

# Agenda

## Item #1



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

Minutes of the December 12, 2006 Meeting of the  
Commission on Governmental Ethics and Election Practices  
Held in the Commission's Meeting Room,  
PUC Building, 242 State Street, Augusta, Maine

Present: Hon. Andrew Ketterer, Chair; Hon. Jean Ginn Marvin; Hon. Mavourneen Thompson;  
Michael Fridman, Staff: Executive Director Jonathan Wayne; Phyllis Gardiner, Counsel.

At 9:06 A.M., Andrew Ketterer convened the meeting and noted that Jean Ginn Marvin had a conflict with regard to Agenda Item #8 and would not be included in the discussion on this agenda item. Item #7 has been withdrawn. The following agenda items were discussed:

Agenda Items #1 and #2 were taken out of order and discussed later.

**Agenda Item #3 – Finding of Violation for Commingling MCEA Funds – Rep. Joan Bryant-Deschenes**

As a result of the staff audit of Rep. Joan Bryant Deschenes' campaign, the staff determined that Rep. Bryant-Deschenes had commingled campaign and personal funds. At the last meeting, the Commission found Rep. Bryant-Deschenes in violation of the prohibition of commingling campaign finance funds with her personal funds but postponed the consideration of a penalty. Mr. Wayne informed the members that Rep. Bryant-Deschenes was an outgoing member of legislature and had submitted a letter to the Commission asking for reconsideration of its action at the previous commission meeting. The staff recommendation is not to impose a penalty.

Rep. Bryant-Deschenes addressed the Commission. She explained that she misunderstood the statute, which she said was clear. However, the Candidate Guidebook says that candidates are "strongly encouraged" to open separate account and does not "require" separate accounts.

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Commission on Governmental Ethics and Election Practices  
December 12, 2006 Meeting Minutes

Mr. Friedman asked what her practice was in past sessions when she ran for the legislature. Rep Bryant Deschenes indicated she did have a separate account during her first run, but because she seldom wrote checks decided she did not need to open a separate account. She further indicated that the Guidebook indicated that it was not mandatory to have separate accounts. She also advised that the Guidebook could be written more clearly so candidates know exactly what is required. The statute indicates one thing and the Guidebook indicates another, therefore, she was unsure which route to take.

Mr. Ketterer asked whether the statute had been changed recently. Mr. Wayne responded that the requirement had existed in statute for a long time but an amendment was made to explicitly require Maine Clean Election Act candidates to have separate campaign accounts.

Mr. Friedman asked Mr. Wayne what the language in the Guidebook was. After a brief discussion, it was agreed that the language should be changed from "strongly encouraged" to "required" if that is what the intent is.

Ms. Ginn Marvin made a motion to assess penalty of \$100, which Mr. Friedman seconded.

Mr. Friedman expressed concern over two things: the perception by public of wrongdoing by commingling funds and the statute requiring it. However, since the Guidebook does not require two separate accounts and statute says it is, the need exists to be sure it is clear what the Commission's intent is with regard to accounting requirements.

Ms. Thompson stated that since the problem was discovered through an audit procedure, we can assume that there are similar problems with other candidates. Because there is a contradiction between what the Guidebook says and what the statute requires, it is more on a mistake on the part of the Commission and the staff than of the candidate. Ms. Thompson said that she would vote against assessing a penalty.

Ms. Ginn Marvin said that the statute was very clear about this.

Commission on Governmental Ethics and Election Practices  
December 12, 2006 Meeting Minutes

The Commission voted 3-1 to impose a \$100 penalty. Ms. Thompson voted against imposing a penalty.

**Agenda Item #4 – Finding of Violation for Commingling MCEA Funds – Donald Marean**

Mr. Wayne explained that Rep. Marean commingled his legislative compensation check and MCEA funds. Rep. Marean assumed they were related monies and could put them together.

Rep. Marean addressed the Commission. In past runs (2004) he had separate accounts, he started using the account for his legislative pay because it was already set up with automatic direct deposit. When the 2006 MCEA funds started coming in, he had them electronically deposited into this same account without realizing it would be a violation. When the Commission staff advised that he should have separate accounts, he did so the same day.

Ms. Thompson made a motion to assess a \$100 penalty, Mr. Friedman seconded this motion, and the Commission voted 3-1 in favor of the \$100 penalty on Rep. Marean. Ms. Thompson voted against the motion.

**Agenda Item #2 – Request for Waiver of Late Filing Penalty – Eagle Lake Democratic Committee**

Mr. Wayne outlined the late filing of the Eagle Lake Democratic Committee's report. This report was due by the town party committee by July 15. Mr. Wayne did note that there was a problem getting the reminder notice to the committee treasurer due to a postal issue. The standard formula used for determining late filing penalties would mean a \$500 penalty. Mr. Wayne also noted that even after the Eagle Lake Democratic Committee learned of the late filing deadline in August, they still did not file their report until October.

