency legislation. A public hearing will be in March.

The City Council recently backed neighborhood residents by passing a resolution to support the legislation and neighborhood concerns.

About Kevin Glynn

Kevin Glynn is serving his fourth term in the Maine Legislature representing District 124, the western section of South Portland. Glynn has been a member of the Insurance and Financial Services Committee and is currently the ranking Republican member. He also serves on the Health & Human Services Committee. Rep. Glynn was chosen for the Joint Select Committee on Health Care Reform in the 121st Legislature. This committee was instrumental in refining and im-

proving the Governor's bill, known as Dirigo Health Care, to provide affordable health insurance to small businesses and individuals and to control health care costs in Maine.

Glynn is a Director of Information Systems for Counseling Services, Inc. in Saco, a community mental health center. Rep. Glynn is a former South Portland City Councilor. He and his wife, Lorie, reside in South Portland.

Did You See Property Tax Reform This Year?

from page 1...

Representative Glynn stated, "I was the only member of the South Portland - Cape Elizabeth delegation that voted to uphold the voters wishes of immediately funding 55% of state education funding. I wanted to be

sure that South Portland and Cape Elizabeth saw the immediate tax reform that they demanded. The Legislature should never overrule the voters."

"The voters approved 55% funding of education and 100% funding for special education students as immediate property tax relief. LD 1 repealed the immediate phase-in and has taken millions of educational dollars for programming and students and property tax relief" said Glynn.

"LD1 had the potential to provide tax relief, but it fell short. The spending caps in the legislation had no teeth and were ignored. There was no requirement for the additional \$250 million in education funding be used to reduce property taxes. We still have much more to do to get the taxes in Maine under control!"

Glynn concluded, "I agree with the survey results. No one in greater Portland got meaningful property tax relief."



Rep. Kevin and Lorie Glynn

Representative Kevin Glynn

Constituent Outreach Newsletter • February 2006



Home: 799-5319 / State House: 287-1440

e-mail: glynn@maine.rr.com

109 Huntress Avenue, South Portland, Maine 04106

Visit my website at <http://www.glynn.org>

Thank you for providing me the opportunity to serve you in the Maine House of Representatives. It continues to be a great honor and privilege. I always welcome your comments and concerns as your feedback is extremely valuable.

If you have questions on the items listed in this newsletter or any other state-related issue, please feel free to contact me by phone at 799-5319, e-mail at glynn@maine.rr.com or by mail at 109 Huntress Avenue, South Portland, Maine 04106.

3753

Representative Kevin Glynn
109 Huntress Ave
South Portland, Maine 04106

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*****ECRWSS**C-075

Resident
102 Mitchell Rd
South Portland, ME 04106-4910

From the desk of State Representative Kevin J. Glynn



Dear Friends & Neighbors:

The Second Regular Session of the 122nd Legislature will begin in January of 2006.

More than 500 bills will be addressed by the Legislature during the next few months, including carryover bills and what are considered emergency pieces of legislation.

I would like to take a moment and find out what you think about the issues facing our state. I would appreciate your taking a few minutes to answer the following questions on various issues and return this to me as soon as possible. I also welcome your thoughts on any topic I may not have covered. If you fold the mailer side of this page in the opposite direction, you will find it is pre-addressed for easy return. Please remember to tape the piece closed.

Please feel free to call me if you have any questions or additional comments. I can be reached at (207) 799-5319, by fax at (207) 799-4824, by e-mail at glynn@maine.rr.com; or you can write to me at 109 Huntress Avenue, South Portland, Maine 04106. Please be sure to visit my website at <http://www.glynn.org> for more local and state information.

Sincerely,

Are you in favor or against allowing *slot machines* in Southern Maine?

In favor Against Undecided

Are you for or against slot machines anywhere in Maine?

In favor Against Undecided

Voters approved a referendum question that required the State to pay a 55% share of local education costs without delay. Lawmakers responded with L.D. 1, "*An Act To Increase the State Share of Education Costs, Reduce Property Taxes and Reduce Government Spending at All Levels*" This put the State on track to pay that 55% over the next four years (*instead of immediately as the voters directed*) and implemented the Essential Programs and Services (EPS) formula for school funding.

Do you believe the legislature has created significant property tax relief from the passage of L.D. 1?

YES NO Undecided

Have you and your family received a significant tax cut as a result of the L.D. 1?

YES NO Undecided

Do you believe the high tax burden in Maine is an obstacle to the creation of good jobs in Maine?

YES NO Undecided

What issue is of most concern to you?

Maine's current health care situation is not sustainable. We spend more of our incomes on health care than 45 other states. Many small businesses and their employees are forced to choose between unpredictable costs and no health coverage at all. In fact, over 130,000 Maine people go without health insurance and most of them work in small business or are self-employed.

To address the problem, the Governor and the Legislature created Dirigo Health. The actual number of people currently enrolled in the Dirigo Health plan as of November 9, 2005 is 7,371, at a cost of around 20 million dollars. Do you feel that the Dirigo Health plan is working?

Do you think that your health insurance should be taxed to pay for Dirigo Health and to enlarge the MaineCare (welfare) enrollment?

YES NO Undecided

Do you think Maine state government does more than it needs to do, resulting in our highest in the nation tax burden as a percentage of income?

YES NO Undecided

If you answered yes, what are areas where you think state government spending could be reduced?

How would you rate Kevin Glynn's performance in his fourth term of office?

Excellent Good Satisfactory Unsatisfactory

Please update your personal information so Rep. Glynn can contact you if you wish to find out more about what is happening in the Maine Legislature.

Name: _____

Address: _____

Home Phone: _____

Email _____

Additional Comments:

*****EORWSS**C-075
Resident
102 Mitchell Rd
South Portland, ME 04106-4910

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PERMIT NO. 352

Representative Kevin J. Glynn
109 Huntress Avenue
South Portland, Maine 04106



122nd Legislature Second Regular Session Questionnaire 2005

From State Representative
Kevin J. Glynn

*Oct -
D. A. Robinson
Summerville, ME
125 04/16*

Representative Kevin Glynn
109 Huntress Avenue
South Portland, Me 04106-9879

POSTAGE WILL BE PAID BY ADDRESSEE

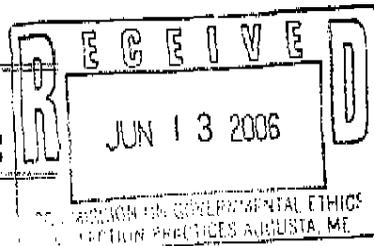
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Representative Kevin J. Glynn

**MARDEN, DUBORD,
BERNIER & STEVENS**



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J. WILLIAM DRUARY, JR.
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(RETIRED)
F. HAROLD DUBORD
(1891-1964)
RICHARD J. DUBORD
(1921-1970)
HAROLD C. MARDEN
(1900-1994)

June 12, 2006

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

RE: Sally Sutton complaint

Dear Jonathan:

I am writing in reply to your letter of June 6, 2006 regarding a complaint filed by Sally Sutton. I agree that Ms. Sutton's complaint does not raise issues that are within the jurisdiction of the Commission, but I am happy to respond to your questions on behalf of Representative Glynn. Ms. Sutton's complaint is a good example of the plethora of similar insubstantial complaints that the Commission will be dealing with on a regular basis if it decides that issues such as Representative Glynn's legislative newsletters fall within the Commission's jurisdiction.

Representative Glynn has sent letters to honor roll students in South Portland throughout his eight years as a member of the Maine House of Representatives. These letters have gone to students both within and outside of his House district. Representative Glynn's purpose in sending the letters is to recognize student achievement and to encourage academic excellence. The stationary used for the letters was provided by the Clerk of the House and the postage and envelopes used to send the letters was paid for by Representative Glynn using his legislative pay and his constituent service allowance. During his service in the House, Representative Glynn has also sponsored legislative sentiments to recognize people that do not live in his House district and has sent letters to people living outside of his district whose achievements were worthy of note.

Very truly yours,

Daniel I. Billings
e-mail: dbillings@gwi.net



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

June 6, 2006

Daniel I. Billings, Esq.
Marden, Dubord, Bernier & Stevens
PO Box 708
Waterville, ME 04901-0708

and VIA FAX: (207) 873-2245

Dear Mr. Billings:

Yesterday, the Ethics Commission received the attached complaint from Sally Sutton, who estimates that for the last year her two children have been receiving letters from Rep. Glynn when they make the honor roll. Her contention is that the Ethics Commission should treat the costs of these letters as campaign expenditures, because she does not live within his current legislative district.

Ms. Sutton's concerns about the use of legislative resources for political purposes are not within the jurisdiction of the Commission as established in the Election and Legislative Ethics Laws. Because the Commission will be considering related issues at its June 22 meeting, the Commission staff invites Rep. Glynn to respond to the question of whether the costs of the honor roll letters should be viewed as campaign expenditures. Ms. Sutton's complaint will be among the materials considered by the Commission members at the June 22 meeting. The Commission would welcome any information which you and your client believe is relevant, including, for example:

- If not campaign-related, what was Rep. Glynn's purpose in sending letters to families living outside his current legislative district?
- Has he mailed any letters outside the boundaries of Senate District #7?
- When did Rep. Glynn begin to send honor roll letters outside of his legislative district?

Any written response received by Wednesday, June 14 will be included in a packet of materials the staff will send to the Commission members on June 15. Please telephone Assistant Director Paul Lavin at 287-4179 if you have any questions.

Sincerely,


Jonathan Wayne
Executive Director

Enclosure

cc: Sally Sutton

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

06/05/2006 15:33

2072876775

ETHICS COMMISSION

PAGE 01/04

JUN 04 2006 10:53PM SUTTON

207-767-3927

P. 2

Sally Sutton
152 Fort Road
South Portland, Maine 04106
207 767-3927
ssutton2@maine.et.com

June 4, 2006

Paul Lavin
Assistant Director
Maine Commission on Governmental Ethics and Election Practices
135 State House Station
Augusta, Maine 04333

Dear Paul,

I am writing to file a complaint against Representative Kevin Glynn of South Portland regarding mailings that he has sent to my family. Representative Glynn does not represent my district but I would estimate that for at least the past year my children have been receiving letters from him each time they make the honor role. I have a senior and freshman at South Portland High School and they both usually make the honor role and consequently have their names listed in the local papers. Attached is the latest letter, dated May 5, 2006 but postmarked May 17, 2006, that was sent to my son. My daughter received a mailing as well.

My husband and I have never supported Representative Glynn and are not members of his party so there is no reason why Representative Glynn should be writing to our children. My first thought upon receiving the first letter, before I even opened it, was that he would be running for the Maine Senate seat which includes my House district. If that is my perception of the intent of the mailing, whether stated or unstated, then I believe it should be counted as a campaign expenditure and governed by the campaign finance laws. I also feel that it is inappropriate that this letter, like previous letters, is mailed on official Maine House of Representatives letterhead and that taxpayer dollars have been spent to cover the cost of this mailing. I am concerned about how Representative Glynn obtained our address and who has been preparing these mailings for him. While we are listed in the phonebook, someone would have had to look up the address and maintain the mailing lists. While these letters may seem harmless and inconsequential I think it is important for you to take into consideration my perception of the mailing as blatant campaigning. How would the Commission view, for example, a similar mailing from Representative Mills to every high school student in the state who makes the honor role? That would clearly be seen as campaigning, as should the mailings we have received from Representative Glynn. He has no other reason to be writing to us other than to further his efforts to be elected to the Senate seat for this district.

I ask that the Commission look into these practices. Thank you.

Sincerely,


Sally Sutton



HOUSE OF REPRESENTATIVES

2 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0002
(207) 287-1440
TTY: (207) 287-4469

Kevin J. Glynn

109 Huxtriss Avenue
South Portland, ME 04106
Residence: (207) 799-5319
Business: (207) 294-7552
Fax: (207) 799-4824
E-Mail: glynn@maine.or.com

May 5, 2006

Anthony Hauser
Ninth Grade
South Portland High School

Dear Anthony:

It is a pleasure to congratulate you as one of the many third quarter honor students at South Portland High School. I am sure you have worked hard for your excellent grades. I am also sure your accomplishments make your family very proud.

The academic abilities and persistence you have demonstrated in high school will become good long term habits throughout your life. Your study skills and ability to complete your work will help you in future education endeavors, as well as in other aspects of your life.

I hope you will to continue to have great success in the remainder of the school year and then have a pleasant and safe summer. Keep up the great work!

Sincerely,

Kevin J. Glynn
State Representative



PORTLAND, ME 041
17 MAY 2006 PM 4 T

ANTHONY S HAEUSER
192 FORT ROAD
SOUTH PORTLAND, ME 04106

Representative Kevin Glynn
109 Haines Avenue
South Portland, Maine 04106

ADDRESS SERVICE REQUESTED



04106-1161A



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

May 24, 2006

Daniel I. Billings, Esq.
Marden, Dubord, Bernier & Stevens
PO Box 708
Waterville, ME 04901-0708

Dear Mr. Billings:

Thank you for your letter dated May 22. This is to inform you that the Commission staff has decided to put the matter of Rep. Glynn's out-of-district mailings on the agenda of the Commission's next meeting, which is scheduled for June 22 at 9:00 a.m. The staff believes it would be inappropriate for it to attempt to resolve the matter without direction from the Commission members. The staff suggests that you and your client be present at the meeting.

The scheduling of this matter for consideration by the Commission should not imply any wrongdoing by Rep. Glynn. The issues presented by Rep. Bliss's request for an inquiry are novel for the Commission. Based on the facts and arguments available at this time, the staff does not intend to recommend any finding of unreported campaign expenditures. The staff also is aware that Rep. Glynn sought advice from the Commission staff regarding the April newsletter, and sent it out in reliance on that advice.

At the June 22 meeting, the Commission members may wish to consider whether any remedy or finding is appropriate in this particular case. In addition, they may consider the broader question of whether a constituent newsletter or mailing may *ever* be considered a campaign contribution or expenditure, and if so, what factors might be considered in that determination. Such an issue might be appropriate for a recommended statutory change or proposed major substantive rule amendment at a future date.

Please telephone me at 287-4179 if you have any questions. By copy of this letter, I am notifying the legislative leaders and interested parties of the scheduling of this matter in case they wish to monitor the matter or comment at the June 22 meeting.

Sincerely,

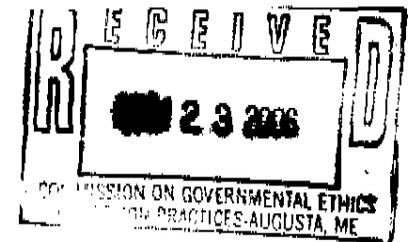
A handwritten signature in black ink, appearing to read "Jonathan Wayne".

Jonathan Wayne
Executive Director

cc: Legislative Leaders
Hon. Lawrence Bliss
Brian Hawkins, Senate Democratic Campaign Committee

**MARDEN, DUBORD,
BERNIER & STEVENS**

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(RETIRED)
F. HAROLD DUBORD
(1891-1964)
RICHARD J. DUBORD
(1921-1970)
HAROLD C. MARDEN
(1900-1994)

May 22, 2006

By Fax and Regular Mail

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

Dear Jonathan:

I am in receipt of your letter of May 19th and have reviewed the Commission rules concerning reports of noncompliance and fact finding by Commission staff. In particular, I turn your attention to Chapter 1, Section 4(2)(D) and Chapter 1, Section 5(1).

