



## MEMORANDUM

To: Commission  
From: Jonathan Wayne, Executive Director  
Date: May 29, 2019  
Subject: Update – Financial Reporting by Janet T. Mills Inaugural Committee

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This memo is to provide you with an update on the financial reporting and fundraising conducted by the transition and inaugural committees of Governor Janet T. Mills. Additional relevant information is available in the attached May 17, 2019 letter from the attorney for the committees, Michael E. Carey.

As part of a 2015 citizen initiative, Maine voters approved a new statute that was intended to provide greater transparency to the financial activities of an incoming gubernatorial administration. Gov. Mill's transition and inaugural committees have fully met the requirements of the 2015 law, except that her inaugural committee has needed to continue fundraising to pay a debt to the Augusta Civic Center that was larger than expected. This memo describes the new transparency law, the registrations and financial statements filed by the committees, and our statutory suggestions to make the law more flexible for future governors-elect – if you believe it would be appropriate for the Commission to make such a proposal to the Legislature.

### **Key elements of new transition/inaugural committee law**

Under the new transparency law for transition/inaugural committees (1 M.R.S. § 1051, attached):

- A transition/inaugural committee must appoint a treasurer, and file a registration with the Commission that identifies key personnel in the committee.

(§ 1051(3)(A))

- Each transition/inaugural committee is required to file two financial disclosure statements (similar to campaign finance reports), which are due on the January 1<sup>st</sup> and February 15<sup>th</sup> after the general election.<sup>1</sup> (§ 1051(3)(E))
- All funds received by the transition/inaugural committee must be deposited into a separate bank account. (§ 1051(2)) The committee may accept donations until January 31<sup>st</sup> after the general election. (§ 1051(4))
- There is no limitation on the amount that an individual or organization may donate to a transition/inaugural committee. The new statute does not restrict the sources of donations to a transition/inaugural committee, except that when the Legislature is in session, the committee may not accept a donation from a lobbyist or an organization that has hired a lobbyist.<sup>2</sup> (§ 1051(5)) This is the same session ban that applies to campaign contributions from lobbyists and their clients to Legislators, constitutional officers, the Governor, and members of their staffs.

### **Gov. Mills's transition and inaugural committees**

Soon after the November 8, 2018 general election, the Commission staff was contacted by Michael E. Carey, Esq., on behalf of the team of people assisting Governor-Elect Mills in planning her transition and inauguration. Earlier in the year, Mr. Carey was in regular contact with our office on behalf of Janet Mill's political campaign.

Mr. Carey had questions about a number of registration and reporting requirements in 1 M.R.S. § 1051. These questions were mostly handled by Candidate Registrar Emma Burke, in consultation with Assistant Director Paul Lavin and me. For your information, the Commission staff's responses were summarized in a December 14, 2018 letter from me to Mr. Carey (attached).

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<sup>1</sup> Because January 1, 2019 was a state holiday, the Commission authorized the committees to file their first report on January 2, 2019, pursuant to 1 M.R.S. § 71(13).

<sup>2</sup> The First Regular Session of the 129<sup>th</sup> Legislature began on December 5, 2018. An individual is required to register as a lobbyist once they have lobbied for a paying client for more than eight hours in a calendar month. Thus, a lobbyist can register for a client in December, January, February or even later in the session.

Governor-Elect Mills chose to establish two committees: one for her transition to office and one related to the inauguration and inaugural celebration. One rationale for forming two committees was to segregate donations from lobbyists and the interest groups that hire them from the effort to form a new administration. The organization of these two committees is discussed on page 2 of Mr. Carey’s May 17 letter.

The transition and inaugural committees registered with the Commission on December 6, 2018. They filed financial disclosure statements on January 2 and February 15, 2019, and later amended some of them. All of the registrations and statements are available for the public to access at the Commission’s website:

<https://www.maine.gov/ethics/MillsTransition.html>. To provide you with a sense of the scale of the financial activity, this chart summarizes the cash receipts of the committees:

	<b>Cash received by Inaugural Committee</b>	<b>Cash received by Transition Committee</b>
Report due 1/2/2019	\$267,640	\$25,769
Report due 2/15/2019	\$117,475	\$16,561
Report filed 5/1/2019	\$2,545	n/a
<b>Total</b>	<b>\$387,660</b>	<b>\$42,330</b>

**Debt to Augusta Civic Center**

At some point in late January 2019, Mr. Carey informed Candidate Registrar Emma Burke that the Augusta Civic Center had presented the inaugural committee with an invoice that was significantly higher than the amount originally quoted. When we met with him on February 7, 2019, Mr. Carey said that the committee was considering options for how to retire this debt, in light of the January 31<sup>st</sup> fundraising limitation in 1 M.R.S. § 1051(4).