Mr. Wayne pointed out that not all local party committees reach the \$1,500 annual threshold every year and so filing reports may not be a regular obligation for many local committees. Mr. Ketterer also pointed out the difficulty of getting volunteer treasurers for these small party committees and how frequently these officers change.

Commission on Governmental Ethics and Election Practices  
December 12, 2006 Meeting Minutes

Ms. Thompson inquired as to what past practice has been in this situation. Mr. Wayne indicated that within the past few years, the Commission has been stricter in regard to late filing penalties of party committees. This issue may be a little different since the late notice mailer was not received by the party treasurer.

Senator Martin addressed the Commission via telephone. He expressed concern that the state party committees are not held accountable in some way for neglecting to notify the town party committees of these reporting deadlines. After speaking to the treasurer himself, Senator Martin was told that the treasurer would file the report for the next filing deadline since activity was so minimal. The treasurer was under the impression that this would be acceptable.

Mr. Friedman asked Senator Martin what happened during the last election cycle in 2004 and was told there was never enough activity in their accountings to file.

There being no further comments, Ms. Ginn Marvin moved that the Commission adopt the staff recommendation to impose a penalty of \$500 against the Eagle Lake Democratic Committee. The motion was seconded by Mr. Friedman.

Ms. Ginn Marvin said that the Commission should be consistent with its previous decisions in similar cases.

Mr. Friedman asked Mr. Wayne if the Commission would accept a penalty payment from the state party committee. Mr. Wayne said that it could. Mr. Friedman said that since it was the state party's responsibility to notify the town party committee of this filing report deadline, then it ought to do that. The Commission is not required to notify the committees of these reporting deadlines, but the state parties are.

Senator Martin asked who is responsible for paying the penalty. Mr. Ketterer explained that it was the local party committee's responsibility.

Commission on Governmental Ethics and Election Practices  
December 12, 2006 Meeting Minutes

The Commission voted in favor of the \$500 penalty by vote of 4-0.

The Commission returned to Agenda Item #1.

**Agenda Item # 1 – Public Workshop on Leadership PACs and MCEA Qualifying Requirements**

Mr. Ketterer informed the group that the purpose of the workshop was to inform and recommend to the Legislature on public policy issues regarding leadership PACs.

Don Bernard from South Portland said that he retired here from Texas and appreciates the openness of Maine government because of the Maine Clean Election Act. Leadership PACs are interfering with this process and undermining the Clean Election process. Running as publicly funded candidate should mean accepting only public funds, no special interest money.

Ms. Thompson asked Mr. Bernard how his opinion affects the right of free speech. Mr. Bernard explained he did not agree that they should be related because then it would be a case where people with the most money would have the most free speech.

Norman Ferguson, former Maine Senator now living in Hanover, addressed the Commission. Mr. Ferguson feels PACs should be eliminated in legislative races because the amount of money raised by legislative leaders in both Democratic and Republican parties, which was over one million and a half dollars in the last election, according to a Lewiston Sun article. Senator Ferguson feels this special interest money creates a sham of the Clean Election process. Too much money is collected by special interests (PACs) and contributed to legislative leaders to enhance their own agendas.

Representative Linda Valentino addressed the Commission. She stated that she formerly served on the Legal and Veterans Affairs Committee during last session and that she has already put in several bills regarding this issue. Rep. Valentino spoke about past bills which did not pass or even come out of committee. After listening to testimony on both sides, she feels strongly that leadership PACs should be funded by the MCEA. She said that her bill would place limits on

Commission on Governmental Ethics and Election Practices  
December 12, 2006 Meeting Minutes

expenditures, which would be on a tier depending upon which leadership office the Legislator is running for, and would place restrictions on how the funds could be used. Specifically, the funds could not be used to support the other candidates for political office. In addition, if a Legislator was running for leadership, that individual would not be able to be involved in another PAC. She feels there needs to be an equal playing field for the leadership PACs. She also thinks that there should be a minimum amount of seed money that Legislators should raise to be eligible.

Ms. Thompson asked what the arguments were against past bills discussed by the LVA. Rep. Valentino responded that mostly the bills were too restrictive according to the committee members. She strongly feels the money amount needs to be something the leadership candidates can work with, if it is too low, the bills will not pass.

