

Agenda

Item #4



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: April 15, 2011

Re: Audit and Recommended Findings of Violation/Joseph Palmieri

The Ethics Commission staff audited the Maine Clean Election Act campaign of 2010 Senate candidate Joseph C. Palmieri. The audit disclosed some apparent violations of the Maine Clean Election Act (MCEA), which the Commission's Auditor, Vincent W. Dinan, will present to you at your April 26 meeting.

As a standard part of the audit, the Commission staff mailed to Mr. Palmieri a draft version of the audit report on March 17, 2011. The candidate was invited to respond to the preliminary findings in the draft report. He responded through a one paragraph letter addressed to Mr. Dinan sent by fax on April 1, 2011. After reading the candidate's response, Mr. Dinan concluded that the candidate's response did not require any changes to the audit report.

On April 6, 2011, the Commission staff sent Mr. Palmieri and his attorney a final audit report and Notice of Recommended Penalties. The notice explained that the staff intended to recommend to you at the April 26 meeting that you make findings of violation and assess civil penalties against the Palmieri campaign.

The notice explained to the candidate his opportunity to respond to the proposed findings of violation and civil penalties. I spoke with Mr. Palmieri yesterday. He intends to attend your April 26 meeting to respond to the audit. He may submit a written response in the next three days.

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

April 6, 2011

By E-Mail and Regular Mail

Mr. Joseph C. Palmieri
35 Jennies Court
South Portland, Maine 04106

**NOTICE OF RECOMMENDED FINDINGS
OF VIOLATION AND PENALTIES**

Dear Mr. Palmieri:

Thank you for your April 1, 2011 response to the draft version of the audit report concerning your 2010 campaign for the Maine State Senate. I have enclosed the Final Audit Report prepared by the Commission's auditor.

Commission's Consideration of this Matter

This letter is intended to notify you of proposed findings of violation and civil penalties that will be considered by the members of the Maine Ethics Commission at their meeting on Tuesday, April 26, 2011. The meeting will begin at 9:00 a.m. in the Commission's office at 45 Memorial Circle in Augusta. At the meeting, the Commission staff intends to recommend the findings of violation and penalties discussed below. This letter also explains the staff recommendations concerning the two late campaign finance reports due in October and December 2010.

Your Opportunity to Respond

You are welcome to respond to the recommended findings and penalties in writing. If we receive a written response by 10:00 a.m. on Monday, April 18, 2011, we will include your written response in the packet of meeting materials we send to the Commissioners later that day. Please send the response by e-mail to Jonathan.Wayne@maine.gov and Paul.Lavin@maine.gov, and also by regular mail. (Even though the Commission's office will be closed April 18 for Patriot's Day, the staff will be sending out the packet to the Commissioners on April 18.)

You are also welcome to respond to the penalties in person at the Commission's April 26 meeting. Because the Commission will be considering whether to assess significant civil penalties, the Commission staff recommends that you attend the meeting to respond to the staff's recommendations. Please be aware that the Commission is authorized to assess penalties that are higher than those recommended by the Commission staff.

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

PHONE: (207) 287-4179

FAX: (207) 287-6775

Recommended Findings of Violation and Penalties

The recommended findings of violation and penalties are discussed in the Final Audit Report. This letter is intended to provide you with a summary of the findings to facilitate your response.

Recommended Findings #1 and #2 – Overpayment of \$857.99 based on Misreported Expenditures

You were a replacement candidate for the 2010 primary election. During the period to qualify for Maine Clean Election Act (MCEA) funding, you were permitted to raise and spend up to \$1,500 in seed money contributions, provided that they were disclosed in a campaign finance report (the “seed money report”). Candidate Registrar Sandy Thompson advised you that if you did not spend all of your seed money, the Commission would deduct any cash balance listed in the seed money report from the first payment of MCEA funds you received for the June 8, 2010 primary election.

On June 4, 2010, you filed the seed money report. On Schedule B of the report (attached), you stated that you made seven expenditures between May 7 and 25, 2010, totaling \$851.39. The auditor’s review of the campaign’s bank statements and canceled checks disclosed that none of the seven reported expenditures had occurred at the time the report was filed on June 4, 2010. As a result, the Commission’s June 4, 2010 payment of MCEA funds was \$857.99 greater than you were entitled for the primary election.

As stated in the draft audit report, the concern of the Commission staff is that you filed the seed report listing the seven expenditures in order to facilitate your receipt of your first payment of MCEA funds or in order to maximize the amount of the payment. Your response to the draft audit report does not explain why you thought it was appropriate to include these seven payments in the seed money report. I have attached a sample of the data entry screen that candidates see when they are entering expenditures on Schedule B. The instructions clearly state that candidates should “Only enter expenditures that have actually been made.”

Therefore, at the Commission’s April 26, 2011 meeting, the Commission staff intends to recommend that the Commission:

- find that you violated 21-A M.R.S.A. § 1125(2-A)(C) by failing to accurately report seed money expenditures;
- find that you violated 21-A M.R.S.A. § 1004(2) by falsely stating in a campaign finance report that you made seven expenditures totaling \$851.39 between May 7 and 25, 2010; and
- assess two penalties totaling \$1,000 pursuant to 21-A M.R.S.A. §§ 1004-A(5) & 1127(1) for failing to accurately report seed money expenditures and for making material false statements in your seed money report.

Mr. Joseph C. Palmieri

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April 6, 2011

Recommended Finding #3 – Use of MCEA Funds to Pay for Goods or Services Received Prior to Certification

In the MCEA program, candidates must use seed money to pay for goods and services received during the qualifying period. Candidates are prohibited by statute from using MCEA funds to retroactively pay for goods or services received prior to “certification” (qualifying for public funds). As explained in the Final Audit Report, the campaign used MCEA funds to pay for goods and services received during the qualifying period. The Commission staff intends to recommend that the Commission find that you violated 21-A M.R.S.A. § 1125(2-A)(A) and assess a penalty of \$100 for the violation under 21-A M.R.S.A. § 1127(1).

Recommended Finding #4 – Failure to Return All Unspent MCEA Funds

If candidates do not spend all of their MCEA funds for an election, they are required to return the unspent funds to the Commission. This is a basic requirement of the program. Your deadline to return the unspent funds and file your last campaign finance report was December 14, 2010.

On January 3, 2011, you returned to the Commission the amount of cash showing on your final campaign finance report (\$641.74). Nevertheless, you kept \$808.59 of public campaign funds, which you have not returned. The Commission staff does not know whether this amount remains in your campaign bank account or whether you have spent these funds for personal purposes. Your response to the draft audit report does not address this issue.

I have attached a number of communications addressed to you explaining the requirement to return unspent funds. In addition, Sandy Thompson spoke with you on December 20, 2011 and left you a voicemail on January 3, 2011.

Candidates are required to return all unspent MCEA funds to the Commission. Sometimes, due to reporting errors, the actual cash remaining in a candidate’s campaign bank account is different than the amount showing on the candidate’s final campaign finance report. In those instances, the Commission urges that the candidate to amend his or her reporting, so that the reported cash balance matches the candidate’s actual cash balance.

Failing to return unspent campaign funds is a serious violation. Your response to the draft audit report does not contain any explanation for why you did not return all of the unspent funds. Therefore, the Commission staff intends to recommend that the Commission:

- find that you violated 21-A M.R.S.A. § 1125(12) by failing to return all unspent MCEA funds by the December 14, 2010 deadline, and
- assess a penalty of \$500 under 21-A M.R.S.A. § 1127(1).

Recommended Repayment of MCEA Funds

The Commission staff also intends to recommend that the Commission direct you to repay \$925.72 to the Maine Clean Election Fund. Returning this amount will also resolve the repayment of unspent MCEA funds discussed in Finding #4 of the Final Audit Report. If you believe that your campaign does not owe these amounts to the Commission, you are welcome to respond to these proposed repayments.

