



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

April 22, 2010

Hon. John G. Richardson
19 Juniper Road
Brunswick, Maine 04011

Re: Staff Determination on Request for Certification as a Maine Clean
Election Act Candidate

Dear Mr. Richardson:

I. Summary

The staff of the Maine Commission on Governmental Ethics and Election Practices (the "Commission") has completed its review of your request for certification as a Maine Clean Election Act (MCEA) candidate. Your campaign has met a number of the requirements for certification, including the collection of \$40,000 in seed money contributions from registered voters in Maine, pursuant to 21-A M.R.S.A. § 1125(5)(C-1). Nevertheless, the Commission staff is denying your request for certification as an MCEA candidate on the grounds set forth in § 1125(B), (D-2) and (D-3), as described below. In particular, because the staff has found that certain campaign workers falsely stated that they collected qualifying contributions, the staff is unable to accept any contributions claimed by those workers unless the contributors have independently confirmed to the Commission staff that they made the contributions with their own personal funds. The Commission staff also declines to grant MCEA certification because of the submission of documents containing material false statements and other substantial violations of the MCEA. Your opportunity to appeal is discussed in section IV of this determination.

II. Legal Requirements for Maine Clean Election Act Certification

A. Certification Statute

In order to certify that a candidate has met the qualifications to receive public funding under the Maine Clean Election Act, the Commission or its executive director must determine that a candidate has complied with 21-A M.R.S.A. § 1125(5), which provides in pertinent part:

5. Certification of Maine Clean Election Act candidates. Upon receipt of a final submittal of qualifying contributions by a participating candidate, the commission or its executive director shall determine whether the candidate has:

- A. Signed and filed a declaration of intent to participate in this Act;
- B. Submitted the appropriate number of valid qualifying contributions;
- C. Qualified as a candidate by petition or other means;
 - C-1. As a gubernatorial candidate, collected at least \$40,000 in seed money contributions from registered voters in the State;
 - D. Not accepted contributions, except for seed money contributions, and otherwise complied with seed money restrictions;
 - D-1. Not run for the same office as a nonparticipating candidate in a primary election in the same election year;
 - D-2. Not been found to have made a material false statement in a report or other document submitted to the commission;
 - D-3. Not otherwise substantially violated the provisions of this chapter or chapter 13;
 - D-4. Not failed to pay any civil penalty assessed by the commission under this Title, except that a candidate has 3 business days from the date of the request for certification to pay the outstanding penalty and remain eligible for certification; and
- E. Otherwise met the requirements for participation in this Act.

The commission or its executive director shall certify a candidate complying with the requirements of this section as a Maine Clean Election Act candidate as soon as possible after final submittal of qualifying contributions and other supporting documents required under subsection 4 but no later than 3 business days for legislative candidates and 5 business days for gubernatorial candidates. The commission and its executive director may take additional time if further investigation is necessary to verify compliance with this Act as long as the

commission notifies the candidate regarding the anticipated schedule for conclusion of the investigation. (Underlining added.)

A candidate must meet every requirement in paragraphs 5(A) through 5(E) in order for the staff or the Commission to certify that the candidate has met the eligibility requirements and is qualified to receive public funding.

B. Definition of Qualifying Contribution

The definition of qualifying contribution is “a donation”:

- A. Of \$5 or more in the form of a check or a money order payable to the fund and signed by the contributor in support of a candidate or made over the Internet in support of a candidate according to the procedure established by the commission;
- B. Made by a registered voter within the electoral division for the office a candidate is seeking and whose voter registration has been verified according to procedures established by the commission;
- C. Made during the designated qualifying period; and
- D. That the contributor acknowledges was made with the contributor’s personal funds and in support of the candidate and was not given in exchange for anything of value and that the candidate acknowledges was obtained with the candidate’s knowledge and approval and that nothing of value was given in exchange for the contribution, on forms provided by the commission.

(21-A M.R.S.A. § 1122(7))

C. Requirement to Collect 3,250 Qualifying Contributions

A 2010 gubernatorial candidate must collect at least 3,250 qualifying contributions supporting his or her candidacy. (21-A M.R.S.A. § 1125(3)(A))

D. Submission of Qualifying Contributions and Receipt and Acknowledgement Forms during Qualifying Period

Candidates must submit the qualifying contributions to the Commission and verification of the contributors’ voter registration status during the qualifying period.

(21-A M.R.S.A. § 1125(4)) For gubernatorial candidates, the qualifying period ends at 5:00 p.m. on April 1st of the election year. (21-A M.R.S.A. § 1122(8))

E. Commission Rules

The gathering of qualifying contributions and the submission of qualifying materials to the Commission are governed by Chapter 3, section 1(4) and section 2 of the Commission's Rules.