As documented in a February 13 letter (attached), I advised Mr. Carey:

- The decision how to proceed was ultimately a choice for the inaugural committee, not the Commission.
- 1 M.R.S. § 1051 allows a transition/inaugural committee to accept contributions until January 31<sup>st</sup> and no later.

- The statute does not authorize the Commission or its staff to grant a waiver or exception of the January 31<sup>st</sup> limitation.
- Nevertheless, since the inaugural committee cannot ignore its contractual obligation to the Augusta Civic Center, the Commission staff believed that the most practical course of action was to continue raising funds beyond the January 31<sup>st</sup> limitation. We clarified that this guidance was on behalf of the Commission staff and would not be binding on the Commission, which could have a different viewpoint.

We requested that the inaugural committee file a May 1, 2019 disclosure statement, which the committee has done.

In his May 17, 2019 letter, Mr. Carey provided an update on this issue. The inaugural committee has paid \$75,000 on the \$195,000 invoice from the Augusta Civic Center. In addition, the committee currently has \$53,000 on hand that will be used to further reduce the remaining debt. According to my calculation, if the inaugural committee uses the cash on hand for that purpose, the remaining debt on the invoice would be roughly \$67,000 (around one-third of the invoice amount). Mr. Carey will attend the June 4, 2019 meeting to answer any questions that you have.

As a matter of public policy, the Commission staff views 1 M.R.S. § 1051 as a step forward in transparency in government. Nevertheless, based on our experience regulating candidate campaigns, we see the January 31 fundraising cut-off and final disclosure deadline of February 15 as too early and will be impractical in some cases. Even if most vendors promptly provide invoices in predictable amounts to candidates and political organizations, we regularly hear of situations in which it has taken weeks for a vendor to provide a final invoice or sometimes – due to a miscommunication or mistake – the amount of an invoice varies significantly from what the candidate or political organization expected.

While transparency and limiting donor influence are valuable public policy goals, the regulation of political finances should not become so restrictive that a candidate or political organization cannot engage in the activities necessary to organize a successful campaign or inauguration. The law should recognize that unforeseen complications can arise and a candidate or political organization may sometimes need more time to wind up their affairs. Even a candidate for county or legislative office has the flexibility under the Election Law to file a semiannual finance report (by the July 15<sup>th</sup> after the general election) if they need time to retire a debt. We have prepared a preliminary amendment of 1 M.R.S. § 1051 (attached for your reference) intended to provide an incoming administration with a little more flexibility in paying for transition/inaugural activities, if you are open to considering the amendment at a future meeting for possible submission to the Legislature.

The Commission staff does not recommend taking any enforcement action concerning this matter. Based on our interactions with the inaugural committee (through Mr. Carey), our perception is that the committee fully intended on complying with all aspects of 1 M.R.S. § 1051 and had an expected budget for the inaugural event but was caught off-guard by unexpected circumstances. We have seen no evidence that the committee has any intention to disregard or circumvent the law. In fact, the committee, through Mr. Carey, sought the advice of the Commission staff and kept the staff apprised of the committee's circumstances since these issues first came to light.

We see little deterrent value in taking any enforcement action, because we view 1 M.R.S. § 1051 as a well-intentioned but restrictive statute that applies to exactly one political committee. When the next inaugural committee is winding up its affairs (in four or eight years), we are hopeful that the statute might be more flexible.

Thank you for your consideration of this memo.

**BRANN & ISAACSON**  
**ATTORNEYS AND COUNSELORS AT LAW**

MICHAEL E. CAREY | Associate  
mcarey@brannlaw.com

May 17, 2019

State of Maine  
Commission On Governmental Ethics And Election Practices  
135 State House Station  
Augusta, ME 04333-0135

RE: Mills Inaugural Committee Fundraising

Commissioners:

Executive Director Jonathan Wayne wrote me, in my capacity as counsel to the Mills Inaugural Committee, to convey your request that the Committee provide information about funds due to the Augusta Civic Center and any fundraising that has been conducted after January 31<sup>st</sup> or is anticipated in the future. We are submitting this letter to comply with that request, and I plan to attend your June 4, 2019 meeting to answer any questions you may have. Thank you for providing that opportunity.

By way of background, as 11 o'clock approached on election night, it became increasingly clear that Attorney General Mills would win the 2018 Maine gubernatorial election. On Wednesday morning, the Attorney General immediately assumed her role as Governor-Elect and began forming a new administration.