Amount	Reason
\$857.99	On June 4, 2010, the Commission paid you \$857.99 more than you were entitled to receive for the primary election, based on the inaccurate cash balance in your seed money report. (Finding #1, Final Audit Report)
\$25.75	The campaign's July 30, 2010 payment to Creative Imaging was \$25.75 more than the amount invoiced by the firm. It appears that the campaign overpaid Creative Imaging by \$25.75. (Administrative Issue #1(A), Final Audit Report)
\$41.98	The campaign reimbursed Cheryl Palmieri at a rate of \$0.50 per mile, whereas the Commission's rule states that MCEA campaigns may only reimburse for vehicle travel at the same rate as received by state employees for travel (currently, \$0.44 per mile) (Administrative Issue #1(B), Final Audit Report)
\$925.72	Total

Late Filing of Campaign Finance Reports

Candidates are required to file campaign finance reports according to statutory deadlines that accurately state their contributions and expenditures. If a report does not substantially conform to the disclosure requirements, it is deemed late under 21-A M.R.S.A. § 1020-A(2).

11-Day Pre-Election Report

In the 11-day pre-election report that you filed on October 22, 2010, the report stated that you had made expenditures totaling \$1,786.80 for the period of September 15, 2010 to October 19, 2010. After the election on December 17, 2010, you amended the 11-day report to show \$8,854.12 in expenditures. Because of the omissions in the originally filed report, the public was not informed before the election of most of your expenditures for the reporting period.

Through a letter dated December 21, 2010, Candidate Registrar Sandy Thompson advised you that the Commission staff was viewing the 11-day pre-election report as 56 days late, because the originally filed report did not substantially conform to the disclosure requirements. Your attorney, William P. Logan, submitted a letter dated January 24, 2011 on your behalf requesting a waiver of the \$5,000 penalty. The Commission staff intends to recommend a \$300 penalty for the violation, because the preliminary amount (\$5,000) is disproportionate to the harm suffered by the public from the late disclosure.

Mr. Joseph C. Palmieri

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April 6, 2011

42-Day Post-Election Report

You filed the 42-Day Post-General Report three days late on December 17, 2010. As stated in Sandy Thompson's December 21, 2010 letter, the preliminary penalty is \$1,786.80. The Commission staff intends to recommend a \$100 penalty for the violation.

Summary of Recommended Penalties and Repayments

The Commission staff intends to recommend at the April 26, 2011 meeting that the Commission assess the following civil penalties totaling \$2,000 and direct you to repay \$925.72 in Maine Clean Election Act funds:

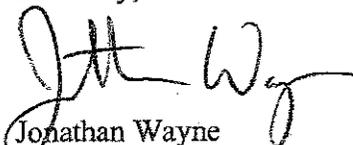
Audit	Recommended
#1 Filing a seed money campaign finance report that substantially misreported expenditures	\$500
#2 Making material false statements (reported expenditures) in seed money report	\$500
# 3 Spending MCEA funds on goods or services received prior to certification	\$100
#4 Failing to return all unspent campaign funds	\$500
Total	\$1,600

Late Campaign Finance Reports	Preliminary	Recommended
Late Filing of 11-Day Pre-General Report (56 days late because not substantially complete)	\$5,000.00	\$300
Late Filing of 42-Day Post-General Report (3 days late)	\$1,349.08	\$100
Total	\$6,349.08	\$400

Total Recommended Repayments	\$925.72
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Thank you for considering this notice of recommended findings of violation and penalties. Please call me at 287-4179 if you have any questions about the Commission's consideration of this matter.

Sincerely,


Jonathan Wayne
Executive Director

cc: William P. Logan, Esq. (by e-mail and by hand)

Seed Money Expenditures
Reported by Joseph Palmieri
Schedule B - Seed Money Report
Filed June 4, 2010

SCHEDULE B
EXPENDITURES

EXPENDITURE TYPES	
CNS Campaign consultants	POL Polling and survey research
CON Contribution to other candidate, party, committee	POS Postage for U.S. Mail and mail box fees
EQP Equipment (office machines, furniture, cell phones, etc.)	PRO Other professional services
FND Fundraising events	PRT Print media ads only (newspapers, magazines, etc.)
FOD Food for campaign events, volunteers	RAD Radio ads, production costs
LIT Print and graphics (flyers, signs, palmcards, t-shirts, etc.)	SAL Campaign workers' salaries and personnel costs
MHS Mail house (all services purchased)	TRV Travel (fuel, mileage, lodging, etc.)
OFF Office rent, utilities, phone and internet services, supplies	TVN TV or cable ads, production costs
OTH Other	WEB Website design, registration, hosting, maintenance, etc.
PHO Phone banks, automated telephone calls	

Only these expenditure types require a remark: CNS, EQP, FND, OTH, PRO, SAL, TRV.

DATE OF EXPENDITURE	PAYEE	REMARK	TYPE	AMOUNT
05/25/2010	CREATIVE IMAGINE	Palm Cards	LIT	\$520.00
05/25/2010	ANTHONY FOSTER	Web site	WEB	\$250.00
05/07/2010	USPS	Money order fees 13 @ \$1.10; reimbursed candidate	OTH	\$14.30
05/12/2010	MECHANICS SAVINGS BANK	Money Order fees 4 @ \$0.50; reimbursed Joel Kase	OTH	\$2.00
05/17/2010	SHAWS SUPERMARKET	Money Order fees 13 @ \$1.00; Reimbursed Kenneth Myrick	OTH	\$13.00
05/12/2010	ACE CASH EXPRESS	Money Order fees 11 @ \$0.19; reimbursed S. Peter Mills	OTH	\$2.09
05/07/2010	MAINE BANK AND TRUST	Money Order fees 10 @ \$5.00; reimbursed candidate	OTH	\$50.00
TOTAL EXPENDITURES ⇨				\$851.39



Christopher W. Babbidge
Seed Money Report
Campaign Year 2008

Schedule B Expenditures

- Enter the date, expenditure type, payee information, and amount for each expenditure made during the reporting period.
- For expenditure types which require a remark, enter a description of the goods and services purchased.
- For reimbursements, expenditures made with a candidate's or an authorized individual's personal funds must be reimbursed within the same reporting period as the expenditure. Enter the vendor as the payee and the purchase date. Report the name of the individual who made the payment in the remarks section.
- Only enter expenditures that have actually been paid. Enter unpaid debts and obligations on Schedule D.
- For payments made to a political action committee or party committee, provide a detailed explanation of the goods or services purchased in the "remarks" section.



Date Expenditure Made: From: 11/8/2006 To: 4/15/2008

Select Type: Business/Committee Individual





2010 Guidebook for MCEA Candidates

Return of All Unspent MCEA Funds

* Candidates are required to return all unspent MCEA funds that the candidate did not spend on their campaign. These unspent funds must be returned by the deadline for the final campaign finance report.

The Commission will verify whether this amount is consistent with the expenditures that have been reported by the candidate. If there is a discrepancy, the Commission will request that the candidate resolve it by amending the reported expenditures to accurately disclose the candidate's actual payments of MCEA funds.

For the 2010 general election, all unspent MCEA funds must be returned by:

December 14, 2010

The amount to be returned should be the same as the cash balance on Schedule F of the 42-Day Post-General Report.

