



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

To: Commissioners  
From: Commission Staff  
Date: October 7, 2013  
Re: Proposed Legislation for the 2014 Session

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The Commission is authorized by law to make statutory proposals to the Legislature concerning matters within the Commission's jurisdiction. (1 M.R.S.A. § 1009) In recent years, the Commission has introduced legislation during most sessions. Generally, the bills submitted for the Second Regular Sessions have been relatively short.

In keeping with recent practice, the staff has drafted two bills for your consideration. Unfortunately, the deadline for agencies to submit legislation was September 27, 2013. So, the staff submitted two bills to the office of Revisor of Statutes with the understanding that

- the staff would present the bills for your consideration at the October 16 meeting, and
- the Commission would withdraw the bills (or make limited adjustments to them through redlining) if they did not meet with your approval.

The staff suggests moving forward with the legislation only if all of the Commissioners feel comfortable with the bills. If not, we suggest withdrawing the bills and would hope that the Legislature may address the issue some other way.

### **Investigative Working Papers**

Under 21-A M.R.S.A. § 1003(3-A), the Ethics Commission is currently authorized to keep certain categories of investigative records confidential, if they contain

- financial information not normally available to the public,
- sensitive political campaign information,
- information subject to a privilege (such as attorney-client communications), or
- intra-agency or interagency communications related to an audit or investigation.

If the information in the document is materially relevant to a final audit or investigation report or determination, the Commission may disclose the document. This statute was enacted in 2007.

Based on investigations conducted in the past few years, the Commission staff proposes some changes to the statute. In the proposed bill:

- These categories of records maintain their confidentiality even if they are in the possession of a financial institution or vendor of a candidate, PAC, or other association being investigated by the Commission.

- Records in these categories that are received in an audit or routine compliance review by staff are confidential, even if the Commission has not authorized “an investigation.”
- If materially relevant, the Commission has the discretion to discuss the document at a public meeting. (The staff seeks a clarification that if the Commission believes the document is materially relevant, it is not required to go into executive session. That would be discretionary.)
- Records of an investigative meeting or interview would qualify as an intra-agency or interagency communication, which has been our assumption on how to apply current statute.

### **Definition of Agent and Candidate’s Political Committee**

Under current law, if someone spends money to promote a candidate in consultation with the candidate, the candidate’s political committee, or an agent of the candidate or the candidate’s political committee, the candidate has received a contribution. (21-A M.R.S.A. § 1015(5))

The recent House District 1 matter highlighted that there is no definition of “agent” or “candidate’s political committee” in Maine’s campaign finance law.

We propose:

- a definition of “agent” based on traditional agency law
- a definition of “candidate’s political committee” that is based on the definition of “political committee” in 1 M.R.S.A. § 1(30) (“Political committee” means 2 or more persons associated for the purpose of promoting or defeating a candidate, party or principle.”)
- that, for the purposes of § 1015(5), individuals who hold key positions in a candidate’s campaign (treasurer, officer, someone in a position of management or responsibility) when the expenditure is made would be deemed to be part of the candidate’s political committee. Those individuals would also be deemed to be part of the candidate’s political committee if they held one of the positions during the 6 months prior to the expenditure being made. Our intention is to exclude occasional volunteers or individuals who are merely helping out here and there. We also wish to exclude business entities that sell goods or services to a candidate.

The staff appreciates that this is a complex issue, and that candidates and Legislators are concerned about being held responsible for spending by people who are only remotely connected to the campaign. So, the staff only wants to move forward on this issue if the Commissioners are in agreement on this proposal.

Thank you for your consideration of the proposed legislation.