Most of the energy and attention that had previously been devoted to winning the campaign now shifted to preparing to govern. A group of volunteer, subject-matter experts began working, at the Governor-Elect's direction, with members of the outgoing administration to prepare the necessary biennial budget. Meanwhile, the Governor-Elect called together a separate group of volunteers (the "Transition Committee") to begin the process of vetting and appointing candidates for cabinet positions, by managing the suggestions and applications that immediately began to arrive, soliciting candidates that matched the Governor-Elect's policy goals, processing applications and conducting interviews. The Transition Committee created this complex process from scratch, and operated through both paid staff and committed volunteers from across Maine.

While the Governor-Elect and incoming Chief-of-Staff Jeremy Kennedy drove the preparations for the new administration, paid staff and volunteers organized the official inauguration and the inaugural ball. Mr. Kennedy is the sole member of the Inaugural Committee and exercised primary budget authority and oversight. The two people who held fundraising and campaign finance compliance responsibilities for the Mills for Governor campaign were the

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Inaugural Committee's fundraisers and also responsible for its compliance with 1 M.R.S. § 1051. Two contractors made all operational decisions for the inauguration and inaugural ball. They were supported by twelve devoted and capable volunteers, some of whom devoted full work weeks to the inaugural work for the 6 weeks before the inauguration, which included the Christmas and New Year's Holidays (for ease of reference I will refer to the contractors and volunteers as "Event Organizers"). The Event Organizers divided the organizing work into general functional areas and the responsible person, whether paid or volunteer, liaised directly with the event vendors, including Augusta Civic Center personnel, to accomplish their task. The Event Organizers were supported in many critical ways by a separate volunteer committee.

Meanwhile, the Mills for Governor campaign began raising a significant amount of money to pay off campaign debt that had been accrued through election day.

### **Constitutional Requirements And Legislative Appropriations**

The Constitution provides that a Governor's term begins the first Wednesday after the first Tuesday of January next following the election. Me. Const. art. V, Pt. 1, § 2. It further provides that on that day, the Secretary of State shall lay the lists returned to the Secretary's office before the Senate and House of Representatives for examination, and they shall determine the number of votes duly cast for the office of Governor. Me. Const. art. V, Pt. 1, § 3. The Legislature made no appropriation for the inauguration, as has been the custom. The Legislature allocated \$5,000 for the Governor-Elect's transition. The State of Maine also provided the Governor-Elect's transition team with a room in the basement of the Cross Office Building.

### **1 M.R.S. § 1051**

#### **Financial Transparency Of a New Governor's Transition to Office and Inauguration**

In 2015, the people enacted 1 M.R.S. § 1051 by referendum, which requires the financial disclosure of donations and payments related to the transition to office and inauguration of a new Governor. This was the first Governor-Elect's transition and inauguration subject to the new law.

The people's purpose was clear—the financing of a new Governor's transition to office and inauguration must be transparent. The Governor-Elect determined to go beyond the law's requirements and to separate the financing of the transition activities from the financing of the inaugural activities, and to ensure that the transition activities—the work of preparing to govern—were not funded by donations from registered lobbyists or their employers. She directed the creation of a separate Transition Committee in order to comply with the people's will and the spirit of the new law.

And yet, as the statute was put into practice for the first time, 1 M.R.S. § 1051 appeared to contain ambiguities and generalities that in many ways made its practical application unclear. By statute, the Commission on Governmental Ethics and Election Practices was authorized to promulgate rules to detail the forms and procedures for ensuring compliance. The Commission

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has not yet promulgated rules. In order to comply with statute's provisions, I consulted with the Ethics Commission staff ("Staff") on multiple occasions, beginning two days after election day, to ensure that the Mills Transition and Inaugural Committees had every guidance then available, and that the Staff understood the Committees' plans.

### **Mills Inaugural Committee and Augusta Civic Center Invoice**

The Inaugural Committee's budget included the amount of \$132,000 for the use of Civic Center for the official inauguration and the inaugural ball, which aligned with the amount of the initial Civic Center invoice received. The Committee did not receive another preliminary invoice or other official estimate of the total charge before the final invoice. Yet, the Civic Center line item totals and item counts changed as the two events took shape. Those changes were not transmitted back to those responsible for fundraising and compliance or to Mr. Kennedy. The next Civic Center invoice was the final invoice sent on January 15, 2019 in an amount that was \$62,902 higher than the preliminary invoice on which the budget was based. This final invoice included a 20 percent food and beverage charge, in the amount of \$26,421, which was not included on the initial invoice.

