

Agenda

Item #2



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

To: Commissioners
From: Jonathan Wayne, Executive Director
Date: November 17, 2011
Re: Rep. Donald E. Pilon's Request for an Investigation concerning Office of
Rep. Linda M. Valentino

Rep. Donald E. Pilon has filed the attached complaint with the Ethics Commission concerning an office in downtown Saco opened by Rep. Linda M. Valentino. They represent adjacent districts in Saco, Maine, and they are both seeking the Democratic nomination for Senate District 5 in the 2012 elections. A third State Representative, George Hogan, is also seeking the Democratic nomination.

On October 21, 2011, Rep. Valentino opened an office on Main Street in Saco. As she has described her intentions to the Commission staff, she expects to use the office for providing services to her constituents in House District 134 and for her 2012 primary election campaign. In addition, her daughter would conduct some personal work in the office and assist her with organizational projects related to her legislative service. As described below, prior to the filing of Rep. Pilon's complaint, Rep. Valentino sought advice from the Commission staff concerning how to pay for the office.

Rep. Pilon filed a complaint concerning the office on the morning of October 28, 2011 (the date of your last meeting). He requests that the Commission consider how Rep. Valentino intends to pay for the office and the intended use of the office. He objects that the office is located in his district, and outside Representative Valentino's district. He suggests that the office should be viewed as a campaign office, rather than an office opened for the purpose

of providing services to her constituents. In her response (attached), Rep. Valentino argues that her office is appropriately situated in downtown Saco because residents of her district come to downtown Saco “to go to the post office, do errands, shop, and do other business.”

In this memo, the Commission staff focuses on whether Rep. Valentino’s financing of the office complies with campaign finance laws. Rep. Pilon’s complaint may raise other issues that are outside the jurisdiction of the Commission.

Applicable Campaign Finance Law

Standard for Commission Investigation

Under Maine campaign finance law, a person may file a complaint with the Commission requesting an investigation concerning contributions to a candidate or expenditures made by a candidate. (21-A M.R.S.A. § 1003(1)) The law states that “the Commission shall review the application and shall make the investigation if the reasons stated for the request show sufficient grounds for believing that a violation may have occurred.” (21-A M.R.S.A. § 1003(2))

Definitions of Expenditure and Contribution

In Maine campaign finance law, the term “expenditure” is defined as “a ... payment ... of money ... made for the purpose of influencing the nomination or election of any person to political office” (21-A M.R.S.A. § 1012(3)(A)(1)) In general, if a candidate spends their personal funds to promote their nomination or election, the candidate has made an in-kind contribution to his or her campaign. (21-A M.R.S.A. § 1015(5))

The term “contribution” is defined as a gift of money or anything of value to a candidate “for the purpose of influencing the nomination or election of any person to state ... office” (21-A M.R.S.A. § 1012(2)(A)(1))

Restrictions on Acceptance of Campaign Contributions

All three Democratic candidates for the nomination in Senate District 5 have chosen to finance their 2012 campaigns through the Maine Clean Election Act (MCEA) program. Prior to qualifying for MCEA funding, MCEA candidates for Senate are permitted to receive and spend up to \$1,500 in seed money. (21-A M.R.S.A. §§ 1125(2) & (2-A)) Under current law, each individual contributor, including the candidate, may give a cash or in-kind contribution of up to \$100. After qualifying to receive MCEA funds, the candidate may not accept any cash or in-kind contributions. (21-A M.R.S.A. § 1125(6))

Acceptable Uses of MCEA Funds

MCEA funds may be spent only to promote the candidate's campaign and not for any other purpose. (21-A M.R.S.A. § 1125(6)) The Commission has issued guidelines on permissible expenditures of MCEA funds. MCEA funds may not be spent for personal purposes.

Acceptable Uses of Seed Money Contributions

Candidates have much more flexibility in how they may spend seed money they have collected. There are no restrictions in law concerning how seed money may be spent.

Exemption for Providing Office Space to a Campaign

Under Maine campaign finance law, "the use of offices, telephones, computers and similar equipment when that use does not result in additional cost to the provider" is exempt from the definition of a campaign "contribution." (21-A M.R.S.A. § 1012(2)(B)(9)) Thus, a business, non-profit, or individual can donate office space to a campaign for free, provided that the provision of the space does not result in an additional cost to the provider.

If providing office space does involve an additional cost, the candidate may avoid receiving a contribution by using campaign funds to reimburse the provider of the office for those additional costs.

Commission's Jurisdiction

The Commission is the campaign finance agency for the state of Maine. It regulates the financial activities of candidates, political action committees, parties, and others. The Commission does not have the statutory authority to regulate other aspects of campaigning, such as campaign practices or the content of campaign communications.

The agency also has a limited role in the field of legislative ethics. It provides advice concerning conflicts of interest, acceptance of gifts, undue influence on administrative agencies, and abuse of office. It may receive complaints concerning alleged misconduct in these areas. The Commission does not have jurisdiction over other issues of legislative conduct, such as communications with constituents or the accuracy of statements made in the State House for or against legislation.

Given the extent of the Commission's jurisdiction, the staff does not see that jurisdiction extending to the following issues:

- whether it is permissible for Rep. Valentino to open an office for the purpose of communicating with her constituents;
- whether Rep. Valentino may open a legislative office outside her State Representative district;
- what sign may be posted in the window of a legislative office; and
- whether Rep. Valentino may campaign prior to the beginning of the 2012 election year.

Factual Information Presented by Rep. Valentino

Rep. Valentino has advised the Commission staff that the office will be used at various times to provide services to constituents, for campaigning, and for personal work projects of Rep. Valentino's family. She says that she selected the location because it is in downtown Saco where residents of her district come for commercial and other purposes. She has also said that presently she is not conducting any campaign activities in the office.

Through December 2011, she foresees using the office for modest or minimal campaign activities.

Rep. Valentino has said that she expects to meet with constituents in the office who may walk in off Main Street or respond to general invitations from her to come to the office. She will also probably meet with constituents by appointment, and may hold regular office hours on Saturday mornings.

My understanding is that based on the advice from the Commission staff described below, the rent that Rep. Valentino has paid for the latter part of October and for November has been entirely from her personal funds, not from her campaign funds.