If your bank balance does not agree with the report, you may have reported a duplicate expenditure, forgotten to report an expenditure or bank interest, or neglected to make a reimbursement to yourself or a supporter. *It is the responsibility of the candidate and treasurer to accurately report expenditures.*

Sale of Property that Could be Converted to the Candidate's Personal Use

After the election, MCEA candidates must sell any campaign property or equipment purchased with public funds that could be converted to the personal use of the candidate or campaign staff (e.g., computers, fax machines, printers, cell phones). The candidates are required to sell the goods at fair market value and return the proceeds to the Commission with the 42-Day Post-Election Report (see page 48 for an explanation of how to determine fair market value). Please report the sale proceeds on Schedule E of the campaign finance report.

42-Day Post-Election Report

MCEA candidates must pay all outstanding obligations, including reimbursements to themselves or campaign workers, by the 35th day after the candidate's last election for the year (primary or general), and must file a final campaign finance report no later than 42 days after the election. For candidates in the 2010 general election, this deadline will be December 14, 2010. For candidates who did not win the primary election, the deadline will be July 20, 2010.

Statement of Sources of Income

Legislative candidates who win the general election are required to file a Statement of Sources of Income for the election year by February 15 of the first term of the Legislature. The statement includes the sources of the income which the Legislator received as a candidate during the election year from employment, self-employment, gifts, and other sources. The forms are provided to Legislators shortly after the New Year.



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

June 9, 2010

Mr. Joseph Palmieri
35 Jennies Court
South Portland, ME 04106

Dear Mr. Palmieri:

The Commission has authorized the State to make a payment of \$19,078.00 for the general election. The payment will be made by check or electronic funds transfer (EFT), depending on whether you have requested EFT. Please inform your treasurer of the payment amount. You should receive the payment within two to four business days after receiving this letter. Please telephone the Commission if you do not receive the payment by then.

If you file your reports electronically, the Ethics Commission staff will enter your general election payment into your 42-Day Post-Primary Report. If you file your reports on paper, you should include the general election payment on Line 2, "Maine Clean Election Act Payments & Authorizations," on Schedule F of your 42-Day Post-Primary Report.

If you have any questions about your general election payment, please telephone us at 287-4179. Thank you.

Sincerely,

Paul Lavin
Assistant Director

Requirements to Remember!

- You must keep your Maine Clean Election Act funds in a separate bank account. Do not mix them with your personal funds.
- Maine Clean Election Act funds must be used for campaign purposes only. If you have any questions, please read the 2010 expenditure guidelines.
- Avoid using cash for expenditures over \$50. Use a check or debit card instead.
- Make sure you have two records to back up every expenditure over \$50 – a receipt and proof of payment to the vendor (e.g., a cancelled check).
- A travel log is required if the campaign reimburses you or a volunteer for travel.
- After the election, you must return all unspent campaign funds to the Commission.

OFFICE LOCATED AT: 45 MEMORIAL CIRCLE, AUGUSTA, MAINE

WEBSITE: WWW.MAINE.GOV/ETHICS





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

November 2, 2010

Mr. Joseph C. Palmieri
35 Jennies Court
South Portland, ME 04106

Dear Mr. Palmieri:

This is to notify you that the Maine Clean Election Act ("MCEA") authorizes you to spend \$697.41 in matching funds (the "authorization amount"), based on independent expenditures made by others. As of the date of this letter, you have been authorized to spend a total of \$19,954.41. The table on the following page displays the details of your MCEA authorizations and payments for the general election.

The Commission has requested the State to make a payment to you of \$697.41. You may only spend the current authorization amount (\$697.41) until you receive notice of further authorizations.

Please be aware that you are required to return to the Commission any matching funds which you have not been authorized to spend within 2 weeks after the general election. You must also pay all outstanding debts and return all unspent authorized MCEA funds upon filing the final report of your campaign. Those amounts must be repaid to the Commission by check or money order payable to the Maine Clean Election Fund.

If you have any questions, please do not hesitate to contact candidate registrar Sandy Thompson at 287-7651. Thank you.

Sincerely,

Paul Lavin
Assistant Director

cc: James Soule, Lawrence Bliss

Requirements to Remember:

- 1) You must keep your Maine Clean Election Act funds and any unspent seed money in a separate bank account. Do not mix them with your personal funds.
- 2) Maine Clean Election Act funds must be used for campaign purposes only. If you have any questions, please read the expenditure guidelines.
- 3) Avoid using cash for expenditures over \$50. Use a check or debit card instead.
- 4) Make sure you have two records to back up every expenditure over \$50 – a receipt and proof of payment to the vendor (e.g., a cancelled check).
- 5) A travel log is required if the campaign reimburses you or a volunteer for travel.
- 6) After the election, you must return all unspent campaign funds to the Commission.



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

PHONE: (207) 287-4179

FAX: (207) 287-6775

Thompson, Sandy

From: Thompson, Sandy
Sent: Monday, December 20, 2010 4:06 PM
To: 'joepalmieri@hotmail.com'
Subject: Returning Unspent MCEA Funds

Importance: High

* Dear Joe – Thank you for filing your report on Friday, December 17, 2010. As I mentioned during our telephone conversation today, you are required to return all unspent MCEA funds. Your 42-Day Post-General Report shows the amount of \$641.74 to be returned (see line 7 of the Summary Schedule). The unspent funds were due last week. Please mail a check (payable to MCE Fund) to the Ethics Commission, 135 SHS, Augusta, ME 04333 on Tuesday 12/21 or no later than Wednesday 12/22. Please let me know if for some reason the check is not mailed out this week. The Commission should have received unspent funds last week. Thank you

Sandy Thompson
Candidate Registrar
207.287.7651
www.maine.gov/ethics

Thompson, Sandy

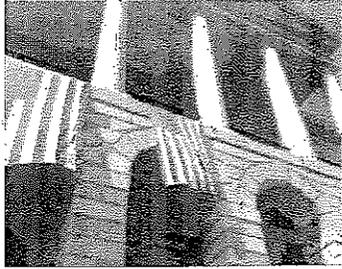
From: Thompson, Sandy
Sent: Monday, January 03, 2011 9:18 AM
To: 'joepalmieri@hotmail.com'
Subject: Returning Unspent MCEA Funds

Importance: High

1/3/2011: I sent this email to you on 12/20 so I am resending it today. The amount on line 7 (which is \$641.74) should agree with your bank balance. I got your voice message today asking what the correct amount (of your unspent fund) is – it should be what you have remaining in your campaign bank account. If it is different, then there is probably a reporting error. Please return the amount in your bank account and then we can figure where the reporting error is. Please let me know if there is a discrepancy between the campaign bank account balance and the amount on line 7 of the Summary Schedule of your 42-Day Post-General Report so that I have a heads up on knowing that there is a reporting error that needs to be identified and corrected. Thank you.

Dear Joe – Thank you for filing your report on Friday, December 17, 2010. As I mentioned during our telephone conversation today, you are required to return all unspent MCEA funds. Your 42-Day Post-General Report shows the amount of **\$641.74 to be returned** (see line 7 of the Summary Schedule). The unspent funds were due last week. Please mail a check (payable to MCE Fund) to the Ethics Commission, 135 SHS, Augusta, ME 04333 on Tuesday 12/21 or no later than Wednesday 12/22. Please let me know if for some reason the check is not mailed out this week. The Commission should have received unspent funds last week. Thank you

Sandy Thompson
Candidate Registrar
207.287.7651
www.maine.gov/ethics



Closing Out Your 2010 Campaign

Upcoming Deadlines

Requirement	Deadline	Action Needed
For candidates who have unauthorized matching funds		
Return <u>Unauthorized</u> MCEA Matching Funds	By Tuesday, November 16, 2010	Submit check to the Commission for the amount of <u>unauthorized</u> matching funds. (see below)
For all candidates		
File 42-Day Post-General Report	By Tuesday, December 14, 2010 by 11:59 p.m.	Report period covers all activity from October 20, 2010 to December 7, 2010. Include all expenditures reported in 24-Hour Reports.
Return Unspent <u>Authorized</u> MCEA Funds	Upon filing of the 42-Day Post General Report but no later than Tuesday, December 14, 2010	Submit check to the Commission for the amount of unspent funds if any. (see below)

Inside this issue:

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Closing Out Your Campaign and Filing Your Report	3
Reconciling Report & Bank Balances	3
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Checklist: Items to Remember	3

Reports must be filed electronically on the Commission's website: www.maine.gov/ethics except by candidates who submitted an e-filing waiver. For candidates filing on paper, the Commission's fax machine operates 24 hours a day. However, staff will be available only until 5:00 p.m. on 12/14/2010 to confirm receipt of a faxed report and to offer assistance and answer questions about filing reports. E-filing instructions are on the Commission's website or you can request a copy to be mailed to you.