In your May 19th letter, you state that "Commission staff is obliged to give [Representative Bliss'] request due consideration." My review of Commission rules indicates that Commission staff is only obligated to take action as required by Chapter 1, Section 4(2)(D). Is it your position that Representative Bliss' letter constitutes "an official request for a Commission investigation or determination" meeting the requirements of Chapter 1, Section 4(2)(D)? If so has Representative Bliss' letter been provided to the Commission Chair? Also, if you are proceeding under this section, am I correct that this matter must be placed on the agenda of the next Commission meeting no matter what the determination is of the Commission staff? If you are not proceeding under the requirements of Chapter 1, Section 4(2)(D), can you identify what statute or rule you are proceeding under that obligates any action? It should also be noted that Chapter 1, Section 5(1), which governs staff fact finding in response to an official request, states that you "may conduct such preliminary fact finding as is deemed prudent and desirable." This section makes clear that whether or not to seek any additional information and what information to seek, if any, is entirely in your discretion.

I ask these questions because I had been working under the assumption that there was a possibility that this matter could be resolved at the staff level. In fact, in your e-mail to me on May 18th, you wrote "if the Commission members have occasion to consider this matter you will have ample opportunity to raise" my concerns about vagueness. This certainly implied the possibility that Commission consideration may not be necessary. However, your May 19th letter states that you are "obliged" to take action. For that to be the case, I can only

Jonathan Wayne, Executive Director
May 22, 2006
Page 2

assume that you are proceeding under Chapter 1, Section 4(2)(D). If this matter is being handled under Chapter 1, Section 4(2)(D), the matter must be placed on the Commission agenda and will not be resolved at the staff level.

In the future, I would recommend that you indicate when seeking information whether you are making an informal request for information or whether you are acting under Commission rules which require action. I have assisted candidates in responding to both types of inquiry and what is an appropriate response depends upon what kind of inquiry is being made. I believe it is only fair that parties be made aware of how the Commission staff is proceeding.

Representative Bliss' April 28th e-mail indicates that he received a newsletter from Representative Glynn, that he is not a constituent of Representative Glynn, and that he believes that sending such a newsletter outside of Representative Glynn's current district constitutes a campaign expenditure that should be paid for with campaign funds and reported as a campaign expenditure. This is the substance of the inquiry and the determination that must be made by the Commission is whether the newsletters in question constitute campaign expenditures. I believe that this determination can be and should be made by reviewing the content of the communications. In your May 10th letter, you rejected this view and requested additional information.

Your requests seeks information that goes well beyond what would be required to be provided if the newsletters in question were campaign expenditures and seeks information which is irrelevant to a determination of whether or not the newsletters in questions are campaign expenditures. Below is my client's response to the questions raised in your May 10th letter:

1. With respect to the February and April newsletters please provide:

- the dates when the literature was mailed;

ANSWER: The February newsletter was mailed on February 27, 2006 and the April newsletter was mailed on April 24, 2006.

- how many pieces were mailed, breaking down the total between in- and out-of-district pieces;

ANSWER: The information requested goes beyond what would be required to be provided if the communications in question were campaign expenditures and is irrelevant to a determination of whether or not the communications in question constituted campaign expenditures. If out-of-district communications constitute campaign expenditures, the number of pieces sent is irrelevant and all that the law requires to be disclosed is the amount of the expenditure.

Jonathan Wayne, Executive Director
May 22, 2006
Page 3

- a description of the geographic area outside of House District 124 where the newsletters were mailed;

ANSWER: The information requested goes beyond what would be required to be provided if the communications in question were campaign expenditures and is irrelevant to a determination of whether or not the communications in question constituted campaign expenditures. However, for the purpose of being cooperative, the communications in question were sent to all residents of House District 124, which is fully contained in Senate District 7, plus areas of South Portland, Cape Elizabeth, and Scarborough both inside and outside of Senate District 7.

- the total expenditure for each mailing, broken down by within and outside the district;

ANSWER: The information requested is irrelevant to a determination of whether or not the communications in questions constituted campaign expenditures. The Commission is not entitled to such information unless the communications in question constitute campaign expenditures. If a determination is made that the communications constituted campaign expenditures, the information required by law will be provided. You have been provided by the House Clerk an invoice showing the total cost of the April newsletters sent within the House District 124.

- the name of the person or organization that paid for the mailings;

ANSWER: Representative Kevin Glynn paid the entire cost of the February newsletter using his legislative pay and his constituent service allowance, which is provided to legislators to use as they see fit. The content of the April newsletter was approved by the House Clerk to be sent at state expense within House District 124 and an invoice for the newsletters sent within House District 124 has been submitted to the House Clerk for payment. You have a copy of that invoice. At the direction of the Speaker Richardson that invoice has not been paid and it may be necessary for Representative Glynn to pay that invoice from personal funds. Representative Glynn paid the entire cost for the newsletters sent in April outside of House District 124 using his legislative pay and his constituent service allowance. No third party had provided any funds to pay for these newsletters and Representative Glynn has not solicited or accepted funds from any third party to pay for the printing or mailing of any newsletters beyond the funds provided by the state to pay for newsletters sent within House District 124.

Jonathan Wayne, Executive Director
May 22, 2006
Page 4

- the name, address, phone number, and contact name for the print-shop or mailhouse which provided services in connection with these mailings;

ANSWER: The information requested is irrelevant to a determination of whether or not the communications in question constituted campaign expenditures. The Commission is not entitled to such information unless the communications in question constitute campaign expenditures. If a determination is made that the communications constituted campaign expenditures, the information required by law will be provided.

- supporting documentation, such as invoices and any postal statements, detailing the costs and how many pieces were mailed.

ANSWER: The information requested goes beyond what would be required to be provided if the communications in question were campaign expenditures and is irrelevant to a determination of whether or not the communications in question constituted campaign expenditures.

2. Please describe to what extent these two newsletters were mailed to the same recipients as the two 2005 mailings, or two different groups.

ANSWER: The information requested is irrelevant to a determination of whether or not the communications in question constituted campaign expenditures. However, for the purpose of being cooperative, all four newsletters were mailed to different numbers of people. The first 2005 newsletter was sent to all of House District 124, plus to other areas in South Portland and Cape Elizabeth, but not to all of Senate District 7. The second newsletter was sent to all residents of House District 124, plus areas of South Portland, Cape Elizabeth, and Scarborough both inside and outside of Senate District 7.

3. We would welcome your view whether any part of the four mailings should be considered campaign expenditures that would be paid for with campaign funds.

ANSWER: The newsletters were not campaign expenditures. The newsletters make no mention, directly or indirectly, of any election or mention that Representative Glynn is a candidate for office. The content of the April newsletter was approved by the House Clerk as appropriate for mailing as a non-political constituent service at state expense within House District 124. If the mailing of the newsletter within the House District 124 is not a campaign expenditure, mailing the same newsletter outside House District 124 is not a campaign expenditure. For the reasons stated in my earlier communications to you, I believe that a determination as to whether or not the communications constitute campaign expenditures should be made by considering the content of the communications and the standard that you appear to be attempting to apply is unconstitutionally vague. If the communications in question are to be considered campaign expenditures, any similar newsletters sent by Representative Glynn's opponent since she became a candidate must also be considered campaign expenditures. It is illogical and unfair to treat similar communications sent to the

Jonathan Wayne, Executive Director
May 22, 2006
Page 5

same people differently simply because one communication was sent by an incumbent and another by a challenger. Such a finding would be inconsistent with the First Amendment and the Clean Elections Act's purpose of leveling the playing field in political campaigns.

4. When did Representative Glynn begin sending mailings outside his district, and what was the geographic scope of those mailings? Please provide an approximate number of mailings that were sent outside his district in his almost 8-year tenure a State Representative?

ANSWER: The information requested is irrelevant to a determination of whether or not the communications in question constituted campaign expenditures. However, for the purpose of being cooperative, Representative Glynn first began sending newsletters outside his district during his first term in the Legislature. Since that time, he has distributed at least one newsletter per year outside of his district. He has distributed newsletters in two different ways during that time period – through the mail and through insertion into newspapers as advertising inserts. Prior to 2005, newsletters mailed were limited to citywide mailings in South Portland. However, newsletters were distributed prior to 2005 through insertion into newspapers as advertising inserts which were distributed beyond South Portland into Cape Elizabeth and Scarborough.

5. Please disclose who holds postal permit number 352.

ANSWER: The information requested is irrelevant to a determination of whether or not the communication in questions constituted campaign expenditures. However, for the purpose of being cooperative, the permit is held by Representative Glynn.

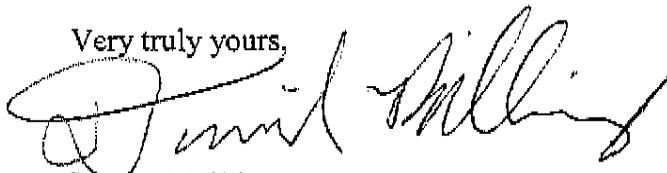
You should be aware that the issue of mailings by legislators, including newsletters and the sending of unsolicited mail using their franking privilege, is a large and complicated one. For example, during the falls of both 2002 and 2004, several incumbent Democrat Senators in contested races made a practice of sending 50 unsolicited letters per day on various subjects to people in the districts in which they were candidates. Then Senator Steve Stanley made a practice of sending mail to citizens in areas that he did not then represent, but which were in the district that he was then a candidate in due to redistricting. This practice was upheld by the Senate President after a written opinion from her legal counsel stating that Senators are state officials whose actions impact all Maine citizens and it is appropriate for Senators to communicate with any Maine citizen concerning legislative business. You should be able to obtain a copy of this opinion from the Senate President's office. I have also been made aware that numerous legislative newsletters are about to be sent out at state expense. These newsletters will come within 21-days of the June 13th primary and could constitute independent expenditures under 21-A M.R.S.A. §1019-B(B). These examples of possibly problematic mailings by incumbents are just the tip of the iceberg. You can expect numerous complaints to be filed if a determination is made that Representative Glynn's newsletters constituted campaign expenditures.

Jonathan Wayne, Executive Director
May 22, 2006
Page 6

Representative Glynn personally visited two members of the Commission staff on two separate occasions seeking to clarify that his April newsletter would not constitute a campaign expenditure because he was a candidate. He was told by Commission staff that the newsletter would not constitute a campaign expenditure and that no additional reporting would be required. He followed up these conversations with a letter summarizing his planned activity and the advice that he had been provided. If you and the Commission are not willing to stand behind advice given by staff, those seeking guidance will be forced to take all such questions to the Commission.

While it may be appropriate for the Commission to consider adopting a rule, or recommending legislation, which better regulates communications sent by incumbent officeholders during an election year, it is inappropriate to stretch the vague definition of an expenditure as "anything of value made for the purpose of influencing the nomination or election of any person to political office" to include the newsletters in question. It is particularly inappropriate in a situation such as this one where the officeholder sought advice concerning the planned activity and was told that sending the newsletter would not constitute a campaign expenditure.

Very truly yours,



Daniel I. Billings
e-mail: dbillings@gwi.net



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

COPY

May 10, 2006

Daniel I. Billings, Esq.
Marden, Dubord, Bernier & Stevens
PO Box 708
Waterville, ME 04901-0708

Dear Mr. Billings:

Thank you for your telephone call requesting clarification of the concerns of the Commission staff regarding the mailings sent by Rep. Kevin Glynn.

The Commission received four pieces of mail addressed to "Resident" with addresses outside Rep. Glynn's current district (two April newsletters, one February newsletter, and one pre-session survey on issues of interest to residents). It seems difficult to characterize mail that was sent outside his district as constituent communications. Since all of the addresses provided to the Commission are inside the Senate district for which Rep. Glynn is running, it raises the question of whether the payments for the out-of-district mailings meet the statutory definition of campaign expenditure in 21-A M.R.S.A. §1012(3)(A)(1) and should be reported as campaign expenditures.

I have consulted with Commission Counsel Phyllis Gardiner, and we believe that the express advocacy requirement that applies to independent expenditures by *third-parties* is not required for the determination whether a payment made by *a candidate* to promote his election qualifies as an expenditure under 21-A M.R.S.A. §1012(3)(A)(1).

That is the basis for the request for factual information in the May 5 letter. The Commission staff has not pre-judged the matter. We are aware that Rep. Glynn received advice from Commission employees with regard to the April newsletter, and do not want to see him disadvantaged by his reliance on that advice. Nevertheless, because the Maine Clean Election Act (MCEA) contemplates that all certified candidates will have equal funds to spend on their races, it seems appropriate to gather information necessary to determine whether the out-of-district portion of the mailings should be paid for with Rep. Glynn's MCEA funds.

Our concern is primarily with the February and April newsletters. Rep. Glynn reported that he accepted his first seed money contribution on February 8, 2006 and purchased money orders for qualifying contributions on February 19, 2006. Those disclosures suggest that Rep. Glynn had made a decision by as early as February that he was running for the Senate.

Daniel I. Billings, Esq.

- 2 -

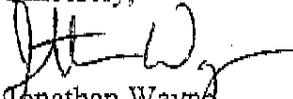
May 10, 2006

To assist the Commission in reaching a determination on the February and April newsletters, we amend the request for information and documents in the May 5 letter as follows:

1. With respect to the February and April newsletters, please provide:
 - the dates when the literature was mailed;
 - how many pieces were mailed, breaking down the total between in- and out-of-district pieces;
 - a description of the geographic area outside of House District 124 where the newsletters were mailed;
 - the total expenditure for each mailing, broken down by within and outside the district;
 - the name of the person or organization that paid for the mailings (if Rep. Glynn used his constituent service allowance or were reimbursed by anyone else, please indicate that; and if different people or organizations paid for the mailings that were sent outside, as opposed to within the district, please indicate that);
 - the name, address, phone number, and contact name for the print-shop or mailhouse which provided services in connection with these mailings;
 - supporting documentation, such as invoices and any postal statements, detailing the costs and how many pieces were mailed.
2. Please describe to what extent these two newsletters were mailed to the same recipients as the two 2005 mailings, or to different groups.
3. We would welcome your view whether any part of the four mailings should be considered campaign expenditures that would be paid for with campaign funds.
4. In Rep. Glynn's April 19 letter, he states that "it is my customary practice to pay for additional copies to be mailed to a wider audience [outside of his district]," but he does not define the scope of that "wider audience." When did Rep. Glynn begin sending mailings outside his district, and what was the geographic scope of those mailings? Please provide an approximate number of mailings that were sent outside his district in his almost 8-year tenure as a State Representative.
5. Please disclose who holds postal permit number 352.

It is possible that the Commission members or staff will request information regarding the 2005 ballot question mailer and survey, but that is not the principal concern of the staff at this time. Please telephone me at 287-4179 if you have any questions.

