



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

May 16, 2012

By E-Mail and Regular Mail

Mr. Michael G. Hein
43B Green Street
Augusta, Maine 04330

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

Dear Mr. Hein:

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. As a candidate for the Maine House of Representatives, District 57, you were required to demonstrate a threshold of support in your legislative district by collecting at least 60 qualifying contributions of \$5 or more.

As described below, the Commission staff and detectives of the Office of the Maine Attorney General interviewed some of the individuals who signed the Receipt & Acknowledgement (R&A) forms that you submitted to our office. The R&A form is intended to be a written acknowledgement by the individuals signing the form that they used personal funds to make a contribution in support of your qualification to receive public campaign funds. The interviews show that, at your suggestion and request, at least 13 individuals signed R&A forms as "contributors" even though they had not made a qualifying contribution. Therefore, the Commission staff has determined that you did not collect the required 60 qualifying contributions.

In addition, you encouraged these 13 individuals to make false acknowledgements on the forms by signing their names, and you later submitted the forms containing the

false statements to the Commission as part of your request for MCEA funding. The submission of fraudulent qualifying contributions, in itself, is a sufficient reason to make you ineligible to receive MCEA funding in the 2012 elections.

Therefore, the Commission staff is denying your request for MCEA funding on the grounds set forth in 21-A M.R.S.A. §§ 1125(B) and (D-5), as described below. Your opportunity to appeal is discussed in section V 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 no later than 5 business days after the end of the qualifying period;
- 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;

D-5. Not submitted any fraudulent qualifying contributions or any falsified acknowledgement forms for qualifying contributions or seed money contributions; 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)) Thus, under paragraph 7(D), the contributions must be made from the donor's personal funds and the donor must acknowledge that the contribution was made with their personal funds.

C. Requirement to Collect 60 Qualifying Contributions

A 2012 candidate for the Maine House of Representatives must collect at least 60 qualifying contributions supporting his or her candidacy. (21-A M.R.S.A. § 1125(3)(C))

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 legislative candidates, the qualifying period ends at 5:00 p.m. on April 20th 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 2(4) and Chapter 3, Section 3(1) of the Commission's Rules.

F. Required Acknowledgement by the Donor

To qualify for MCEA funding, a candidate for the Maine House of Representatives is required to collect 60 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 60 qualifying contributions, a legislative candidate demonstrates that he or she has a threshold of support within the district to merit receiving public campaign funds.

In order to make a valid qualifying contribution, a voter must sign an R&A form, by which the voter acknowledges that he or she has made a donation. The contributor's

written acknowledgement 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.

III. Factual Findings

You submitted your request for MCEA funding on April 18, 2012, two days before the deadline. Your alphabetical list of donors contained the names of 67 individuals whom you claimed provided qualifying contributions. Your qualifying contributions indicated that you had received 35 contributions in cash, and a total of 32 contributions by check or electronically on the Commission's website. You were the person who circulated all of the R&A forms that you submitted.

During our consideration of your request for MCEA funding, the Commission staff attempted to contact a sampling of individuals listed on your R&A forms to verify that the people who signed the forms had, in fact, made contributions of cash in support of your campaign. We made these contacts because a member of the public telephoned our office to ask about the proper procedures for a candidate to collect qualifying contributions. This individual said that you had asked them to sign an R&A form, but that you indicated you did not need to collect any money. This individual did not sign an R&A form.

The Commission staff made the contacts through telephone calls and two mailings on April 21 and 27. Some of the individuals verified that the information contained in the R&A forms was correct, but we found six individuals who stated that they did not make a contribution. After consultation with the Attorney General's Office, detectives were assigned to interview individuals who had signed your R&A forms. The Commission staff deferred making a final determination in order to receive the results of these interviews from the Attorney General's Office. On May 15, 2012, we received

written reports of the interviews, which will be conveyed to you separately since they are not public documents.

A. Failure to Collect 60 Qualifying Contributions

The interviews of individuals who signed the R&A forms disclosed at least 13 instances in which you suggested that individuals sign the R&A forms, even though they had not made a qualifying contribution. The interviews disclose that at least three individuals signing the form offered to make a contribution (or inquired whether they needed to make a contribution), but you declined. In at least three instances, you encouraged the individuals to give the money to their church, which some did. Four of the individuals interviewed stated that you did not ask for a contribution.