Need to Return MCEA Funds?

Did you receive matching funds? Most candidates who received matching funds were authorized to spend only a portion of the amount received. The remaining amount—the unauthorized matching funds—must be returned to the Commission by November 16. If you had unauthorized funds, the Commission recently sent a letter notifying you of the amount to be returned. The unauthorized amount is also found on line 6, page 2 of the last matching funds authorization letter the Commission sent you.

Do you have unspent authorized MCEA funds? If you did not spend the entire amount you were authorized to spend—the initial distribution and authorized matching funds, you must return those funds to the Commission. You can find the amount of the unspent authorized MCEA funds on the Summary Schedule (line 7) in the 42-Day Post-General Report. (See pg. 3 about reconciling accounts.)

The Commission will enter the amount of returned funds into your report.

How to Return MCEA Funds

Please make check or money order payable to "Maine Clean Election Fund."

Paper Filers: Make check/money order out for amount on line 7 of the Summary Schedule and attach to the completed paper report and mail to the Commission.

Electronic Filers: After filing your report, make check/money order out for amount on line 7 of the Summary Schedule and mail it to the Commission. Please note on check/money order that it is for unspent funds. Please be sure the candidate's name is on the check.

Helpful Tips:

Before Filing the 42-Day Post-General Report, Did You...?

- Pay all outstanding debts and obligations.
- Reimburse volunteers, supporters, and yourself for expenditures made with personal funds.
- Reimburse travel costs—mileage & tolls—based upon travel logs submitted to the campaign.
- Sell at fair market value all equipment purchased with MCEA funds and return proceeds to the Commission. If you used seed money to purchase equipment, this requirement does not apply.
- Enter all expenditures reported in 24-hour reports. Remember that expenditures reported in 24-hour reports do not automatically get uploaded into the 42-Day Post-General Report.

You can file your report when all of your financial activity has been completed and reported. You do not have to wait until December 14, the deadline, to file your report.

Reconciling Report and Bank Account Balances

When you file your 42-Day Post-General Report, the amount shown on line 7 of the Summary Section (Schedule F) should agree with your campaign bank account balance. If it doesn't, the following errors may have occurred.

- An expenditure was not reported, causing the report cash balance to be greater than the bank balance. Remember that expenditures reported in 24-hour reports must be entered into the 42-Day Post-General Report.
- An expenditure amount was reported incorrectly.
- An expenditure was reported multiple times.
- A payment (check or debit) has not cleared your account.
- A refund was deposited or credited to your account.
- An initial deposit of personal funds was made to set up the account and was never withdrawn.

To view or print a filed report: Click on the printer icon located at the far right side of your Home Page screen and not on the report name.

Using MCEA Funds for Election "Thank-Yous"

Can MCEA Funds be used for election thank-yous? Candidates may spend a limited amount of MCEA funds on post-election parties, thank-you notes, or advertising to thank supporters and voters. The maximum amounts that can be spent are:

\$250 by House candidates and \$750 by Senate candidates.

You may use an unlimited amount of personal funds for election thank-yous.

How do I report election thank-yous? Enter a description in the Remarks section that the expenditure was for a thank-you event, ad, or notes.

Can I use MCEA funds to purchase a thank-you gift for a volunteer? Thank-you gifts to volunteers and supports cannot be purchased with MCEA funds. Candidates may spend their personal funds on gifts.

Please Remember:

- Treasurers for MCEA candidates must maintain all campaign records for three years (until December 2013). Records include: names and addresses of seed money contributors who gave more than \$10, invoices, bank statements, cancelled checks, travel logs, etc.
- Twenty percent of MCEA candidates are randomly selected for an audit. Please see Chapter 10 of the 2010 Candidate Guide for an explanation of the audit process.
- If your treasurer's, deputy treasurer's or your contact information (postal or e-mail addresses or telephone numbers) changes, please contact the Commission by phone or e-mail so that your registration information can be updated.
- After filing your 42-Day Post-General Report, return to your Home Page to check the status of all previously filed reports. All reports should have the status of "Filed." Please re-file all "In-Progress(A)" reports before logging off your Home Page.
- Call the Commission if you have any questions.





STATE OF MAINE
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AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

April 5, 2011

Joseph C. Palmieri
35 Jennies Court
South Portland, ME 04106

Subject: Final Audit Report – 2010 Campaign Contributions and Expenditures

Dear Mr. Palmieri:

Enclosed is the final audit report by the Commission on Governmental Ethics and Election Practices (Commission) concerning our examination of your 2010 Senate campaign contributions and expenditures. We plan to present the report to our members at the April 26, 2011 Commission meeting. In advance of the meeting, Jonathan Wayne, the Commission's Executive Director, will contact you to provide you with the opportunity to appear before the commissioners to discuss the audit findings and recommendations.

Sincerely,

A handwritten signature in black ink that reads "Vincent W. Dinan".

Vincent W. Dinan
Commission Auditor

Enclosure

cc: James A. Soule, Campaign Treasurer
Jonathan Wayne



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

April 5, 2011

Audit Report No. 2010-SP001

**Joseph C. Palmieri
Senate District 7**

Background

Joseph C. Palmieri was a replacement candidate for election to the Maine State Senate, District 7, in the 2010 general election. Mr. Palmieri was certified as a Maine Clean Election Act (MCEA) candidate on June 4, 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 contributions made to the campaign, and expenditures made by the campaign during the following reporting periods:

- Seed Money (3/01/2010 through 6/04/2010)
- 42 Day Post-Primary (6/05/2010 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 (10/21/2010 through 12/7/2010)

The transactions examined were recorded in the campaign's accounting records and were reported to the Commission. The purpose of the audit was to determine that

- Seed Money contributions were made from the personal resources of the contributors, and were made in amounts within the limits imposed by the Act.
- Campaign expenditures (1) were properly approved by the candidate or his 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 respects with the requirements of the Maine Clean Election Act and the Commission's rules.

Findings and Recommendations

Finding No. 1 – Filing a Campaign Finance Report that Substantially Misreported Expenditures

Findings No. 1 and No. 2 both relate to the seed money campaign finance report, which the Palmieri campaign filed on June 4, 2010 (four days before the primary election). Mr. Palmieri replaced another candidate who had qualified for the primary election ballot. The Commission staff established a qualifying period for him to collect the required number of qualifying contributions. During that period, the candidate was permitted to raise and spend seed money contributions of up to \$1,500, provided that they were disclosed in a seed money campaign finance report submitted upon turning in the qualifying contributions.

Mr. Palmieri submitted his qualifying contributions on May 25, 2010. He was advised by Candidate Registrar Sandy Thompson that the Commission could not make the primary election payment until receiving a seed money report. She also explained that any seed money that he had collected but had not spent would be deducted from the first public funds payment the Commission made to him for the primary election.

Mr. Palmieri filed the seed money report on June 4, 2010. The report included seed money contributions totaling \$1,030 and expenditures totaling \$851.39.