Sincerely,



Jonathan Wayne
Executive Director



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

May 5, 2006

Hon. Kevin J. Glynn
109 Huntress Avenue
South Portland, ME 04106-9879

Dear Rep. Glynn:

One week ago, the Maine Ethics Commission received the attached e-mail from Rep. Lawrence Bliss regarding a constituent newsletter from you which was received by his constituents. Subsequently, the Senate Democratic Caucus has expressed similar concern and supplied copies of a February and April newsletter and a 2005 survey that were sent to residents outside your House district. It also mentioned a 2005 mailing regarding general election ballot questions that was sent to residents outside your district, although it did not supply the Commission with a copy.

Rep. Bliss' e-mail asks whether the expenditures for these mailings should have been publicly disclosed as campaign expenditures and paid for with campaign funds, since some of the recipients live outside of your district and inside the Senate district for which you are running. This does appear to be a reasonable question for the Commission to consider, particularly if funds spent by you or others on any of the four mailings promoted your campaign for State Senate. I appreciate that during the second week of April you received some oral advice regarding the April newsletter from two Commission employees, although one of the employees who advised you understood that the mailing would be limited to residents in your district.

Kindly clarify in writing whether you consider any of the four mailings to be campaign contributions or expenditures, and whether they have been reported as such. I have attached the legal provisions defining "contribution" and "expenditure".

Regardless whether you consider them to be campaign contributions or expenditures, please provide the following information regarding each of the four mailings:

- the dates when the literature was mailed
- how many pieces were mailed
- the total expenditure for each mailing (including any return postage charged to postal permit #8053)
- whether the literature was mailed outside your district
- whether you used the same mailing list for all four mailings
- who paid for the mailings (if you used your constituent service allowance or were reimbursed by anyone else, please indicate that)

Hon. Kevin J. Glynn

- 2 -

May 5, 2006

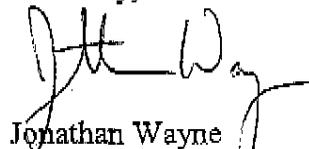
- the name, address, phone number, and contact name for the print-shop or mailhouse which provided services in connection with these mailings.

If you sent any other bulk or large-scale mailings, please provide the requested information regarding those mailings as well. Since I do not have a copy of the 2005 ballot question mailing, please provide one.

In researching the legislative rules regarding constituent mailings, it came to our attention that you submitted to the Legislature for reimbursement two invoices from a firm, Chartwell, for printing, postage, and handling in connection with two of the mailings. Please provide the Commission with all invoices supplied by any vendors in connection with all four mailings, and any forms required by the U.S. Postal Service in connection with the mailings which might detail the cost and number of pieces. By copy of this letter we are letting Chartwell know of this request and asking for its full cooperation in supplying you with the information and documents requested in this letter. Also, please identify who holds the postal permits numbered 352 and 8053.

Thank you for your cooperation with this request. Please telephone me at 287-4179 if you have any questions.

Sincerely,



Jonathan Wayne
Executive Director

cc: Jeff Foss, Chartwell

Lavin, Paul

From: Bliss, Lawrence
Sent: Friday, April 28, 2006 10:44 AM
To: Lavin, Paul
Subject: Campaign expenditure concern ...

Paul --

I don't really know where to go with this, since it doesn't directly affect my campaign for re-election. It is, however, an important issue because Representative Glynn is running for the Senate seat in my area.

Last night when I went home from the Legislature and got a chance to wade through several days of mail, I found a four-page flyer addressed to "resident" from Representative Kevin Glynn. The bottom of the front page reads, "Constituent Outreach Newsletter, April 2006. Paid for by the Maine Legislature as a constituency service." Obviously, Representative Glynn is NOT my representative, since I am the representative from my district! I also received three messages on my telephone from constituents who had also received Representative Glynn's mailing, who wanted to know why they got it, when they were quite sure that I was their Representative.

I do not believe that the State should pay for Representative Glynn to distribute his information to parts of South Portland outside of his own district. And if (as I suspect) Representative Glynn paid to have his regular Constituent Outreach Newsletter distributed throughout the Senate district, then it should be listed as a campaign expense, and it should have included IN WRITING that it was paid for and authorized by his campaign committee, rather than by the Maine Legislature.

Paul, can you please let me know what options I have with regard to this document? I have a copy of it, if you or the Commission wants to see it. Thanks, in advance, for your help.

Larry

Representative Lawrence Bliss
House District 122 (South Portland, Cape Elizabeth)

21-A MRSA §1012

2. Contribution. The term "contribution:"

A. Includes:

- * (1) 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 or for the purpose of liquidating any campaign deficit of a candidate, except that a loan of money to a candidate by a financial institution in this State made in accordance with applicable banking laws and regulations and in the ordinary course of business is not included;
- (2) A contract, promise or agreement, express or implied, whether or not legally enforceable, to make a contribution for such purposes;
- (3) Funds received by a candidate or a political committee that are transferred to the candidate or committee from another political committee or other source; and
- (4) The payment, by any person other than a candidate or a political committee, of compensation for the personal services of other persons that are provided to the candidate or political committee without charge for any such purpose; and

B. Does not include:

- (1) The value of services provided without compensation by individuals who volunteer a portion or all of their time on behalf of a candidate or political committee;
- (2) The use of real or personal property and the cost of invitations, food and beverages, voluntarily provided by an individual to a candidate in rendering voluntary personal services for candidate-related activities, if the cumulative value of these activities by the individual on behalf of any candidate does not exceed \$100 with respect to any election;
- (3) The sale of any food or beverage by a vendor for use in a candidate's campaign at a charge less than the normal comparable charge, if the charge to the candidate is at least equal to the cost of the food or beverages to the vendor and if the cumulative value of the food or beverages does not exceed \$100 with respect to any election;
- (4) Any unreimbursed travel expenses incurred and paid for by an individual who volunteers personal services to a candidate, if the cumulative amount of these expenses does not exceed \$100 with respect to any election;
- (4-A) Any unreimbursed travel expenses incurred and paid for by the candidate or the candidate's spouse;
- (5) The payment by a party's state, district, county or municipal committee of the costs of preparation, display or mailing or other distribution of a party candidate listing;

- (6) Documents, in printed or electronic form, including party platforms, single copies of issue papers, information pertaining to the requirements of this Title, lists of registered voters and voter identification information, created or maintained by a political party for the general purpose of party building and provided to a candidate who is a member of that party;
- (7) Compensation paid by a political party to an employee of that party for the following purposes:
 - (a) Providing advice to any one candidate for a period of no more than 20 hours in any election;
 - (b) Recruiting and overseeing volunteers for campaign activities involving 3 or more candidates; or
 - (c) Coordinating campaign events involving 3 or more candidates;
- (8) Campaign training sessions provided to 3 or more candidates;
- (8-A) Costs paid for by a party committee in connection with a campaign event at which 3 or more candidates are present;
- (8-B) Wood or other materials used for political signs that are found or contributed if not originally obtained by the candidate or contributor for campaign purposes;
- (8-C) The use or distribution of any communication, as described in section 1014, obtained by the candidate for a previous election and fully paid for during that election;
- (9) The use of offices, telephones, computers and similar equipment when that use does not result in additional cost to the provider; or
- (10) Activity or communication designed to encourage individuals to register to vote or to vote if that activity or communication does not mention a clearly identified candidate.

3. Expenditure. The term "expenditure:"

A. Includes:

- (1) A purchase, payment, distribution, loan, advance, deposit or gift of money or anything of value made for the purpose of influencing the nomination or election of any person to political office, except that a loan of money to a candidate by a financial institution in this State made in accordance with applicable banking laws and regulations and in the ordinary course of business is not included;
- (2) A contract, promise or agreement, expressed or implied, whether or not legally enforceable, to make any expenditure;
- (3) The transfer of funds by a candidate or a political committee to another candidate or political committee; and

21-A MRSA §1014

2-A. Communication. If a communication that names or depicts a clearly identified candidate is disseminated during the 21 days before an election through the media described in subsection 1, the communication must state the name and address of the person who made or financed the communication and a statement that the communication was or was not authorized by the candidate.

3. Broadcasting prohibited without disclosure. No person operating a broadcasting station within this State may broadcast any communication, as described in subsections 1 and 2, without an oral or written visual announcement of the name of the person who made or financed the expenditure for the communication.

3-A. In-kind contributions of printed materials. A candidate, political committee or political action committee shall report on the campaign finance report as a contribution to the candidate, political committee or political action committee any contributions of in-kind printed materials to be used in the support of a candidate or in the support or defeat of a cause to be voted upon at referendum. Any in-kind contributions of printed materials used or distributed by a candidate, political committee or political action committee must include the name or title of that candidate, political committee or political action committee as the authorizing agent for the printing and distribution of the in-kind contribution.

The use or distribution of in-kind printed materials contributed to a candidate, political committee or political action committee must be reported as an expenditure on the campaign finance report of that candidate, political committee or political action committee.

3-B. Newspapers. A newspaper may not publish a communication described in subsection 1 or 2 without including the disclosure required by this section. For purposes of this subsection, "newspaper" includes any printed material intended for general circulation or to be read by the general public. When necessary, a newspaper may seek the advice of the commission regarding whether or not the communication requires the disclosure.

4. Enforcement. An expenditure, communication or broadcast made within 10 days before the election to which it relates that results in a violation of this section may result in a civil forfeiture of no more than \$200. An expenditure, communication or broadcast made more than 10 days before the election that results in a violation of this section may result in a civil forfeiture of no more than \$100 if the violation is not corrected within 10 days after the candidate or other person who committed the violation receives notification of the violation from the commission. Enforcement and collection procedures must be in accordance with section 1020-A.

5. Automated telephone calls. Automated telephone calls that name a clearly identified candidate must clearly state the name of the person who made or financed the expenditure for the communication, except for automated telephone calls paid for by the candidate that use the candidate's voice in the telephone call.

21A § 1014-A. Endorsements of political candidates

21-A MRSA §1015

For the purposes of the limitations imposed by this section, all contributions made by a person, either directly or indirectly, on behalf of a particular candidate, including contributions which are in any way earmarked or otherwise directed through an intermediary or conduit to the candidate, are considered to be contributions from that person to the candidate. The intermediary or conduit shall report the original source and the intended recipient of the contribution to the commission and to the intended recipient.

5. Other contributions and expenditures. 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.

* The financing by any person of the dissemination, distribution or republication, in whole or in part, of any broadcast or any written or other campaign materials prepared by the candidate, the candidate's political committee or committees or their authorized agents is considered to be a contribution to that candidate.

6. Prohibited expenditures. A candidate, a treasurer, a political committee, a party or party committee, a person required to file a report under this subchapter or their authorized agents may not make any expenditures for liquor to be distributed to or consumed by voters while the polls are open on election day.

7. Voluntary limitations on political expenditures. A candidate may voluntarily agree to limit the total expenditures made on behalf of that candidate's campaign as specified in section 1013-A, subsection 1, paragraph C and subsections 8 and 9.

8. Political expenditure limitation amounts. Total expenditures in any election for legislative office by a candidate who voluntarily agrees to limit campaign expenditures as provided in subsection 7 are as follows:

- A. For State Senator, \$25,000;
- B. For State Representative, \$5,000; and
- C. For State Senator or State Representative as a candidate certified under the Maine Clean Election Act, to the extent authorized by that Act.

Expenditure limits are per election and may not be carried forward from one election to another. For calculation and reporting purposes, the reporting periods established in section 1017 apply.

9. Publication of list. The commission shall publish a list of the candidates for State Representative and State Senator who have agreed to voluntarily limit total expenditures for their campaigns as provided in section 1013-A, subsection 1, paragraph C.

For the purposes of subsections 7 and 8 and this subsection, "total expenditures" means the sum of all expenditures made to influence a single election that are made by a candidate or made on the candidate's behalf by the candidate's political committee or committees, the candidate's party or the candidate's immediate family.

21A § 1015-A. Corporate contributions



STATE OF MAINE
HOUSE OF REPRESENTATIVES
CLERK'S OFFICE
2 State House Station
Augusta, Maine 04333-0002

Millicent M. MacFarland
Clerk of the House

May 5, 2006

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

Dear Executive Director Wayne:

As requested, enclosed are copies of the last two bills that I have received for legislative newsletter mailings for Representative Kevin Glynn the current member of House District 124.

If you have any questions you may call me at 287-1400.

Sincerely,

Millicent M. MacFarland
Millicent M. MacFarland
Clerk of the House

Cc: Speaker John Richardson
Representative David Bowles
Representative Kevin Glynn



Chartwell
129 South Main Street
Auburn, Maine 04210

Millicent M. MacFarland
Clerk of the House
2 State House Station
Augusta, ME 04333

INVOICE:

Bill for Mailing done for State Rep. Kevin Glynn of South Portland.

~~Bullet Printing~~
Newsletter

Printing of 4,962 pieces	X .0924	\$458.49
Postage and Handling	X .125	\$620.25
Total Due		\$1,078.74

Please Remit Payment to:

Chartwell
Attention Jeff Foss
129 South Main Street
Auburn, ME 04210



Chartwell
129 South Main Street
Auburn, Maine 04210

Millicent M. MacFarland
Clerk of the House
2 State House Station
Augusta, ME 04333

INVOICE:

Bill for Mailing done for State Rep. Kevin Glynn of South Portland.

Ballot Preview

Printing of 4,962 pieces	X .0924	\$458.49
Postage and Handling	X .125	\$620.25

Total Due **\$1,078.74**

Please Remit Payment to:

Chartwell
Attention Jeff Foss
129 South Main Street
Auburn, ME 04210



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

May 5, 2006

Hon. Millicent M. MacFarland
Clerk of the Maine House of Representatives
2 State House Station
Augusta, ME 04333

Dear Ms. MacFarland:

In researching the legislative mailing privilege, we learned that Rep. Kevin Glynn submitted to your office for reimbursement two invoices for constituent mailings which may have been sent partially outside his district.

This is to request a copy of any invoices or other papers Rep. Glynn submitted to your office in connection with the mailings. Thank you.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jonathan Wayne".

Jonathan Wayne
Executive Director



HOUSE OF REPRESENTATIVES

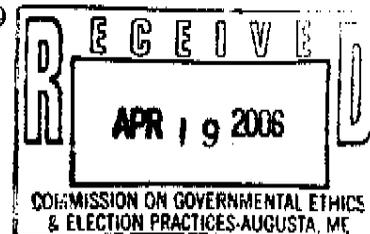
2 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0002

(207) 287-1440

TTY: (207) 287-4469

Kevin J. Glynn

109 Huntress Avenue
South Portland, ME 04106
Residence: (207) 799-5319
Business: (207) 294-7552
Fax: (207) 799-4824
E-Mail: glynn@maine.jr.com



April 19, 2006

Attn: Sandra Thompson
Ethics Commission
135 State House Station
Augusta, Maine 04333

RE: Rep. Glynn Constituent Mailer

Dear Sandra,

This letter is in follow-up to my office visit last week regarding constituent services mailers.

I am a clean election candidate for Maine Senate District 7 for the 2006 election cycle. I am currently serving my fourth term in the Maine House of Representatives for House District 124.

Attached, please find a copy of a newsletter that I am distributing through the House Clerk's Office. State Representatives are entitled to one mailer to the House District per year and this will be my approved mailer for 2006. I additionally distribute other constituent services publications in service to the people of South Portland and of Maine.