Daniel Billings, Esq., addressed the Commission saying that he has been involved in several leadership PACs in the past but that he was expressing his personal opinions. He said that what concerns him are proposals that would appear to make a change, but have no substance in them, e.g., making it illegal for MCEA candidates to participate in fund raising for a PAC, but those same candidates could raise funds for party committees. The result in eliminating leadership PACs is that fundraising is pushed over to party committees, which would also be less transparent than it is currently. Mr. Billings said that by focusing solely on MCEA candidates misses the problem of the involvement of traditionally financed candidates in leadership PACs. Maine has low contribution limits for traditionally funded candidates in order to reduce the influence of contributors. However, those same candidates can accept contributions without any limitation for their leadership PACs. Caucus PACs seem like a good idea for reform. Mr. Billings recommended that the Commission look at whole system, not just leadership PACs. He also recommended that the Commission considered this issue separately from the other proposals dealing with the Maine Clean Election Act.

Mr. Friedman asked what Mr. Billings would change in the system. Mr. Billings responded that he would ban MCEA candidates from raising private money including PACs, party committees, or any political organization. He said that he is concerned that certain changes may actually result in less transparency than there is now. Caucus PACs have less personal control by

Commission on Governmental Ethics and Election Practices  
December 12, 2006 Meeting Minutes

individual candidates and represents group as a whole. Caucus PACs could also be on-going organizations, which could be clearly identified. Currently, leadership PACs come and go and sometimes have names that do not clearly indicate what purpose they serve.

John Bartholomew from Common Cause Maine addressed the Commission. This is not a solely a Clean Elections problem. Mr. Bartholomew pointed out that there have been incremental changes to the campaign finance system that have lessened the influence of money on politics and public policy but the influence has not been eliminated. Yet rather than criticize changes that have been implemented, we should look at the possibilities for new incremental steps to take. Maine is one of the few states without PAC contribution limits. Many other states also limit the types of entities that can contribute to PACs, e.g., some states prohibit corporations or labor unions from contributing to PACs.

Alison Smith, co-chair of Maine Citizens for Clean Elections (MCCE), addressed the Commission. MCCE does not have a position on leaderships PACs but does view PAC reform as the next step in campaign finance reform. The MCEA was successful in removing most of the influence of big money out of candidate campaigns. The contribution limits for privately financed candidates are also successful in limiting the influence of money in candidate campaigns. If change (reform) is necessary, then we need to look at the big picture, not just focus on MCEA candidates. PAC reform needs to be looked at separately. PACs do provide disclosures now, and we should look at solutions that increase accountability.

Mr. Friedman asked Ms. Smith if her group would rather see the focus on larger PAC issue than the leadership PAC issue. Ms. Smith responded that in her opinion the leadership PAC has been framed as a clean election problem. She does not agree. PACs provide an avenue for donations for privately financed candidates as well MCEA candidates. The current system does provide disclosure but does not limit influence.

Mr. Ketterer also noted that a number of e-mails were received from citizens and former candidates on this issue as well.

Commission on Governmental Ethics and Election Practices  
December 12, 2006 Meeting Minutes

Ms. Thompson requested comments from staff.

Mr. Wayne noted two related problems: leadership PACs and caucus PACs. Leadership PACs are smaller and controlled by a single Legislator used to become a leader or remain a leader. Money involved is not as large as the caucus PACs. Proposals for reform could be made regarding leadership PACs and MCEA candidates since there is an inconsistency between MCEA candidates who do not take private money for their campaigns but do have personal PACs raising money on the side. However, there are some costs associated with running for a leadership position and the reforms should be sensitive to that. Speaker Cummings' bill in last legislature allowed candidates to accept limited amounts of money from individuals who are not lobbyists to cover travel and other expenditures that leadership candidates do encounter. So some progress could be made in that area and prohibiting MCEA candidates from having their own leadership PAC could be a precondition for MCEA funds.

Mr. Wayne said that caucus PACs present a larger issue. There are PACs that almost function as caucus PACs: the House Democratic Campaign Committee, the House Republican Fund, Senate Democratic Campaign Committee, and the Maine Senate Republican Victory Fund. There is a great deal of money, contributions, flowing into these PACs from people who have interests before the Legislature. Some of the editorial criticisms are valid. The influence of special interest money has been largely removed from candidate campaigns but it has only moved into leadership and caucus PACs. The Commission might want to think about contribution restrictions to all PACs or to caucus PACs. Under the First Amendment, it is difficult to limit amount PACs spend, but if you feel that the public's perception and confidence in the political process would be benefited, you could recommend contribution limits to restrict the flow of special interest into caucus PACs. The Commission may be in a unique position to make a bipartisan recommendation. The Legislators are accountable to their caucus and may feel constrained in this area.

Mr. Friedman recalled that today's hearing was to get input from the public; no decision by the Commission is required. Mr. Ketterer also reminded the members that any ideas for proposals to the Legislature need to be made within 90 days of the election.

Commission on Governmental Ethics and Election Practices  
December 12, 2006 Meeting Minutes

It was agreed to bring this item back to the table at the next meeting for more discussion after all members have had a chance to review today's public comments.