In the report, Mr. Palmieri affirmatively stated that he made seven expenditures between May 7 and 25, 2010, which totaled \$851.39. Based on the auditor's review of the campaign's bank statements and canceled checks, the audit disclosed that none of the seven reported expenditures had occurred at the time the report was filed on June 4, 2010. The campaign's actual expenditures as of June 4, 2010 were \$18.40 (the cost of checks), which was never reported by the campaign. In addition, the report understated the campaign's cash contributions by \$25.

The seed money report indicated that the campaign had a cash balance of seed money of \$178.61, which was deducted from the first payment of MCEA funds paid to the candidate for the primary election. In fact, the campaign's actual cash balance was \$1,036.60.

As a result, the Commission paid Mr. Palmieri \$857.99 more in MCEA funds than he was entitled for the primary election. (The Commission paid the candidate \$1,748.39 in MCEA funds for the primary election, whereas he should only have received \$890.40.) In addition, the errors contained in the seed money report carried through and affected the beginning and ending cash balances of all of the candidate's

subsequent campaign finance reports. Exhibit I illustrates the dimensions of the reporting violation.

Standard - 21-A M.R.S.A. § 1125(2-A) (C) states that "Upon requesting certification, a participating candidate shall file a report of all seed money contributions and expenditures. If the candidate is certified, any unspent seed money will be deducted from the amount distributed to the candidate ..." 21-A M.R.S.A. § 1004-A(4) states that "A person that files a campaign finance report that substantially misreports contributions, expenditures or other campaign activity may be assessed a penalty not to exceed \$5,000."

Recommendation – Candidates seeking office in the Maine Legislature should be held to a high standard in describing expenditures in campaign finance reports. Candidates may not report expenditures that have not occurred for the sake of expediency, to maximize the amount of public campaign funds received, or for any other reasons. The Commission staff requests that any response by the candidate to Findings No. 1 and No. 2 include an explanation of why the candidate reported making seven expenditures during May 7 - 25, 2010, when, in fact, none of them were made.

Finding No. 1 relates to the overall inaccuracy of the seed money report filed by Mr. Palmieri. The Commission staff recommends that the Commission:

- find that Joseph Palmieri violated 21-A M.R.S.A. § 1125(2-A)(C) by failing to accurately report seed money expenditures;
- assess a penalty against Joseph Palmieri of \$500 under 21-A M.R.S.A. § 1004-A(4) because he filed a campaign finance report that substantially misreported his expenditures; and
- direct the candidate to return \$857.99, the amount paid to the candidate in excess of his entitlement, to the Maine Clean Election Fund.

Finding No. 2 – Making Material False Statements in a Campaign Finance Report

In the seed money report filed on June 4, 2010, the Palmieri campaign stated that it made seven seed money expenditures during May 7 - 25, 2010 totaling \$851.39 (see Exhibit II). The audit disclosed that none of these seven expenditures had occurred as of June 4, 2010. Two months later, on July 8, 2010, the candidate made – or attempted to make – four of the seven expenditures totaling \$67.09 with MCEA funds, not seed money. (As indicated in Exhibit II, some of these payments were not debited from the campaign bank account because the payees did not cash Mr. Palmieri's checks.)

Standard – 21-A M.R.S.A. § 1004(2) states that "No person, candidate, treasurer, or political action committee may make a false statement in any report required by this chapter." 21-A M.R.S.A. § 1004-A(5) states that "A person that makes a material false statement or that makes a statement that includes a material misrepresentation in a document that is required to be submitted to the commission, or that is submitted in

response to a request by the commission, may be assessed a penalty not to exceed \$5,000.”

Recommendation –The Commission staff recommends that the Commission:

- find that Joseph Palmieri violated 21-A M.R.S.A. § 1004(2) by falsely stating in a campaign finance report that he made seven expenditures totaling \$851.39 between May 7 and 25, 2010.
- assess a penalty against Joseph Palmieri of \$500 under 21-A M.R.S.A. § 1004-A(5) for making material false statements in his seed money report by falsely stating that he made seven expenditures totaling \$851.39 between May 7 and 25, 2010.

Finding No. 3 – Use of MCEA Funds to Pay for Goods and Services Received during the Qualifying Period

In the MCEA program, candidates must use seed money (exclusively) to pay for goods and services received during the qualifying period. Candidates are prohibited by statute from using MCEA funds to retroactively pay for goods or services received prior to “certification” (qualifying for public funds). The Palmieri campaign used MCEA funds to pay for goods or services received prior to the candidate’s June 4, 2010 certification as an MCEA candidate.

On July 8, 2010, the Palmieri campaign wrote five checks to cover goods or services he received prior to June 4, 2010. (See Exhibit III) One check was in the amount of \$50 payable to the candidate to cover the face value of money orders purchased for purposes of qualifying for MCEA funding. Another payment was in the amount of \$300 to a website developer, Anthony Foster. In addition, Mr. Palmieri wrote three checks to reimburse three other candidates (Joel Kase, Kenneth Myrick, and Peter Mills) for the fees the other candidates had paid in the purchase of money orders. The three candidates did not cash these three checks, so these amounts (\$2.00, \$13.00, and \$2.09) were not debited from the campaign bank account. The total of the five checks written for qualification expenses was \$367.09.

Standard – 21-A M.R.S.A. § 1125(2-A) (A) states that “All goods and services received prior to certification must be paid for with seed money contributions ... B. It is a violation of this chapter for a participating candidate to use fund revenues received after certification to pay for goods and services received prior to certification.”

Recommendation – the Commission staff recommends that the Commission find that Joseph Palmieri violated 21-A M.R.S.A. § 1125(2-A) (A) and assess a penalty of \$100 for the violation under 21-A M.R.S.A. § 1127(1).

Finding No. 4 – Failure to Return Unspent MCEA Funds

MCEA campaigns are required to return all unspent public campaign funds to the Maine Clean Election Fund by the deadline for filing the final campaign finance report

42 days after the election. For Mr. Palmieri, the deadline was December 14, 2010. Most MCEA candidates filed the post-election report and returned unspent campaign funds on time.

After the December 14 deadline, Candidate Registrar Sandy Thompson notified Mr. Palmieri that he was late in returning MCEA funds to the Commission. These communications included a telephone conversation and follow-up e-mail on December 20, 2010. In response to a voicemail message from Mr. Palmieri, Ms. Thompson sent him an e-mail on January 3, 2011. Ms. Thompson's January 3 e-mail explicitly advised Mr. Palmieri to return all public funds remaining in his campaign bank account, even if the amount differed from the cash balance shown on the campaign's final financial report.

On January 3, 2011, Mr. Palmieri returned \$641.74 to the Commission, which was the amount shown as the cash balance on his final campaign finance report. The audit disclosed, however, that the campaign's actual bank balance as of January 3, 2011 was \$1,450.33. Mr. Palmieri should have returned that amount to the Fund.

Instead, after the January 3 payment, there remained \$808.59 in the bank account. As of the end of January 2011, Mr. Palmieri still retained these funds. Mr. Palmieri must return these funds to the State of Maine promptly. Had the Commission not audited the candidate, these funds apparently would not have been returned. The amount of \$808.59 corresponds roughly to the amount of Seed Money expenditures reported but not incurred.

If Mr. Palmieri returns the amount requested in Finding No. 1, he will have returned all unspent MCEA funds. Nevertheless, the candidate's failure to return all MCEA funds is a violation of the Act.

Standard - 21-A M.R.S.A. § 1125(12) states in part that " Notwithstanding any other provision of law, participating and certified candidates shall report any money collected, all campaign expenditures, obligations and related activities to the commission according to procedures developed by the commission... Upon the filing of a final report for any primary election in which the candidate was defeated and for all general elections that candidate shall return all unspent fund revenues to the commission." (Emphasis added).