As we discussed, it is my customary practice to pay for additional copies to be mailed to a wider audience using my constituent service money and State Representative pay. My question to your office was does this practice of constituent services spending raise any issues or trigger any reporting requirements.

Following the staff review of the draft piece, I was informed that it would not be considered to be part of my 2006 election and no reporting would be required. I was asked if I could provide the office with a sample piece so that it would be on file in the event that anyone should have questions.

Thank you once again for your help and assistance with my question.

Respectfully,

A handwritten signature in black ink, appearing to read 'Kevin J. Glynn', written over a horizontal line.

Kevin J. Glynn
State Representative

MEMORANDUM

To: President Daggett
From: Phil Merrill
Date: June 16, 2004
Subject: New Senate Districts

Question The Maine Supreme Judicial Court has now defined the Senate districts that will apply for the 122nd legislature. Usually, these new districts include some geographic areas not in the current district (hereafter referred to as *new town*). This prompts the question, what, if any, are the constraints on a current Senator, as he or she meets Maine citizens in *new town*? Are there different restraints on a Senator who plans to run to represent the new district, than those on a Senator who intends to retire from service in the Senate at the end of his or her term?

A Maine State Senator's Responsibilities Exploration of this issue must start with an overview of a State Senators duties and responsibilities. Once a person is elected to the Maine Senate, he or she takes an oath to follow the United States Constitution as well as the Constitution and laws of the State of Maine. The principal responsibility imposed by the Maine Constitution on a State Senator is to participate as one of a group of thirty-five Maine citizens making laws, passing a state budget, and raising taxes for the benefit of the people of Maine, all the people of Maine. In this process, a Senator may take into account only the very narrow interests of his or her constituents and leave it to the process as a whole to determine what is best for the entire state, or a Senator may deem it his or her duty to approach an issue asking only what is best for the state as a whole. In practical terms, a Senator must always balance the interests of his or her constituents and the broader interest of the state as a whole. Indeed, a Senator who saw no other duty than to advance the needs of his or his constituents would quickly understand that in order to do so, he or she would need the votes of Senators from other parts of Maine and to gain those votes requires an understanding of the needs of Maine citizens in other parts of the state. In addition, every Senator is given responsibilities that extend beyond the district such as serving on a standing committee or as a member of leadership. Also, as a Senator attempts to pass legislation that will serve the interests of the folks who elected him or her, it is sometimes necessary to build public support out of the confines of the Senator's own Senate district. It may be support for a bridge that will serve people from the surrounding districts. It might be a school funding issue that could benefit everyone in Maine. In the latter case, serving the people who elected the Senator might require the senator to meet people from all over Maine and gain their support for the bill.

Every Maine State Senator holds a **state political office** and in the end it is his or her duty alone to decide how and when to communicate with the people of the state. When a Maine citizen from outside the district writes with a concern, most Senators take the time to answer and do so on official stationery and with the help of legislative staff. If the

Merrill Memo, Page 2

Senator meets someone from outside the district who has some interest in what the Senator is doing, the Senator will often provide his or her card, which was printed at state expense. Does the designation of a group of Maine citizens as future voters in the district restrict the Senator from these general services?

In considering this question, it is useful to consider it not only in the context of the Senator reaching out to the constituent, but also the other way around. If a citizen from new *town* calls a state Senator and says, "Our town has problems with school funding, and I have noticed that you are on the Education Committee and my town will be in your district next time," is there any reason to think the Senator can do less for this person than any other Maine citizen. There is no basis in Maine law or the state Constitution to answer in the affirmative, and likewise there is no basis in law to argue that the answer is different if the Senator initiates the contact.

What then are the limits on what a Senator may do, and the state goods and services he or she may use to provide services to a Maine resident and are there any distinctions between people in and out of the district? To answer this we must look at two different titles of Maine law and implementing procedures: one, the laws appropriating the goods and services that are the subject of this memo; and two, the election laws.

A Senator's Use of State Goods and Services Maine State Senators are provided with certain printed materials such as stationery, business cards, and legislative reports. Senators are also provided with telephone cards and mailing privileges as well as the services of legislative staff that help with issue analysis and the drafting of letters, press releases and reports. All of these are provided to aid the Senators in carrying out the general responsibilities defined above. The State provides these from funds made available for operation of the Senate. Any direct reimbursement to a Senator is clearly governed by 3MRS.A §2 ¶ 7 that reads, *No additional expenses may be paid to Legislators from the Legislative account unless authorized by the President of the Senate or Speaker of the House during any regular session.* This same restriction has always been applied to expenditures made directly by the Senate on behalf of a Senator, for example having business cards printed for the lawmaker.

Because the state's resources are finite, Senate Presidents have consistently put limits on the use of these goods and services. For example, a Senator might decide that every taxpayer in Maine should know about his or her tax reform bill and the Senate staff would help with a press release to accomplish that purpose, but by determination of the President, the Senate would not pay for a mailing to all the taxpayers in Maine.

Senate Presidents in the last quarter century have been very consistent in setting these rules. The preliminary question on all these expenditures is, does the expenditure of state resources legitimately relate to the Senator's conduct of business? For example, business cards are traditionally available to give to any person whom the Senator meets and wants to inform how to contact them again. The fact that the person was a "future constituent" would not matter. The fact that the Senator met the person while attending a town

Merrill Memo, Page 3

meeting in the *new town* would not matter. A Senator is meeting Maine citizens and making himself or herself available to them and that is consistent with his duties as Senator. The same guidelines apply to writing letters or making calls to any citizen outside the district, with one important caveat. Communicating with a specific Maine citizen is clearly supported by the Senate expenditures, but a bulk mailing to the citizens of *new town* is not. The only bulk mailings supported by the Senate are to current constituents.

Before leaving this subject, it is necessary to address 3 MRSA § 170-A, which does bar "legislative employees . . . from at any time using the computer system, telephones, copying machines or other legislative equipment for work related to campaigns." Does this bar a Senator from using these materials if it might be construed as work related to a campaign?

First, it must be noted that Senators are not "employees" within the meaning of Title 3. The distinction is clear and unambiguous throughout the Title. For example, in §162 of the same title the legislative council is given the power to set "salary schedules for all employees of the legislative agencies." In contrast, the Maine Constitution requires that compensation of Senators and members of the House of Representatives be set in the statutes and is subject to constitutional restrictions as to timing of any pay increase (see Constitution of Maine Article IV, Part 3 Legislative Power Sec. 7. Compensation; traveling expenses). However, the fact that Senators are not employees, in and of itself, does not dispose of the relevance of this statute to our inquiry, because many services that are the subject of this memorandum are carried out by "employees" on state computers, telephones, copying machines, etc. This then begs the question, is work for a Senator that involves communication with a person in *new town* by definition "work related to a campaign" as the term is used in § 170-A. The answer is clearly no. It is work done consistent with the general duties of a Senator as discussed above. It is also clear that when this statute refers to "work related to campaigns," it is very specifically referring to work in a campaign as opposed to work, which might possibly benefit a campaign. If this were not the case, then the statute would bar a legislative employee from ever using state equipment to aid the Senator from communicating with a voter. In fact, it is universally understood that this prohibition does not even apply after the Senator has announced his or her intentions to seek re-election. The clearly understood meaning of the statute is that the employee can use state equipment to aid the Senator in communicating with citizens of Maine right up to the election unless the mailing asks for the constituent to vote in a specific way, to make a contribution to the campaign, or is done for and by the campaign organization.

A different section of Maine law applies to the constituent services allowance. The Allowance for Constituent Services, 3 MRSA § 2, provides that, *Each member of the Senate receives an allowance for constituent services in the amount of \$2,000, \$1300 at the start of each regular session and \$700 in the month following the adjournment of the regular session, emphasis added.* This money is separate and above the funds providing the goods and services discussed above. Here the purpose of the money is expressly limited to a singular part of a Senator's duties: communicating with constituents. In

Merrill Memo, Page 4

general terms, a constituent is one who gives authority to another to act for him. See *Kunz V. Lowden*, C. C.A.Kan., 124 F.2d. 911, 913. In politics, its clear meaning is the people who elect one to office. The statute does not expressly provide that the money is supplied to a Senator to serve **his or her** constituents and so it might be argued that the money could be used to serve all the constituents of the Senate, which are all the people of Maine. This is not the interpretation made by any President of the Senate however, everyone of whom has determined that each Senator gets this money to help offset the costs of getting around in their current district and serving the people who elected them. Therefore, all Senators would be well advised to take whatever steps they deem prudent and necessary to prove that these monies were used to meet those needs and not to service people outside the district.

Campaign Finance Laws The inclusion of voters from *new town*, in what would be an incumbent senator's new district if he or she ran again, creates a potential political aspect to all intercourse between the Senator and these potential new voters. This requires that one examine the laws governing campaigns to see if any have relevance to the issues discussed here. At the outset it is important to note as discussed above that a state senator holds a state political office and has responsibilities that extend to every citizen of the state. It is also useful to see this question in the same context as the Senator's intercourse with those voters in his or her old district who will also be in his or her new one. In both cases then, there is a component related to Senate responsibilities and a potential political aspect when and if the Senator becomes a candidate. Therefore, from the standpoint of campaign laws, as a general rule the Senator should treat intercourse with "new town" voters no differently then intercourse with current constituents.

The specific questions that potentially arise are, do the state-supported communications discussed above trigger a Senator becoming a candidate, or once the person is a candidate will these count as a campaign expenditure? If a campaign were referenced in the communication, then the communication would be a campaign expenditure. If there is no mention of a campaign or how a person should vote, then it is simply a communication from a Senator to the citizens of the state and has no impact on the determination of money spent for campaign purposes. This is no different from a situation a local basketball coach might encounter if it were his or her practice to send out weekly flyers to the student's homes telling what he or she and the team are doing to win the upcoming games. Even if he or she had formed the general intent of running for the Senate from that town the next year, those communications would not trigger the campaign finance law unless in one of them he or she said something like, *You've always trusted me to win for our team, now give me your trust to win for us in the Maine Senate.*

The statutes that they must review to decide are found in Title 21-A MRSA. Elections. Section 1014 (3-A) Chapter 13 subchapter 2 requires that a candidate must report "in-kind contributions" including specifically "in-kind printed materials to be used in support of a candidate." It goes on to say that these in-kind printed materials must include the listing of the authorizing agent for the expenditure. The state-provided materials, which are the subject of this memo, such as business cards, to potential voters in the current

Merrill Memo, Page 5

district or in the future district do not constitute an in-kind contribution by the state that must be reported because the card is not being used "in support of a candidate." The Senator may in fact be a candidate, but he or she is also a Senator and his or her responsibilities do not end when he or she seeks reelection. The law must and does make the distinction. The definitions for the terms used in 21-A MRSA Chapter 13 subchapter 2 are found in §1012. And, in subsection 3 B (6) the law states that excluded from the definition of campaign expenditures are, *Any communication by any person which is not made for the purpose of influencing the nomination for election, or election, of any person to state or county office.* A communication made by a Senator about the business of the state and public policy is not made for the purpose of influencing an election unless made in the context of a campaign event or message. More specifically, Senator X goes to the town meeting in "new town" and meets people there. While there, he or she solicits their views on matters before the legislature and offers his or her own thoughts. He or she gives his or her state business card to people who show some interest. To this point, no campaign activity has taken place. Now, if at that same meeting someone comes up and says, "I want to work in your campaign how do I get hold of you", here, arguably giving the business card could constitute a campaign activity and raise many related questions including whether the card contained the proper disclaimer. If the Senator has not yet announced, he or she might say "I'm not yet a candidate" and take the person's name to notify him when and if the announcement is made. He or she might still offer his or her business card in case the person wants to contact the Senator in his or her official capacity. If the Senator has announced and has campaign material, it would be prudent to provide that instead of the state business card. This distinction may seem artificial, in the sense that the Senator probably has mixed reasons for going to that town meeting; it is true that it might help the Senator do his or her job as Senator better whenever he or she talks with Maine citizens about state issues, but clearly if he or she intends to be running in the future in "new town" impressing the people there and ultimately winning their vote is probably on the Senator's mind when he or she goes to the meeting. But the same could be said for many people at the meeting who might also give out their business card. Politics is such that any social act can have beneficial impact on a person's electability. Any expression of a political view could be uttered for the purpose of influencing a future election. Therefore, the requirement of the law that the communication must be made for the "purpose of influencing the election" must be read strictly to mean expressly for that purpose. To do otherwise would constitute an unconstitutional interference with free speech and in the case of sitting Senators force the court to make determinations about the scope of a Senator's duties which would run the risk of violating Article III of the Maine Constitution, Distribution of Powers.

Agenda

Item #3



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

June 12, 2006

Michael D. Mowles Jr.
423 Ocean House Road
Cape Elizabeth, ME 04107

Re: Duddy Complaint

Dear Mr. Mowles:

At a meeting held today by telephone, the members of the Commission on Governmental Ethics and Election Practices considered a complaint against your campaign filed by Jennifer Duddy concerning a flyer you sent in the Republican primary election for House of Representatives, District #121. That flyer contains language by U.S. Senators Olympia Snowe and Susan Collins, which was an endorsement of you in the 2004 general election. Ms. Duddy stated that she believed this language has misled voters into believing the Senators had endorsed you in tomorrow's Republican primary election. You declined to participate in the meeting, and instead provided the attached letter.

The Commission members considered the text of the flyer and the attached e-mail confirming conversations between Commission staff and staff of the U.S. Senators in which they denied any endorsement of you in the 2006 Republican primary election.

Because of the exigent circumstances present, the Commission members voted unanimously (3-0) that your use of that language in the flyer constituted an "endorsement" in the 2006 primary election and that your use of the endorsement in the flyer violated the Election Law because the U.S. Senators did not authorize your use of the endorsement for this election. (See 21-A M.R.S.A. §1014-A(1) and (2))

At its next meeting on June 22 at 9:00 a.m., the Commission members will consider whether to assess any forfeiture for the legal violation. The Election Law authorizes a civil forfeiture for this violation of up to \$200. If you wish to request a reconsideration of the finding of violation with the assistance of counsel, the Commission will consider your request at the meeting.

Sincerely,

A handwritten signature in black ink that reads "Jonathan Wayne".

Jonathan Wayne
Executive Director

cc: Jennifer Duddy

COMPLAINT TO ETHICS COMMISSION

TO: State of Maine Commission on Governmental Ethics and Election Practices
FROM: Jennifer Duddy, candidate for State Representative, District 121
DATE: June 12, 2006
RE: Misleading campaign flyer sent by Mowles campaign.

On Sunday, June 11, 2006, campaign volunteers for my campaign for State Representative, District 121 (Cape Elizabeth), made "get-out-the-vote" phone calls to voters in my district. Two of my volunteers spoke to voters who had received flyers in the mail from my opponent Mike Mowles, which led them to believe that U.S. Senators Snowe and Collins had endorsed Mowles campaign. Please see copy of Mowles mailer attached.

The Mowles flyer is captioned "See What People **Are Saying** About Mike Mowles." (Emphasis added). The flyer prominently displays the photographs of Senators Snowe and Collins, along with a quote from each Senator. The reverse side of the mailer lists the names of local Mowles supporters who are endorsing him in this primary race. The quotes date from the 2004 general election, a race in which Mowles was running against a Democrat. The October 2004 dates for the quotes are shown on the mailer in small print.