F. Proper Procedures for Collecting Qualifying Contributions

To qualify for MCEA funding, a gubernatorial candidate is required to collect 3,250 qualifying contributions of \$5 from registered Maine voters, among other requirements. The contribution of \$5 is designed to signal the contributor's personal support for the candidate. By collecting 3,250 qualifying contributions, a candidate for Governor demonstrates a high threshold of support to merit public campaign funding.

In order to make a valid qualifying contribution, a voter must sign a Receipt and Acknowledgement ("R&A") Form, by which the voter affirms that he or she has made a donation. The contributor's written affirmation is an important part of the process, because it is the primary proof received by the State of Maine that the contributor

- voluntarily gave \$5,
- from their personal funds,
- to support the candidate,
- without receiving something of value in exchange.

If the contribution was collected by a campaign worker (*i.e.*, someone other than the candidate), the form requires the campaign worker to sign the "circulator" section of the form in which the worker affirms that "I collected the qualifying contribution" and "the contribution came from the personal funds of the contributor"¹ The Commission

¹ For purposes of this determination, the campaign worker who signed the R&A form is referred to as the "circulator," even though "solicitor" or "fundraiser" may be a more appropriate term. The two key roles of the circulator are (1) to collect the contribution and (2) to verify that the contributor affirmed the contribution with a signature on the R&A form.

staff amended the R&A form in 2007 to include this circulator statement, after having discovered that campaign workers for a 2006 gubernatorial candidate had falsified receipt of qualifying contributions.

III. Factual Findings

All seed money contributions submitted by the campaign were found to be in order. Our routine review of your qualifying contributions raised concerns about the authenticity of some of the qualifying contributions, which prompted the need for further inquiry. During the review process, the Commission staff attempted to contact individuals listed on your R&A forms to verify that affirmations made on these forms are accurate. We made contacts through:

- telephone calls,
- a mailing on Wednesday, April 14, and
- visits to contributors in Fort Kent and Pleasant Point by two law enforcement officers.

Our investigation revealed the following:

A. Falsifying Qualifying Contributions

The campaign submitted R&A forms signed by a circulator in Fort Kent, listing 155 qualifying contributions. We were able to contact 66 individuals who were approached by this circulator on behalf of your campaign. Many said that they signed the R&A form, but did not make a \$5 qualifying contribution. Several expressly declined to make a contribution, while others said they could not afford to or had no cash available to make a contribution. Some of the individuals stated that the circulator offered to put in the \$5 for the contribution. Others stated that the circulator never asked for a contribution. In total, 28 said that they did not make a contribution, and 35 said that they did make a contribution. (The responses for three interviews were inconclusive.) This circulator was paid by the campaign for "campaign field work." It is unclear whether

those funds were used to pay the face value of money orders submitted with these R&A forms.

The campaign submitted 34 qualifying contributions on R&A forms signed by another circulator in Perry. Of the thirty-four individuals listed on the R&A forms, the Commission staff or investigators were able to contact 17 to verify whether they made the contribution. Eight individuals said they did not make a \$5 contribution, while nine said they did. All of the individuals who stated they did not make a contribution also stated that they were not asked to make one.

In a subsequent telephone interview with Commission staff, the circulator admitted that someone else approached 15 of the people listed on these R&A forms, and that these 15 people were not asked to make a contribution initially. Although the circulator claimed to have revisited the listed donors to collect the contributions later, the circulator admitted not receiving any contributions during the qualifying period from five of the individuals listed on the R&A forms that were submitted by the campaign. She allowed the forms to be submitted to our office on April 1 even though she admits that five of the people listed had not contributed at that time.

A resident of Topsham informed the Commission staff that she was approached by a third circulator to collect a qualifying contribution for the campaign. The Topsham resident signed the R&A form as requested but did not give a qualifying contribution from her personal funds. Instead, she stated that the circulator provided the money for the contribution. The campaign submitted R&A forms signed by this circulator listing a total of 21 individuals as qualifying contributors.

Based on the above information, the Commission staff cannot rely on the affirmation statements on the R&A forms signed by these circulators that the contributors listed on the forms indeed did contribute \$5 of their personal funds on your behalf. Accordingly, the only contributions accepted on these circulators' forms are those confirmed independently to the Commission by the individual contributors.

