

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: June 14, 2011
Re: Request for Reconsideration from Joseph Palmieri

At the April 26, 2011 meeting, you considered the audit of 2010 State Senate candidate Joseph C. Palmieri and two late-filing penalties against his campaign. At that meeting, you

- reduced the two late-filing penalties from a total of \$6,349 to a total of \$400;
- assessed civil penalties totaling \$1,350 against Mr. Palmieri for violations of the Maine Clean Election Act; and
- directed Mr. Palmieri to repay \$925.72 to the Maine Clean Election Fund.¹

On June 1, 2011, Mr. Palmieri e-mailed the attached letter to you requesting reconsideration of the penalties. Reconsideration is an application that is available in some courts and administrative agencies when a person or party requests that the decision-maker revisit an earlier determination. Prior to his written request, I advised the candidate that he could ask for reconsideration but that, in my experience, members of the Commission have been reluctant to reconsider previous decisions.

The Commission's Rules are silent regarding reconsideration. You have the discretion to reconsider your April 26 determination, but you are under no obligation to do so. The Commission has entertained reconsideration requests before, but to my knowledge, has not actually reconsidered an earlier decision.²

¹ To date, Mr. Palmieri has returned only \$858.62, which is the amount remaining in his campaign credit union account. He has not returned \$67.73, which consists of two overpayments by the campaign to Cheryl Palmieri and Creative Imaging.

² I could find only three requests for reconsideration within my eight-year employment. On May 27, 2010, the Commission declined to reconsider a decision from April 2010 assessing a \$200 penalty against Peter Martin for failing to register on time as a lobbyist. On July 13, 2005, the Commission declined to reconsider a decision from May 2005 assessing penalties totaling \$8,967 against Maine Clean Election Act candidate Christopher McCarthy. On October 20, 2004, the Commission declined to reconsider a September 2004 decision to award matching funds to Paul Davis and Chandler Woodcock based on a radio advertisement criticizing "Republican leaders."

Procedurally, reconsideration is often viewed as a two-step process: first, you would decide whether or not to reconsider the April 26 determination. Then, if the majority votes to reconsider, the April 26 determination would be vacated, and the matter would be re-opened for a new determination.

I. Procedural Issues Regarding Reconsideration

In many courts and administrative agencies, reconsideration is granted if there is evidence which could not have been presented to the court or agency when it made its original decision. (For example, Rule 7(b)(5) of the Maine Rules of Civil Procedures states that: “[m]otions for reconsideration of an order shall not be filed unless required to bring to the court’s attention an error, omission or new material that could not previously have been presented.”) You may, however, grant reconsideration for reasons other than new evidence that was not previously available. For example, some agencies allow reconsideration as a means to correct a decision believed to be in error and not intended by the agency, to address “significant, relevant information not previously considered by the department” (certificates of need for construction of health care facilities, 22 M.R.S.A § 240), or to respond to significant changes in factors or circumstances relied upon by the agency in making the initial decision.

The Commission is not bound by Robert’s Rules of Order, but has previously relied on them in this context. Under Robert’s Rules, the Commission could only reconsider its April 26, 2010 determination if a member of the majority voting on the motion at the April 26, 2010 meeting moved to reconsider that vote.

Mr. Palmieri’s argument is essentially that the Commission’s penalties were excessive, comparing his penalties to those in two other instances of actual or perceived misconduct.³ He notes that the campaign did not use any public campaign funds for

³ In the case of Dennis Bailey, the Commission assessed the maximum penalty of \$200 allowable under law for not including the required disclaimer on the Cutler Files website. Mr. Palmieri also refers to a purchase of a laptop computer by the 2010 campaign of State Rep. Cynthia Dill. This matter did not come before the Commission, and the staff’s view is that she complied with current law. In a posting to a private bulletin board for candidates in her caucus, she mentioned her intention to buy the computer from her campaign for 40% of the purchase price paid by the campaign. In fact, she never bought the computer from her campaign. After the e-mail became public and she was criticized publicly, another buyer, Charlie Neville, came forward, and the campaign sold the computer to Mr. Neville instead.

personal use, returned more than \$1,400 in unused campaign funds, and never intended to keep unspent campaign funds. He admits that his campaign made clerical errors.