When contacted by the Duddy campaign, spokesmen for Senator Collins and Senator Snowe stated they had no knowledge of the flyer and that they had not endorsed Mowles in this primary race. Furthermore, it is their practice NOT to endorse candidates in state primary campaigns. In other words, Senators Snowe and Collins ARE NOT NOW saying the phrases which are quoted in the flyer.

The effect of the mailer has been to mislead voters in my district on the eve of the primary election. Some voters in my district now believe that Mowles campaign has been endorsed by our U.S. Senators. It is impossible to judge how many voters have been misled by the flyer or how widespread the effects of it will be. The flyer has compromised the fairness of this election.

Michael D. Mowles Jr.
423 Ocean House Road
Cape Elizabeth, ME 04107

Mr. Jonathan Wayne
Executive Director
Maine Ethics Commission
242 State Street
Augusta, Maine 04333

Dear Jonathan:

I have just spoken with Paul Lavin (today June 12th at 12:40 P.M.) who informed me that Jennifer Duddy my opponent in the republican primary for House District 121 has filed an ethics complaint. He also informed me that the ethics commission wants to convene a teleconference hearing on this complaint today at 2:00 PM. I ask that you present this letter to the Ethics Commissioners prior to their hearing this complaint.

It is preposterous that I should be informed of this less than 1 ½ hours before the proposed hearing. It is equally unfair to not supply me with a copy of the complaint filed by my opponent so that I know what she is alleging. I ask you to inform the Commissioners that this request is a violation of due process as I:

- 1) I have not been supplied with a written copy of the complaint
- 2) I have not been told when the complaint was made and in what fashion
- 3) Ample notice has not been given so that I may be properly represented in from of the commission
- 4) I wish to be represented by an attorney for this hearing
- 5) My attorney will need the proper time to prepare for the hearing

From my discussion with Mr. Lavin, Ms Duddy has complained about two quotations which appear on a flyer I sent out last week, copy attached. Assuming that the complaint (which has not been supplied to me and which I have not read) is regarding the quotes from our two U.S. Senators dated October 2004 on my literature I will attempt to explain why they were used.

The two quotes where from U.S. Senator Snow and U.S. Senator Collins and the date of the quotes where clearly marked on the flyer as October 2004. Your Staff can verify with the Senator's Staff that these two statements where made by them in support of my candidacy for State Representative in October 2004. These statements are on public record and date specific and have been used in the previous election. There was no inference that U.S. Senator Snow or U.S. Senator Collins made these statements about me as an endorsement in this primary on June 13th 2006, but were more accurately described as public statements made at that point in time. For Ms. Duddy or anyone else to complain that these statements from October 2004 are being painted as an endorsement of the June 2006 primary is inaccurate.

It is true and relevant that both U.S. Senators endorsed Michael Mowles for State Representative in 2004 and authorized my use of their statements at that time. The flyer does not represent or infer that either Senator endorsed my candidacy for the June 2006 Primary. Showing primary voters that I have earned the trust and support of our two U.S. Senators in the past is highly relevant to this Primary and our selection of a viable nominee for 2006.

Sincerely,

Michael D. Mowles Jr.

Copy: Paul Lavin

Title 21-A, §1014-A, Endorsements of political candidates

The State of Maine claims a copyright in its codified statutes. If you intend to republish this material, we do require that you include the following disclaimer in your publication:

All copyrights and other rights to statutory text are reserved by the State of Maine. The text included in this publication is current to the end of the Second Special Session of the 122nd Legislature, which adjourned July 30, 2005, but is subject to change without notice. It is a version that has not been officially certified by the Secretary of State. Refer to the Maine Revised Statutes Annotated and supplements for certified text.

The Office of the Revisor of Statutes also requests that you send us one copy of any statutory publication you may produce. Our goal is not to restrict publishing activity, but to keep track of who is publishing what, to identify any needless duplication and to preserve the State's copyright rights.

PLEASE NOTE: The Revisor's Office CAN NOT perform research for or provide legal advice or interpretation of Maine law. If you need legal assistance, please contact a qualified attorney.

§1014-A. Endorsements of political candidates

1. Definition. For purposes of this section, "endorsement" means an expression of support for the election of a clearly identified candidate by methods including but not limited to the following: broadcasting stations, newspapers, magazines, outdoor advertising facilities, direct mails or other similar types of general public political advertising or through computer networks, flyers, handbills, bumper stickers and other nonperiodical publications. [1995, c. 43, §1 (new).]

2. Authorization. A candidate may not use an endorsement unless the endorser has expressly authorized its use. The communication must clearly and conspicuously state that the endorsement has been authorized. If applicable, the communication must also satisfy the requirements of section 1014. [1995, c. 43, §1 (new).]

3. Civil forfeiture. A candidate who uses an endorsement without the authorization of the endorser violates this section and is subject to a civil forfeiture of no more than \$200. [1995, c. 43, §1 (new).]

4. Enforcement. The full amount of the forfeiture is due within 30 days of the commission's determination that an endorsement has been used without the endorser's authorization. The commission is authorized to use all necessary powers to collect the forfeiture. If the full amount of the forfeiture is not collected within the 30 days after the commission has determined that a violation of this section has occurred, the commission shall report to the Attorney General the name of the person who has failed to pay. The Attorney General shall enforce the violation in a civil action to collect the full outstanding amount of the forfeiture. This action must be brought in the Superior Court for the County of Kennebec or the District Court, 7th District, Division of Southern Kennebec. [1995, c. 43, §1 (new).]

PL 1995, Ch. 43, §1 (NEW).

file:///F:/Mowles/Mike%20Mowles%20HD%20121%20Commission%20Matter.htm

From: Demeritt, Martha

Sent: Monday, June 12, 2006 12:48 PM

To: Lavin, Paul

Cc: Brown, Nathaniel T; Wayne, Jonathan; O'Brien, Gavin; Thompson, Sandy

Subject: Mike Mowles HD 121 Commission Matter

Importance: High

As promised, I am forwarding the statement from the Snowe campaign.

I also caught up to Collins' chief of staff, Steve Abbott, who couldn't access e-mail in time for the meeting today, but told me that Senator Collins has not endorsed any state races in Maine whatsoever in 2006.

From: Lucas Caron [mailto:lucas@olympiasnowe.com]

Sent: Monday, June 12, 2006 12:39 PM

To: Demeritt, Martha

Subject: Snowe Policy on Endorsements

Martha,

Per our conversation, this e-mail should serve as confirmation that Senator Snowe has not and shall not, as general policy, endorse any one candidate during a contested primary race.

It should be made clear that the flyer circulated recently in House district 121 by Republican candidate Michael Mowles contained a quote from Senator Snowe endorsing Mr. Mowles' **2004 run in the general election for the Maine State House**. Consistent with the above mentioned policy that quote should not be misconstrued as an endorsement for Mr. Mowles' 2006 primary run.

Sincerely,

Lucas W. Caron
Campaign Manager
Snowe for Senate 2006

Lucas W. Caron

Campaign Manager

Snowe for Senate

Office: (207) 774-2006

Cell: (207) 252-5972

lucas@olympiasnowe.com

See What People Are Saying About

MIKE MOWLES

Representative to the Legislature

The Experience Cape Elizabeth Needs in Augusta



“Mike Mowles is a results-oriented individual of great integrity. As a member of the Cape Elizabeth Town Council, he has demonstrated bipartisanship and the leadership qualities and experience to get the job done in Augusta. Mike’s knowledge of local government and budgets position him well to continue to lead on issues of tax reform and fair school funding for Cape Elizabeth. I urge you to elect Mike Mowles to the Maine House of Representatives.”

(October 2004)

—U.S. Senator Olympia Snowe

“Mike Mowles exhibits the qualities of a really good Representative. Hardworking, thoughtful, passionate about issues that affect his community, Mike will be a wonderful asset in Augusta. He has the right experience for the job.”

(October 2004)

—U.S. Senator Susan Collins



ATTENTION REPUBLICANS

On Tuesday, June 13th

**Please Join Your Neighbors
In Supporting**

MIKE MOWLES

Representative to the Legislature

JOIN US IN SUPPORTING MIKE MOWLES:

Bruce Blaisdell

Kristine Blaisdell

Merideth Blaisdell

Betsy Colburn

John Colburn

Claudia Dricot

Vaughn Dyer

Cynthia Garfield

Tzeana Gross

Owen Harney

Debra Harney

James Hewes

Reid Jones

Jodie Jordan

Susan LaTorre

John Makrides

Susan Makrides

Jeff McClellan

Kim McClellan

Paul McGrath

Lisa Mowles

Irene O'Donnell

Rick O'Donnell

Jay Petersen

Dale Shaw

Denise Ross

Ted Ross

Ann Underdown

Frank Underdown

Christine Zachman

Paid for and Authorized by the Candidate, 423 Ocean House Road, Cape Elizabeth, Jim Hewes, Treasurer

The Mullin Family
6 Dean Way
Cape Elizabeth, ME 04107

PRSR STD
U.S. POSTAGE
PAID
PORTLAND, ME
PERMIT NO. 207

Agenda

Item #4

Sec. 1. 21-A MRSA §1125, sub-§6A is enacted to read:

6A. 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 or person may not assist another person in qualifying as a candidate for the same office if such candidacy would result in the distribution of revenues under subsections 7 and 8 for participating candidates in a contested election.

Agenda

Item #5



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

April 28, 2006

Mr. Paul Volle
P.O. Box 546
Westbrook, ME 04098

Dear Mr. Volle:

At its meeting today the Commission on Governmental Ethics and Election Practices considered the late submission of your PAC re-registrations for ~~*Ad Hoc*~~ ~~*Committee for Common Sense, Yes for Equal Rights and Yes for Life*~~. While they considered your written request for waiver they found no mitigating circumstance that prevented the timely filing of the registration, but have assessed a reduced total penalty of \$100 by a vote of 4-0.

Please submit to the Commission a check in the amount of \$100 payable to "Treasurer, State of Maine" within 30 days of the date of this letter. If you have any questions concerning this, please call me at 287-4179.

Sincerely,

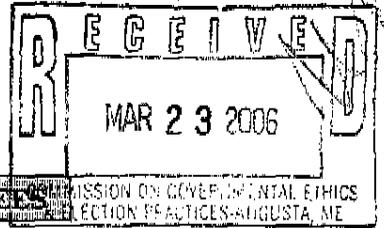
A handwritten signature in cursive script, appearing to read "Jonathan Wayne".

Jonathan Wayne
Executive Director

JW:md

This is an update.

STATE OF MAINE
Commission on Governmental Ethics and Election Practices
135 State House Station
Augusta, Maine 04333
Tel: (207) 287-6221 Fax: (207) 287-6775
Website: www.maine.gov/ethics



Re -

REGISTRATION FOR POLITICAL ACTION COMMITTEES

A political action committee must register with the Commission within 7 days of accepting contributions, incurring obligations or making expenditures in the aggregate in excess of \$1,500 in any single calendar year to initiate, support, defeat or influence in any way a campaign, referendum, initiated petition, candidate, political committee or another political action committee (21-A M.R.S.A. §1053).

Within 10 days of a change in PAC information an amended registration form must be submitted to the Commission.
The committee must file an updated registration every election year between January 1st and March 1st.

I. COMMITTEE INFORMATION

Name of committee Yes For Equal Rights Acronym YER
Mailing address P.O. Box 517 Telephone # 854-0087
City, State, Zip Code Westbrook, ME 04098 Fax # 854-0084
Website None

II. IDENTIFICATION OF TREASURER AND PRINCIPAL OFFICERS OF COMMITTEE

A. Committee Treasurer: Paul A. Velle
Mailing address P.O. Box 546 Telephone # 854-0080
City, State, Zip Code Westbrook, ME 04098 E-Mail pvelle@freelast.ws

B. Principal Officers:
Name Paul A. Velle Title Exec Dir.
Mailing address P.O. Box 546
City, State, Zip code Westbrook, ME 04098 Telephone # 854-0080
Name _____ Title _____
Mailing address _____
City, State, Zip Code _____ Telephone # _____

C. Identify any candidates, Legislators or other individuals who are the primary fundraisers and decision makers for the committee.
None

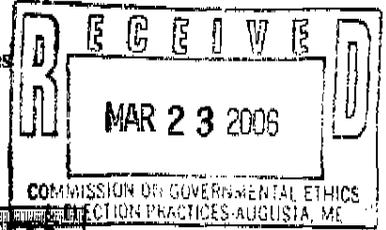
III. MAILING ADDRESS (Filing notices and correspondence will be mailed to this address.)

Paul A. Velle
P.O. Box 546
Westbrook, ME 04098

[Handwritten mark]

This is an update.

STATE OF MAINE
Commission on Governmental Ethics and Election Practices
 135 State House Station
 Augusta, Maine 04333
 Tel: (207) 287-6221 Fax: (207) 287-6775
 Website: www.maine.gov/ethics



Re-

REGISTRATION FOR POLITICAL ACTION COMMITTEES

A political action committee must register with the Commission within 7 days of accepting contributions, incurring obligations or making expenditures in the aggregate in excess of \$1,500 in any single calendar year to initiate, support, defeat or influence in any way a campaign, referendum, initiated petition, candidate, political committee or another political action committee (21-A M.R.S.A. §1053).

Within 10 days of a change in PAC information an amended registration form must be submitted to the Commission. The committee must file an updated registration every election year between January 1st and March 1st.

I. COMMITTEE INFORMATION

Name of committee Yes for Life Acronym YFL
 Mailing address P.O. Box 517 Telephone # 854-0087
 City, State, Zip Code Westbrook, ME 04098 Fax # 854-0084
 Website None

II. IDENTIFICATION OF TREASURER AND PRINCIPAL OFFICERS OF COMMITTEE

A. Committee Treasurer: Paul A. Valle
 Mailing address P.O. Box 546 Telephone # 854-0080
 City, State, Zip Code Westbrook, ME 04098 E-Mail pvalle@freedlast.ws

B. Principal Officers:
 Name Paul A. Valle Title Exec Dir
 Mailing address P.O. Box 546
 City, State, Zip code Westbrook, ME 04098 Telephone # 854-0080

Name _____ Title _____
 Mailing address _____
 City, State, Zip Code _____ Telephone # _____

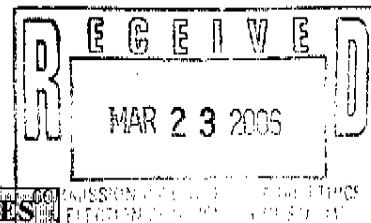
C. Identify any candidates, Legislators or other individuals who are the primary fundraisers and decision makers for the committee.
None

III. MAILING ADDRESS (Filing notices and correspondence will be mailed to this address.)

Paul A. Valle
P.O. Box 546
Westbrook, ME 04098

This is an update.

STATE OF MAINE
Commission on Governmental Ethics and Election Practices
135 State House Station
Augusta, Maine 04333
Tel: (207) 287-6221 Fax: (207) 287-6775
Website: www.maine.gov/ethics



Re -

REGISTRATION FOR POLITICAL ACTION COMMITTEES

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

A political action committee must register with the Commission within 7 days of accepting contributions, incurring obligations or making expenditures in the aggregate in excess of \$1,500 in any single calendar year to initiate, support, defeat or influence in any way a campaign, referendum, initiated petition, candidate, political committee or another political action committee (21-A M.R.S.A. §1053).