Around January 15<sup>th</sup>, the person primarily responsible for fundraising was experiencing urgent and immediate personal issues that entirely removed the person's attention from Inaugural Committee tasks. It was only on January 25, 2019 that Mr. Kennedy and I became aware of the amount of the invoice and the existence of the budget discrepancy. That very day, I met with Staff to notify them of the issue. The Committee was required by 1 M.R.S. § 1051(4) to cease fundraising by January 31<sup>st</sup>. The other fundraiser worked valiantly in the remaining week, from Israel on account of a pre-planned trip, but was unable to materially affect the balance in such a short timeframe. After January 31<sup>st</sup>, I again met with Staff to seek guidance regarding how the Committee could meet its obligation to the Civic Center.

Since then, based on Staff guidance, the Inaugural Committee has continued fundraising. However, most of its activity to date has been administrative in nature. The Committee and the campaign have transferred primary responsibility for fundraising and administrative decision-making to Megan-Gean Gendron. Megan focused first on transferring records and learning the information systems and ensuring her authority to act on behalf of the entities.

A Governor's inauguration is a Constitutionally prescribed transfer of power. Maine's practice has been to vest the incoming Governor, or her supporters, with the responsibility of funding the ceremony. This year, for the first time, 1 M.R.S. § 1051 specified how fundraising shall be done. Less than two days after Governor Mills won the election, the Mills Inaugural Committee initiated a detailed conversation with Ethics Commission Staff to ensure that it met the requirements of the statute. Indeed, the Governor-Elect directed her staff and supporters to go beyond the law's requirements to meet the peoples' expectations of transparency and good government; she directed us to separate the funding of the transition to power and the development



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of the new administration's first budget and policy from fundraising from members of the lobby and their employers. Throughout this process, the Mills Inaugural Committee repeatedly sought, in good faith, guidance from Ethics Commission Staff.

The committee has made progress in resolving the debt. To date, it has paid \$75,000 of the originally outstanding \$195,000 and the committee has on hand nearly \$53,000 that will be used to further reduce the remaining amount. The committee will work vigorously to continue to pay off the debt in the coming months.

Very truly yours,

BRANN & ISAACSON



Michael E Carey

MEC/clm

## **1 M.R.S. § 1051. GUBERNATORIAL TRANSITION COMMITTEE**

**1. Definitions.** As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

- A. "Commission" means the Commission on Governmental Ethics and Election Practices. [2015, c. 1, §1 (NEW).]
- B. "Election cycle" means the period beginning on the day after the general election for any state, county or municipal office and ending on the day of the next general election for that office. [2015, c. 1, §1 (NEW).]

**2. Transition and inaugural activities; funding.** A person may solicit and accept donations for the purpose of financing costs related to the transition to office and inauguration of a new Governor. A person who accepts donations for these purposes must establish a committee and appoint a treasurer who is responsible for keeping records of donations and for filing a financial disclosure statement required by this section. All donations received must be deposited in a separate and segregated account and may not be commingled with any contributions received by any candidate or political committee or any personal or business funds of any person. An individual who has served as a treasurer of any candidate committee or political action committee in the same election cycle may not serve as treasurer of a gubernatorial transition committee.

**3. Registration with the commission and financial disclosure statement.** A committee established pursuant to this section shall register and file a financial disclosure statement with the commission as required by this subsection.

- A. The committee shall register with the commission within 10 days after appointment of a treasurer. The registration must include the name and mailing addresses of the members of the committee, its treasurer and all individuals who are raising funds for the committee. [2015, c. 1, §1 (NEW).]
- B. The financial disclosure statement must contain the names, addresses, occupations and employers of all donors who have given money or anything of value in a total amount exceeding \$50 to the committee, including in-kind donations of goods or services, along with the amounts and dates of the donations. Donors who have given donations with a total value of \$50 or less may be disclosed in the aggregate without itemization or other identification. [2015, c. 1, §1 (NEW).]
- C. Any outstanding loan, debt or other obligation of the committee must be disclosed as a donation. [2015, c. 1, §1 (NEW).]
- D. The financial disclosure statement must identify the amounts, dates, payees and purposes of all payments made by the committee. [2015, c. 1, §1 (NEW).]

E. An interim financial disclosure statement must be filed by 5:00 p.m. on January 1st following the gubernatorial election and must be complete as of 10 days prior to that date. The final financial disclosure statement must be filed by 5:00 p.m. on February 15th following the gubernatorial election and must be complete as of that date. [2015, c. 1, §1 (NEW).]