The Commission staff was also contacted by an employee of a company in southern Maine, who was approached by representatives of your campaign when gathering in the parking lot outside his place of employment with fellow employees. He

stated that he was told by “Richardson people” that if an employee wished to support your campaign, one of the company owners would pay the \$5 for the contribution. He signed an R&A form and a money order but did not contribute any of his personal funds. The R&A form listing this individual was signed by a fourth circulator for the campaign.

The Commission staff finds that each of the circulators described above obtained signatures from voters on R&A forms when those individuals did not give \$5 qualifying contributions.

B. Submitting Documents Containing Material False Statements

The campaign submitted R&A forms signed by the circulators described above in which those circulators falsely stated on the forms that they had received contributions from the personal funds of voters, when in fact they had received no such funds. The staff’s investigation did not reveal any indication that the candidate himself made false statements in documents submitted to the Commission. The number of contributions involved is significant, particularly given the small number of qualifying contributions above the statutory minimum on the forms submitted by the campaign. Moreover, the false statements in these R&A forms are material in that: 1) they address a key requirement for certification under the statute – proof that \$5 contributions were made by individuals listed from their own personal funds in support of the named candidate – and 2) the forms were submitted with the intent that the Commission would rely upon the statements as proof that these were valid qualifying contributions under 21-A M.R.S.A. § 1125(5)(B), qualifying the candidate to receive MCEA funds.

By signing the circulator statement on the R&A form, the person signing:

affirm[s] that: (1) I collected the qualifying contributions, (2) the contributor signed this form in my presence, (3) to the best of my knowledge and belief, the signature is the signature of the person whose name it purports to be, (4) the contribution came from the personal funds of the contributor, (5) I did not give anything of value to the contributor in exchange for their contribution and signature, and (6) I did not represent the purpose of collecting the contributions and signatures to be for any purpose other than obtaining public funds to finance the candidate’s campaign.

In interviews with contributors, the Commission staff learned that several of them were approached, not by the individual who signed the above statement as circulator, but by another individual who asked them to sign the R&A form and money order. Thus, the person who signed did not personally receive the contribution:

- A contributor in Hallowell identified the name of a particular person who solicited their contribution, but a different person signed the R&A form as the circulator. This was the fourth circulator referenced above.
- In an interview with Commission staff, a resident of Brunswick said that he collected ten qualifying contributions listed on three R&A forms, yet the circulator's signature on those forms was not that of the Brunswick resident but rather was the same circulator who collected the contribution of the Topsham resident mentioned above.
- The circulator in Perry signed two R&A forms which she later admitted were circulated by another individual. The actual circulator for these two forms contacted 15 contributors.

The circulators' statements on these R&A forms are material false statements, since they were submitted with the intent that the Commission would rely on them as proof that these were valid qualifying contributions. The individual contributions referenced here have not been rejected by the staff based on the circulator's false statement.

Nevertheless, the submission of these R&A forms by campaign workers who did not collect all the signatures on the forms supports the staff finding that the campaign submitted documents with the material false statements, which constitutes a separate ground for denial.

C. Possible Falsification of Signatures

(1) On money orders

Evidence obtained in this investigation strongly suggests that one of the above circulators signed the names of Maine voters on money orders intending them to be accepted by the Commission as genuine. Several voters reported during interviews that they did not sign a money order, and, when shown the money orders, stated that the signatures appearing on them were not theirs.

(2) On R&A Forms

The Commission staff found a number of signatures of voters on R&A forms which do not seem to match the signatures of the individuals on voter registration cards:

- The purported signatures of a resident of Mt. Desert on an R&A form and money order are completely different than the individual's actual signature on the voter registration card from five years ago. The circulator signing that R&A form is the same one who signed the form for the company employee in the situation described above.
- The signatures of a Berwick resident on an R&A form and money order are consistent, but they differ significantly from her actual signature as it appears on her voter registration card and the R&A form for another candidate, Rep. Richard Burns. The staff's conclusion is that the signature on Richard Burns' form is authentic, while the one on your form is not. We have rejected this contribution.
- The marks that a Biddeford resident purportedly made on the R&A form and money order look nothing like the voter's actual signature on the voter registration card. It is possible that the individual wrote his initials on the R&A form, so we have put this signature in a "questionable" category. This

contribution was collected one week before the close of the qualifying period by the same circulator who signed the form for the company employee described above.

- The signature of a 22-year-old North Yarmouth resident on an R&A form is different than the signature on that voter's registration card. We marked this contribution as questionable, because the signature on the voter registration card is unclear.