**Agenda Item #5 – Alleged Violation of the Code of Fair Campaign Practices – David**

**Miramant**

Mr. Wayne informed the Commission that David Metz of Rockport brought a complaint to the Commission regarding literature sent by the Miramant campaign. The question is whether the literature is misleading and whether that would be a violation of the Code of Fair Campaign Practices that Mr. Miramant signed. There is a jurisdictional issue since signing the Code is voluntary and since the statute does not authorize the Commission to perform any investigation or impose any fine in violation of the Code.

Mr. Metz addressed the Commission. He said that there were two issues: Does the Commission have the authority to hear the matter and the matter itself. Statement of Fact in the original Bill gives direction for Commission to proceed with investigation and forward findings to the Legislature. Mr. Metz believes the Commission does have jurisdiction with regard to this matter. Mr. Metz contends that the David Miramant flyer mailed out is misleading because of the nature of the roll call referred to in the flyer. The roll call account of Mr. Miramant's general election opponent, Rep. Steve Bowen was not accurate and misleading regarding Rep. Bowen's position on domestic violence and protecting children from lead poisoning. Mr. Metz contends that when candidates sign the Code, they are giving up certain amount of their First Amendment right of free speech and agree to control their speech within the parameters of the Code.

Representative Miramant from Rockland and his counsel, Dan Walker, Esq., addressed the Commission. Mr. Walker addressed the jurisdiction issue. Statute is clear that the Commission does not have jurisdiction on this issue. This is purely a voluntary option on the part of candidates. The complaint procedure that was in the original bill was pulled from the law that was enacted. The study group convened pursuant to the enacted law to study the options for enforcing the Code decided that there were not the resources to institute a complaint procedure and that there would be significant First Amendment issues. Mr. Walker contended that the statements in the mailer about Rep. Bowen's votes and positions were not false.

Commission on Governmental Ethics and Election Practices  
December 12, 2006 Meeting Minutes

Rep. Miramant reviewed the reasons and justification for the mailing along with the accuracy of the information. He received many positive comments as a result of the flyer.

Ms. Gardiner agreed that jurisdiction is the issue here and felt no action was warranted.

Mr. Ketterer expressed concern over the Ethics Commission getting involved in looking over literature printed by candidates. The opportunity to be heard is valid, however, having the Commission make any decisions on these issues is not appropriate.

Mr. Friedman agreed with Mr. Ketterer and thought that the staff was correct in affording the complainant an opportunity to be heard.

Ms. Ginn Marvin moved that the Commission adopt the staff recommendation that there is no jurisdiction in this matter. The motion was seconded by Ms. Thompson and the Commission voted in favor by vote of 4-0.

**Agenda Item # 6 – Misreporting of Expenditures Dates – Geoffrey Heckman**

Mr. Wayne reviewed that an audit of Geoffrey Heckman's reports found dates that were inaccurate causing him to receive \$200 more in the distribution of MCEA funds for his primary election funds that he would not have received if the dates had been correct. Because he spent all his seed money, he received public money in excess of \$200. Mr. Heckman was a candidate for the House.

Mr. Heckman addressed the Commission. He confirmed that he believed he had to spend all his seed money, he did not read the Guidebook carefully and was relying on what other people told him.

On motion by Ms. Thompson and seconded by Ms. Ginn Marvin it was moved to accept the staff recommendation and impose a violation in the amount of \$200. (4-0)

Commission on Governmental Ethics and Election Practices  
December 12, 2006 Meeting Minutes

**(Agenda Item #7 withdrawn, Items 8 & 9 discussed later)**

**Agenda Item #10 – Ethics Code for Commission Employees**

Mr. Wayne advised the Commission members that the Commission, as well as other state agencies, has been urged by the Governor, to adopt a code of ethics and advised the members to adopt.

John Branson, Esq., raised the issue of conflict of interest with regard to the Ethics Commission establishing a code of ethics. Any code of ethics should include a provision to that effect.

Mr. Friedman moved to adopt the Code of Ethics proposed by Mr. Wayne. The motion was seconded by Ms. Thompson. The motion carried by 4-0 vote.

**Agenda Item #9 – Proposed Statutory Changes**

Mr. Wayne noted that the changes were drafted by the Assistant Director, Paul Lavin. He also informed the group that the changes are posted on the Ethics website. After discussion, it was decided to take testimony from people who have reviewed the changes prior to the meeting.

Senator Bill Diamond addressed the Commission. Senator Diamond feels that there should be more scrutiny of candidates seeking public funding than the law requires currently. He feels the number of qualifying signatures should be increased from 150 and should be restricted to the district the candidate is running in. Public funds should not be used for meals, car maintenance and fuel expenses. Taxpayers do not want their money spent on these kinds of items.

Independent contributions by supporters (for example, a mailing) which the candidate nor treasurer know nothing about are unfair, because the matching funds kick in without the candidate being able to control money spent on their behalf. This could create a loophole that people could take advantage of to get matching funds.