The Commission staff does not make a recommendation as to whether or not you should reconsider. As I explain in the section below, at the April 26 meeting, the candidate provided a large amount of information and a supporting document from a vendor (Creative Imaging) entitled "Invoice." After the meeting, I discussed the document with the vendor. Had the Commission staff received the information and the document before April 26, it probably would have reduced my penalty recommendations.

II. Proportionality of Penalties Assessed on April 26, 2011

This section of the memo explains why the Commission staff recommended significant penalties for the violations found in the audit. If you choose to reconsider the penalties, I would support a moderate reduction in the penalties based on the information and document that the candidate provided at the April 26 meeting.

Audit	Recommended	Assessed
#1 Filing a seed money campaign finance report that substantially misreported expenditures	\$500	\$500
#2 Making material false statements (reported expenditures) in seed money report	\$500	\$250*
#3 Spending MCEA funds on goods or services received prior to certification	\$100	\$100
#4 Failing to return all unspent campaign funds	\$500	\$500
Total	\$1,600	\$1,350

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

*The commissioners assessed a \$250 penalty instead of the recommended \$500 penalty.

On March 17, 2011, the Commission's auditor mailed to Mr. Palmieri a draft version of the audit report that contained the recommended penalties. The recommended penalties reflected the staff's existing knowledge of the apparent violations and their seriousness. As a general rule, if a candidate has a straightforward legal duty that is easy to understand (e.g., filing an accurate campaign finance report, or returning unspent public campaign funds) and the candidate's failure to fulfill that duty results in a loss to

the State of Maine or to an unwarranted enrichment of the campaign, the staff will be inclined to treat those violations seriously. At the time we prepared the March 17, 2011 draft audit report, I hoped to receive a substantive response from the candidate that would better inform the staff's penalty recommendations. Instead, on April 1, 2011, Mr. Palmieri submitted the attached one-paragraph response. The response did not explain why the campaign indicated on Schedule B of the seed money report that it had made seven expenditures totaling \$851.39 between May 7 and 25, 2011 when those expenditures had not, in fact, been made. The brief response also did not explain why his campaign failed to return all unspent funds.

On April 6, 2011, I sent Mr. Palmieri a notice of recommended penalties, which included directions on how to respond to the recommended penalties in writing in advance of the meeting and/or in person at the Commission meeting. I followed up with a telephone call to Mr. Palmieri on April 14. We discussed his opportunity to respond in writing and in person. He said that he was considering how to respond, and would be consulting with William Logan, an attorney who was representing him on the late-filing penalties.

Mr. Palmieri chose to respond to the recommended penalties *only* by attending the meeting on April 26 and providing a great deal of information that was new to me.

Inaccurate Transactions Entered on Schedule B of Seed Money Report

The campaign made seven entries on Schedule B of the seed money campaign finance report that the campaign filed on June 4, 2010. For your reference, a print-out of the information entered on Schedule B is the second page after this memo. The dates of the entries fall within May 7-25, 2010. Five of the entries were reimbursements to candidates for money order fees. In the remarks for these five entries, the campaign entered "Reimbursed [candidate's name]" (past tense). A straightforward reading of these entries is that these reimbursements had *already* been paid, and were not debts to be paid in the future. The total for the seven entries was \$851.39.