**4. Limitation on fund-raising activity.** A committee established pursuant to this section may accept donations until January 31st of the year following the gubernatorial election.

**5. Prohibited donations during a legislative session.** A committee established pursuant to this section may not directly or indirectly solicit or accept a donation from a lobbyist, lobbyist associate or employer during any period of time in which the Legislature is convened before final adjournment. A lobbyist, lobbyist associate or employer may not directly or indirectly give, offer or promise a donation to a committee established pursuant to this section during any period of time in which the Legislature is convened before final adjournment.

**6. Anonymous donations.** A committee established pursuant to this section may not accept an anonymous donation in excess of \$50.

**7. Disposing of surplus funds.** Prior to the filing of the final financial disclosure statement under subsection 3, paragraph E, any surplus funds remaining in the committee's account must be refunded to one or more donors, donated to a charitable organization that qualifies as a tax-exempt organization under 26 United States Code, Section 501(c)(3) or remitted to the State Treasurer.

**8. Rulemaking.** The commission may establish by routine technical rule, adopted in accordance with Title 5, chapter 375, subchapter 2-A, forms and procedures for ensuring compliance with this section.

**9. Enforcement and penalty.** The commission shall administer and enforce this subchapter. A person who violates this subchapter is subject to a civil penalty not to exceed \$10,000, payable to the State and recoverable in a civil action.



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

December 14, 2018

*By Email and Regular Mail*

Michael E. Carey, Esq.  
Janet Mills for Governor  
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Farmington, Maine 04938

**Re: Advice – Gubernatorial Transition/Inaugural Committee**

Dear Mr. Carey:

Thank you for seeking advice from the Commission on Governmental Ethics and Election Practices concerning registration and financial reporting by the transition/inaugural committee of Governor-elect Janet Mills. This letter represents a consolidation of guidance provided to you last month through a November 8, 2018 letter from Candidate Registrar Emma Burke, and various emails and telephone conversations with the Commission staff.

**Registration**

A transition/inaugural committee established pursuant to 1 M.R.S.A. § 1051 must register with the Commission. The committee must be registered with the Commission within 10 days of appointing a treasurer; a treasurer must be appointed by the Governor-elect once donations have been accepted. The statute does not specify a date range within which the treasurer must be appointed; however, the Commission staff suggests appointing the treasurer no later than 10 days after accepting donations.

The Transition/Inaugural Committee Registration form must include the names and mailing addresses of the members of the committee, the treasurer, and all individuals who are raising funds for the committee. Only individuals who are primarily responsible for decision-making and/or fundraising for the transition/inaugural committee are required to be named on the registration as committee members and/or fundraisers. The committee does not need to list anyone whose transition/inaugural activities are unrelated to soliciting, receiving or spending money. Volunteer fundraisers who are acting externally of the transition/inaugural committee are not required to be named on the registration; only those individuals who are tasked with fundraising responsibilities by the official transition/inaugural committee are required to be included on the registration. The form must be signed by the treasurer of the committee.

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Michael E. Carey, Esq.

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You informed Emma Burke that the Governor-elect was interested in forming two committees – one for the inauguration and one for transitioning state government to a new administration. In a November 16, 2018 email, I advised (after conferring with Commission Counsel) that the Commission staff believes the two-committee organization would comply with 1 M.R.S.A. § 1051, provided that the committees have separate bank accounts and each committee registers and files two disclosure statements.

### **Donations**

The transition/inaugural committee may accept donations until January 31, 2019. All funds received for purposes of the transition to office or the inauguration must be deposited into the separate bank accounts, and may not be deposited in another account containing any personal or business funds or the campaign funds of any candidate or political committee.

The statute does not restrict the sources of donations to the committee, other than lobbyists, lobbyist associates and their clients during a legislative session (discussed below). The statute also does not place a limit on the amount a person may donate to the committee. The Governor-elect may donate surplus funds from her campaign committee to the transition/inaugural committee (*see* 21-A M.R.S.A. § 1017(8)(G)).

When the Legislature is in session, the committee may not solicit or accept donations from a person who is registered as a lobbyist or lobbyist associate at the time of the solicitation or donation. The prohibition during the session also applies to a client of a registered lobbyist.

For donors who contribute a total amount in excess of \$50, the committee must record and report the donors' names and addresses, and, for individual donors, their occupations and employers. The Commission staff will be expecting the transition/inaugural committee to adhere to the same good-faith practices to request and obtain employment and occupation information as were implemented by the gubernatorial campaign. It is understood that some donors decline to disclose their employment situation to political candidates or to a Governor-elect.