Ms. Thompson asked Senator Diamond for ideas regarding solving the independent contributions issue. Senator Diamond thought having the ability to somehow reject contributions would help this problem.

Commission on Governmental Ethics and Election Practices  
December 12, 2006 Meeting Minutes

Senator Peter Mills addressed the Commission and reviewed his experience as running as House and Senate candidate and a gubernatorial candidate. California and Connecticut have refined the Maine and Arizona Clean Election Law. The draft features a change that removes the \$5 qualifying contributions, which reduces the travel, organization and validating time. Road travel alone is staggering to collect qualifying contributions. Money orders need to be purchased and recorded on each sheet. Senator Mills proposes opening the donation process up to anyone for any amount from \$5 to \$40, so it would combine the seed money process and the qualifying process into one step. The candidate would still have a validation form, and be able to keep the money and work from that amount. He feels the cost of processing the \$5 contributions is disproportionate to the contribution.

Senator Mills believes privately financed candidates should be able to 'shield' themselves if they agree to limit their spending to a certain amount and if their opponent raises more or if there is an independent expenditure for their opponent, the candidate would receive matching funds from the Commission.

Mr. Friedman asked Sen. Mills what he thought about Sen. Diamond's idea that a candidate ought to be able to reject an independent expenditure on their behalf. Because independent expenditures crop up without the candidate knowing about it, the candidate has no control and therefore cannot really set a limit. The party committees are the most aggressive at this, and not always with a favorable result. If the candidate had a 'shield' to limit spending, it would protect the candidate and save money in the long run.

Representative Linda Valentino spoke to the Commission. Rep. Valentino highlighted her concerns with the proposed changes regarding qualifying contribution requirements, seed money contributions, and the need to increase the number of signatures required.

Daniel Billings, Esq., representing the Woodcock for Governor campaign, said that he believed that some of the measures to tighten up the qualifying contributions for gubernatorial candidates would create new problems. Increasing the number of checks or having geographical

Commission on Governmental Ethics and Election Practices  
December 12, 2006 Meeting Minutes

requirements will force candidates to rely on a paid effort to collect the contributions. He said that he strongly disagreed with the requirement of a minimum number of contributions from every county. He also felt the qualifying form should not require the candidate's signature since it does not really signify anything. The candidate is not certifying anything; therefore, should not have to sign. Mr. Billings felt that more importantly, the person circulating the form should be making certain the check is from a personal account and the contributor is a registered voter, etc. He was supportive of the extension of the rebuttable presumption period to 60 days from 21 days.

Representative Gary Knight expressed his concern that there is a negative connotation drawn if a candidate is not running as a "clean" candidate. He suggested changing the name of publicly funded candidates to something other than "clean." Also, he believes non-profit corporations should have dollar restrictions the same as all other PACs and political parties.

Alison Smith of the Maine Citizens for Clean Elections and John Bartholomew of Common Cause Maine addressed the Commission. They endorsed the following ideas: extending rebuttable presumption period before the general election; the ability to revoke certification of a candidate; changing qualifying process by tightening up rules to shore up contributions as a measure of genuine support for the candidate, and with giving the staff more time for process certification requests. Ms. Smith did have reservations regarding the 20 hour rule per party, stating the language change could create a loophole. She also raised concerns over disclosure statements on expenditures.

Mr. Bartholomew cautioned the Commission to move carefully towards changes affecting minimum seed money and geographic distributions.

Mr. Ketterer informed the group that the Commission will be continuing discussion on this item further on January 19.

Discussion took place regarding what order to take up the Agenda Item #8 and an item for executive session. It was suggested that a separate meeting take place for discussion of Agenda

Commission on Governmental Ethics and Election Practices  
December 12, 2006 Meeting Minutes

Item #8, before the regularly scheduled January meeting. Much discussion followed regarding the urgency to get this issue resolved since the original complaint was filed back in October. John Branson, Esq., counsel for Carl Lindemann, requested that Commissioner Jean Ginn Marvin be removed from discussions regarding this agenda item, due to conflict of interest.

John Crasnick, Democracy Maine, also requested this discussion take place before the January 19 meeting due to the fact that if the Maine Heritage Policy Center is found to be required to file a report under §1056B, it must be done before the December 19 filing deadline, so any decision needs to be made prior to that date.

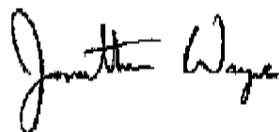
Mr. Wayne pointed out that the public would not be disadvantaged by the filing of a report from Maine Heritage Policy Center later than the December 19<sup>th</sup> deadline. Under the circumstances, it would be justified for this deadline to be extended.

The Commission decided to hold a special meeting will be held on December 20<sup>th</sup> for the purpose of discussing Agenda Item #8.