At the April 26 meeting, Mr. Palmieri said that:

- the vendors and amounts listed as "Expenditures" on Schedule B were actually debts which the campaign intended to pay to the vendors;

- the vendors and amounts should have been reported on Schedule D, which is designated for “Unpaid Debts and Obligations;”
- the seed money report was prepared by a family friend who served as the campaign’s deputy treasurer. The deputy treasurer did not see the instruction on Schedule B to “[o]nly enter expenditures that have actually been paid”;
- Mr. Palmieri replaced another candidate who had withdrawn, and he relied on friends to help him out and “a lot of things were done on the fly;”
- Mr. Palmieri did not review the June 4, 2010 seed money report before the deputy treasurer had filed it. The campaign would never have intended to put false information on a report or to take anything that it did not deserve;
- in the few days before the Commission’s April 26 meeting, a member of campaign staff provided him with a document entitled “Invoice” from Creative Imaging in the amount of \$520 for palm cards, which Mr. Palmieri provided to the Commissioners at the meeting;⁴
- Mr. Palmieri stated that “I can only assume [the campaign] had gotten the information on what the bill was going to be [before we filed the seed money report]”
- with respect to the reported payment of \$250 to Anthony Foster for a web site, Mr. Palmieri stated that he had talked with Anthony Foster about a website in April 2010. When asked when the web site was posted to the internet, Mr. Palmieri replied “maybe toward the end of May” and then explained that he did not know. He said it was delayed.

In my opinion, the information provided by Mr. Palmieri on April 26 does not excuse the violations, but it provides relevant information as to why the violations may have occurred. I accept that, at the time the June 4 report was filed, the campaign may

⁴ After the April 26 meeting , I spoke with a sales representative at Creative Imaging who confirmed that when a political campaign considers placing an order and wants a document confirming the possible order, he will sometimes create a document that he called a “pre-invoice.” I showed him the document presented by Mr. Palmieri on April 26. The sales representative stated that the format of the document was consistent his pre-invoices. He stated that the firm did not print palm cards for Mr. Palmieri until later in the campaign year. My suspicion is that there may have been some discussion between the campaign and the vendor in late May about a potential order.

have *anticipated paying* all seven amounts listed on Schedule B totaling \$851.39.⁵ Nevertheless, to enter the vendors and amounts on Schedule B as though payments *had been made* (when they were not) is to make false statements in a campaign finance report that resulted in an overpayment.

In my opinion, Mr. Palmieri has not fully explained why the campaign entered amounts on Schedule B as though they had been paid. Even if the deputy treasurer understood these amounts to be debts, it is hard to understand how she could confuse the data entry screens for Schedules B and D. I have attached the navigation screen and the two data entry screens that the treasurer would have seen once she opened the report to enter transactions. It is clear that expenditures should be reported on Schedule B and unpaid debts should be reported on Schedule D. (These screens are the third, fourth, and fifth pages after this memo.)

The concern of the auditor in raising this as false reporting is that the campaign may have entered vendor names and amounts as Schedule B expenditures, in order to avoid a reduction in the primary election payment that would result from having unspent seed money. (This has been a concern of ours with other campaigns.) The context is that after Joseph Palmieri had dropped off his \$5 qualifying contributions on May 25, 2010, Candidate Registrar Sandy Thompson encouraged the candidate to file the campaign finance report of his seed money contributions and expenditures, so that the Commission could issue the first payment of public funds for the June 8, 2010 primary election. When the report was not filed right away, Sandy advised the candidate to file the report by Friday, June 4, so that the Commission could make the primary election payment before the election on Tuesday, June 8. She also provided to the candidate our standard advice that if the campaign does not spend all of its seed money, the Commission is required by statute to deduct it from the candidate's primary election payment. Most campaigns find it in their strategic interest to spend most of their seed money on campaign goods or services, so that they do not suffer a reduction in the primary election payment (\$1,927 for Senate candidates). The following chart shows how the reduction worked in the case of Mr. Palmieri's campaign:

⁵ I am not sure that it is accurate to characterize the \$520 for Creative Imaging as a "debt," because the campaign did not actually receive palm cards until later in the year.

		As actually entered by campaign (\$851.39 entered on Schedule B)	If Schedule B had been accurate (zero expenditures on Schedule B)
1	Contributions (Schedule A)	\$1,030.00	\$1,030.00
2	Expenditures (Schedule B)	\$851.39	\$0.00
3	Unspent seed money (row 1 minus row 2)	\$178.61	\$1,030.00
4	Unpaid Debts (Schedule D)	\$0.00	\$851.39
5	Base Primary Payment for Senate Campaigns	\$1,927.00	\$1,927.00
6	Reduction for unspent seed money (from row 3 above)	\$178.61	\$1,030.00
7	Primary Payment to Joseph Palmieri (row 4 minus row 5)	\$1,748.39	\$897.00

The bottom line is that the Commission staff cannot know for sure why the campaign entered these amounts on Schedule B. Nevertheless, there are circumstances present that make the auditor's concern reasonable.