The transition/inaugural committee is prohibited from accepting anonymous donations in excess of \$50. Additionally, the Commission staff would like to make the committee aware that candidates for state, county, and local offices in Maine and their committees (other than the Governor-elect) may not use surplus campaign funds to donate to the transition/inaugural committee, as such a donation is not an allowable use of surplus campaign funds under 21-A M.R.S.A. § 1017(8).

The income from sales of \$20 tickets to the inaugural event are not considered donations. Please report that income under the heading of Other Receipts on the summary page of the report, along with any food or beverage sales at the event.

### **Bank Accounts**

You advised that the bank of the transition/inaugural committees has suggested opening the committees' accounts as sub-accounts to the existing account for the Janet Mills for Governor campaign. The money in the subaccounts would not be commingled with campaign funds and each account would have a separate statement. The Commission staff believes this organization meets the requirements of 1 M.R.S.A. § 1051.

### **Paying for Transition Staff**

In a November 21, 2018 phone call with Assistant Director Paul Lavin, you explained that most members of the transition staff were formerly staff of the Janet Mills for Governor campaign. The campaign used the services of a payroll processing firm. The guidance from the Commission staff is that the transition/inaugural committees may rely on the Janet Mills for Governor campaign to process payroll for the transition/inaugural committees. The campaign would pay the transition staff from the campaign account, and the transition/inaugural committees would reimburse the campaign for all payroll costs (*e.g.*, salary, taxes, fees, payroll processing fee.) The transition/inaugural committees would include on their financial disclosure statements the amount of salary to each person, as well as taxes and fees.

### **Reporting**

Each transition/inaugural committee is required to file two financial disclosure statements (referred to below as "reports"). The first report ("Pre-Inauguration Report") is due on the January 1<sup>st</sup> after the election, and must be complete as of 10 days before that date (December 22<sup>nd</sup>). Because January 1<sup>st</sup> is a federal and state holiday, the Pre-Inauguration Report is due no later than 5:00 p.m. on January 2<sup>nd</sup> (*see* 1 M.R.S.A. § 71(13)). The reporting period for the Pre-Inauguration Report is November 7, 2018 – December 22, 2018.

The second report ("Post-Inauguration Report") is due on February 15<sup>th</sup> by 5:00 p.m., and must be complete as of that date. Therefore, the reporting period for the Post-Inauguration Report is December 23, 2018 - February 15, 2019.

As mentioned above, each transition/inaugural committee must itemize all donations from donors who have given in excess of \$50 total, disclosing the names and addresses of the donors, the type of contributor, and the occupations and employers for individual donors, as well as the dates and amounts of the donations. This is the case for both cash and in-kind donations. The committee may report donations from donors who have given \$50 or less in total as an unitemized lump sum.

Each transition/inaugural committee must also report all in-kind donations, which are donations of goods or services with a monetary value. This would include any

Michael E. Carey, Esq.

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unreimbursed payments made by the gubernatorial campaign for goods or services for the transition/inaugural committee. The reports must identify the donor information as specified above, as well as a description of the goods or services donated.

Each transition/inaugural committee must report all payments it made during the reporting period, identifying the payees, payee types, amounts, dates, and purposes of the payments. The date to be used for reporting purposes is the date the payment was made to the payee by the committee. For the Pre-Inauguration Report, the committee should not report unpaid debts or obligations. If unpaid debts and obligations remain as of February 15<sup>th</sup>, the transition/inaugural committee must report those as in-kind donations from the vendors in the committee's Post-Inauguration Report.

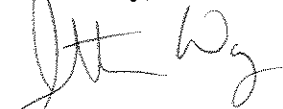
### **Errors in Reporting**

The Commission staff appreciates that fundraising for the inauguration and transition will be conducted in a short time period by multiple individuals, including volunteers who may have little supervision by the transition/inaugural committees. Given all of these factors, if the committees find that they have filed a report that contains omissions or inaccuracies, they will be able to amend the reports. We would appreciate you providing Ms. Burke with one or two days notice if the committees find that amendments are necessary.

Based on principles in Maine campaign finance law and Commission Rules,<sup>1</sup> as long each report is substantially correct the Commission staff does not intend to bring corrections or omissions to the Commission's attention for any finding of violation or consideration of late-filing penalties. If any complaint or request for investigation is filed from an outside source arguing that the reports should be viewed as late or deficient, the Commission staff intends to apply the same mitigating factors set out in 21-A M.R.S.A. § 1020-A(2) (proportionality to public harm, obstacles to complete reporting that were outside the control of the committee, *etc.*).