Mr. Friedman moved to go into Executive Session pursuant to Title 1, Section 405, §6 to determine whether to hear a complaint against a Legislator. The motion was seconded by Ms. Ginn Marvin and carried by a unanimous vote (4-0). Mr. Ketterer left the meeting at this point and Ms. Ginn Marvin assumed the chair.

The Commission came out of Executive Session. Mr. Friedman moved that the complaint that was the basis of the Executive Session be dismissed because the Commission lacks jurisdiction to consider the complaint and because, even if the Commission had jurisdiction, it would make a finding that there was no violation of 21-A M.R.S.A. § 1014. Ms. Thompson seconded. The motion carried (3-0).

Respectfully submitted,



Jonathan Wayne, Executive Director



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Minutes of the November 20, 2006 Meeting of the  
Commission on Governmental Ethics and Election Practices  
Held in the Commission's Meeting Room,  
PUC Building, 242 State Street, Augusta, Maine

Present: Chair Andrew Ketterer; Hon. Michael P. Friedman; Hon. Jean Ginn Marvin; Hon. A. Mavourneen Thompson. Staff: Executive Director Jonathan Wayne; Phyllis Gardiner, Counsel.

At 9:07 A.M., Chair Andrew Ketterer convened the meeting. The Commission considered the following items:

**Agenda Item #1 – Request for Waiver of Late Filing Penalty/Eagle Lake Democratic Committee**

At the request of the Eagle Lake Democratic Committee, the Commission decided to postpone its discussion of this item until the December meeting.

**Agenda Item #2 – Request for Waiver of Late Filing Penalty/South Portland Democratic Committee**

Mr. Wayne said that the Commission staff sent a notice of the filing deadline to Alan Mills. Mr. Wayne said that any party committee that raises or spends at least \$1,500 in the first six months of a calendar year has to file a finance report in July. Mr. Wayne said that the local committee chair stated that the committee had a fundraiser in October 2005, but was not able to process the credit card payments and had to recollect the contributions. Mr. Wayne said that the committee expected to get the revenues in October 2005, but they did not actually come in until January and February of 2006.

Alan Mills, treasurer of the South Portland Democratic Committee, said that funds in the amount of \$1,050 were raised in 2005 and he thought the funds had been deposited at that time. Mr. Mills said that he thought the committee was well under the \$1,500 filing threshold by June 2006. Mr. Mills said that it was not until he filed the October report that he received notice from the Commission staff that he was required to have filed the January report.

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Mr. Friedman asked if someone assumed that the items from the auction in October 2005 had been paid for in 2005. Mr. Mills said that there was a glitch in the credit card payments. Mr. Friedman asked if it was only a problem with credit card payments. Mr. Mills said he understood that only credit card payments were affected. Mr. Mills said that due to the glitch, the committee chairperson at that time, John Jameson, had to recollect the money. Mr. Mills said that the recollection took place in 2006.

Mr. Friedman asked whether the glitch was with the committee, the bank, or some other entity. Mr. Mills said that it was probably due to miscommunication within the committee. Mr. Friedman asked if there was any question that the money was deposited into the account in 2006. Mr. Mills said that there was no question.

Ms. Ginn Marvin asked if the problem was due to not processing the receipts from the auction. Mr. Mills said that John Jameson was in charge of the auction and not himself. Ms. Ginn Marvin asked if the receipts from the auction were reported in 2005. Mr. Mills said that they were not reported because the committee did not exceed the \$1,500 filing threshold. Mr. Mills said that the \$1,050 did put the committee over the \$1,500 for the period of January through June of 2006.

Ms. Ginn Marvin asked when Mr. Mills first heard from Commission staff. Mr. Mills said that he filed the October report on October 25 and received a phone call from Martha Demeritt the same day asking for the January report. Mr. Mills said that he refiled the January report on October 27 after reviewing the committee's receipts.

Ms. Ginn Marvin said that she was not clear on why the credit card payments were not processed. Mr. Mills said that the credit card system did not process payments made at the auction, but he did not know why.

Ms. Thompson asked if Mr. Mills would have filed a report if the committee collected more than \$1,500 prior to January 2006. Mr. Mills said yes. Mr. Mills said that including the \$1,050 raised from the auction, the committee had \$1,975.15 in total receipts between January and June 2006. Mr. Mills said that without the auction receipts, the committee was well below the \$1,500 filing threshold.

Ms. Thompson asked when the \$1,050 was collected. Mr. Mills said that it was deposited in March 2006.

Ms. Ginn Marvin moved, and Ms. Thompson seconded, that the Commission follow the staff recommendation and assess the statutory penalty of \$500.

Ms. Ginn Marvin said that she did not hear any reasons why the Commission should be lenient. Ms. Ginn Marvin said that the committee had an obligation to file the report on time.