I continue to believe that a significant penalty is warranted. The seed money report was the final step in the candidate's application to receive a grant of public funds from the State of Maine. At a minimum, the campaign should have shown greater care in providing accurate information on the report. As a result of the inaccurate reporting, the State overpaid the campaign by \$851.39. Nevertheless, under the circumstances fleshed out on April 26, the combined penalties for Findings #1 and #2 do not, in my opinion, need to be as high as \$750. If you choose to reconsider the penalties assessed on April 26, you could reduce the penalty for Finding #1 (failure to report seed money) from \$500 to \$250.

Not Returning to the Commission \$808.59 in Unspent MCEA Funds

2010 candidates were legally required to return all unspent MCEA funds by December 14, 2010. That is a basic, unambiguous requirement of the program. When Mr. Palmieri did not return the funds by the deadline, Candidate Registrar Sandy Thompson contacted him to ask for the unspent funds. On January 3, 2011, the candidate left a voicemail for Ms. Thompson inquiring how much to repay. She replied with a voicemail and the e-mail advising him to return all campaign funds remaining in the campaign account. She indicated that if the amount returned did not match the cash balance on his final campaign finance report, it could indicate an error in the candidate's reporting which would need to be identified and corrected through amendments to the reports.

Another point of context is that on December 21, 2010, the Commission staff sent the candidate a notice that his October 2010 campaign finance report was late because it was substantially under-reported expenditures, and that the preliminary penalty for the late report was the maximum \$5,000. So, in the first week of January 2011, he had just become aware that MCEA candidates are held to high standards for financial reporting, and Maine Election Law can impose large penalties for reporting violations.

At the April 26 meeting, Mr. Palmieri offered an explanation concerning his January 3, 2011 repayment of unspent MCEA funds. On that date, he returned \$641.74 (the cash balance showing on his final financial report), and did not return another \$808.59 that stayed in his campaign bank account. Mr. Palmieri and his counsel explained that he was concerned that if he had repaid an amount other than the cash balance shown on his reports, it might trigger another finding that a campaign finance report was late. Mr. Palmieri stressed that he never attempted to use the remaining \$808.59 in unspent funds. He said that in hindsight he should have returned the full amount and it was his fault.

Mr. Palmieri states in his request for reconsideration that he returned a large amount of public funds to the State of Maine that he could have spent on his campaign. He states that "There was never any intention to keep this money and there is nothing to indicate that was the case."

On January 5, 2011, the Commission staff notified Mr. Palmieri by letter that he would be audited by the Commission staff. At the April 26, 2011 meeting, Mr. Palmieri's attorney stated that one reason for not repaying the funds was "wanting to get through the full process."

At the April 26 meeting, the candidate explained that if he returned all of the funds in his campaign account, he was concerned that it might have triggered more reporting violations. That is not an acceptable excuse. A candidate should not neglect repaying a debt to the State of Maine merely because there is a possibility that making the repayment could cause negative consequences.

Mr. Palmieri has not offered an explanation of *when* he would have repaid the \$808.59 in public funds had the Commission staff not audited him, and what would have prompted that repayment. There continues to be a reasonable concern that the State of Maine would have never received the remaining \$808.59 in unspent funds had we not initiated the audit.

The staff believes that the \$500 penalty is justified. The penalty could be reduced slightly and continue to serve as a effective deterrent effect to encourage compliance.⁶

Conclusion on Proportionality of Penalties

I am not sure whether you will be open to reconsidering the penalties. If you do, I would support a moderate reduction in the \$1,350 total for the penalties related to the audit. I view the assessed penalties as high, but not unreasonable. The Commission staff does not believe it is accurate to characterize the violations in the audit as clerical errors. The violations had a financial impact on the Maine Clean Election Fund, and it is reasonable to view them as significant. When one is relying on public funds, accurate reporting and repaying *all* unspent fund are basic requirements of the program.