Advice by Commission Staff to Rep. Valentino

In October 2011, Rep. Valentino asked for advice from the staff of the Commission concerning how she should pay for the office. She stated repeatedly that she would be willing to pay for the office from campaign funds, or personal funds, or from some combination. She was turning to the Commission staff for guidance in order to make sure that she was in compliance with Maine Election Law. On October 13, 2011, she e-mailed me the question, and I responded by e-mail on October 14.

After she opened the office, Rep. Pilon called me to express his concerns. Because of the potential for a complaint, I decided that Rep. Valentino needed expanded advice in the form of the attached letter, which I e-mailed to her on October 27, 2011. The staff advice represented the combined viewpoint of four employees of the Commission who had met to consider her question.

The staff advised that Rep. Valentino pay for the office partially from her campaign funds and partially from her personal funds. We recommend that, for each upcoming month, she project what portion of her use of the office would be for campaign versus non-campaign purposes. For example, if she expected that 15% of her use of the office during a month

would be for campaigning, we suggested paying for 15% of that month's rent with campaign funds, and the remaining 85% with personal funds. That way, her campaign would not be receiving an in-kind contribution from her. Once she qualified to receive MCEA funds, using this allocation would minimize the risk that MCEA funds would be used to finance activities other than her campaign.

Because this matter might be the subject of a complaint before the Commission, we also recommended that she document her use of the office by keeping a journal or calendar in which she or others would record the day's campaign, legislative, or personal activities.

We cautioned her that the advice was on behalf of the staff of the Commission, and would not be binding on the Commissioners if a complaint were filed. We also cautioned that even if she believed that she was conducting outreach to Saco residents in order to carry out her responsibilities as a State Representative, some members of the public or her campaign opponents may view her use of the office as campaigning.

Views of Commission Staff

My understanding is that on the basis of advice from the Commission staff, Rep. Valentino has paid for the end of October and November with her personal funds, because she believes she is not presently conducting campaign activities in the office. You may wish to request Rep. Valentino to provide you with more detail about the kinds of activities that have been conducted in the office to date.

In the view of the Commission staff, the primary compliance question in this matter is whether her Rep. Valentino's 2012 campaign has received a "contribution" because some or all of the rent is being paid with personal funds. Once she becomes an MCEA candidate, she also has to comply with the restriction that MCEA funds cannot be used to pay for personal expenses or activities.

Under Maine campaign finance law, a payment of money by a candidate counts as an “expenditure” by the candidate, if the candidate’s purpose in making the payment is to promote the candidate’s nomination or election. If the payment is for another purpose, the payment is not an expenditure. Of course, sometimes the purpose of an expenditure may be difficult to discern.

Rep. Valentino explains that she, her family, and her campaign will conduct three types of activities in the office:

- constituent services
- campaigning
- her daughter’s work.

She is quite willing to pay for the office from any source of funds suggested by the Commission, but she views the office as serving purposes other than just campaigning. Rep. Pilon, in contrast, suggests that “this is a campaign office disguised as a constituent services office.” To the best of the staff’s knowledge, historically few – if any – Legislators have opened constituent offices in their districts.

Legislators regularly engage in a variety of communications with constituents, including newsletters, e-mail communications, or printed information about government programs. Some Legislators have websites, social media pages, or participate in regular cable access television or radio shows. Some of these communications, inevitably, reach voters who reside outside the current districts of the Legislators. When presented with this issue in the past, the Commissioners generally have taken a hands-off approach by not viewing these communications and activities as campaigning, even though there may be some benefit to the Legislator in a future election.

One event that has guided the staff’s thinking was a decision by the Commissioners in 2006. In that election, State Representative Kevin Glynn of South Portland was challenging the incumbent State Senator in his area, Sen. Lynn Bromley. Rep. Glynn

began sending communications that were in the format of typical constituent newsletters. He sent the newsletters not just to his own constituents, but also to residents of the neighboring communities in the Senate District he was seeking to represent.

A supporter of Lynn Bromley filed a complaint, arguing that Rep. Glynn's personal expenditures on the newsletters should be viewed as a contribution to his Senate campaign. The Commission heard the complaint in June 2006. An attorney representing Sen. Bromley made comments similar to the person filing the complaint. Rep. Glynn's attorney argued that it is difficult to know the intent behind the newsletters. The Commissioners at the time decided by a vote of three to zero not to take any action on the complaint against Rep. Glynn.

In this instance, Rep. Valentino's office will give her an opportunity to interact with voters who do not reside in her current district as well as those who do. By elevating her visibility in her community, the office could have a benefit to her in the 2012 primary election campaign. Nevertheless, if she is actually engaging in non-campaign activities such as:

- talking to Saco residents concerning their issues with the agencies and policies of Maine state government
- advising them about government programs that could interest them
- providing a space for family members to work

the staff believes it would be reasonable to determine that the use of the office is not wholly for the purpose of campaigning.

So, the staff is inclined to accept the view that Rep. Valentino has opened the office for multiple purposes, and that campaigning is one purpose but not the only one. We therefore continue to believe that she may comply with the campaign finance laws by pro-rating the costs of the office.

If, however, the Commission is persuaded that the office is entirely a campaign effort, Rep. Valentino's campaign may avoid receiving an in-kind contribution by paying for the office with campaign funds. Rep. Valentino has said repeatedly to the Commission staff that she would be pleased to pay for the office through any means that the Commission believes is appropriate – personal funds, campaign funds, or some combination.

Thank you for your consideration of this memo.



HOUSE OF REPRESENTATIVES

2 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0002

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Donald E. Pilon

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Saco, ME 04072

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October 27, 2011

Jonathan Wayne
Executive Director
State of Maine Commission on Governmental Ethics
133 State House Station
Augusta, Maine 04333-0135

Dear Jonathan,

Recently, it has come to my attention that Representative Linda Valentino of District #134 in Saco has opened a campaign office in my district. I find it unusual that a representative would open a constituent services office outside her district. I don't know of any other Maine state representative or state senator that has a constituent office let alone one in another legislator's district.