Mr. Friedman said that the committee was responsible for learning the filing requirements. Mr. Friedman said that it was clear that the filing should have occurred when the funds were actually received in 2006, whether or not there was a glitch in the processing of payments in 2005.

Mr. Ketterer said that the Commission had to consider whether the committee's explanation fit the statutory definition of mitigating circumstances. Mr. Ketterer said that \$500 was the maximum penalty for the type of violation being discussed.

The Commission voted unanimously (4-0) to follow the staff recommendation and assess the statutory penalty of \$500.

Mr. Mills said that the committee did not have funds available to pay the fine. Mr. Ketterer recommended that Mr. Mills discuss the payment of the penalty with Commission staff.

**Agenda Item #3 – Finding of Violation for Commingling Maine Clean Election Act Funds/Hon. Joan Bryant-Deschenes**

Mr. Wayne said that the instance of commingling was a result of the Commission staff's random audits of campaign finance reports. Mr. Wayne said that Rep. Bryant-Deschenes deposited her Maine Clean Election Act funds into a personal bank account. Mr. Wayne said that some candidates commingle funds without being aware that it is illegal. Mr. Wayne said that he recommended that the Commission find the candidate in violation for commingling Maine Clean Election Act funds with personal funds. Mr. Wayne said that it was a legal requirement not to commingle funds, and this requirement encourages good record keeping and good reporting. Mr. Wayne said that there were likely other candidates who commingled funds and were not audited by the Commission staff, so the Commission could decide not to take any action in order to avoid singling out Rep. Bryant-Deschenes.

Ms. Thompson asked how many times Rep. Bryant-Deschenes had run as a Maine Clean Election Act candidate. Mr. Wayne said that the 2006 election was at least her second time running with public funding. Mr. Wayne said that the commingling requirement was included in the candidate guidebook but was not considered a major issue, so it was possible that Rep. Bryant-Deschenes was not aware of it.

Ms. Thompson asked about the purpose of auditing candidates. Mr. Wayne said that auditing provides greater assurance to the legislature and to taxpayers that candidates are held accountable for their use of public funds. Mr. Wayne said that auditing ensures that candidates use public funds for campaign-related purposes. Mr. Wayne said that Rep. Bryant-Deschenes used all of her funds appropriately and filed her reports correctly.

Ms. Thompson asked if Mr. Wayne was aware of other instances of commingling. Mr. Wayne said that the audits revealed two candidates who appear to have commingled funds. Mr. Wayne said that the auditing was random.

Mr. Friedman asked what the range of possible penalties would be.

Mr. Ketterer said there were instances in the past where candidates deposited Clean Election funds in their personal checking accounts and then used the funds for personal expenses. Mr. Ketterer said that it was easier to track expenditures when the funds remained in a separate campaign account. Mr. Ketterer said that the legislature added the commingling requirement to the statute as a result of these and similar problems. Mr. Ketterer said that the commingling requirement appeared in the candidate guidebook.

Mr. Wayne said that commingling was now a violation of the Maine Clean Election Act, and any violation of that act could be subject to a penalty of up to \$10,000. Mr. Wayne said that he sent Rep. Bryant-Deschenes a notice that her commingling of funds would be on the meeting agenda, but none of the materials suggested that there could be a penalty. Mr. Wayne said that it might be appropriate to delay assessing a penalty until the next meeting.

Mr. Ketterer said that he thought there was a criminal law requirement against commingling funds.

Mr. Friedman said that it was a serious violation. Mr. Friedman said that commingling funds makes it much easier to spend Clean Election funds inappropriately. Mr. Friedman said that the Commission should assess a penalty in order to demonstrate that commingling funds is a violation. Mr. Friedman said that the requirement was included in both the statute and the candidate guidebook.

Ms. Thompson said that she could not think of a reason why anyone would not think it appropriate to deposit public funds into a separate bank account. Ms. Thompson said that there should be both a finding of wrongdoing and a penalty. Ms. Thompson said that a penalty should not be assessed before there is a staff recommendation and an opportunity for Rep. Bryant-Deschenes to comment.

Mr. Ketterer said that he thought it was appropriate to find a violation and then make a penalty determination at a future meeting.

Ms. Thompson moved, and Mr. Friedman seconded, that the Commission find Rep. Bryant-Deschenes in violation of the Maine Clean Election Act with consideration of a penalty assessment to be made at the next meeting.

Ms. Ginn Marvin said that the fact that the commingling was discovered as the result of a random audit, with other potential instances of commingling not known, was not a sufficient reason to avoid making a finding of violation.

The Commission voted unanimously (4-0) to find Rep. Bryant-Deschenes in violation of the Maine Clean Election Act with consideration of a penalty assessment to be made at the next meeting.

