

# Agenda

## Item #3



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

To: Commissioners  
From: Jonathan Wayne, Executive Director  
Date: August 12, 2011  
Re: Audit of Representative Howard McFadden

---

I have attached the materials related to the audit of the 2010 Maine Clean Election Act campaign of Howard McFadden. Rep. McFadden's campaign was largely compliant, but his campaign bank account contained a balance of \$804.62 in personal funds at the beginning of the 2010 election year. The personal funds were not used for campaign purposes, and no public campaign funds were misused. The campaign removed all but \$100 of the personal money in September 2010. This is the amount of personal funds the candidate routinely leaves on deposit in his campaign account to keep it open.

In order to discourage commingling of Maine Clean Election Act funds and personal funds, the Commission staff recommends finding that the campaign violated the prohibition against commingling, and recommends assessing a penalty of \$100. The Commission has previously assessed this penalty in instances of commingling in which public campaign funds were not misused.

Rep. McFadden did not respond to the recommended finding or penalty.

Thank you for your consideration of this matter.



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

July 29, 2011

Hon. Howard McFadden  
19 Shipyard Road  
Dennysville, ME 04628

**NOTICE OF RECOMMENDED FINDING  
OF VIOLATION AND PENALTY**

Dear Mr. McFadden:

Thank you for the information and documents your campaign has provided as part of the audit of your 2010 campaign as a Maine Clean Election Act (MCEA) candidate. The final audit report (enclosed) contains only one finding. As discussed in Finding No.1, the campaign bank account contained a balance of \$804.62 in personal funds at the beginning of the election year. In September 2010, the campaign withdrew \$704.62 in the account, leaving a balance of \$100, which is the amount of personal funds you routinely leave on deposit in the account to keep it open.

In 21-A M.R.S.A. § 1125(7-A), the MCEA prohibits participating candidates from commingling MCEA funds with personal funds. In this case, the campaign violated the prohibition on commingling, but no MCEA funds were misspent, and no personal funds were used for campaign purposes.

The Commission's auditor will be presenting audit reports to the Commissioners at their next meeting on August 18, 2011 at the Commission office. This letter is to notify you that the Commission staff intends to recommend to the Commissioners at the meeting that they find the campaign in violation of 21-A M.R.S.A. § 1125(7-A) by commingling MCEA with personal funds. The staff also intends to recommend that the Commissioners assess a penalty of \$100 for the violation. This is a penalty amount that the Commissioners have assessed previously against candidates who commingled MCEA and personal funds when there was no misspending.

**Your Opportunity to Respond**

The members of the Maine Ethics Commission will meet at 9:00 a.m. on Thursday, August 18, 2011 at the Commission's office at 45 Memorial Circle in Augusta. You are welcome to respond in writing to the enforcement actions recommended by the staff. If we receive a written response by Monday, August 8, we will include it in a packet of materials that I intend to mail to the Commissioners on August 9. If we receive a written response after August 8, I will forward it to the Commissioners by e-mail. You are also welcome to respond by attending the Commission's August 18 meeting in person, but that is not required.

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

PHONE: (207) 287-4179

FAX: (207) 287-6775

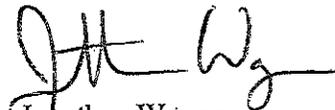
Mr. Howard McFadden

Page 2

July 29, 2011

Thank you for considering this notice of recommended penalty. Please call me at 287-4179 if you have any questions about the Commission's consideration of this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jonathan Wayne', written in a cursive style.

Jonathan Wayne  
Executive Director



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

July 29, 2011

The Honorable Howard E. McFadden  
19 Shipyard Road  
Dennysville, ME 04628

Subject: 2010 Final Audit Report

Dear Representative McFadden:

Enclosed is the final report of the audit of your 2010 campaign contributions and expenditures by the Commission on Governmental Ethics and Election Practices (Commission). We plan to present the report to the Commission at its meeting on August 18, 2011. Prior to that time, Jonathan Wayne, the Commission's Executive Director, will contact you regarding your attendance at the meeting to discuss our audit findings and recommendations.

Thank you for your cooperation during the audit process, and for helping us to achieve the objectives of the Commission's audit program.

Sincerely,

A handwritten signature in black ink, appearing to read "Vincent W. Dinan".

Vincent W. Dinan  
Commission Auditor

Enclosure

cc: Mary McFadden, Campaign Treasurer  
Jonathan Wayne



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

July 29, 2011

**Audit Report No. 2010-HR026**  
**Candidate: Howard E. McFadden**  
**House District 30**

Background

Representative Howard E. McFadden was a candidate for re-election to the Maine House of Representatives, District 30, in the 2010 general election. Rep. McFadden was certified for Maine Clean Election Act (MCEA) funding on March 22, 2010. Under the terms of the Act, MCEA candidates are required to submit reports of contributions received, campaign expenditures, equipment purchases and dispositions, and outstanding campaign debt for specified periods during the election cycle.