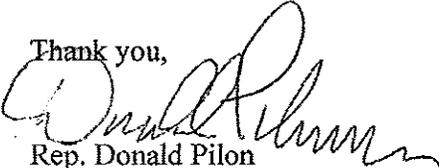
The timing of this constituent services office is suspect. It is two months before the 2012 primary campaign for the Senate seat in District #5. Why didn't she open this office at the beginning of the legislative session if she wanted to reach out to District #134 constituents?

Representative Valentino has indicated to you that she intends to use this office to provide services to her constituent's in House District #134. This office is miles from her district and her constituents. The demographics of Rep. Valentino's district show a mixture of suburban, rural and agricultural. District #133 (my district) is business, commercial, neighborhoods, shorefront communities and schools. From all appearances, this is a campaign office disguised as a constituent services office.

How is Representative Valentino paying for rent for this space and its expenses such as heat, AC, lights, cable/internet, phones, maintenance, trash removal and snowplowing? Please note, there is a sign in the window reading, "The Office of State Representative Linda Valentino District #134." Will you require her to remove it?

I'm registering a formal complaint against Representative Valentino and would like the Commission on Governmental Ethics and Election Practices to review the opening of this office in my district and its intended use.

Thank you,


Rep. Donald Pilon

District 133 Part of Saco

Printed on recycled paper

Wayne, Jonathan

From: Linda Valentino [lvalentino54@yahoo.com]
Sent: Friday, November 04, 2011 3:24 PM
To: Wayne, Jonathan
Subject: letter

Linda M. Valentino

**PO Box 1049
Fire Lane #2, Boom Road
Saco, Maine 04072
Home 207.282.5227 Cell 207.205.0077**

October 31, 2011

Jonathan Wayne, Executive Director
Commission on Governmental Ethics and Election Practices
135 State House Station
Augusta, Maine 04333-0135

RE: Response to Complaint filed by Rep. Don Pilon on October 27, 2011

Dear Mr. Wayne,

Thank you for the opportunity to address the opening of my new office on Main Street in Saco. When I contacted you on October 6, 2011, I disclosed that I was planning on opening an office. Our discussion centered around how the rent would be paid. I am currently a State Representative, but I was planning on filing papers to run for the Senate prior to the opening date of the office. When we first spoke, I questioned whether I needed to pay the rent from my personal funds or future campaign funds.

BACKGROUND

On October 13, 2011, I wrote to you to explain in greater detail how I was planning on using the office and asked for your opinion as to how the rent should be paid. **I clearly state in the correspondence, "I don't care if I use clean election funds or if I use my own funds to pay for the rent. I am only concerned about paying the rent "correctly" so no one will question it at a later time."** I close the letter with, "Whatever you say, I will do. I just want to do the correct, legal, ethical thing."

On October 14, 2011, you wrote back stating that since the office would be used for both campaign and constituent services that I should pro-rate the rent based on how much activity I did. It also noted that the usage percentages may change as I get closer to the election.

On October 18, I filed my papers to run for State Senate District 5 which includes both my district (134) and Rep. Pilon's district (133).

On October 19, 2011, I received the office key from the landlord and signed a month-to-month lease. As stated to you in previous discussions, I am renting the office on a month-to-month basis because I am willing to move out if the landlord finds a long term renter. All three store fronts on the ground floor of the building are vacant. Therefore, if someone wants the space I am in, I will move to another space and if that space gets rented, then I will move to the other space. There are currently eight (8) store fronts vacant on Main Street in Saco. I was told by one building owner that he had been trying to rent his vacant space for three (3) years. My occupying a store front was to create activity in the building and along Main Street.

On October 21, 2011, I opened the office for the first day and the Biddeford Saco Chamber of Commerce offered to hold a ribbon-cutting ceremony for me on October 28, 2011.

On October 24 and 25, 2011, I was on a bus tour with other legislators touring the Northern Maine woods. Rep. Pilon also attended the tour. I talked with other legislators about opening an office. Rep. Pilon did not talk to me about the new office or of his concerns.

On October 26, 2011, I received an email from you at 9:42am asking that we talk around 4 or 5 o'clock because you had a meeting all day. Rep. Pilon had called your office to state that my office was not in my district. At 1:39pm I emailed you back confirming that Main Street was not in my district, but there is only one "Main Street" in Saco where people come to go to the post office, do errands, shop, and do other business. **Main Street is where ALL Saco citizens go.** I also invited you to come to Saco to see the space. At 3:48pm I emailed you nine (9) pictures of the interior and exterior of the office. One of the pictures was a close up of the signage. At approximately 5:00pm you called me and asked if it was alright if Paul Lavin listened in to our conversation. I said "yes". You stated that you had received my email and the pictures. We spoke for about 45 minutes on the phone and you asked me many questions about how I was planning on using the office, who would be in the office, and who I expected to drop in or have appointments with. You then asked to call me back in 15 minutes. You and Paul then called back and discussed what you would be putting into a letter for me.

On October 27, 2011, I called you late in the day asking when I would receive your letter. I said that the Chamber ribbon-cutting was scheduled for tomorrow and I would like to have the letter beforehand. I also asked you to send the letter to Rep. Pilon so he would know that I was not violating any rule or law. At 7:26pm I received your letter. The letter was four (4) pages in length and very detailed. Two important points in the letter are:

- (a) "Candidates have more flexibility in how they spend (MCEA) seed money they have collected. There are no restrictions in law concerning how seed money may be spent." This means that if the office is a "campaign" office then I can use seed money to pay the expense. The office is located in Senate District 5, which is the district I have filed papers to run.
- (b) "The commission staff does not know of any law or policy placing any restrictions on whether a Legislator may open an office and where it may be located." This means that if the office is a "constituent" office, even though I represent District 134, I can still have an office on Main Street in District 133.

On October 28, 2011, at 1:16am (morning) Rep. Pilon emailed the Commission a formal letter of complaint. He did not email me a copy. At 8:20am, you sent an email to Rep. Pilon and I stating that the Board was holding their monthly meeting at 9:00am and you were going to bring up the matter informally. Neither Rep. Pilon nor I were able to get to Augusta on short notice. I called up to the meeting to see about tele-conferencing in by phone, but was told the meeting was almost over and the board had decided to gather more facts. I was emailed Rep. Pilon's letter of complaint by your staff. I then walked over to the Chamber of Commerce and gave them copies of Rep. Pilon's letter and your 4-page letter and asked them to cancel the ribbon-cutting scheduled for 3:30pm. I did not want to put the Chamber in an awkward position. Later that day at 4:35pm, I received an email letter from you stating that a meeting would be held on December 19, 2011 at the Commission office to review this matter.