**Within 10 days of a change in PAC information an amended registration form must be submitted to the Commission.
The committee must file an updated registration every election year between January 1st and March 1st.**

I. COMMITTEE INFORMATION

Name of committee Ad Hoc Comm. for Common Sense Acronym AHCCS
Mailing address P.O. Box 517 Telephone # 854-0087
City, State, Zip Code Westbrook, ME 04098 Fax # 854-0084
Website None

II. IDENTIFICATION OF TREASURER AND PRINCIPAL OFFICERS OF COMMITTEE

A. Committee Treasurer: Paul A. Volle
Mailing address P.O. Box 546 Telephone # 854-0080
City, State, Zip Code Westbrook, ME 04098 E-Mail pvolle@freecatlast.ws

B. Principal Officers:
Name Paul A. Volle Title Exec. Dir.
Mailing address P.O. Box 546
City, State, Zip code Westbrook, ME 04098 Telephone # 854-0080
Name _____ Title _____
Mailing address _____
City, State, Zip Code _____ Telephone # _____

C. Identify any candidates, Legislators or other individuals who are the primary fundraisers and decision makers for the committee.

None

III. MAILING ADDRESS (Filing notices and correspondence will be mailed to this address.)

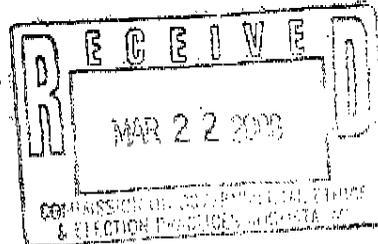
Paul A. Volle
P.O. Box 546
Westbrook, ME 04098

CHRISTIAN COALITION OF MAINE IS AN AFFILIATE OF THE CHRISTIAN COALITION OF AMERICA



Christian Coalition of Maine

March 21, 2006



Paul A. Volle
Executive
Director

CERTIFIED MAIL

To: Jonathan Wayne, Executive Director
State of Maine Commission on Governmental
Ethics and Election Practices
135 State House Station
Augusta, Maine 04333

From: Paul A. Volle, Executive Director
Christian Coalition of Maine

Dear Mr. Wayne,

I am the Treasurer of the *Ad Hoc Committee for Common Sense, Yes for Equal Rights*, and the *Yes for Life Political Action Committees (PACs)*. All of these PACs are current and are in good standing, the most recent reporting was January, 2006 Quarterly Report submitted on January 17, 2006.

On March 3, 2006 I received a letter for each of the aforementioned PACs from Martha Currier-Demeritt of your office stating, "...that your PAC's re-registration form has not been filed to date." It further stated "...that any person who fails to file a timely report may be assessed a penalty of \$250; thus, to date your penalty is \$250 (a total of \$750 for all three PACs). Along with this letter I received another letter for each of the aforementioned PACs, with a CGEEP Form PAC (Rev. 7/05) "Registration For Political Action Committees" attached to the letter. This second letter was also authored Ms. Currier-Demeritt dated December 13, 2005 informing the PACs of the new requirement of updating of the PAC Registration Form (ie: PAC re-registration).

By implication of the date of the letter, it was supposedly sent to all PACs on or about that date. I have diligently searched all of my records and have not found a copy of this letter. The first time that I was aware of this letter and the requirements stated therein was when I received the certified mailings.

Mr. Wayne I pray that you will ameliorate this arbitrary decision against *Ad Hoc Committee for Common Sense, Yes for Equal Rights*, and the *Yes for Life Political Action Committees* based on the following facts:

1. The Treasurer of the *Ad Hoc Committee for Common Sense, Yes for Equal Rights*, and the *Yes for Life Political Action Committees* did not have knowledge of the very recently changed statute regarding PAC's re-registrations.
2. The first knowledge of the changed statute was in the form of Certified Mail receive on/or about March 3, 2006 in forming me of the assessed penalty of \$250.00 for each of the aforementioned PACs.
3. The citation [21-A M.R.S.A. Section 1062-A(1)] referred to for the penalty assessed (by your own admission to Paul Madore via telecon on/or about March 15, 2006) refers to the initial registration of a Political action Committee, NOT the re-registration of a PAC that has already had a timely registration. Therefore, I believe this citation is not applicable to re-registrations.

Christian Coalition of Maine, Inc., P.O. Box 517, Westbrook, Maine 04092
Phone (207) 854-0080 • Fax (207) 854-0084 • Email: ccme@ccofme.org • Website: www.ccofme.org

Mr. J. Wayne letter March 21, 2006 continued

Page 2 of 2 Pages

4. All requirements for Political Action Committee mandatory Reports are included in the "2006 FILING SCHEDULE - POLITICAL ACTION COMMITTEES" and in your mailings and is posted on the Commission Website: www.maine.gov/ethics. This mandatory requirement is not currently posted (as of March 15, 2006) nor was it included in the CGEEP mailing for the "January 17, 2006 Quarterly Report." It would seem, that such an important new reporting requirement, that required an immediate first time violation forfeiture of \$250.00, would be posted and mailed as all the other reporting requirements.

Thank you for your consideration of this request.

In His Service,



Paul A. Volle,
Executive Director



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

CERTIFIED MAIL

To: Paul Volle, Treasurer
Ad Hoc Committee for Common Sense
P.O. Box 517
Westbrook, ME 04092

From: Martha Currier-Demeritt, PAC Registrar

Date: March 2, 2006

Our records show that your PAC's re-registration form has not been filed to date. The re-registration is required to be filed by all PAC registered with the Commission by March 1st of every election year. 21-A M.R.S.A. §1053(7).

In addition, 21-A M.R.S.A. §1062-A(1) states that any person who fails to file a timely report may be assessed a penalty of \$250; thus, to date your penalty is \$250. If you agree with this preliminary determination, you may use the attached billing statement to pay that penalty within 30 days of the date of this notice. Please mail your remittance to the Commission on Governmental Ethics and Election Practices, 135 State House Station, Augusta, Maine 04333.

However, if you have a valid reason for filing late, you may request a final penalty determination by the Commission. Requests for penalty waivers should be addressed to the Executive Director of the Commission, Jonathan Wayne. The Commission will notify you of the disposition of your case within 10 days after its determination.

To avoid further penalty, you should file the report as soon as possible.

Please direct any questions you may have about this matter to me at (207) 287-6221.

Cut Along Dotted Line

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

For Office Use Only
Account: CGEEP
Fund: 010
Appr: 01

From: Mr. Paul Volle, Treasurer
Ad Hoc Committee For Commons Sense

Re: Penalty for late filing of the PAC Re-Registration (\$250)

Amount Enclosed: \$ _____

Check/M.O. No.: # _____

Please Make Check or Money Order Payable to Treasurer, State of Maine

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

Agenda

Item #6

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COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES

AUDIT MEMORANDUM

1. Introduction

The Commission on Governmental Ethics and Election Practices (Commission) administers the campaign finance law and the Maine Clean Election Act (MCEA), a public-funded campaign financing option. Through the Commission, candidates register, declare their intention to run as a Maine Clean Election Act candidate (or not), and file the required campaign finance reports. In a related activity, the Commission also oversees financial reporting and regulatory compliance by political action committees (PAC) and committees of political parties.

The Commission will review all expenditures made by MCEA candidates to verify that:

- MCEA funds were spent for campaign-related purposes;
- the correct amount of spent public funds was returned after the election;
- all property that could be converted to personal use is sold, and the proceeds are returned to the Commission;
- every dollar of public funds spent by MCEA candidates has been publicly disclosed in campaign finance reports submitted to the Commission.

The Commission staff reviews all expenditures disclosed by MCEA candidates in campaign finance reports, and frequently requests additional information from candidates to verify that public funds were spent for campaign-related purposes. In addition, the Commission Auditor conducts compliance audits of source documentation for receipts and expenditures transactions reported by the candidates. Reports are selected for examination either through a random sampling process or due to questions of non-compliance that surface during or after the election period. Audit results are reported to the Commission, and resolution of audit issues is generally accomplished through communications with candidates and their election committee treasurers. Candidates who use public funds for purposes other than their campaign may be required to repay some or all public funds received. In cases of serious misuse, the candidates or others may be liable for civil penalties, and may be referred to the State Attorney General for possible criminal prosecution.

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The purpose of this memorandum is to document the procedures and objectives of the Commission's audit program, and to provide Commission members and staff, candidates, and political committees with operating guidance for identifying and resolving audit and compliance issues.

2. Background

Enacted by Maine voters in 1996, the MCEA established a voluntary program of full public financing of political campaigns for candidates running for Governor, State Senator, and State Representative. Candidates who wish to qualify and run as a MCEA candidate must meet certain requirements, which are described in the *2006 Candidate's Guide*. The *Guide* also explains the campaign finance reporting and record-keeping requirements for MCEA candidates, which are similar in most respects to those imposed on privately financed candidates. The Commission is responsible for assuring that public monies are used only for the purposes stipulated in the MCEA. Accordingly, the Commission's audit program has been implemented to provide the monitoring, examination, and reporting necessary to meet the Commission's compliance objectives.

3. Audits of MCEA Candidates

The Commission's primary responsibility is to administer the MCEA and all of its attendant fiscal and regulatory requirements. The Commission auditor, therefore, focuses the bulk of available audit resources on compliance and verification of MCEA candidates' activities. Areas of audit interest include, but are not limited to:

- Expenditures – confirm that only allowable materials and services were procured by the candidate and his/her representatives.
- Contributions – validate qualifications.
- Equipment disposition – verify that equipment acquired by the candidate with MCEA funds has been disposed of at fair market value, and the proceeds from sale have been refunded to the Maine Clean Election Fund.
- Campaign finance reporting – verify compliance with MCEA reporting requirements.
- Special purpose investigations – as directed by the Commission.

MCEA candidate records will be selected for review on a sample basis, but will also be subject to review in the event of obvious non-compliance.

4. Privately Financed Candidates

The audit focus on privately financed candidates is directed toward reporting compliance matters. Privately funded candidates have special reporting obligations when their opponent is publicly funded. The Commission audit staff examines and reports on candidate compliance with the expanded reporting requirements, e.g., accelerated reports.

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5. PAC and Political Committees

Political action committees (PAC) and political party committees have specific reporting requirements under the MCEA relative to contributions and expenditures. The Commission's audit program provides an effective level of compliance measurement with a process similar in concept and execution to that utilized in auditing political candidates.

6. Audit Scope

The scope of the audit examination is defined in large part by the audit objectives. Generally, the scope will address issues relating to the purpose and allowability of campaign expenditures; campaign contributions; compliance with reporting requirements; sale of campaign property; and other compliance issues related to public policy as defined by the MCEA and the Commission.

6A. Standard Compliance Audits Directed by the Commission

The bulk of audits initiated by the Commission audit staff will be concerned with verifying that the public monies disbursed to gubernatorial and legislative candidates were (1) spent for allowable election-related purposes, (2) were accurately and timely reported, and (3) that any unspent funds remaining after the election period were promptly refunded to the state. In addition, routine audits may test the validity of campaign contributions; verify compliance with campaign reporting requirements; and occasionally reconcile voter registration rolls with contributor lists.

6B. Audits of Political Action Committees and Committees of Political Parties

PAC and party committees have stringent record-keeping and reporting requirements under the Act. The Commission will undertake reviews of selected committee activities to (1) ascertain compliance by the committee with provisions of the law and regulations; and (2) to evaluate the effectiveness of established monitoring and reporting mechanisms. The Commission Auditor also assesses the functionality and effectiveness of reporting mechanisms and makes recommendations to the Executive Director for changes or modifications to reporting rules.

6C. Special Purpose Audits

The Commission may occasionally initiate non-routine audits or investigations of election-related activities. Examples of special purpose audits include:

- Audits initiated in response to candidate misfeasance;
- Examinations of equipment acquisitions by candidates or committees, subsequent post-election disposal at fair market value, and refunds to the Clean Election Fund.
- Special projects, e.g., evaluation of campaign salaries and compensation issues;
- Assessments of perceived obstacles to efficient and effective campaign reporting

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processes.

6D. External Request Audits

The Commission may receive requests from public or private institutions or individuals to undertake audits of elections or candidates based on verifiable information regarding Maine Clean Election Act issues or irregularities. The scope of such audits – if undertaken – will focus very specifically on the matter at hand, and reporting will be entirely at the discretion of the Commission. In such circumstances, audit activities will be closely coordinated with the Attorney General and other concerned agencies.

7. Audit Work-plans

The audit work-plan implements the objectives of the audit scope. The Commission audit staff will develop a specific work-plan for each audit they initiate. The work-plan provides specific step-by-step direction for each element within the plan, all leading to accomplishment of the audit objectives.

7A. Standard Candidate Compliance Audits

Typically, a standard compliance audit would be structured to include but not be limited to, the following:

- Audit based sample selection of both candidates and transactions;
- Verification of expenditure transactions and examination of cash disbursements;
- Verification of contributions;
- Proceeds from the sale of campaign equipment;
- Analysis of compliance with basic reporting requirements
- Verification that unused funds have been repaid to the Clean Election Fund.

The Auditor will submit audit findings and recommendations to the Commission with a copy to the candidate. Any further action on matters discussed in the audit report will be dictated by the Commission.

7B. Audits of PAC and Committees of Political Parties

The audit work-plan for PAC and party committees addresses issues similar to those of candidate audits. The Auditor will track receipts and expenditures from accounting records all the way through to the appropriate reports to the Commission. Similarly, the Auditor will select sample transactions from committee reports and locate and examine the source documentation that supports the transaction. Exceptions noted during the audit will be referred to the Executive Director for action. Resolution of audit findings may involve simple administrative remedies, or alternatively, may require Commission action.

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7C. Special Purpose Audits

The audit work-plan for special purpose audits will be unique to each audit. Circumstances and objectives will determine the technical approach the auditor follows. Typically, this kind of audit may require coordination with other agencies, e.g., the Attorney General, the State Auditor, with the result that the audit examination will be pursued in more depth than may be customary.

7D. External Request Audits

External request audits are similar – at least in terms of work-plans – to special purpose audits. The work-plan is designed specifically to address the issue raised by the institution or individual making the request. Moreover, the Commission will dictate the parameters of the examination or investigation, the framework for disposition of the findings, activities coordinated with other agencies, and the appropriate forum for audit reporting.

8. Examination Techniques

Candidate audits are guided by the terms of the Maine Clean Election Act, and their focus is to verify that funds disbursed to candidates have been expended for a public purpose, and that funds not spent during the election are promptly returned to the Maine Clean Election Fund. It should be noted that the Commission may direct the Auditor to examine or investigate other activities such as qualifying contributions, but the primary thrust of the audit effort will be in the area of candidate expenditures.

8A. Audit Priorities and Sample Selection

The Commission has limited audit resources. Accordingly, candidates are selected for routine audits on a statistically random basis. That is, all publicly funded candidates in Maine have an equal chance of being audited, but not all will be. Similarly, in selecting transactions for audit, the Auditor utilizes a judgment sampling technique to identify campaign invoices, payments, and other documentation for review. This approach provides assurance that MCEA audits are undertaken in a fair and unbiased way, while at the same time enabling the Commission to exercise their election oversight responsibilities.