⁶ For purposes of comparison, the Commission assessed penalties of \$500 and \$750, respectively, against 2006 candidates Arthur Clement and Thomas Bossie. Both candidates were slow to return MCEA funds, and ultimately our investigation disclosed that they spent MCEA funds for personal expenses. Two other 2006 candidates did not return unspent MCEA funds, and were referred for criminal prosecution after misuse was discovered. The Commission assessed a penalty of \$200 against 2007 special election candidate for not returning MCEA funds promptly. The funds were returned after repeated attempts by staff to collect the funds. In assessing a \$200 penalty, the Commission was influenced by emotional difficulties that the candidate had endured because of the death of a family friend.

If you are inclined to reduce the penalties, some options could include:

- reducing the penalty for Finding #1 (filing a seed money report that substantially misreported expenditures) from \$500 to \$250;
- slightly reducing the \$500 penalty for Finding #4 (failure to return public funds); and
- reducing the penalty for Finding #3 (using MCEA funds for pre-certification goods or services) from \$100 to \$0, in light of the information presented on April 26 concerning timing of the website designed by Anthony Foster.

Thank you for your consideration of this memo.

Dear Commission Members:

I would like to take this time to ask you to reconsider the penalties imposed on my campaign.

While I understand the difficulties you face in looking over the mountain of information that comes before you on a regular basis, I feel the penalty you imposed in this case is excessive especially in light of other violations.

This year you had to look over dozens of violations including a web site created by Dennis Bailey designed to hit directly at the integrity of a political opponent. His fine was \$200. In another case Cynthia Dill purchased a laptop computer with Clean Election Funds and bragged about it in a newspaper account. You decided there was no violation even though that computer can now be used for non election, governmental work.

While my campaign made errors I did not use any of the taxpayer's funds for personal use and I would never even consider attacking the integrity of my opponent. I find it difficult to imagine how a clerical error rises calls for a bigger than a character assassination?

I returned more than \$1400 of taxpayers' money to Clean Elections. Meaning the apx \$850 overpayment to my campaign was returned in addition to other unused funds. There was never any intention to keep this money and there is nothing to indicate that was the case.

I hope you will use this information in reconsidering the fine imposed

Thank You

Joe Palmieri

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

Navigation Screen
for Seed
Money Report



- Menu
- Home
- Help
- Logout
- Change Password
- ✓ P

Christopher W. Babbidge Seed Money Report Campaign Year 2008

- Select one schedule at a time to add new transactions or to amend old transactions.
- All information will be stored and the report will be 'in-progress' until you file the report.
- You may also use this page to view or print schedules.

Status: In-Progress

Filed Date: 06/15/2011 (mm/dd/yy)

<input type="checkbox"/> Select All	No Activity on Schedule	Amended
<input type="checkbox"/> Cover Page		
<input type="checkbox"/> Interest Earned	✓	
<input type="checkbox"/> Schedule A Cash Contributions	✓	
<input type="checkbox"/> Schedule A-1 In-Kind Contributions	✓	
<input type="checkbox"/> Schedule B Expenditures	✓	
<input type="checkbox"/> Schedule D Unpaid Debts and Obligations	✓	
<input type="checkbox"/> Schedule F Summary Section	✓	

*
*

Completing a report does not constitute a "FILED" report. Click the "File Report" button to file the report.

Add New Transactions

Amend Old Transactions

View/Print Report

File Report

File No Activity Report

CSV Upload



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.