RESPONSE TO REP. PILON'S LETTER

Rep. Pilon wrote his letter after you issued your 4-page advice letter to me. In paragraph 5, he says that he is "registering a formal complaint against Representative Valentino" but does not cite any rule, regulation or law that he claims I have violated. **Therefore, since he does not cite any rule, is he in fact merely appealing your advisory letter to me to the Board?**

In paragraph 1, he refers to it as a "campaign office", but in paragraph 2, he refers to it as a "constituent services office". I have stated from the start that the office will serve both purposes, as well as for personal use. Simply because no other State Senator or Representative have opened an office does not mean that it is not a good idea. **I felt strongly that if I wanted to know what the people on Main Street were thinking, then I should move to Main Street and find out.**

In paragraph 3, he states that "this office is miles from her district and her constituents." The beginning of my district is approximately 7 tenths of a mile away. I strongly object to his characterization that because Main Street is not in my district that my constituents don't come to Main Street. I am beside the only Post Office in town and I see constituents walk by all day long. Rep. Pilon then states that the demographics are different. I find

this borderline insulting. I can unequivocally state that my district has “business, commercial, neighborhoods and schools” in it. He implies that us “rural, agricultural” folks don’t come to town and therefore I should not be on Main Street. **Saco does not have a wall built down its center to divide the east from the west. Saco has one Main Street and it belongs to all Saco citizens.**

In paragraph 4, he asks about payment of rent and expenses. These issues were discussed extensively in your 4-page letter on how to be pro-rated based on campaign versus constituent versus personal time spent in office. As you suggested, I am keeping track of this time. Since I am renting on a month-to-month basis, I have no parking provided at the building, so I don’t deal with snow removal; I remove my own trash; I did not install phones or cable (I use my cell phone); plus I use the communal bathroom down the hall (which I keep supplied and clean); I washed all the store front windows –both inside and out; I am replacing six of the overhead lights that were burnt out; and I cleaned the area before I moved in.

Rep. Pilon is also incorrect on the wording of my sign. Line 1 says “Office of”. Line 2 says “Linda M. Valentino”. Line 3 says “State Representative”. It does not say, “Office of State Representative Linda Valentino District 134.”

SUMMARY

I have tried to do everything possible to be open and transparent with the Commission on Governmental Ethics. I sought your advice prior to opening the office and stated to you in writing, **“Whatever you say, I will do. I just want to do the correct, legal, ethical thing.”**

The outpouring of support from merchants on Main Street, the Chamber, Saco City Hall, and Saco citizens has been wonderful. Certainly, if Rep. Pilon wants to open his own office, there is plenty of vacant space on Main Street to rent.

It is unfortunate that instead of the newspapers heralding a ribbon-cutting celebrating a vacant store front coming to life, Rep. Pilon has chosen to contact the local press about his complaint, which will cause negative publicity for the downtown.

Since the Board meeting is not scheduled until December 16, 2011, I will assume that I am permitted to continue to operate the office as per your 4-page letter. If this is not the case, please advise me immediately.

Thank you for the assistance your have provided me.

Sincerely yours,

Linda M. Valentino



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

October 27, 2011

By E-Mail and Regular Mail

Hon. Linda M. Valentino
P.O. Box 1049
Saco, Maine 04072

Dear Rep. Valentino:

Thank you for the opportunity to provide further guidance concerning an office you have opened in downtown Saco. Around two weeks ago, you contacted the staff of the Ethics Commission concerning how to pay for a proposed office on Main Street in Saco. Currently, you represent District 134 in the Maine House of Representatives, and have registered as a candidate for State Senate District 5 in the 2012 elections. Two other individuals have registered as candidates seeking the Democratic nomination for Senate District 5.

You have told the Commission staff that you intend to use the office for providing services to your constituents in House District 134 and for your 2012 campaign. In addition, your daughter would conduct some personal work in the office and assist you with projects related to your legislative service. You asked how to pay for the office in a way that is legal, and that you would be willing to pay for the office from campaign funds, personal funds, or some combination.

The Ethics Commission does not have a policy on how Legislators should pay for assets or resources that have a dual campaign/legislative purpose, or a dual campaign/personal purpose. When "grey areas" such as this arise, the staff of the Ethics Commission provides advice on a case-by-case basis, applying current law and policies. This letter is intended to provide you with guidance on behalf of the Commission staff concerning options for paying for the office in compliance with campaign finance law. If a complaint were ever filed concerning this issue, the staff's advice would not be binding on the members of the Commission.

Legal Restrictions

Restrictions on Acceptance of Campaign Contributions

In Maine campaign finance law, the term "contribution" is defined as a gift of money or anything of value to a candidate "for the purpose of influencing the nomination or election of any person to state ... office ..." (21-A M.R.S.A. § 1012(2)(A)(1)) In general, if a

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WEBSITE: WWW.MAINE.GOV/ETHICS

PHONE: (207) 287-4179

FAX: (207) 287-6775

candidate spends their personal funds to promote their nomination or election, the candidate has made an in-kind contribution to his or her campaign. (21-A M.R.S.A. § 1015(5))

You have chosen to finance your 2012 campaign through the Maine Clean Election Act (MCEA) program. For purposes of this response, the Commission staff presumes that you will qualify for public campaign funding during March or April of 2012. Prior to qualifying for MCEA funding, you are permitted to receive and spend up to \$1,500 in seed money. (21-A M.R.S.A. §§ 1125(2) & (2-A)) Each individual contributor may give your 2012 campaign a cash or in-kind contribution of up to \$100. After qualifying to receive MCEA funds, you may not accept any cash or in-kind contributions. (21-A M.R.S.A. § 1125(6))

Acceptable Uses of MCEA Funds and Seed Money

MCEA funds may be spent only to promote the candidate's campaign and not for any other purpose. (21-A M.R.S.A. § 1125(6)) The Commission has issued guidelines on permissible expenditures of MCEA funds. MCEA funds may not be spent for personal purposes. You have expressed that you want to make sure that if you spend MCEA funds for the office, that would not be viewed by the Commission as an illegitimate purpose.