Please let me know if you have any questions concerning the advice letter.

Sincerely,



Jonathan Wayne  
Executive Director

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<sup>1</sup> 21-A M.R.S.A. §1020-A(2) and Commission Rules, Section 4(2)(A)



STATE OF MAINE  
COMMISSION ON GOVERNMENTAL ETHICS  
AND ELECTION PRACTICES  
135 STATE HOUSE STATION  
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February 13, 2019

*By Email and Regular Mail*

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Janet Mills for Governor  
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Farmington, Maine 04938

Dear Mr. Carey:

Thank you for meeting with the staff of the Commission on Governmental Ethics and Election Practices on February 7, 2019 concerning the plans of the Mills Inaugural Committee to complete its financial activities. We appreciate the committee's ongoing communication with the Commission staff concerning compliance with the gubernatorial transition committee law. (1 M.R.S. § 1051)

Under this law, a transition/inaugural committee:

- must file two financial disclosure statements on the January 1<sup>st</sup> and February 15<sup>th</sup> following the gubernatorial election, and
- may accept donations until January 31<sup>st</sup>.

As we discussed, this is a recent law enacted in 2015 through a citizen initiative that the Commission is administering for the first time. In the opinion of the Commission staff, some of the deadlines in the current law are unworkable – such as the final disclosure deadline of February 15<sup>th</sup> and a fundraising cut-off date (January 31) that is just a few weeks after the inaugural activities take place.

#### **Acceptance of Donations after January 31**

At our February 7, 2019 meeting, you explained that the committee was presented with an invoice from a vendor in an amount significantly higher than the cost quoted by the vendor upon engagement. Until the committee received the invoice, the committee had received no indication from the vendor that the billed amount would be higher than the quoted amount. Although the committee intends to negotiate with the vendor, it is likely the committee will be required to make expenditures that are somewhat higher than the amount of donations in the committee's budget.

The Commission staff appreciates that this unexpected development places the inaugural committee in a difficult position. Nevertheless, the gubernatorial transition committee



Michael E. Carey, Esq.  
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law states that funds may be accepted until January 31<sup>st</sup> and no later. (1 M.R.S. § 1051(4)) The Commission and its staff is not authorized by § 1051 to grant a waiver or exception to this January 31<sup>st</sup> limitation.

The decision of how to proceed belongs with the inaugural committee. The Commission staff believes that the most practical course of action is to continue raising funds beyond the January 31<sup>st</sup> limitation in order to resolve the committee's financial commitments. The staff's view and guidance on this is not binding on the Commission which may have a different viewpoint.

The Commission staff is likely to bring this matter up for discussion at an upcoming meeting of the Commission, probably on March 6 or April 30, 2019. If this matter were to be the subject of an enforcement proceeding, the Commission staff would not recommend the assessment of any civil penalty if the Commission were to find that fundraising by the committee beyond January 31 violated § 1051(4).

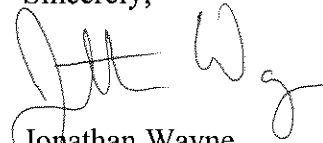
### **Financial Disclosure**

The Commission staff appreciates the inaugural committee's commitment to make full disclosure of its financial activities. Although the law contemplates that a transition/inaugural committee will file a "final" statement on February 15, the Commission staff requests that the committee file a supplemental statement on May 1, 2019. We acknowledge that one or two additional supplemental statements may be required later after May 1<sup>st</sup>, because the committee has indicated that it will have some financial activities related to payroll taxes or other administrative personnel expenses that will be concluded later in 2019.

With regard to the invoice from the vendor referred to above, the Commission staff suggests listing the amount in the Payments section of the form that the committee will file on February 15. Based on the language of 1 M.R.S. § 1051, the form for the inaugural committee's disclosure statements does not include a section for debts. Please include a notation in the Description field that the amount is not final. Please exclude this amount from the Total Payments sum, because the committee has not paid this amount.

Please contact Candidate Registrar Emma Burke or me if you have any questions.

Sincerely,



Jonathan Wayne  
Executive Director

## 21-A MRSA § 1051. GUBERNATORIAL TRANSITION COMMITTEE

**1. Definitions.** As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

A. "Commission" means the Commission on Governmental Ethics and Election Practices.

B. "Election cycle" means the period beginning on the day after the general election for any state, county or municipal office and ending on the day of the next general election for that office.

