



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

August 9, 2007

Mr. Carl Lindemann  
P.O. Box 171  
Portland, ME 04112

Dear Mr. Lindemann:

This is in response to your letter of August 6 and attached materials requesting that the Ethics Commission undertake to determine the qualifications of Jean Ginn Marvin to serve as a member of the Commission because of her position as an officer of the Maine Heritage Policy Center, and to investigate whether she engaged in any prohibited activities under Title 1 M.R.S.A. §1002(6).

You had raised these same issues regarding Commissioner Ginn Marvin's qualifications in a letter addressed to the Commission, the Governor, and legislative leadership on July 2, 2007. At the end of the Commission's last regular meeting on July 16, 2007, you inquired whether the Ethics Commission had the jurisdiction to take action in response to your complaint about Ms. Ginn Marvin. Both the Commission's counsel and I indicated, based on preliminary research that we did not believe the Commission had authority to take action as a body regarding the qualifications of an individual Commission member, or to initiate an investigation of alleged prohibited activities by a Commission member. I invited you, however, to review the matter with your counsel and to submit to our counsel any research on the jurisdictional question.

The letter and supporting materials that you submitted to the Commission on August 6 do not include any research suggesting that the Commission has jurisdiction to disqualify one of its members. Accordingly, my conclusion remains the same that the Commission has no jurisdiction or authority to take the actions you suggest. The basis for that conclusion is set forth below.

The Commission is a creature of statute and can only exercise the powers that are expressly conferred on it by the Legislature, or necessary by implication in order to carry out its express statutory functions. *See Valente v. Board of Envtl. Protection*, 461 A.2d 716, 718 (Me. 1983); *Clark v. State Employees. Appeals Board*, 363 A.2d 735, 737 (Me. 1976).

**Duties of the Ethics Commission:**

The powers and duties of the Ethics Commission are described in 1 M.R.S.A. §1008:

OFFICE LOCATED AT: 242 STATE STREET, AUGUSTA, MAINE  
WEBSITE: [WWW.MAINE.GOV/ETHICS](http://WWW.MAINE.GOV/ETHICS)

PHONE: (207) 287-4179

FAX: (207) 287-6775

The general duties of the commission shall be:

1. *Legislative ethics.* To investigate and make advisory recommendations to the appropriate body of any apparent violations of the ethical standards set by the Legislature;
2. *Election practices.* To administer and investigate any violations of the requirements for campaign reports and campaign financing, including the provisions of the Maine Clean Election Act and the Maine Clean Election Fund;
3. *Ethics seminar.* To conduct, in conjunction with the Attorney General and the Chair of the Legislative Council or their designees, an ethics seminar for Legislators after the general election and before the convening of the Legislature, in every even-numbered year. The Attorney General shall provide each Legislator with a bound compilation of the laws of this State pertaining to legislative ethics and conduct;
4. *Lobbyist activities.* To administer the lobbyist disclosure laws, Title 3, chapter 15;
5. *Maine Clean Election Act and Maine Clean Election Fund.* To administer and ensure the effective implementation of the Maine Clean Election Act and the Maine Clean Election Fund according to Title 21-A, chapter 14; and
6. *Enhanced monitoring.* To provide for enhanced monitoring and enforcement of election practices and the electronic submission of reports and computerized tracking of campaign, election and lobbying information under the commission's jurisdiction.

Specific duties with respect to the above listed areas are set forth in:

- the campaign finance laws, Chapter 13 of the Election Law, Title 21-A, §1001 - §1105;
- the Maine Clean Election Act, Chapter 14 of the Election Law, Title 21-A, §1121 - §1128;
- the lobbyist disclosure laws, Chapter 15 of the Legislature Law, Title 3, §311 - §326; and
- the legislative ethics laws, Chapter 25 of Maine's General Provisions statutes, Title 1, §1001 - §1023.

These statutes do not contain any provisions suggesting that members of the Ethics Commission have the authority to investigate or determine the qualifications of another member to serve on the Commission.

### **Appointment and Qualifications Statutes**

Appointments and qualifications of Commission members are governed by 1 M.R.S.A. §1002(1-A). Members of the Commission are nominated by the Governor from a list of three qualified candidates provided by legislative leadership pursuant to Subsections F and G. The Commission members do not appoint each other and do not have the power to remove each other. There is nothing in the appointments or qualifications statutes that suggests that the Commission as a body can disqualify individual members from serving on the Commission, nor is there any language to suggest that the Commission has authority to investigate or determine whether one of its individual members has engaged in an activity prohibited by Title 1, section 1002(6).

### **Other Removal Provisions**

The Maine Constitution provides that persons holding civil office may be removed by impeachment, for misconduct in office, or by the Governor on the address of both branches of the Legislature. Me. Const., art. IX, §5. In addition, Title 5, section 3 provides that persons holding a civil office for which the term is fixed by law (as it is for Commission, pursuant to 1 M.R.S.A. § 1002(1-A)(C)) “shall hold office during the term for which they were appointed and until their successors in office have been appointed and qualified, unless sooner removed in accordance with law.” The Legislature may, if it so chooses, create a removal process by statute for statutorily created offices. Such provisions exist, for example, for the Workers’ Compensation Board (39-A M.R.S.A. § 151(2)), the Maine Human Rights Commission (5 M.R.S.A. § 4565), the Real Estate Commission (32 M.R.S.A. § 13062(4)), and the State Harness Racing Commission (8 M.R.S.A. § 261-A(7)). The Ethics Commission’s statute does not provide such a procedure, however. Accordingly, our research to date indicates that the constitutional provisions may provide the only method of removal “in accordance with law” of a Commission member during that member’s term of office.

Of course, a Commission member who is serving beyond the end of the 4-year term for which he or she was appointed is automatically removed from office as soon as a successor has been appointed and qualified pursuant to Title 5, section 3.

### **Conclusion**

Jean Ginn Marvin has recused herself appropriately from all matters relating to the Maine Heritage Policy Center. With regard to your request that the Commission investigate or determine her qualifications to serve on the Commission, however, the Commission lacks jurisdiction to do so.

Mr. Carl Lindemann

-4-

August 9, 2007

Any Commission member who disagrees with the conclusions stated in this letter is free to make a motion to take up this matter on the agenda at the meeting on Monday, August 13. If such a motion is made and seconded, we will address the limited issue as to whether the Commission has the jurisdiction to disqualify a Commission member from serving.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael P. Friedman", with a long horizontal flourish extending to the right.

Michael P. Friedman  
Commission Chair

cc: Commission members  
Commission counsel and director