Candidates have much more flexibility in how they may spend seed money they have collected. There are no restrictions in law concerning how seed money may be spent.

Providing Office Space to a Campaign

Under Maine campaign finance law, "the use of offices, telephones, computers and similar equipment when that use does not result in additional cost to the provider" is exempt from the definition of a campaign "contribution." (21-A M.R.S.A. § 1012(2)(B)(9)) Thus, a business, non-profit, or individual can donate office space to a campaign for free, provided that the provision of the space does not result in an additional cost to the provider.

Factual Information Presented

Based on the information you have provided me, my current understanding of the facts is as follows:

- The office will be used at various times to provide services to constituents, for campaigning, and for personal work projects of you or your family.
- You selected the location because it is in downtown Saco where residents of your district come for commercial and other purposes. The location of the office is in House District 133, which is represented by Donald E. Pilon. Rep. Pilon is also seeking the Democratic nomination for Senate District 5 in the 2012 elections.

- Presently, you are not conducting any campaign activities in the office. Through December 2011, you foresee using the office for modest or minimal campaign activities.
- You expect to meet with constituents in the office who may walk in off Main Street or who are responding to general invitations from you. You will also probably meet with constituents by appointment. You may hold regular office hours on Saturday mornings.
- As of yesterday, you had used the office for three days. This activity included discussions of state government with Saco residents, including one guardianship issue and the potential to hold a future meeting on workers compensation matters.
- Your daughter may do some personal work in the office. In addition, she will assist you with outreach to constituents and organizational tasks related to legislative service.

Advice by Commission Staff

The permissibility of whether a Legislator may rent or use an office to perform their legislative responsibilities is not within the jurisdiction of the Commission. The Commission has limited jurisdiction over a small number of ethics issues, such as conflicts of interest and acceptance of gifts. The Commission staff does not know of any law or policy placing any restrictions on whether a Legislator may open an office and where it may be located. You may wish to consult with authorities in the House of Representatives on these issues, if you have not already.

Because the office will be used for campaign purposes, the financing of the office is within the Commission's jurisdiction as the campaign finance agency for the State of Maine. As noted above, the Commission does not have a policy that covers payments made for dual (campaign/non-campaign) purposes.

The staff of the Commission advises that you pay for the office partially from your campaign funds and partially from your personal funds. We recommend that, for each upcoming month, you project what portion of your use of the office will be for campaign versus non-campaign purposes. For example, if you expect that 15% of your use of the office during a month will be for campaigning, we suggest paying for 15% of that month's rent with campaign funds, and the remaining 85% with personal funds. That way, your campaign will not be receiving an in-kind contribution from you. Once you qualify to receive MCEA funds, using this allocation will minimize the risk that MCEA funds will be used to finance activities other than your campaign. It may be that you will need to adjust the allocation between personal and campaign funds over time, as your use of the office changes.

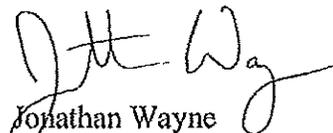
Even if you believe that you are conducting outreach to Saco residents in order to carry out your responsibilities as a State Representative, some members of the public or your campaign opponents may view your use of the office as campaigning. If you believe that the Main Street office will provide you with some campaign benefit this fall, you may wish to pay for some part of the rent with seed money to avoid any perception that your campaign has received an in-kind contribution. There are no limitations on how you may use seed money.

Because this matter might be the subject of a complaint before the Commission, we also recommend that you document your use of the office. We recommend that you keep a journal or calendar in which you or others record the day's campaign, legislative, or personal activities. This is not legally required, but it will assist you in defending the amount of campaign funds spent for the office and in verifying that the campaign has not received an in-kind contribution.

At his request, I am providing a copy of this letter to Rep. Donald E. Pilon. He has expressed some concerns to the Commission staff, because the office is located within his legislative district.

If you have any questions concerning this matter, please call me at 287-4179.