8B. Office Audits

Most routine audits of candidate contributions and expenditures will be conducted at Commission headquarters. Candidate selected for audit will be requested to submit copies of documentation that support the transactions identified in the audit sample. Copies may be submitted electronically or as photocopies. Most importantly, the documentation must be clear, readable, and provide proof of the transaction claimed by the candidate.

After the Commission audit staff has examined the transaction(s) and developed the

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appropriate conclusions and recommendations, they will prepare a draft audit report. The format and report submittal processes are discussed below in Section 9.

8C. Site Audits

Circumstances will dictate that occasionally the Auditor will conduct his/her examination at the candidate's election offices or "on-site". For example, it is anticipated that all gubernatorial campaign audits will be conducted at the candidates' offices due to the volume of records subject to audit. The process is essentially the same as for office audits. The Auditor examines documentation supporting selected transactions for the purpose of verifying the public purpose of the candidate's expenditures. Audit results are reported to the Commission after all exceptions have been addressed, and following completion of the audit, the audit documentation is stored electronically in the Commission archive. Candidates should be prepared to provide photocopies or electronic images of all documents requested by the Auditor. Costs associated with supporting the audit are allowable public expenditures under Commission rules.

8D. Campaign Finance Reports

An important adjunct to the audit program is the staff review of all campaign finance reports. The Commission staff reviews 100 percent of all campaign finance reports in detail to assure that the activities reported comply with Commission rules governing campaign receipts and expenditures. The Commission staff participates in the review, and from this process selects transactions for audit. This examination looks at individual cash receipts and expenditures and selects the transactions to include in the audit sample. This is a judgment sample, and the selections are based on transaction value, perceived risk, type of expenditure, e.g., rent, and related factors.

8D (1) Validation of Candidate Expenditures

The Commission's *2006 Candidates Guide* states in part that "All expenditures of MCEA funds must be spent to promote the election campaign of the candidate. Expenditures made *only* for some other purpose (personal uses, or to promote another candidate, the candidate's party, or a charity) are not permitted." The audit objective is to determine that expenditures made by or on behalf of the candidate are allowable. The examination technique is to match source documentation e.g., original vendor invoice, with proof of the expenditure, e.g., cancelled bank check payable to the vendor in the invoice amount. The process is simple and reliable. Audit exceptions arise when either one or both of the principal supporting documents is missing from the expenditure file. Such exceptions must be satisfactorily resolved before the audit is completed.

8D (2) Candidate Receipts

MCEA candidates are not permitted to solicit or accept campaign contributions. The Auditor may review the campaign bank accounts, bank account reconciliations, and

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other cash disbursement records to assure that all cash receipts have been reported; that MCEA candidates have not accepted contributions; and there are no questionable transactions on file.

8D (3) Equipment Records

Candidates are charged with the responsibility of selling equipment acquired with MCEA funds during an election at *fair market value*. The proceeds of the sales must be refunded to the Commission no later than 42 days after the election. The Auditor will generally include equipment purchases in the sample selection.

8E. Candidate Qualification Verification

The Auditor may select some of the candidate's qualifying contributions to test and verify. The verification procedure involves selecting names from the "Receipt and Acknowledgement" form(s), and contacting the individuals named to determine if they in fact contributed to the candidate's campaign and provided a qualifying signature.

8F. Voter Registrar Verifications

Each MCEA candidate must gather a certain number of qualifying signatures and contributions. Signatories must be registered voters, and their signatures attested to by the Voter Registrar in the appropriate jurisdiction. Occasionally, the Auditor will verify the authenticity of the Voter Registrar's signature, and the process for assuring that the candidates qualifying signatures are in fact registered voters.

9. Audit Reporting

At the conclusion of the audit examination, the Auditor will review findings and recommendations with the Executive Director for his/her input. Normally, the draft audit report is then submitted to the candidate, the PAC, or the party committee for review and comment. Once the candidate or committee has responded, the Auditor finalizes the report and it is sent to the Commission for action. The basic format for the audit report is shown as Exhibit I of this document.

Audit findings are always discussed within the framework of the MCEA, other applicable statutes, and relevant administrative rules and guidelines. Recommendations for corrective action are intended to help the candidate, his/her election committee, the PAC or the party committee, achieve compliance with the applicable rules and regulations as quickly as possible. Most infractions of the rules are relatively minor and easily fixed. Only occasionally are violations serious enough to warrant more aggressive action by the Commission, and possibly by Maine's Attorney General.

10. Freedom of Access Requests

Maine's *Freedom of Access* (FOA) law is interpreted to give the public open access to

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Commission records and proceedings, including the activities and reports of the Commission audit staff. Accordingly, requests for audit documentation will be processed in the manner prescribed by the FOA. Applicants will complete a request form that specifically identifies the document (s) requested, and the audit staff will respond as quickly as possible consistent with available resources and existing workload.

The application form will alert the requestor to his/her rights and limitations concerning access. In addition, the requestor will be cautioned that draft and other evaluation documents are incomplete, and the requestor uses the information provided at his/her own risk.

All letters to candidates from the Commission concerning audit matters shall provide notification that audit activities are subject to disclosure under the provisions of the FOA. It is therefore in the candidates' best interest to be as thorough as possible when responding to audit inquiries.

11. Documentation Standards

Audit materials and audit reports become part of the Commission's permanent records, and therefore, must be submitted and maintained according to documentation standards established by the Commission.

11A. Original Documentation

The Auditor will request copies of original supporting documentation from the candidate, PAC or party committee for political and campaign transactions selected for audit. Auditees are requested to provide such copies in electronic format, i.e., documents scanned into MS WORD, EXCEL, ADOBE PDF, or other widely used format. In the event that the candidate's staff does not have access to scanning technology, photocopies are acceptable. In the end, all audit documentation will be stored electronically in the Commission archives.

11B. Records Retention Policies of the Commission

The Commission retains candidate documentation for a minimum of two years following the election cycle. Documents originating with political action committees and committees of political parties are retained for a minimum of four years following the submittal date. Retention requirements follow the relevant statutes.

EXHIBIT I
Page 1 of 2**State of Maine**
Commission on Governmental Ethics and Election Practices**AUDIT REPORT NO. 2006-HR001SAMPLE****Subject: House of Representatives Candidate XXXXXXXXXXXX**
2006 42 Day Post Primary Campaign Finance ReportBackground

XXXXXXXXXXXXXXXXXX is a candidate for the Maine House of Representatives, District 999. Mr./Ms. XXXXXXXXXXXXXXXXXXXX was certified by the Commission as an MCEA candidate on April 18, 2006. MCEA candidates are required under the Act to submit a 42 day post primary report of their receipts, expenditures, outstanding campaign debt, and equipment purchases and dispositions for the period June 2, 2006 through July 18, 2006.

Audit Scope

Examination of selected candidate expenditure transactions occurring between June 2, 2006 and July 18, 2006 as recorded in the candidate's accounting records, or as reported to the Commission, to determine if the identified transactions (1) were properly approved by the candidate or his/her authorized representative; (2) were adequately documented as evidenced by original vendor invoices and cancelled checks or other acceptable disbursement documentation; and (3) complied in all material aspects with the requirements of the Maine Clean Election Act.

Audit Findings

The audit examination disclosed the following:

1. On three occasions during the reporting period, ABC Limo Service provided transportation to campaign events for the candidate and his staff. The referenced services were provided by ABC Limo Service to the candidate at no charge, and therefore constituted an "in-kind", unallowable contribution. As a certified MCEA candidate Mr. _____ is precluded from accepting contributions to his campaign.
2. Disbursement of \$99.57 from campaign funds for office supplies was not supported by a vendor invoice (attachment B), and was not included in the subject report. NOTE: when the auditor discussed the finding with Mr. _____, the candidate contacted the vendor, and was able to obtain a copy of the original invoice for \$99.57.

EXHIBIT I
Page 2 of 2

Recommendations

We recommend the following:

Finding No. 1:

- a) The candidate should request ABC Limo Service to invoice the campaign at their normal rates for services provided on June __, __ and __, and the campaign should pay the invoice, thus converting the unallowable contribution to an allowable expenditure.
- b) The candidate should be required to file an amended report to include the revised expenditure information.
- c) The Commission should consider assessing a fine for the reporting violation as provided for by the MCEA. The Act provides for a fine of \$_____ for accepting unallowable contributions.

Finding No. 2:

- a) The candidate should be required to file an amended report, revising Schedule B to include the previously unreported \$99.57 purchase of office supplies.
- b) The Commission should consider assessing a fine for the reporting violation as provided by the MCEA. The Act provides for a fine of \$_____ for each instance of unreported expenditure.

We found no indication of intentional misrepresentation in our review of the candidate's records and reports.

Candidate's Comments: Attached

Respectfully submitted,

Vincent W. Dirahn, Staff Auditor

Date _____

Approved:

Jonathan Wayne – Executive Director

Agenda

Item #7

STATE OF MAINE
YORK, ss.

SUPERIOR COURT
DOCKET NO. CR-

STATE OF MAINE)
)
 v.)
)
 PETER P. THROUMOULOS)
 DOB: 09/21/1948)
 4 Academy Avenue)
 Saco, ME 04072)
)
 Defendant)
)

INDICTMENT FOR THREE COUNTS OF
AGGRAVATED FORGERY (17-A M.R.S.A.
§702) (CLASS B), ONE COUNT OF
THEFT BY DECEPTION
(17-A M.R.S.A. §354)(CLASS B) AND
ONE COUNT ATTEMPTED THEFT
BY DECEPTION (17-A M.R.S.A. §354)(CLASS C)

Incident # 2006-027-31A
ATN #: 470370A
CTN #: 0014890
0024890
0034890
0048431
0058431 ATTEMPT

The Grand Jury charges:

COUNT I

On or about April 8, 2004, in the County of York, State of Maine, the Defendant, Peter P. Throumoulos, did commit aggravated forgery, in that, with the intent to defraud or deceive the government, the Defendant falsely completed written instruments or knowingly uttered or possessed such instruments, which instruments were filed or required or authorized by law to be filed in or with a public office or public employee, to wit, the Qualifying Contributions Receipt and Acknowledgement forms in support of his request for certification as a Clean Election Candidate for State Senate District Number 5, filed with the Saco City Clerk's Office and the State of Maine Commission of Governmental Ethics and Election Practices, copies of which instruments are attached hereto and incorporated herein as Appendix A to Count I, all in violation of 17-A M.R.S.A. §702 (1)(D) and (2)(1983 & Supp. 2003).

COUNT II

On or about April 18, 2006, in the County of York, State of Maine, the Defendant, Peter P. Throumoulos, did commit aggravated forgery, in that, with the intent to defraud or deceive the government, the Defendant falsely completed written instruments or knowingly uttered or possessed such instruments, which instruments were filed or required or authorized by law to be filed in or with a public office or public employee, to wit, the Qualifying Contributions Receipt and Acknowledgment forms in support of the Defendant's request for certification as a Clean Election Candidate in State Senate District 5, filed with the Saco City Clerk's Office and the State of Maine Commission on Governmental Ethics and Election Practices, copies of which instruments are attached hereto and incorporated herein as Appendix B to Count II, all in violation of 17-A M.R.S.A. §702 (1)(D) and (2)(1983 & Supp. 2005).

COUNT III

On or about April 18, 2006, in the County of York, State of Maine, the Defendant, Peter P. Throumoulos, did commit aggravated forgery, in that, with the intent to defraud or deceive the government, the Defendant falsely completed written instruments or knowingly uttered or possessed such instruments, which instruments were filed or required or authorized by law to be filed in or with a public office or public employee, to wit, the money orders for qualifying contributions in support of the Defendant's request for certification as a Clean Election Candidate, filed with the State of Maine Commission on Governmental Ethics and Election Practices, copies of which instruments are attached hereto and incorporated herein as Appendix C to Count III, all in violation of 17-A M.R.S.A. §702 (1)(D) and (2)(1983 & Supp. 2005).

COUNT IV

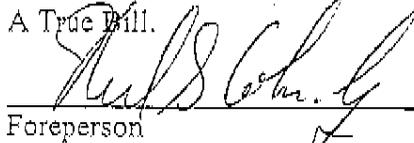
From on or about April 16, 2004 to on or about June 17, 2004, in the County of York, State of Maine, Defendant Peter P. Throumoulos ("Defendant") did commit theft pursuant to one scheme or course of conduct by obtaining or exercising control over the property of the State of Maine, such property consisting of money with an aggregate value in excess of \$10,000, with the intent to deprive the State of Maine thereof, and as a result of deception, in that the Defendant did intentionally create or reinforce the impression that he had obtained 150 qualifying signatures and contributions in support of his request for certification as a Clean Election Candidate for State Senate District 5, which impression was false and which Defendant did not believe to be true, all in violation of 17-A M.R.S.A. §§ 352(5)(E), 354(1)(A) and (B)(1) (Supp. 2003).

COUNT V

On or about April 18, 2006, in the County of York, State of Maine, Defendant Peter P. Throumoulos ("Defendant") did attempt to commit theft by obtaining or exercising control over the property of the State of Maine, such property consisting of money with an aggregate value in excess of \$10,000, with the intent to deprive the State of Maine thereof, and as a result of deception, in that the Defendant did intentionally create or reinforce the impression that he had obtained 150 qualifying signatures and contributions in support of his request for certification as a Clean Election Candidate for State Senate District 5, which impression was false and which Defendant did not believe to be true, all in violation of 17-A M.R.S.A. §§ 152(1)(C), 354(A) and (B)(1) (Supp. 2005).

Dated: June 6, 2006

A True Bill.


Foreperson

Candidate charged with election fraud

Peter Throumoulos of Old Orchard Beach is accused of forging signatures to qualify for Clean Election funding.

By DAVID HENCH
Staff Writer

A York County grand jury has charged an Old Orchard Beach Republican who is running for state Senate with stealing \$18,000 in state money two years ago by filing fraudulent Clean Election campaign petitions.

The five-count felony indictment issued Tuesday also alleges that Peter Throumoulos, 57, tried to steal a similar amount of money in this election cycle by again forging petition signatures and forging signatures on money orders that supposedly represented some of the required \$5 contributions from supporters.

If convicted, Throumoulos could face as much as 10 years in prison for theft and for each of three aggravated-forgery charges, and five years for attempted theft.

"Theft, in this case, is when you obtain property of another person based upon deception with the intent to permanently deprive them of that," said Assistant Attorney General Leanne Robbin. "The allegation is he's stealing state campaign funds because he knows he doesn't meet the qualifications of a Clean Election candidate."

Robbin also said that while it is not part of the indictment, Throumoulos spent about \$11,000 of his state-provided campaign money

Please see **CAMPAIGN**, Back Pa

CAMPAIGN

Continued from Page A1

in 2004 to hire his brother as a campaign worker.

Reached at his home Wednesday, Throumoulos said that he had not been formally notified of the charges but that he denies them. He said he plans to plead not guilty.

"If I did wrong, I'm going to have to answer for it one way or another," Throumoulos said. "Whatever comes out of this thing, I will bear the responsibility."