**An Act concerning Confidential Records Received  
by the Maine Commission on Governmental Ethics and Election Practices**

**3-A. Confidential records.** Investigative working papers of the commission are confidential ~~and may not be disclosed to any person except the members and staff of the commission,~~ except that the Commission may disclose them to the subject of the audit or investigation, other entities as necessary for the conduct of an audit or investigation and law enforcement and other agencies for purposes of reporting, investigating or prosecuting a criminal or civil violation. For purposes of this subsection, “investigative working papers” means documents, records and other printed or electronic information in the following limited categories that are acquired, prepared or maintained by the commission during the conduct of an audit, investigation, or ~~audit~~ other enforcement matter:

- A. Financial information not normally available to the public;
- B. Information ~~belonging to a party committee, political action committee, ballot question committee, candidate or candidate’s authorized committee,~~ that, if disclosed, would reveal sensitive political or campaign information belonging to a party committee, political action committee, ballot question committee, candidate or candidate’s political committee, or other person who is the subject of an audit, investigation or other enforcement matter, even if the information is in the possession of a vendor or third-party;
- C. Information or records subject to a privilege against discovery or use as evidence; and
- D. Intra-agency or interagency communications related to an audit or investigation, including any record of an interview, meeting or examination.

The commission may disclose investigative working papers or discuss them at a public meeting, except for the information or records subject to a privilege against discovery or use as evidence, ~~in a final audit or investigation report or determination~~ if the information or record is materially relevant to a finding of fact, ~~or violation~~, or other decision by the Commission concerning an audit, investigation, or enforcement matter.

### **SUMMARY**

This bill clarifies that certain categories of investigative records deemed confidential under current statute maintain their confidentiality even if they are in the possession of a financial institution or vendor of a candidate, political action committee, or other association being investigated by the Commission. Those categories of documents are also confidential if received in the context of an audit or the staff review of the compliance of campaign finance reports. The Commission staff may present those documents or discuss them at a public meeting of the Commission when they are materially relevant to a final Commission determination or other decision by the Commission concerning an audit, investigation, or other enforcement matter.

## **An Act to Define Agent of a Candidate and Candidate's Political Committee**

### **21A § 1001. Definitions**

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

**1. Commission.** "Commission" means the Commission on Governmental Ethics and Election Practices established under Title 1, section 1002.

**1-A. Agent.** "Agent" means a person to whom the candidate or candidate's political committee has given express or implied authority to act on behalf of the candidate or the candidate's political committee.

**1-B. Candidate's political committee.** Candidate's political committee means the association of the candidate and one or more individuals who are conducting activities to promote the nomination or election of the candidate with the knowledge and consent of the candidate.

**2. Election.** "Election" means any primary, general or special election for state, county or municipal offices as defined in Title 30-A, section 2502, subsection 1.

**3. Person.** "Person" means an individual, committee, firm, partnership, corporation, association or organization.

### **21A § 1015. Limitations on contributions and expenditures**

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**5. Other contributions and expenditures.** Any expenditure made by any person in cooperation, consultation or concert with, or at the request or suggestion of, a candidate, a candidate's political committee or their agents is considered to be a contribution to that candidate. The financing by any person of the dissemination, distribution or republication, in whole or in part, of any broadcast or any written or other campaign materials prepared by the candidate, the candidate's political committee or committees or their authorized agents is considered to be a contribution to that candidate.

**5-A. Individuals deemed to be part of political committee.** For purposes of subsection 5, individuals engaged in the following activities or positions at the time of the expenditure, or

during the six months before the expenditure, are deemed to be part of the candidate's political committee:

- A. an individual who has been designated by the candidate under section 1013-A(1)(B) as an officer of the candidate's political committee,
- B. the candidate's treasurer or deputy treasurer,
- C. a person who is performing the statutory responsibilities of the candidate's treasurer; or
- D. an individual who, with the candidate's knowledge and consent, manages or is responsible for activities of the candidate's campaign, such as campaign communications or advertising, public or media relations, or fundraising.

A business entity engaged by the candidate to provide goods or services to promote the candidate's election is not deemed to be part of the candidate's political committee. For purposes of this section, "business entity" means a corporation, association, partnership, limited liability company, limited liability partnership or other legal entity.

## SUMMARY

This bill defines who is an agent of a candidate or the candidate's political committee for purposes of Maine campaign finance law. The bill also inserts a definition of "candidate's political committee" based on the existing definition of "political committee" in Title 21-A, section 1, subsection 30. Certain individuals in positions of responsibility within a candidate's political campaign are deemed to be part of the candidate's political committee for a period of six months for purposes of coordinating with others on their expenditures to promote the candidate.