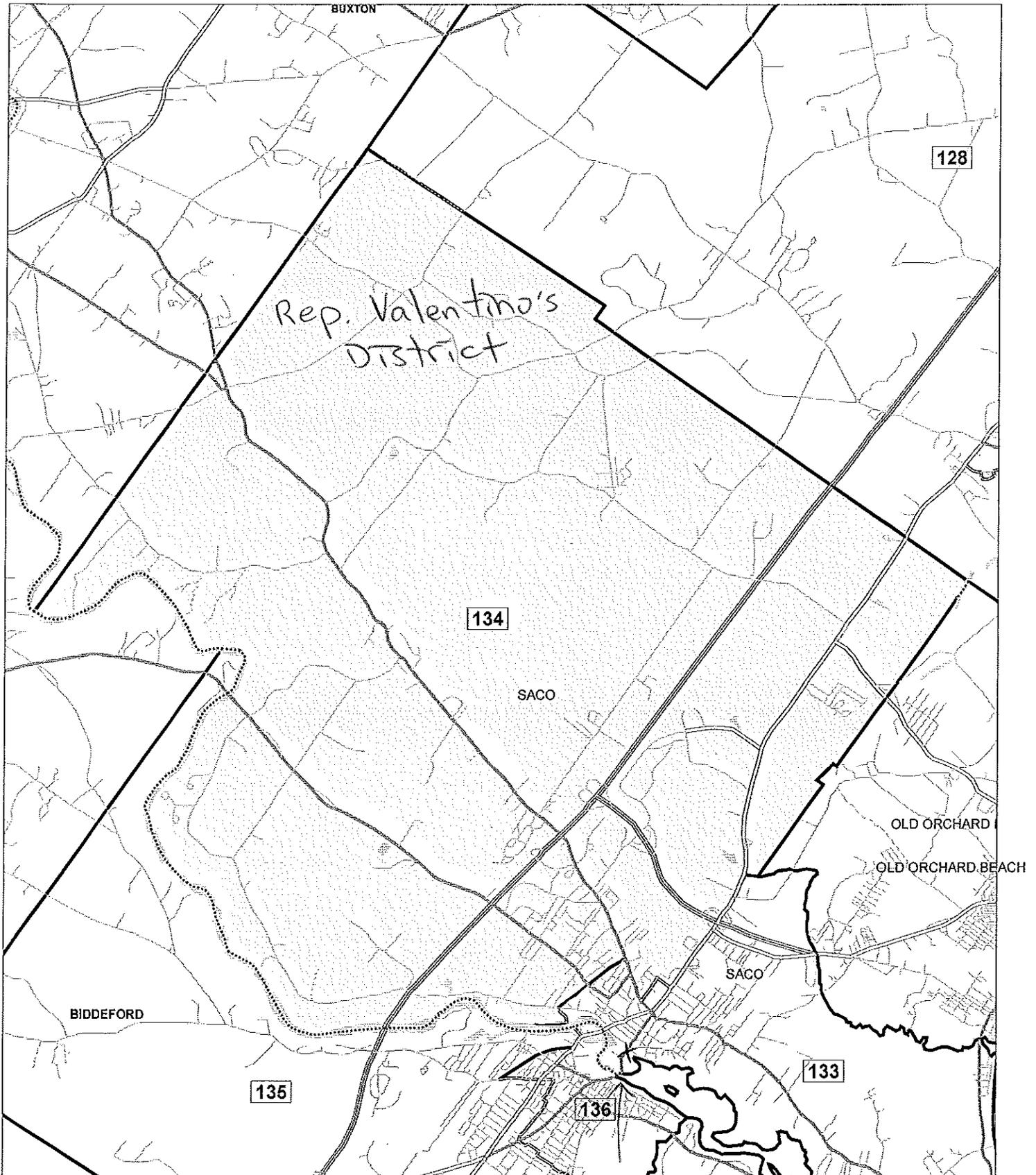
Sincerely,


Jonathan Wayne
Executive Director

cc: Hon. Donald E. Pilon (by e-mail)

State Representative District 134

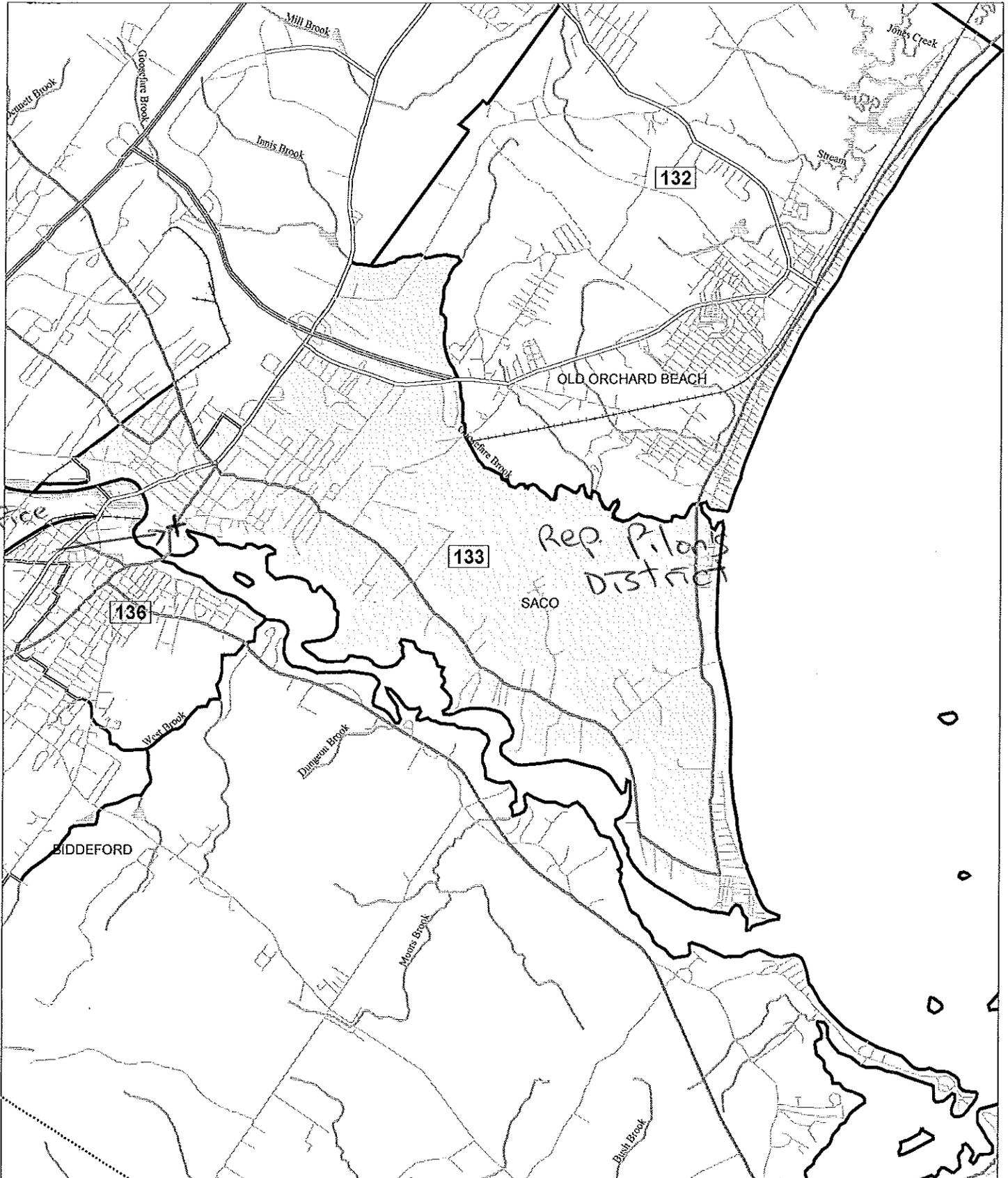
State Representative District 134 is shaded area



Office

State Representative District 133

State Representative District 133 is shaded area



3. Other meetings. The commission shall meet at other times on the call of the Secretary of State, the President of the Senate, the Speaker of the House or the chair or a majority of the members of the commission, as long as all members are notified of the time, place and purpose of the meeting at least 24 hours in advance.