In the qualifying papers that you submitted on April 18, you claimed that you had received qualifying contributions from 67 individuals. The interviews conducted by the Commission staff and the Attorney General's Office found 13 people who stated that they did not make a contribution from their personal funds. Accordingly, the Commission staff has determined that you did not submit the minimum number of 60 qualifying contributions required by 21-A M.R.S.A. § 1125(5)(B).

B. Fraudulent Qualifying Contributions and False Information in Receipt and Acknowledgement Forms

In order to grant your request for MCEA funding, the Commission staff would need to certify you have "[n]ot submitted any fraudulent qualifying contributions or any falsified acknowledgement forms for qualifying contributions" (21-A M.R.S.A. § 1125(5)(D-5)) The Commission staff cannot make this certification because you

- asked at least 13 members of the public to sign R&A forms that falsely acknowledged that they had made qualifying contributions; and
- submitted these R&A forms to our office, knowing that you had not actually collected qualifying contributions from these people.

This conduct constitutes the submission of fraudulent qualifying contributions and falsified acknowledgement forms to the Commission. For this reason, the Commission staff cannot certify that you have met the requirements in 21-A M.R.S.A. § 1125(5)(D-5).

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 insists on fair but high standards for publicly financed candidates. The Commission should pay public campaign funds only to those candidates who have qualified in accordance with the program's requirements.

The chief requirement for a legislative candidate to receive MCEA funding is to collect the required number of qualifying contributions as a demonstration of public support within the district. The signatures on the R&A forms are not merely signs of general support for the candidate's campaign. Rather, they are intended to be proof that the individuals actually made the contributions from their personal funds and did not receive anything of value in return.

At a meeting with you in the Commission's office on May 4, 2012, Candidate Registrar Matthew Marett and I explained that the Commission staff had reason to doubt that you had collected \$5 from all of the individuals who signed the R&A forms. Given an opportunity at that meeting, you did not confirm that you had collected a \$5 contribution from every individual who signed the R&A forms. You indicated that some people you approached did not have the personal means to make a \$5 contribution. The proper procedure in those situations would have been to seek qualifying contributions from other registered voters in your district. The results of the interviews indicate that in some cases a contribution was offered but you declined to accept it, and that in some instances you did not ask for a contribution.

The "contributions" by Maine voters who signed the R&A forms without giving \$5 cannot be counted toward the minimum requirement of 60 valid qualifying contributions. Based on the above findings, the Commission staff has concluded that you

did not submit the minimum number (60) of valid qualifying contributions required by 21-A M.R.S.A. § 1125(5)(B).

Moreover, the staff concludes that you asked at least 13 Maine voters in your district to falsely acknowledge in R&A forms that they contributed to your campaign and you submitted those forms to our office in order to qualify for public funding. Therefore, we cannot certify that you have “[n]ot submitted any fraudulent qualifying contributions or any falsified acknowledgement forms for qualifying contributions ...” (21-A M.R.S.A. § 1125(5)(D-3)) This is a *separate ground* for denying your request for MCEA funding. Even if we could determine that you had collected 60 valid qualifying contributions (which you did not, as noted in the above findings), we would be required to deny your request for funding because of the false statements included in forms you submitted to the Commission.

V. Your Right to Appeal

You have a right to appeal the staff determination to the full 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

You must submit the written appeal within seven days of this determination and include the reasons for the appeal. The Commission is required to hold an adjudicatory hearing to consider the appeal within five calendar days of receiving it, unless that time period is extended in accordance with the provisions of 21-A M.R.S.A. § 1125(14). If you decide to appeal, it may be practical for the Commission to hold the appeal hearing at its previously scheduled meeting on May 30, 2012. 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 within five

Hon. Michael G. Hein
Page 9
May 16, 2012

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,

A handwritten signature in black ink, appearing to read "Jonathan Wayne". The signature is fluid and cursive, with the first name "Jonathan" being more prominent than the last name "Wayne".

Jonathan Wayne
Executive Director

cc: Assistant Attorney General Phyllis Gardiner