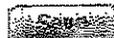
Date Expenditure Made:



From: 11/8/2006 To: 4/15/2008

Select Type:

Business/Committee Individual



Data Entry
Screen
Schedule D



- Menu
- Home
- Help
- Logout
- Change Password
- ✓ P

Christopher W. Babbidge
Seed Money Report
Campaign Year 2008

Unpaid Debts and Obligations

- List any debts or obligations that are unpaid at the close of this period (even if included in earlier reports).
- Report actual payments to vendors on Schedule B.
- If the campaign has not received a bill for goods or services, contact the vendor to obtain the amount owed or an estimate.

Date of Obligation:



From: 11/8/2006 To: 4/15/2008

Creditor Name:

Address:

City:

State:

ME

Zip:

Description:

Amount:

\$0.00

- Save
- Reset
- Report Menu

Provided by Joseph Palmieri

INVOICE

Item #4
4/26



64 Mussey Road
Scarborough, Maine 04074
207.883.2999
207.883.2992 fax

DATE 05/27/10 INVOICE # 100252 CUST. NO JOEPALM

BILL TO:

Joe Palmieri
285 US Route 1 # 3
Scarborough, ME 04074-6801

SHIP TO:

CUSTOMER PO#	TERMS	SHIP VIA	SHIP DATE	SALES REP	ORDER#	
Kathie 5/27/10	Prepay		6/3/10	MC1	100252	
Ordered	Shipped	DESCRIPTION		U/M	PRICE UNIT	AMOUNT
1	1	Joe Palermi Palm Cards				520.00
*****PLEASE PAY FROM THIS INVOICE*****				FREIGHT (S&H)	42.50	
				Sales Tax	26.00	
				Total	\$588.50	

Please remit payment to:
PO Box 10248
Portland, Maine 04104-10248

THANK YOU For the opportunity to be of service



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

May 3, 2011

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

Dear Mr. Palmieri:

Thank you for the testimony you provided at the April 26, 2011 meeting of the Maine Commission on Governmental and Election Practices concerning the proposed findings arising from the audit of your 2010 campaign for State Senate. The Commissioners considered your oral testimony and your written response to the draft audit report, which they had received in advance of the meeting.

Repayment of Public Funds

At the meeting, the Commissioners directed you to repay \$925.72 to the Maine Clean Election Fund. This consists of \$857.99, which the Commission overpaid to the campaign for the 2010 primary election, and two overpayments from the campaign to Creative Imaging Group and Cheryl Palmieri.

Audit Violations and Civil Penalties

At the meeting, the Commissioners took the following actions.

- The Commission found that you violated 21-A M.R.S.A. § 1125(2-A)(C) by failing to accurately disclose seed money expenditures in your June 4, 2010 seed money campaign finance report, and assessed a civil penalty of \$500 for the violation pursuant to 21-A M.R.S.A. § 1127(1).
- The Commission found that you violated 21-A M.R.S.A. § 1004(2) by falsely stating in the seed money report that you made seven expenditures totaling \$851.39 between May 7 and 25, 2010. The Commission assessed a civil penalty of \$250 pursuant to 21-A M.R.S.A. § 1004-A(5) for making material false statements in the report.
- The Commission found that you violated 21-A M.R.S.A. § 1125(2-A)(A) by spending Maine Clean Election Act (MCEA) funds for goods and services which your campaign received prior to certification as an MCEA candidate, and assessed a penalty of \$100 for the violation pursuant to 21-A M.R.S.A. § 1127(1).

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

PHONE: (207) 287-4179

FAX: (207) 287-6775

Mr. Joseph Palmieri

Page 2

May 3, 2011

- The Commission found 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 assessed a penalty of \$500 for the violation pursuant to 21-A M.R.S.A. § 1127(1).

The violations are discussed in more detail in the final audit report dated April 5, 2011.

Late-Filing Penalties

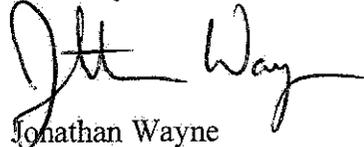
The Commission granted your request for a waiver of the preliminary late-filing penalties for the 11-day pre-general campaign finance report and the 42-day post-general campaign finance report, and assessed penalties of \$300 and \$100, respectively.