Recommendation – Mr. Palmieri failed to return to the Commission the full amount of his unspent public campaign funds. Instead, on January 3, 2011 he returned to the Commission the amount that was showing as his cash balance on his final campaign finance report (\$641.74). The Commission staff recommends that the Commission:

- find that Joseph Palmieri violated 21-A M.R.S.A. § 1125(12) by failing to return all unspent MCEA funds by the December 14, 2010 deadline, and
- assess a penalty of \$500 under 21-A M.R.S.A. § 1127(1).

LATE-FILING ISSUES

In the 11-day pre-election report Mr. Palmieri filed on October 22, 2010, the candidate grossly understated his actual campaign expenditures for the period ending October 19, 2010. On October 22, 2010, the report included \$1,786.80 in expenditures. On December 17, 2010, the candidate amended the 11-day report to show \$8,854.12 in expenditures. Because of the omissions in the originally filed report, the public was not informed before the election of most of the candidate's expenditures for the reporting period.

Through a letter dated December 21, 2010, Candidate Registrar Sandy Thompson advised the candidate that the Commission staff was viewing the 11-day pre-election report as 56 days late, because the originally filed report did not substantially conform to the disclosure requirements. Mr. Palmieri has obtained legal counsel to ask for a waiver of the \$5,000 penalty, along with another penalty for filing the post-election report (due December 14, 2010) late.

ADMINISTRATIVE ISSUES

The issues that follow require administrative correction but do not rise to the level of reportable violations.

Issue No. 1 – Over-payments for services provided to the Palmieri Campaign.

- A. The Palmieri Campaign paid vendor Creative Imaging \$1,746.15 on 7/30/2010. The invoice amount was \$1,718.40. Resulting over-payment was \$27.75. Action required: Candidate must refund \$27.75 to the Ethics Commission.
- B. The Palmieri Campaign over-reimbursed campaign worker Cheryl Palmieri for mileage. The candidate informed the Commission that the error was caused by the campaign using an incorrect mileage reimbursement rate (\$.50/mile instead of \$.44/mile). Action required: Candidate must refund \$41.98 to the Ethics Commission.

Issue No. 2 – Expenditures listed in the wrong reporting period.

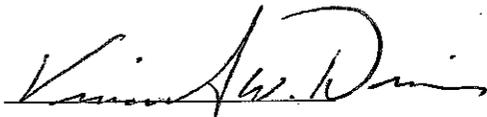
- A. The Palmieri Campaign paid Mainely Media \$1,191.20 (check # 526) on 10/11/2010 but reported the payment as made on 9/28/2010. Although mis-reported, the payment was made in the same reporting period as listed (Eleven Day Pre-General), so the mis-reporting had no apparent impact on reported total expenditures for the period. Action required: candidate must amend report.
- B. The Palmieri campaign paid Atlantic Coast Radio \$700 (check # 513) on 10/22/2010, but reported the payment as made on 9/25/2010. The payment to Atlantic Coast Radio was made in the 42 Day Post-General period, but listed in the Eleven Day Pre-General period. Accordingly, total expenditures in the 42 Day period were under-stated, and expenditures in the Eleven Day

period were over-stated. Action required: candidate must amend both reports.

Candidate's Comments on the Audit Report

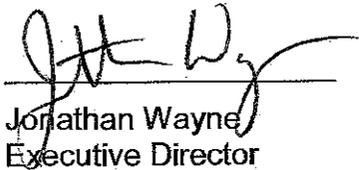
Mr. Palmieri's comments on the audit report are attached as Exhibit IV.

Respectfully Submitted to the Members of the Commission:



Vincent W. Dinan
Commission Auditor

Approved:



Jonathan Wayne
Executive Director

MAINE COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES
2010 CAMPAIGN AUDIT
CANDIDATE: JOSEPH C. PALMIERI
SENATE DISTRICT 7
AUDIT REPORT - FINDING NO. 1
FILING A CAMPAIGN FINANCE REPORT THAT SUBSTANTIALLY MISREPORTED
EXPENDITURES

Background

The candidate reported Seed Money contributions of \$1,030 and expenditures totaling \$851.39. Actual contributions were \$1,055 and actual expenditures (which were unreported) were \$18.40. **Impact:** the candidate's erroneous claim resulted in an over-payment to him of \$857.99.

Analysis**Seed Money Report:**

Contributions - Listed on Sch. A	\$1,030.00
Expenditures - Listed on Sch. B	(\$851.39)
Balance	\$178.61

Initial MCEA Disbursement:	
Amount Available, Statutory	\$1,927.00
Net Balance of Seed Money, From Above	(\$178.61)
MCEA Funds Payable	\$1,748.39

Actual, Per Bank Statements:

Seed Money Deposits	\$1,055.00
Seed Money Expenditures	(\$18.40)
Balance	\$1,036.60

MCEA Constructive Payment Re-calculation:

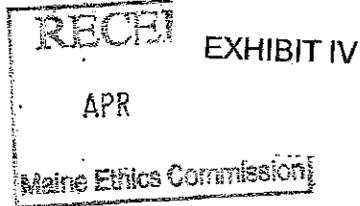
Total available MCEA payment	\$1,927.00
Less: unexpended seed money, per bank statement	(\$1,036.60)
Re-calculated MCEA monies payable to J. Palmieri	\$890.40
MCEA funds paid to J. Palmieri	\$1,748.39
Amount to be recovered by the Ethics Commission	\$857.99

MAINE COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES
 2010 CAMPAIGN AUDIT
 CANDIDATE: JOSEPH C. PALMIERI
 SENATE DISTRICT 7
 AUDIT REPORT - FINDING NO. 2
 MAKING MATERIAL FALSE STATEMENTS IN A CAMPAIGN
 FINANCE REPORT

REPORTED EXPENSE	DATE	AMOUNT	DEFICIENCIES
Creative Imagine	5/25/2010	\$520.00	No invoice or disbursement in this amount. Campaign has no documentation on file.
Anthony Foster	5/25/2010	\$250.00	No invoice or disbursement in this amount. Campaign has no documentation on file.
USPS	5/7/2010	\$14.30	Money Order Fees, 13 @ \$1.10, reported as reimbursed to the candidate. No invoice, receipt or disbursement on file.
Mechanics Savings Bank	5/12/2010	\$2.00	Money order fees, 4 @ \$0.50, reimbursed Joel Kase. No invoice or receipt. <u>Ck # 501 dated 7/8/2010 in the amount of \$2.00 returned to the campaign by Dr. Kase according to the candidate. Payment made from MCEA funds, not Seed Money, as required.</u>
Shaw's Supermarket	5/17/2010	\$13.00	Money order fees, 13 @ \$1.00, reimbursed Kenneth Myrick. No invoice or receipt. <u>Check # 502 dated 7/8/2010 in the amount of \$13.00 returned to the campaign by Mr. Myrick according to candidate. Payment made from MCEA funds, not Seed Money, as required.</u>
Ace Cash Express	5/12/2010	\$2.09	Money order fees, 11 @ \$0.19, reimbursed S. Peter Mills. No invoice, receipt or proof of payment. <u>Check register indicated check # 503 issued to Sen. Mills. Check has not cleared the bank. Payment made from MCEA funds, not Seed Money, as required.</u>
Maine Bank and Trust	5/7/2010	\$50.00	Money order fees, 10 @ \$5.00, reported as reimbursed to the candidate. No invoice or receipt. <u>Ck # 504 dated 7/8/2010 paid to candidate. Payment made from MCEA funds, not Seed Money, as required.</u>
Total Reported Seed Money Expense		<u>\$851.39</u>	