Audit Scope

The auditor examined selected contributions made to the campaign, and certain expenditures made during the following reporting periods:

- Seed Money (11/05/2008 through March 22, 2010)
- Eleven Day Pre-Primary (3/23/2010 through 5/25/2010)
- 42 Day Post-Primary (5/26/2010 through 7/13/2010)
- 42 Day Pre-General (7/14/2010 through 9/14/2010)
- 11 Day Pre-General (9/15/2010 through 10/19/2010)
- 42 Day Post-General (10/20/2010 through 12/7/2010)

The transactions examined were recorded in the campaign's accounting and banking records. The audit's purpose was to determine if the identified contributions and expenditures (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 third party disbursement documentation; (3) were properly reported to the Commission; and (4) complied in all material respects with the requirements of the Maine Clean Election Act and the Commission's rules.

Audit Findings and Recommendations

**Finding – Commingling of Funds**

The McFadden Campaign began the 2010 qualifying period with a bank balance of \$804.62, which was carried over from a prior election period. The referenced funds remained on deposit through the qualifying period and on into the primary and general election campaigns, which constituted commingling of personal funds with Clean Election monies. In September, 2010, Rep. McFadden withdrew \$704.62 in a check payable to himself. Rep. McFadden informed the auditor that this payment replaced a check originally written in September, 2008, that was never cashed. He acknowledged the error of allowing the money to remain in the account during the 2010 campaign period. At the end of the election, and after unused MCEA funds had been returned to the Commission, Rep. McFadden's ending bank balance was \$100, the amount he routinely leaves on deposit to keep the account open.

Standard - 21-A M.R.S.A. § 1125(7-A) states that "The candidate ... shall deposit all [MCEA] revenues from the fund ... in a campaign account with a bank or other financial institution. The campaign funds must be segregated from, and may not be commingled with, any other funds."

Recommendations – The staff recommends that the Commission

- find that Howard McFadden violated 21-A M.R.S.A. § 1125(7-A) because the campaign commingled MCEA campaign funds with personal funds of the candidate; and
- assess a penalty of \$100 for this violation under 21-A M.R.S.A. § 1125(7-A).

Administrative Issues

The McFadden Campaign listed the following transactions on its Eleven Day Pre-General report:

- Pembroke Mobil, 10/8/2010, \$494.12
- Foster's, 10/19/2010, \$426.36

The audit disclosed that both of the payments were actually reimbursements to the candidate for travel expenses, and both were supported by mileage logs as required by the Commission. There is no violation; the candidate is required to amend his Eleven Day Pre-General report to list himself as the payee for each of the two travel reimbursements.

Candidate's Comments on the Report

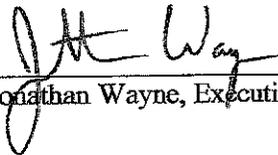
See the attachment to this report.

Respectfully submitted,



Vincent W. Dinan, Auditor

Approved:



Jonathan Wayne, Executive Director

# EXHIBIT



## HOUSE OF REPRESENTATIVES

2 STATE HOUSE STATION  
AUGUSTA, MAINE 04333-0002

(207) 287-1440

TTY: (207) 287-4469

### Howard E. McFadden

19 Shipyard Road  
Dennysville, ME 04628  
Residence: (207) 726-4676  
RepHoward.McFadden@legislature.maine.gov

RECEIVED

JUL 08 2011

Maine Ethics Commission

Mr. Vincent W. Dinan, Commission Auditor

July 5, 2011

MCEA

135 State House Station

Augusta, Maine 04333-0135

Mr. Dinan,

I have amended my Eleven-Day Pre-General report as required by your audit. I have changed the payee from Pembroke Mobil, and Foster's to Howard McFadden. The correction was made July 5, 2011, 12:34 p.m.

I agree with your findings as per our telephone conversation.

Thank you,

*Howard*

Rep. Howard McFadden

House District #30

District 30 Alexander, Amherst, Aurora, Beddington, Cooper, Crawford, Deblois, Dennysville, East Machias, Eastbrook, Franklin, Great Pond, Jonesboro, Mariaville, Marshfield, Meddybemps, Northfield, Osborn, Pembroke, Wesley and Whitneyville, plus the unorganized territories of Centerville Township, East Central Washington (part, including Edmunds, Marion and No. 14 Townships), East Hancock (part), North Washington (part) and Northwest Hancock

Printed on recycled paper