



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

December 23, 2008

Mr. John N. Frary
355 Red Schoolhouse Rd
Farmington, ME 04983

Dear Mr. Frary:

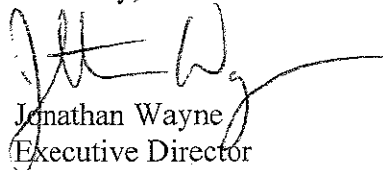
On October 30, 2008, Senator John L. Martin telephoned the office of the Maine Ethics Commission regarding a radio ad sponsored by your congressional campaign which referred to "John Martin, Mike Michaud, and John Baldacci" in connection with a message of "throw the bums out." Sen. Martin was running as an unopposed candidate for the State House of Representatives in the November 4, 2008 general election. I have attached an informal transcript of the radio advertisement, which is available on your campaign website, www.fraryforcongress.com.

Although you were a candidate in a congressional election, the advertisement appears to be covered by a presumption under 21-A M.R.S.A. § 1019-B(1)(B) that applies to advertising in the final 35 days before a general election identifying a legislative candidate. Under that provision, the cost of the radio ad would be presumed to be an independent expenditure against John Martin, and your campaign would be required (1) to file an independent expenditure report, or (2) to rebut the presumption by filing a signed written statement that your intention in making the expenditure was not to influence John Martin's election. I have attached a form which the Commission developed for rebutting the presumption.

If the cost of the ad was not incurred with the intention of influencing John Martin's election, kindly complete the form and submit it to the Commission no later than Monday, January 19. I will bring this matter to the attention of the Commission members at their meeting on Thursday, January 29, 2008 at 9:00 a.m. at the Public Utilities Hearing Room, 242 State Street, in Augusta. You, Rep. Martin, and any other interested persons would be welcome to comment on this matter at that meeting if you would like.

If you wish to discuss this request, please call me at 287-4179. I will be in the office beginning on Monday, December 29, 2008.

Sincerely,



Jonathan Wayne
Executive Director

cp
Enclosure
cc: Hon. John L. Martin

OFFICE LOCATED AT: 242 STATE STREET, AUGUSTA, MAINE
WEBSITE: WWW.MAINE.GOV/ETHICS

PHONE: (207) 287-4179

FAX: (207) 287-6775

Frery Radio Commercial

Three men rule northern Maine and they've all been in power for decades, amassing enormous pensions and salaries and piling up special interest money by the millions to fund their insatiable war chests. John Martin, Mike Michaud and John Baldacci are the three amigos of the north Maine woods and while they fiddle, Maine's economy burns. While they rule, no one's property is safe. Want change? You'll have to vote for it. There's a new sheriff in town and he's wearing a different hat.

I'm Professor John Frery and I'm running for Congress. I promise only what I can deliver as a freshman – to donate my salary to charity, to actually say what I think, however unpopular, to do what, in my judgment, is the best for Maine and to serve one term. These are the only promises I will make. My opponents claim I use too many big words and speak satirically, but it is Mike Michaud who is the farce in this picture. Close examination of his voting record shows Mike Michaud is the most useless member of the most useless and dangerous Congress in history. You have absolutely nothing to lose by voting for change in Maine. Look for me, John Frery, on the ballot and throw the bums out! Thank you. *Paid for by the Committee to Elect Frery*

21-A M.R.S.A. § 1019-B - REPORTS OF INDEPENDENT EXPENDITURES

1. Independent expenditures; definition. For the purposes of this section, an "independent expenditure":

A. Is any expenditure made by a person, party committee, political committee or political action committee, other than by contribution to a candidate or a candidate's authorized political committee, for any communication that expressly advocates the election or defeat of a clearly identified candidate; and [2003, c. 448, §3 (NEW).]

B. Is presumed in races involving a candidate who is certified as a Maine Clean Election Act candidate under section 1125, subsection 5 to be any expenditure made to design, produce or disseminate a communication that names or depicts a clearly identified candidate and is disseminated during the 21 days, including election day, before a primary election; the 35 days, including election day, before a general election; or during a special election until and on election day.

2. Rebutting presumption. A person presumed under this section to have made an independent expenditure may rebut the presumption by filing a signed written statement with the commission within 48 hours of making the expenditure stating that the cost was not incurred with the intent to influence the nomination, election or defeat of a candidate, supported by any additional evidence the person chooses to submit. The commission may gather any additional evidence it deems relevant and material and must determine by a preponderance of the evidence whether the cost was incurred with intent to influence the nomination, election or defeat of a candidate.

3. Report required; content; rules. A person, party committee, political committee or political action committee that makes independent expenditures aggregating in excess of \$100 during any one candidate's election shall file a report with the commission. In the case of a municipal election, a copy of the same information must be filed with the municipal clerk.

A. A report required by this subsection must be filed with the commission according to a reporting schedule that the commission shall establish by rule that takes into consideration existing campaign finance reporting requirements and matching fund provisions under chapter 14. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

B. A report required by this subsection must contain an itemized account of each contribution or expenditure aggregating in excess of \$100 in any one candidate's election, the date and purpose of each contribution or expenditure and the name of each payee or creditor. The report must state whether the contribution or expenditure is in support of or in opposition to the candidate and must include, under penalty of perjury, as provided in Title 17-A, section 451, a statement under oath or affirmation whether the contribution or expenditure is made in cooperation, consultation or concert with, or at the request or suggestion of, the candidate or an authorized committee or agent of the candidate.

C. A report required by this subsection must be on a form prescribed and prepared by the commission. A person filing this report may use additional pages if necessary, but the pages must be the same size as the pages of the form.



COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES
 Mail: 135 State House Station, Augusta, Maine 04333
 Office: 242 State Street, Augusta, Maine

Website: www.maine.gov/ethics
 Phone: 207-287-4179
 Fax: 207-287-6775

Statement to Rebut Presumption of Independent Expenditure

Instructions: under 21-A M.R.S.A. §1019-B, an expenditure to design, produce, or disseminate a communication that names or depicts a clearly identified candidate in a race involving a Maine Clean Election Act candidate and that is disseminated within the last 21 days before a primary election or 35 days before a general election is presumed to be an independent expenditure. The party making the expenditure may attempt to rebut the presumption by filing this form with the Ethics Commission. The party may attach any documents, statements, or other evidence it wishes (e.g., a copy of a printed communication or a script of a recorded communication.) The form is required to be filed with the Ethics Commission within 48 hours of making the expenditure, including on a weekend day or a holiday. The form may be filed by faxing it to (207) 287-6775, provided that the Commission receives the original within 5 days.

Party making the expenditure: _____

Contact person: _____

Contact's mailing address: _____

Contact's telephone number(s): _____

Candidates named or depicted:
 (use additional pages if necessary)

Payee or creditor (including address): _____

The above expenditure was not incurred with the intent to influence the nomination, election, or defeat of a candidate.

 Signature of authorized individual

 Date