D. Summary of Findings re: Number of Valid Qualifying Contributions

Based on the above findings, the Commission staff cannot conclude that the campaign submitted the required number of valid qualifying contributions. As summarized in the table on the next page, the staff has accepted 3,168 of the qualifying contributions submitted by the campaign, although further investigation might reveal that more of these are invalid. The staff is declining to accept any contributions collected by the circulators found to have made false statements unless we received a specific confirmation from the contributor that they made a contribution from their personal funds.

Total of all names in alphabetical lists submitted by campaign	3,597
Duplicate contributors/entries	65
Rejected as invalid	210
Signature on form does not match contributor's voter record	7
Signatures collected by 3 circulators found to have made false statements (where contributions were neither confirmed nor denied by the voter)	115
Pending ² (not counted due to deficiencies that the campaign was authorized to correct after April 1 but has not corrected to date)	32
Accepted (as of the date of this determination)	3,168

IV. Conclusions by Commission Staff

An important duty of the Ethics Commission is to assure the integrity of the MCEA program. To advance this goal, the Commission should insist on fair but high standards for publicly financed candidates. This is particularly important in deciding whether a gubernatorial candidate is qualified to receive public campaign financing. In the 2010 gubernatorial election, an MCEA candidate could receive as much as \$1.8 million in public funds. In this context, the Commission staff cannot accept contributions collected by circulators who engaged in unacceptable activities such as falsifying qualifying contributions and forging signatures on money orders.

Candidates for Governor seeking public funding must be held to the standard of organizing their campaigns in such a way that grass-roots level workers – whether paid or

² "Pending" status applies to contributions for which the campaign was given an extension of time by staff after the deadline to cure certain defects, such as obtaining written confirmation from a contributor that he or she used a business account for personal purposes, unsigned money orders, or incompletely written checks. These 35 contributions have not been corrected as of the date of the staff's decision.

volunteer – are following the procedures spelled out in law to qualify the candidate for public funding. Establishing an effective campaign structure to ensure compliance is a reasonable standard to hold any candidate seeking public funding to become the chief executive officer of the State of Maine.

The staff has found that, because it cannot accept the qualifying contributions collected by circulators who made false statements, it is unable to determine that the campaign collected 3,250 valid qualifying contributions. In addition, because of the extent of the violations discovered, the Commission staff is concerned that more qualifying contributions submitted by the campaign may not actually be valid.

It is the campaign's responsibility to get the message to its staff and volunteers that they must follow the law and adhere to correct procedures in qualifying the candidate to receive public funds. If the behavior cited above was replicated by five or ten other volunteers, there could be dozens of other contributions in the campaign's submissions that are not genuine. Regardless whether circulators acted carelessly or knowingly, if Maine voters signed the R&A forms without giving \$5, those "contributions" should not count toward the 3,250 requirement. Based on the above findings, the Commission staff cannot conclude that the candidate has "submitted the appropriate number [3,250] of valid qualifying contributions," pursuant to 21-A M.R.S.A. § 1125(5)(B).

Moreover, the staff concludes that material false statements were made in certain R&A forms and money orders submitted as part of your request for certification, and the violations described herein (including collecting signatures from voters on R&A forms without collecting qualifying contributions of \$5 in personal funds of those voters; contributing the \$5 or allowing others to contribute \$5 on behalf of individual voters; signing voters' names to money orders; and circulators signing forms that they did not circulate) constitute substantial violations of the Maine Clean Election Act. These are separate grounds for denial under 21-A M.R.S.A. §§ 1125(5)(D-1) and (D-3).

For all of these reasons, the staff of the Ethics Commission is denying your application for certification as a MCEA candidate.

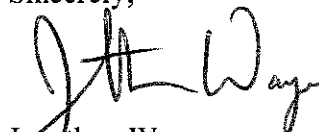
V. Your Right to Appeal

You have a right to appeal the staff determination to the members of the Commission, pursuant to 21-A M.R.S.A. § 1125(14). If you wish to do so, please submit the appeal in writing addressed to:

Walter F. McKee, Chair
Maine Ethics Commission
135 SHS
Augusta, ME 04333

The Commission is required to hold a hearing to consider the appeal within five calendar days of receiving the appeal. The hearing would be held in accordance with the State Administrative Procedure Act (5 M.R.S.A. §§ 8001-11008). You would have the burden of proving that the staff's decision was in error as a matter of law or was based on factual error. The Commission must rule on the appeal with five business days after the hearing. Please call the Commission's Counsel, Assistant Attorney General Phyllis Gardiner, if you have questions about the appeal process or the scheduling of an appeal hearing.

Sincerely,



Jonathan Wayne
Executive Director