Throumoulos insisted that the fraudulent signatures were added to his petition and to the money orders by a group of college students who were volunteering for his campaign. He said the students admitted the behavior to him on the condition that he not release their names.

Throumoulos said he doubts that the students will come forward, even if he faces jail time, because he believes they were working to sabotage his candidacy.

He said that he doesn't know their names, that they used "Greek fraternity" names, and that they have returned to their home states.

"If you asked me now who they were, I couldn't even tell you," Throumoulos said.

Throumoulos, a former state legislator and Biddeford city councilor who is retired and draws a disability pension from Social Security, said he needed help from campaign volunteers to go door to door because he has a bad back.

"I couldn't go door to door so I sat by the roadside with a sign, with my name and slogan . . . and I waved to people as they drove by," he said.

Throumoulos said that he will defend himself in court, and that he learned the rudiments of the law from a correspondence course.

The case is being prosecuted by the state Attorney General's Office. Throumoulos will be issued a summons to appear in York County Superior Court for arraignment by the end of next month.

When Throumoulos turned in his Clean Election forms and contributions on April 13 at Saco City Hall, a clerk saw the names of two dead men and others who are not registered to vote in the candidate's district. The clerk returned the forms to Throumoulos and forwarded copies to the state ethics commission.

Throumoulos returned to City Hall the next day and submitted additional forms, but allegedly covered the names and signatures of the deceased men with new names, one of which did not match the signature on the voter registration card. Saco clerks also noted 14 other signatures that didn't match voter registration cards.

The incident led investigators to check Throumoulos' petitions from the last election cycle.

The allegations of forgery involve only Clean Election candidacy filings. Because he just met the 150-signature threshold for donations, invalidating any meant he did not qualify.

Throumoulos' petition to be a candidate in the Republican primary, which required just 100 signatures, had enough, even though some of the signatures were disallowed.

Throumoulos will face Charity Kewish in the Senate District 5 Republican primary Tuesday. He said he has no plans to drop out.

"If the people who vote in the Republican Party know me personally, my personality, character and integrity, they'll see to it to vote for me," he said. "If this situation is that negative, I could lose the primary. Even if the incident wasn't there, there always was a chance I could lose."

Staff Writer David Hensch can be contacted at 791-6327 or at: dhensch@pressherald.com

Additional Materials

Ethics
Commission
Meeting
June 22, 2006

Agenda

Item #2



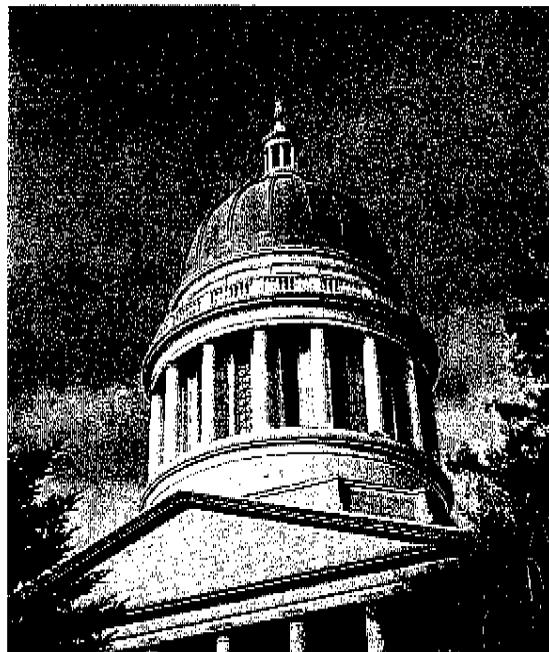
Representative Kevin Glynn

109 Huntress Ave.
South Portland, Maine
Phone: (207) 799-5319
Email: glynn@maine.rr.com

Website: www.glynn.org

Dear Neighbor:

I am providing this overview of some of the issues the 122nd Maine Legislature dealt with in the Second Regular Session. In this the shorter session of our two-year term, the bills we tackle are those that were introduced in the First Session but carried over to be finalized in the Second Session or new bills that were introduced because they were critical in nature. **My priorities this session were to avoid tax or fee increases, rein in government spending, create jobs through a more stable and business-friendly climate, lower health insurance costs for all Maine citizens and provide tougher penalties for criminals.**



Please visit the State of Maine website at www.state.me.us for more information on the bills and roll call votes from the 122nd Legislature. You can also find many online services such as vehicle registration and driver's license renewal and hunting and fishing license purchases. Please contact me with your ideas, concerns and questions. As always, I welcome and appreciate your input.

Kevin J. Glynn

HEALTH INSURANCE

Legislation to create a high-risk insurance pool to spread the cost of high-risk individuals among all health insurers while drawing down federal money available to states with such laws was passed in the House. The bill was halted in the Senate due to a procedural ruling that it was "not properly before the body" and, therefore, could not be further acted upon. Proponents of the bill assert that by pooling together high-



risk individuals, insurance carriers would be able to reduce premium rates to the majority of their customers; and the federal money Maine would have received could have provided state subsidies for high-risk individuals to purchase their insurance plans.

"Tina's Law" (LD 1906) imposes stricter penalties for operating a motor vehicle after license suspension. Rep. Darlene Curley (R-Scarborough) submitted the bill after a constituent, Tina Turcotte, was killed in an accident last year on I-95. A truck driver with multiple license suspensions and other traffic violations collided with her vehicle.

The new law defines habitual offenders as those convicted at least three times in five years for major motor vehicle violations or at least 10 times in five years for moving violations. These

TERM LIMITS

Currently, members of the Maine House and Senate can serve four consecutive two-year terms. These term limit provisions were enacted by Maine voters in 1993. LD 496 would have repealed term limits subject to the voters' approval at referendum in November 2006. It was amended in the House to extend term limits to 12 years, but the bill was eventually killed in both the House and Senate thereby ending any chance for term limits to be repealed or altered in this legislative session.

THE COST OF GOVERNMENT

In a bid to reduce state spending, LD 1330 called for a \$1 million reduction in the state payroll by eliminating an undetermined number of politically-appointed positions within state government. This Resolve failed passage.

"TINA'S LAW"

offenders will face a minimum \$500 fine and 30 days in jail if caught driving after suspension or revocation. In addition, habitual offenders who commit the most heinous crimes, such as driving drunk or driving to endanger after having their licenses suspended or revoked, will face mandatory penalties of \$500 to \$3,000 in fines and six months to five years in prison. A driver can be sentenced to as much as five years in prison for causing an accident in which another person is injured and a driver causing a fatality could spend up to ten years in prison.

TAX MATTERS

"TABOR"

"An Act to Create a Taxpayer Bill of Rights," or TABOR, is a citizen initiative that will appear on the November 2006 ballot asking the question, "Do you want to limit increases in state and local government spending to the rate of inflation plus population growth and to require voter approval for all tax and fee increases?"



TABOR includes spending and tax growth limits at the state, county and municipal levels. To exceed the spending limit or to enact tax increases would require a

two-thirds vote of the governing body and a majority vote of the citizens.

The growth of state government is based on the change in population plus the inflation rate as determined by the Consumer Price Index. The initiative requires 20% of any surplus tax collections above the growth limit go into a budget stabilization fund, while the remaining 80% of surplus tax revenues gets returned to taxpayers as a rebate.

WORKING WATERFRONT

LD 1972 implements the amendment to the Maine Constitution approved by voters in 2005. That amendment permitted the Legislature to provide for the current use valuation for property tax purposes of waterfront land used to support commercial fishing.

About Kevin Glynn

Kevin Glynn is serving his fourth term in the Maine Legislature representing District 124, the western section of South Portland. Glynn has been a member of the Insurance and Financial Services Committee and is currently the ranking Republican member. He also serves on the Health & Human Services Committee. Rep. Glynn was chosen for the Joint Select Committee on Health Care Reform in the 121st Legislature. This committee was instrumental in refining and improving the Governor's bill known as Dirigo Health Care and worked to provide affordable health insurance to

small businesses and individuals and to control healthcare costs in Maine. Glynn is a Director of Information Systems for Counseling Services, Inc. in Saco, a community mental health center.



Rep. Kevin and Lorie Glynn

Rep. Glynn is a former South Portland City Councilor. He and his wife, Lorie, reside in South Portland.

Representative Kevin Glynn

Constituent Outreach Newsletter • June 2006



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e-mail: glynn@maine.rr.com

109 Huntress Avenue, South Portland, Maine 04106

Visit my website at:
<http://www.glynn.org>

Representative Kevin Glynn
109 Huntress Ave
South Portland, Maine 04106

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Wayne, Jonathan

From: Dib9@aol.com
Sent: Friday, June 16, 2006 11:18 AM
To: Wayne, Jonathan
Cc: Lavin, Paul; Gardiner, Phyllis
Subject: Re: FYI - June Newsletter

Jonathan:

I asked Representative Glynn if had sent a June newsletter to people outside of his current House district and received the following response:

"No, I did not send a Newsletter outside my current House District.

As we discussed earlier in the month, I am entitled to one State Sponsored mailing per year. This is the annual end of session mailing I am encouraged to send. I met the deadline set by the House Clerk and this was my mailing for 2006.

Working through the House Clerk, the House Clerk's office sent out this mailer to my House district only. This work was performed by Bangor LetterShop (one of the two approved mailing houses through Millie MacFarland) and House Clerk Millie MacFarland. I gave no input on the mailing list for this mailing.

Why would somebody who lives one street outside my Legislative House District received such a mailing? The answer is simple -- every time these newsletters are sent, people from outside a legislative district receives them. Saturation mailings mail to people within certain carrier routes. These carrier routes do not follow legislative district lines exactly but are close.

I mailed no extra copies to anybody. I have not received the final copy myself.

If Jonathan Wayne has a question as to who received the mailing, these inquiries should be directed to Millie McFarland and/or her vendor Bangor Lettershop. Additionally, Millie MacFarland approved the mailing to be sent to the list it was sent to. You should direct Jonathan Wayne to secure a copy from her."

I think this response adequately addresses the concern. I am responding via e-mail to give you adequate time to confirm this information with the Clerk's office. I am told that a number of House newsletters were sent out in the past week.

Dan

Agenda

Item #3

David A. Lourie
Attorney at Law
189 Spurwink Avenue
Cape Elizabeth, ME 04107
(207) 799-4922
Fax 799-7865
dalourie@maine.rr.com

June 17, 2006

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

Re: Reconsideration of Determination that Michael D. Mowles, Jr. Intended to Mislead Voters in the 2006 Republican Primary

Dear Mr. Wayne:

This will confirm that I represent Michael D. Mowles, Jr., and that Mr. Mowles requests reconsideration of the finding that he violated 21-A M.R.S.A. §1014-A.

Mr. Mowles was authorized to use testimonials given by two Maine Senators in connection with his 2004 race for the Legislature. Mr. Mowles was not aware of any limitation on the use of those testimonials. The testimonials spoke only to the fitness of Mr. Mowles for election to the Legislature. Mr. Mowles did not *intend* to mislead anyone. Mr. Mowles has already lost the election, in part due to the Commission's summary action. He should not have to bear the stigma of a mistaken finding for the rest of his life that he intended to mislead voters.

In the market place of ideas, the remedy for what a candidate considers to be misleading political speech from an opponent is *more* speech - not by a complaint to the Commission that testimonials authorized for publication when given, which authorization was never rescinded, were *misleading* (and therefore *unauthorized*) when presented in a subsequent election for the same position. The Commission's decision raises significant 1st Amendment issues.

Mr. Mowles does not support the staff recommendation (that the Commission take no further action.) Mr. Mowles wants the summary determination that he committed an election violation set aside; or have the Commission impose a penalty so that he can contest the Commission's determination in Court. Please add this request to the June 22, 2006 Agenda.

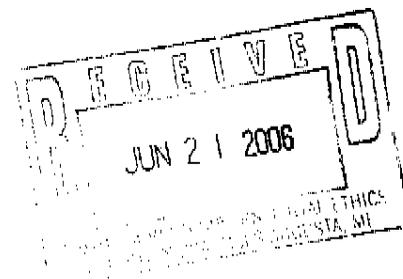
Sincerely,



David A. Lourie

cc: Mike Mowles

Jennifer J. Duddy
11 Crescent View Ave.
Cape Elizabeth, ME 04107



Via telecopy (original to follow)

June 20, 2006

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

Re: Michael D. Mowles, Jr.

Dear Jonathan:

The purpose of this letter is to respond to David Lourie's letter of June 17, 2006, and to convey my agreement with the Staff's recommendation in this matter.

First, attorney Lourie refers to the quotes from Senators Snowe and Collins used in the Mowles flyer as "testimonials." Attorney Lourie thus implies that a testimonial is something different from an "endorsement," and hence is unregulated. However, attorney Lourie's suggestion is not supported by the statute, and in fact would undermine the statute.

According to the statute, an "endorsement" is broadly defined to mean "an expression of support for the election of a clearly identifiable candidate by methods including but not limited to . . . flyers." 21-A M.R.S.A. section 1014-A(1). The definition is easily broad enough to encompass the quoted statements of Senators Snowe and Collins used in the Mowles election flyer distributed just a few days before the primary election, under the prominent heading "See What People Are Saying About Mike Mowles." To find otherwise would allow a candidate to easily circumvent the endorsement statute.

Second, attorney Lourie objects to the Commission's findings on the grounds that his client did not "intend" to mislead voters. The Commission's findings nowhere mention intent, and intent is not a required element of the statute. See 21-A M.R.S.A. section 1014-A(3). Accordingly, attorney Lourie's objection based on intent should be disregarded.

Third, attorney Lourie argues that his client was not aware of any limitation on the use of the Senators' statements from the 2004 general election, in which his client did not face a primary opponent and was running against a democrat. Attorney Lourie's argument, apart from being dubious on its face, misses the point of the statute.

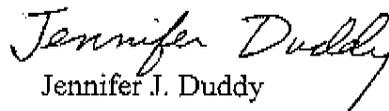
The statute does not require or contemplate an inquiry into the candidate's subjective state of mind. The statute simply provides that a candidate cannot use an endorsement unless (1)

the endorser has expressly authorized its use, and (2) the flyer clearly and conspicuously states that the endorsement has been authorized. 21-A M.R.S.A. section 1014-A(2). In this case, both elements are missing. Commission staff personally confirmed that Senators Snowe and Collins did not authorize Mowles to use their quotes in the 2006 republican primary for the District 121 state representative nomination. Additionally, the Mowles flyer failed to state that the endorsements were authorized. The Commission did not, and need not, go any further in its findings.

Finally, attorney Lourie apparently objects to the "summary" nature of the Commission's action in this matter. However, the Commission's prompt telephonic meeting was not only permissible under the circumstances, but in fact required under the statute. 21-A M.R.S.A. section 1002.

In summary, the Commission's findings in this matter are appropriately narrow, do not unfairly impugn Mr. Mowles, and follow inescapably from the evidence. I thus agree with Staff's recommendation that no further action is necessary in this matter, and there are no grounds for reconsideration. I also agree with Staff's recommendation that assessing a fine would serve no useful purpose, and is thus unnecessary.

Respectfully,


Jennifer J. Duddy

Cc David A. Lourie, Esq. (via telecopy)