C. "Governor-elect" means the candidate for the office of Governor elected at the most recent general election.

**2. Transition and inaugural activities; funding.** A person may solicit and accept donations for the purpose of financing costs related to the transition to office and inauguration of a ~~new Governor-elect~~. A person who accepts donations for these purposes must establish a committee and appoint a treasurer who is responsible for keeping records of donations and for filing a financial disclosure statement required by this section. All donations received must be deposited in a separate and segregated account and may not be commingled with any contributions received by any candidate or political committee or any personal or business funds of any person. ~~An individual who has served as a treasurer of any candidate committee or political action committee in the same election cycle may not serve as treasurer of a gubernatorial transition committee.~~ All donations received by the committee must be used for expenses related to the transition to office or inauguration or disposed of pursuant to subsection 7.

**3. Registration with the commission and financial disclosure statement.** A committee established pursuant to this section shall register and file a financial disclosure statements with the commission as required by this subsection.

A. The committee shall register with the commission within 10 days after appointment of a treasurer. The registration must include the name and mailing addresses of the members of the committee, its treasurer and all individuals designated by the committee who are raising to raise funds for the committee.

B. ~~The f~~Financial disclosure statements must contain the names, addresses, occupations and employers of all donors who have given money or anything of value in a total amount exceeding \$50 to the committee, including in-kind donations of goods or services, along with the amounts and dates of the donations. ~~Donors who have given d~~Donations with a total value of \$50 or less may be disclosed in the aggregate without itemization or other identification.

C. ~~Any outstanding loan, debt or other obligation of the committee must be disclosed as a donation.~~ If the committee owes a debt or loan at the end of a time period for a financial disclosure statement, the committee shall report the debt or loan. If a creditor or lender forgives a debt or loan, the committee shall disclose the forgiven debt or loan as a donation.

D. ~~The final~~ Financial disclosure statements must identify include the amounts, dates, payees and purposes of all payments made by the committee during the statement period.

E. ~~An interim~~ Financial disclosure statements must be filed by 5:00 p.m. on the January 1<sup>st</sup> 2<sup>nd</sup> and February 15<sup>th</sup> following the gubernatorial election and must be complete as of 10 days prior to ~~that date~~ those filing deadlines. ~~The final financial disclosure statement must be filed by 5:00 p.m. on February 15<sup>th</sup> following the gubernatorial election and must be complete as of that date.~~ If the committee has surplus funds after the end of the statement period for the February 15<sup>th</sup> statement, the committee shall file bimonthly financial disclosure statements beginning on April 15<sup>th</sup> until it disposes of all surplus funds.

**4. Limitation on fund-raising activity.** A committee established pursuant to this section may accept donations until ~~January 31<sup>st</sup>~~ March 31<sup>st</sup> of the year following the gubernatorial election. The commission may authorize the acceptance of donations after March 31<sup>st</sup> if the committee requests such authorization in order to pay a debt or loan related to the transition to office or inauguration.

**5. Prohibited donations during a legislative session.** A committee established pursuant to this section may not directly or indirectly solicit or accept a donation from a lobbyist, lobbyist associate or employer, as defined in Title 3, chapter 15, section 312-A, during any period of time in which the Legislature is convened before final adjournment. A lobbyist, lobbyist associate or employer may not directly or indirectly give, offer or promise a donation to a committee established pursuant to this section during any period of time in which the Legislature is convened before final adjournment.

**6. Anonymous donations.** A committee established pursuant to this section may not accept an anonymous donation in excess of \$50.

**7. Disposing of surplus funds.** ~~Prior to the filing of the final financial disclosure statement under subsection 3, paragraph E,~~ Any surplus funds remaining in the committee's account must be refunded to one or more donors, donated to a charitable organization that qualifies as a tax-exempt organization under 26 United States Code, Section 501(c)(3) or remitted to the State Treasurer.

**8. Rulemaking.** The commission may establish by routine technical rule, adopted in accordance with Title 5, chapter 375, subchapter 2-A, forms and procedures for ensuring compliance with this section.

**9. Enforcement and penalty.** The commission shall administer and enforce this subchapter. A person who violates this subchapter is subject to a civil penalty not to exceed \$10,000, payable to the State and recoverable in a civil action. In assessing a civil penalty, the commission shall consider, among other things, whether the committee made a bona fide effort to comply with the requirements of this section, whether the violation occurred as the result of an error by a vendor, consultant or other party outside the control of the committee, and whether evidence is present that the committee intended to conceal or misrepresent its financial activities.