4. Office hours before election. The commission office must be open with adequate staff resources available to respond to inquiries and receive complaints from 8 a.m. until at least 5:30 p.m. on the Saturday, Sunday and Monday immediately preceding an election.

21A § 1003. Investigations by commission

1. Investigations. The commission may undertake audits and investigations to determine the facts concerning the registration of a candidate, treasurer, party committee, political action committee, ballot question committee or other political committee and contributions by or to and expenditures by a person, candidate, treasurer, party committee, political action committee, ballot question committee or other political committee. For this purpose, the commission may subpoena witnesses and records whether located within or without the State and take evidence under oath. A person or entity that fails to obey the lawful subpoena of the commission or to testify before it under oath must be punished by the Superior Court for contempt upon application by the Attorney General on behalf of the commission.

2. Investigations requested. A person may apply in writing to the commission requesting an investigation as described in subsection 1. The commission shall review the application and shall make the investigation if the reasons stated for the request show sufficient grounds for believing that a violation may have occurred.

 **2-A. Confidentiality. (REPEALED)**

3. State Auditor. The State Auditor shall assist the commission in making investigations and in other phases of the commission's duties under this chapter, as requested by the commission, and has all necessary powers to carry out these responsibilities.

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, 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 investigation or audit:

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;

21A § 1012. Definitions

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

1. **Clearly identified.** "Clearly identified," with respect to a candidate, means that:

- A. The name of the candidate appears;
- B. A photograph or drawing of the candidate appears; or
- C. The identity of the candidate is apparent by unambiguous reference.

2. **Contribution.** The term "contribution:"

A. Includes:

- (1) A gift, subscription, loan, advance or deposit of money or anything of value made for the purpose of influencing the nomination or election of any person to state, county or municipal office or for the purpose of liquidating any campaign deficit of a candidate, except that a loan of money to a candidate by a financial institution in this State made in accordance with applicable banking laws and regulations and in the ordinary course of business is not included;
- (2) A contract, promise or agreement, express or implied, whether or not legally enforceable, to make a contribution for such purposes;
- (3) Funds received by a candidate or a political committee that are transferred to the candidate or committee from another political committee or other source; and
- (4) The payment, by any person other than a candidate or a political committee, of compensation for the personal services of other persons that are provided to the candidate or political committee without charge for any such purpose; and

B. Does not include:

- (1) The value of services provided without compensation by individuals who volunteer a portion or all of their time on behalf of a candidate or political committee;
- (2) The use of real or personal property and the cost of invitations, food and beverages, voluntarily provided by an individual to a candidate in rendering voluntary personal services for candidate-related activities, if the cumulative value of these activities by the individual on behalf of any candidate does not exceed \$100 with respect to any election;
- (3) The sale of any food or beverage by a vendor for use in a candidate's campaign at a charge less than the normal comparable charge, if the charge to the candidate is at least equal to the cost of the food or beverages to the vendor and if the cumulative value of the food or beverages does not exceed \$100 with respect to any election;



- (4) Any unreimbursed travel expenses incurred and paid for by an individual who volunteers personal services to a candidate, if the cumulative amount of these expenses does not exceed \$100 with respect to any election;
- (4-A) Any unreimbursed campaign-related travel expenses incurred and paid for by the candidate or the candidate's spouse or domestic partner;
- (5) The payment by a party's state, district, county or municipal committee of the costs of preparation, display or mailing or other distribution of a party candidate listing;
- (6) Documents, in printed or electronic form, including party platforms, single copies of issue papers, information pertaining to the requirements of this Title, lists of registered voters and voter identification information, created, obtained or maintained by a political party for the general purpose of party building and provided to a candidate who is a member of that party;
- (7) Compensation paid by a state party committee to its employees for the following purposes:
- (a) Providing no more than a total of 40 hours of assistance from its employees to a candidate in any election;
 - (b) Recruiting and overseeing volunteers for campaign activities involving 3 or more candidates; or
 - (c) Coordinating campaign events involving 3 or more candidates;
- (8) Campaign training sessions provided to 3 or more candidates;
- (8-A) Costs paid for by a party committee in connection with a campaign event at which 3 or more candidates are present;
- (8-B) Wood or other materials used for political signs that are found or contributed if not originally obtained by the candidate or contributor for campaign purposes;
- (8-C) The use or distribution of any communication, as described in section 1014, obtained by the candidate for a previous election and fully paid for during that election;
- (9) The use of offices, telephones, computers and similar equipment when that use does not result in additional cost to the provider;
- (10) Activity or communication designed to encourage individuals to register to vote or to vote if that activity or communication does not mention a clearly identified candidate; or
- (11) A purchase of apparel from a commercial vendor with a total cost of \$25 or less by an individual when the vendor has received a graphic or design from the candidate or the candidate's authorized committee.



3. Expenditure. The term "expenditure:"

A. Includes:

- 
- (1) A purchase, payment, distribution, loan, advance, deposit or gift of money or anything of value made for the purpose of influencing the nomination or election of any person to political office, except that a loan of money to a candidate by a financial institution in this State made in accordance with applicable banking laws and regulations and in the ordinary course of business is not included;
 - (2) A contract, promise or agreement, expressed or implied, whether or not legally enforceable, to make any expenditure;
 - (3) The transfer of funds by a candidate or a political committee to another candidate or political committee; and
 - (4) A payment or promise of payment to a person contracted with for the purpose of influencing any campaign as defined in section 1052, subsection 1; and

B. Does not include:

- (1) Any news story, commentary or editorial distributed through the facilities of any broadcasting station, newspaper, magazine or other periodical publication, unless the facilities are owned or controlled by any political party, political committee, candidate, or candidate's immediate family;
- (1-A) Any communication distributed through a public access television station if the communication complies with the laws and rules governing the station and all candidates in the race have an equal opportunity to promote their candidacies through the station;
- (2) Activity or communication designed to encourage individuals to register to vote or to vote if that activity or communication does not mention a clearly identified candidate;
- (3) Any communication by any membership organization or corporation to its members or stockholders, if that membership organization or corporation is not organized primarily for the purpose of influencing the nomination or election of any person to state or county office;
- (4) The use of real or personal property and the cost of invitations, food and beverages, voluntarily provided by an individual to a candidate in rendering voluntary personal services for candidate-related activities, if the cumulative value of these activities does not exceed \$100 with respect to any election;
- (5) Any unreimbursed travel expenses incurred and paid for by an individual who volunteers personal services to a candidate, if the cumulative amount of these expenses does not exceed \$100 with respect to any election;
- (5-A) Any unreimbursed campaign-related travel expenses incurred and paid for by the candidate or the candidate's spouse or domestic partner;