ME. COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES
 2010 CAMPAIGN AUDIT
 CANDIDATE: JOSEPH C. PALMIERI
 SENATE DISTRICT 7
 AUDIT REPORT - FINDING NO. 3
 USE OF MCEA FUNDS TO PAY FOR GOODS AND SERVICES
 RECEIVED DURING THE QUALIFYING PERIOD

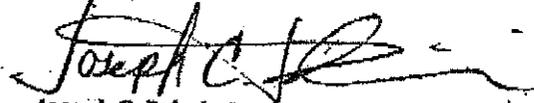
PAYEE	DATE REPORTED	DATE PAID	AMOUNT	COMMENT
Mechanics Savings Bank	5/12/2010	7/8/2010	\$2.00	Money order fees, 4 @ \$.50, reimbursed Joel Kase. No invoice or receipt. <u>CK # 501 dated 7/8/2010 in the amount of \$2.00 returned to the campaign by Dr. Kase according to the candidate. Payment made from MCEA funds, not Seed Money, as required.</u>
Shaw's Supermarket	5/17/2010	7/8/2010	\$13.00	Money order fees, 13 @ \$.19, reimbursed Kenneth Myrick. No invoice or receipt. <u>Check # 502 dated 7/8/2010 in the amount of \$13.00 returned to the campaign by Mr. Myrick according to candidate. Payment made from MCEA funds, not Seed Money, as required.</u>
Ace Cash Express	5/12/2010	7/8/2010	\$2.09	Money order fees, 11 @ \$.19, reimbursed S. Peter Mills. No invoice, receipt or proof of payment. <u>Check register indicated check # 503 issued to Sen. Mills. Check has not cleared the bank. Payment made from MCEA funds, not Seed Money, as required.</u>
Maine Bank and Trust	5/7/2010	7/8/2010	\$50.00	Money order fees, 10 @ \$.50, reimbursed candidate. No invoice or receipt. <u>CK # 504 dated 7/8/2010 paid to candidate. Payment made from MCEA funds, not Seed Money, as required.</u>
Anthony Foster	7/8/2010	7/8/2010	\$300.00	Expenditure reported on 42 Day Post-Primary report and paid with MCEA funds. Vendor invoice is dated June 1, 2010, which was in the Seed Money period. <u>Payment made from MCEA funds, not Seed Money, as required.</u>
Total			\$367.09	



Dear Mr. Dinan

I have received and reviewed your report. I have a number of concerns about the report including a tone that seems to indicate I willingly set out to deceive the Ethics Commission. While mistakes may have been made, primarily the late filing of reports I, in no way, ever lied about what we were doing. I take that charge very seriously. If there were mistakes made they were made because of an inexperienced candidate who worked with an inexperienced treasurer. During the campaign I attempted to run a campaign and a business while preparing to send a son to Afghanistan and during a period where I was hospitalized because of severe burns. While those are not excuses they should be taken into consideration when reports like yours are filed. I take this very seriously. So much that I chose not to see the seat vacated by Senator Larry Bliss, a race that I lost by just 75 votes in November. It would not be fair to the voters for me to be asking for their trust when I am defending myself against your charges.

Sincerely,



Joseph C. Palmieri

- C. Information or records subject to a privilege against discovery or use as evidence; and
- D. Intra-agency or interagency communications related to an audit or investigation.

The commission may disclose investigative working papers, except for the information or records subject to a privilege against discovery or use as evidence, in a final audit or investigation report or determination if the information or record is materially relevant to a finding of fact or violation.

4. Attorney General. Upon the request of the commission, the Attorney General shall aid in any investigation, provide advice, examine any witnesses before the commission or otherwise assist the commission in the performance of its duties. The commission shall refer any apparent violations of this chapter to the Attorney General for prosecution.

21A § 1004. Violations

The violation of any of the following subsections is a Class E crime.

1. Contributions and expenditures. A person, candidate, treasurer, political committee or political action committee may not knowingly make or accept any contribution or make any expenditure in violation of this chapter.

2. False statements. No person, candidate, treasurer or political action committee may make a false statement in any report required by this chapter.

3. Contributions in another's name. No person may make a contribution in the name of another person or knowingly permit his name to be used to accomplish such a contribution, and no person may knowingly accept a contribution made by one person in the name of another person.

4. Registration; political action committees. No political action committee required to be registered under section 1053 may operate in this State unless it is so registered.

21-A § 1004-A. Penalties

The commission may assess the following penalties in addition to the other monetary sanctions authorized in this chapter.

1. Late campaign finance report. A person that files a late campaign finance report containing no contributions or expenditures may be assessed a penalty of no more than \$100.

2. Contribution in excess of limitations. A person that accepts or makes a contribution that exceeds the limitations set out in section 1015, subsections 1 and 2 may be assessed a penalty of no more than the amount by which the contribution exceeded the limitation.

3. Contribution in name of another person. A person that makes a contribution in the name of another person, or that knowingly accepts a contribution made by one person in the name of another person, may be assessed a penalty not to exceed \$5,000.

 **4. Substantial misreporting.** A person that files a campaign finance report that substantially misreports contributions, expenditures or other campaign activity may be assessed a penalty not to exceed \$5,000.

 **5. Material false statements.** A person that makes a material false statement or that makes a statement that includes a material misrepresentation in a document that is required to be submitted to the commission, or that is submitted in response to a request by the commission, may be assessed a penalty not to exceed \$5,000.

When the commission has reason to believe that a violation has occurred, the commission shall provide written notice to the candidate, party committee, political action committee, committee treasurer or other respondent and shall afford them an opportunity to appear before the commission before assessing any penalty. In determining any penalty under subsections 3, 4 and 5, the commission shall consider, among other things, the level of intent to mislead, the penalty necessary to deter similar misconduct in the future and the harm suffered by the public from the incorrect disclosure. A final determination by the commission may be appealed to the Superior Court in accordance with Title 5, chapter 375, subchapter 7 and the Maine Rules of Civil Procedure Rule 80C.

Penalties assessed pursuant to this section that have not been paid in full within 30 days after issuance of a notice of the final determination may be enforced in accordance with section 1004-B.

21-A § 1004-B. Enforcement of penalties assessed by the commission

The commission staff shall collect the full amount of any penalty and the return of Maine Clean Election Act funds required by the commission to be returned for a violation of the statutes or rules administered by the commission and has all necessary powers to carry out these duties. Failure to pay the full amount of any penalty assessed by the commission or return of Maine Clean Election Act funds is a civil violation by the candidate, treasurer, party committee, political action committee or other person. Thirty days after issuing the notice of penalty or order for the return of funds, the commission shall report to the Attorney General the name of any person who has failed to pay the full amount of any penalty or to return Maine Clean Election Act funds unless the commission has provided an extended deadline for payment. The Attorney General shall enforce the violation in a civil action to collect the full outstanding amount of the penalty or order for the return of Maine Clean Election Act funds. This action must be brought in the Superior Court for Kennebec County or the District Court, 7th District, Division of Southern Kennebec.

21-A § 1005 Restrictions on commercial use of contributor information

Information concerning contributors contained in campaign finance reports filed by candidates, political action committees and party committees and reports filed under section 1056-B may not be used for any commercial purpose, including, but not limited to, the sales and marketing of products and services, or for solicitations of any kind not directly related to

C. Revenue from a tax check off program allowing a resident of the State who files a tax return with the State Tax Assessor to designate that \$3 be paid into the fund. If a husband and wife file a joint return, each spouse may designate that \$3 be paid. The State Tax Assessor shall report annually the amounts designated for the fund to the State Controller, who shall transfer that amount to the fund;

D. Seed money contributions remaining unspent after a candidate has been certified as a Maine Clean Election Act candidate;

E. Fund revenues that were distributed to a Maine Clean Election Act candidate and that remain unspent after the candidate has lost a primary election or after all general elections;

F. Other unspent fund revenues distributed to any Maine Clean Election Act candidate who does not remain a candidate throughout a primary or general election cycle;

G. Voluntary donations made directly to the fund; and

H. Fines collected under section 1020-A, subsection 4 and section 1127.

3. Determination of fund amount. If the commission determines that the fund will not have sufficient revenues to cover the likely demand for funds from the Maine Clean Election Fund in an upcoming election by January 1st, the commission shall provide a report of its projections of the balances in the Maine Clean Election Fund to the Legislature and the Governor. The commission may submit legislation to request additional funding or an advance on revenues to be transferred pursuant to subsection 2, paragraph B.