Paying the Penalty and Return of MCEA Funds

Please repay the \$925.72 in MCEA funds and pay the \$1,750 in penalties within 30 days of your receipt of this letter by submitting the payments in the form of checks or money orders payable to the Maine Clean Election Fund. The Commission may also receive the penalty payment by credit card if you prefer.

If you have any questions, please call me at 287-4179.

Sincerely,



Jonathan Wayne
Executive Director

cp



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

Mr. Joseph C. Palmieri
Page 2
April 6, 2011

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.

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
Page 5
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:

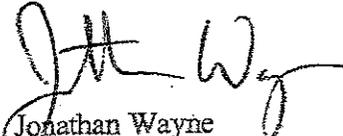
Audit	Recommended
#1 Filing a seed money campaign finance report that substantially misreported expenditures	\$500
#2 Making material false statements (reported expenditures) in seed money report	\$500
# 3 Spending MCEA funds on goods or services received prior to certification	\$100
#4 Failing to return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

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)



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,

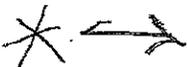
Paul Lavin
Assistant Director

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





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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

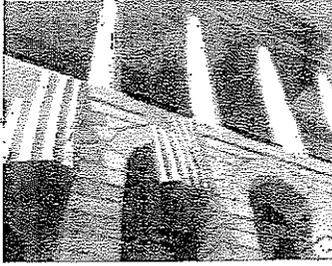
From: Thompson, Sandy
Sent: Monday, January 03, 2011 9:18 AM
To: 'joepalmieri@hotmail.com'
Subject: Returning Unspent MCEA Funds

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



Commission on Governmental Ethics and Election Practices
 135 State House Station, Augusta, Maine 04333
 (207)287-4179 Website: www.maine.gov/ethics

November 8, 2010
 MCEA

Closing Out Your 2010 Campaign

Upcoming Deadlines

Requirement	Deadline	Actions Needed
For candidates who have unauthorized matching funds		
Return <u>Unauthorized MCEA Matching Funds</u>	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 MCEA Funds</u>	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:

2010 Candidate Survey	2
Equipment Purchased with MCEA Funds	2
Closing Out Your Campaign and Filing Your Report	3
Reconciling Report & Bank Balances	3
Election "Thank-You's" - Events, Ads, etc.	3
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
COMMISSION ON GOVERNMENTAL ETHICS
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, appearing to read "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

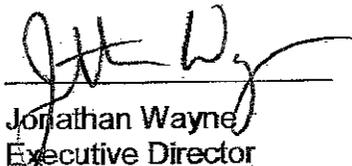
Mr. Palmieri's comments on the audit report are attached as Exhibit IV.

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	<u>\$178.61</u>

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

Actual, Per Bank Statements:	
Seed Money Deposits	\$1,055.00
Seed Money Expenditures	(\$18.40)
Balance	<u>\$1,036.60</u>

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	<u>\$857.99</u>

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. PALMERI
 SENATE DISTRICT 7
 AUDIT REPORT - FINDING NO. 3
 USE OF MCEA FUNDS TO PAY FOR GOODS AND SERVICES
 RECEIVED DURING THE QUALIFYING PERIOD

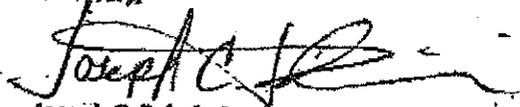
PAYEE	DATE REPORTED	DATE PAID	AMOUNT	COMMENT
Mechanics Savings Bank	5/12/2010	7/8/2010	\$2.00	Money order fees, 4 @ \$.50, reimbursed Joel Kasa. No invoice or receipt. <u>CK # 501 dated 7/8/2010 in the amount of \$2.00 returned to the campaign by Dr. Kasa according to the candidate. Payment made from MCEA funds, not Seed Money, as required.</u>
Shaw's Supermarket	5/17/2010	7/8/2010	\$13.00	Money order fees, 13 @ \$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	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 @ \$5.00, 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	

RECEIVED
 APR
 Maine Ethics Commission

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.

A **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.

A **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

§ 1125

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.