- (6) Any communication by any person that is not made for the purpose of influencing the nomination for election, or election, of any person to state or county office;
- (7) The payment by a party's state, district, county or municipal committee of the costs of preparation, display or mailing or other distribution of a party candidate listing;
- (8) The use or distribution of any communication, as described in section 1014, obtained by the candidate for a previous election and fully paid for during that election campaign;
- (9) Documents, in printed or electronic form, including party platforms, single copies of issue papers, information pertaining to the requirements of this Title, lists of registered voters and voter identification information, created or maintained by a political party for the general purpose of party building and provided to a candidate who is a member of that party;
- (10) Compensation paid by a state party committee to its employees for the following purposes:
- (a) Providing no more than a total of 40 hours of assistance from its employees to a candidate in any election;
 - (b) Recruiting and overseeing volunteers for campaign activities involving 3 or more candidates; or
 - (c) Coordinating campaign events involving 3 or more candidates;
- (10-A) Costs paid for by a party committee in connection with a campaign event at which 3 or more candidates are present;
- (11) Campaign training sessions provided to 3 or more candidates;
- (11-A) Wood or other materials used for political signs that are found or contributed if not originally obtained by the candidate or contributor for campaign purposes;
- (12) The use of offices, telephones, computers and similar equipment when that use does not result in additional cost to the provider; or
- (13) A purchase of apparel from a commercial vendor with a total cost of \$25 or less by an individual when the vendor has received a graphic or design from the candidate or the candidate's authorized committee.

4. Exploratory committee. (REPEALED)

4-A. Influence. "Influence" means to promote, support, oppose or defeat.

5. Party candidate listing. "Party candidate listing" means any communication that meets the following criteria.

- A. The communication lists the names of at least 3 candidates for election to public office.

authorized to do business in this State. This paragraph does not apply to any entity already lawfully registered to conduct business in this State.

B. The commission shall create and maintain forms for the designation of agents required pursuant to paragraph A and require, at a minimum, the following information:

- (1) The name, address and telephone number of the designated agent; and
- (2) The name, address and telephone number of the person conducting business in this State.

C. The person conducting push polling shall notify the commission of any changes in the designated agent and the information required by paragraph B.

D. A person who violates this subsection may be assessed a forfeiture of \$500 by the commission.

4. Permitted practices. This section does not prohibit legitimate election practices, including but not limited to:

- A. Voter identification;
- B. Voter facilitation activities; or
- C. Generally accepted scientific polling research.

21A § 1015. Limitations on contributions and expenditures

1. Individuals. An individual may not make contributions to a candidate in support of the candidacy of one person aggregating more than \$1,500 in any election for a gubernatorial candidate, more than \$350 for a legislative candidate, more than \$350 for a candidate for municipal office and beginning January 1, 2012 more than \$750 for a candidate for municipal office or more than \$750 in any election for any other candidate. This limitation does not apply to contributions in support of a candidate by that candidate or that candidate's spouse or domestic partner. Beginning December 1, 2010, contribution limits in accordance with this subsection are adjusted every two years based on the Consumer Price Index as reported by the United States Department of Labor, Bureau of Labor Statistics and rounded to the nearest amount divisible by \$25. The commission shall post the current contribution limit and the amount of the next adjustment and the date that it will become effective on its publicly accessible website and include this information with any publication to be used as a guide for candidates.

2. Committees; corporations; associations. A political committee, political action committee, other committee, firm, partnership, corporation, association or organization may not make contributions to a candidate in support of the candidacy of one person aggregating more than \$1,500 in any election for a gubernatorial candidate, more than \$350 for a legislative candidate, more than \$350 for a candidate for municipal office and beginning January 1, 2012 more than \$750 for a candidate for municipal office or more than \$750 in any election for any other candidate. Beginning December 1, 2010, contribution limits in accordance with this subsection are adjusted every two years based on the Consumer Price Index as reported by the United States Department of Labor, Bureau of Labor Statistics and rounded to the nearest amount divisible by \$25. The commission shall post the current

contribution limit and the amount of the next adjustment and the date that it will become effective on its publicly accessible website and include this information with any publication to be used as a guide for candidates.

3. Aggregate contributions. No individual may make contributions to candidates aggregating more than \$25,000 in any calendar year. This limitation does not apply to contributions in support of a candidate by that candidate or that candidate's spouse or domestic partner.

4. Political committees; intermediaries. For the purpose of the limitations imposed by this section, contributions made to any political committee authorized by a candidate to accept contributions on the candidate's behalf are considered to be contributions made to that candidate. If the campaign activities of a political action committee within a calendar year primarily promote or support the nomination or election of a single candidate, contributions to the committee that were solicited by the candidate are considered to be contributions made to the candidate for purposes of the limitations in this section. For purposes of this subsection, solicitation of contributions includes but is not limited to the candidate's appearing at a fundraising event organized by or on behalf of the political action committee or suggesting that a donor make a contribution to that committee.

For the purposes of the limitations imposed by this section, all contributions made by a person, either directly or indirectly, on behalf of a particular candidate that are in any way earmarked or otherwise directed through an intermediary or conduit to the candidate are considered to be contributions from that person to the candidate. The intermediary or conduit shall report the original source and the intended recipient of the contribution to the commission and to the intended recipient.

 **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.

6. Prohibited expenditures. A candidate, a treasurer, a political committee, a party or party committee, a person required to file a report under this subchapter or their authorized agents may not make any expenditures for liquor to be distributed to or consumed by voters while the polls are open on election day.

7. Voluntary limitations on political expenditures. A candidate may voluntarily agree to limit the total expenditures made on behalf of that candidate's campaign as specified in section 1013-A, subsection 1, paragraph C and subsections 8 and 9.