21A § 1125. Terms of participation

1. Declaration of intent. A participating candidate must file a declaration of intent to seek certification as a Maine Clean Election Act candidate and to comply with the requirements of this chapter. The declaration of intent must be filed with the commission prior to or during the qualifying period, except as provided in subsection 11, according to forms and procedures developed by the commission. A participating candidate must submit a declaration of intent within 5 business days of collecting qualifying contributions under this chapter. Qualifying contributions collected before the declaration of intent has been filed will not be counted toward the eligibility requirement in subsection 3.

2. Contribution limits for participating candidates. Subsequent to becoming a candidate as defined by section 1, subsection 5 and prior to certification, a participating candidate may not accept contributions, except for seed money contributions. A participating candidate must limit the candidate's total seed money contributions to the following amounts:

A. Two hundred thousand dollars for a gubernatorial candidate;

B. One thousand five hundred dollars for a candidate for the State Senate; or

C. Five hundred dollars for a candidate for the State House of Representatives.

The commission may, by rule, revise these amounts to ensure the effective implementation of this chapter.

2-A. Seed money restrictions. To be eligible for certification, a participating candidate may collect and spend only seed money contributions subsequent to becoming a candidate and prior to certification. A participating candidate may not solicit, accept or collect seed money contributions after certification as a Maine Clean Election Act candidate.

A. All goods and services received prior to certification must be paid for with seed money contributions, except for goods and services that are excluded from the definition of contribution in section 1012, subsection 2, paragraph B. It is a violation of this chapter for a participating candidate to use fund revenues received after certification to pay for goods and services received prior to certification,

B. Prior to certification, a participating candidate may obligate an amount greater than the seed money collected, but may only receive that portion of goods and services that has been paid for or will be paid for with seed money. A participating candidate who has accepted contributions or made expenditures that do not comply with the seed money restrictions under this chapter may petition the commission to remain eligible for certification as a Maine Clean Election Act candidate in accordance with rules of the commission, if the failure to comply was unintentional and does not constitute a significant infraction of these restrictions.

C. Upon requesting certification, a participating candidate shall file a report of all seed money contributions and expenditures. If the candidate is certified, any unspent seed money will be deducted from the amount distributed to the candidate as provided in subsection 8.

2-B. Seed money required for gubernatorial candidates; documentation. For seed money contributions that a candidate for Governor collects to satisfy the requirement in subsection 5, paragraph C-1, the candidate shall obtain the contributor's name, residence address, mailing address, telephone number if provided by the contributor and other information required for reporting under section 1017, subsection 5. For these contributions, the candidate shall submit to the commission during the qualifying period:

A. A contribution acknowledgment form as determined by the commission, to be completed by each person that contributes seed money, that includes the name, residence address, mailing address, optional telephone number and signature of the person making the seed money contribution acknowledging that the contribution was made with the person's personal funds and will not be reimbursed by any source;

B. A list of the seed money contributions in a format determined by the commission that includes the name and mailing address of the contributor;

C. For seed money contributions received by check or money order, photocopies of the check or money order; and

D. For seed money contributions received by debit or credit card, a bank or merchant account statement that contains the cardholder's name and that otherwise meets the requirements specified by the commission in order to verify compliance with subsection 5, paragraph C-1.

The commission may permit the submission of an online or electronic acknowledgment form as required by paragraph A for seed money contributions made via the Internet. The

certified is eligible for revenues from the fund in the same amounts and at the same time as an uncontested primary election candidate and a general election candidate as specified in subsections 7 and 8. Otherwise, an unenrolled candidate for the Legislature must submit the required number of qualifying contributions and the other required documents under subsection 4 by 5:00 p.m. on June 2nd preceding the general election. If certified, the candidate is eligible for revenues from the fund in the same amounts as a general election candidate, as specified in subsection 8. Revenues for the general election must be distributed to the candidate no later than 3 days after certification. An unenrolled candidate for Governor who submits the required number of qualifying contributions and other required documents under subsections 2-B and 4 by 5:00 p.m. on April 1st preceding the primary election and who is certified is eligible for revenues from the fund in the same amounts and at the same time as an uncontested primary election gubernatorial candidate and a general election gubernatorial candidate as specified in subsections 7 and 8. Revenues for the general election must be distributed to the candidate for Governor no later than 3 days after the primary election results are certified.

11. Other procedures. The commission shall establish by rule procedures for qualification, certification, disbursement of fund revenues and return of unspent fund revenues for races involving special elections, recounts, vacancies, withdrawals or replacement candidates.

 **12. Reporting; unspent revenue.** Notwithstanding any other provision of law, participating and certified candidates shall report any money collected, all campaign expenditures, obligations and related activities to the commission according to procedures developed by the commission. If a certified candidate pays fund revenues to a member of the candidate's immediate family or household or a business or nonprofit entity affiliated with a member of the candidate's immediate family or household, the candidate must disclose the candidate's relationship to the payee in a manner prescribed by the commission. Upon the filing of a final report for any primary election in which the candidate was defeated and for all general elections that candidate shall return all unspent fund revenues to the commission. In developing these procedures, the commission shall utilize existing campaign reporting procedures whenever practicable. The commission shall ensure timely public access to campaign finance data and may utilize electronic means of reporting and storing information.

 **12-A. Required records.** The treasurer shall obtain and keep;

- A. Bank or other account statements for the campaign account covering the duration of the campaign;
- B. A vendor invoice stating the particular goods or services purchased for every expenditure of \$50 or more;
- C. A record proving that a vendor received payment for every expenditure of \$50 or more in the form of a cancelled check, receipt from the vendor or bank or credit card statement identifying the vendor as the payee; and
- D. **(REPEALED)**
- E. A document such as an invoice, contract or timesheet that specifies in detail the services provided by a vendor who was paid \$500 or more for the election cycle for providing campaign staff or consulting services to a candidate.

decision. The record on appeal must be transmitted to the Law Court within 3 days after the notice of appeal is filed. After filing the notice of appeal, the parties have 4 days to file briefs and appendices with the clerk of the court. The court shall consider the case as soon as possible after the record and briefs have been filed and shall issue its decision within 14 days of the decision of the Superior Court.

D. A candidate whose certification as a Maine Clean Election Act candidate is reversed on appeal must return to the commission any unspent revenues distributed from the fund. If the commission or court finds that an appeal was made frivolously or to cause delay or hardship, the commission or court may require the moving party to pay costs of the commission, court and opposing parties, if any.

21A § 1126. Commission to adopt rules

The commission shall adopt rules to ensure effective administration of this chapter. These rules must include but must not be limited to procedures for obtaining qualifying contributions, certification as a Maine Clean Election Act candidate, circumstances involving special elections, vacancies, recounts, withdrawals or replacements, collection of revenues for the fund, distribution of fund revenue to certified candidates, return of unspent fund disbursements, disposition of equipment purchased with clean election funds and compliance with the Maine Clean Election Act. Rules of the commission required by this section are major, substantive rules as defined in Title 5, chapter 375, subchapter II-A.

21A § 1127. Violations

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