#### **Agenda Item #4 – Report of Audit Findings**

Vincent Dinan said that there were eight audit reports included in the meeting materials. Mr. Dinan said that seven were without exceptions and one was the commingling issue considered in agenda item #3. Mr. Dinan said that the staff had completed 18 audits and had 9 in progress. Mr. Dinan said that most audits resulted in a finding of no exceptions.

Mr. Friedman asked if 2 out of 18 completed audits contained a finding of commingled funds. Mr. Dinan said yes, and that there were no indications that any audits in progress contained evidence of commingled funds. Mr. Friedman said that if the numbers were extrapolated, it could indicate a serious problem.

Mr. Dinan said that the commingling requirement existed in the statute for some time, but the change that went into effect in April 2006 required candidates to both maintain a separate bank account and to avoid commingling funds.

Ms. Thompson asked if the audits were used to alert staff to serious issues and possible changes. Mr. Dinan said that he communicated with staff if the audits uncovered evidence of widespread problems. Mr. Dinan provided the example of travel reimbursements that did not comply with the Commission's rules. Mr. Dinan said that the staff then sent out advisory notices to the candidates.

Ms. Thompson asked how an audit identified issues that the normal staff review would not uncover. Mr. Dinan said that the audits check to see whether the source documentation, such as vendor invoices, bank statements, and canceled checks, supports the candidate's reported expenditures. Mr. Dinan said that for the most part, candidates have been very cooperative in providing the source documentation requested by the Commission staff.

Ms. Ginn Marvin asked if the gubernatorial campaigns were also being audited. Mr. Dinan said that there would eventually be on-site audits of all gubernatorial campaigns.

Ms. Ginn Marvin said that it might be useful if the Commission staff released the results of the gubernatorial audits to the public. Ms. Ginn Marvin said that many members of the public were suspicious about how the gubernatorial campaigns were using Clean Election funds.

Mr. Ketterer said that it was difficult to determine how frequently the commingling of funds occurred based on the information available. Mr. Ketterer said that the auditing process increased accountability.

### **Agenda Item #5 – Proposed Statutory Changes**

Mr. Ketterer mentioned an article on Clean Election loopholes in the fall 2006 *Maine Bar Journal*. Mr. Friedman said that the article included information on Clean Election candidates setting up private political action committees.

Mr. Wayne said that the staff would like to present some of the more complex recommendations at the Commission's December 12 meeting. Mr. Wayne said that one of those recommendations will relate to the Clean Election qualification of gubernatorial candidates.

Mr. Wayne said that candidates were allowed to form leadership PACs and participate in their legislative caucus PACs. Mr. Wayne said that none of the proposed changes made in 2005 were adopted, although there may be more proposals in 2006. Mr. Wayne said that the Commission may want to allow the legislature to resolve the issue without having any specific recommendations from the Commission.

Ms. Thompson asked what problems were associated with leadership PACs. Mr. Wayne said that some see a conflict between the agreement as a Maine Clean Election Act candidate not to accept private campaign contributions and the raising of private contributions by Clean Election candidates through PACs.

Mr. Wayne said that there were costs associated with running for a leadership position.

Ms. Gardiner said that the leadership PACs may also contribute the money they raise to privately financed candidates.

Mr. Wayne said that placing restrictions on Clean Election candidates that wish to form leadership PACs may create a disadvantage for Clean Election candidates who then run for leadership positions in the legislature.

Mr. Friedman asked if there was a difference between private PACs and leadership PACs. Mr. Wayne said that most candidates who form PACs call them leadership PACs, but in either case the money raised by the PAC can be used the same way.

Mr. Wayne said that Clean Election candidates could not use money raised by leadership PACs toward their own campaigns for the legislature.

Mr. Ketterer said that the Commission could express its concern about a particular issue without making specific recommendations. Mr. Ketterer said that the Commission should not just ignore an issue and hope the legislature does something about it.

Ms. Thompson said that the Commission should make recommendations for legislation whether or not the legislature is likely to adopt it.

Mr. Friedman said that it may be difficult to draft proposed legislation with a chance of being passed due to the fact that legislators have such a stake in the outcome.

Ms. Ginn Marvin said that the Commission should show leadership on the issue and be aware that it may face criticism from the public if it takes no action.

Alison Smith, member of Maine Citizens for Clean Elections, said that contribution limits should also be considered when discussing leadership PACs. Ms. Smith said that privately or publicly financed candidates could set up PACs to go around the contribution limits. Ms. Smith said that some candidates use their leadership PACs to raise money for the party caucuses. Ms. Smith said that contribution limits on candidate PACs may be a solution.

Ms. Thompson asked if there could be a public workshop on leadership PACs. Mr. Ketterer said that the Commission was required to have a workshop on proposed rule changes but not statutory changes.

Mr. Wayne said that the Commission staff had reached out to interested parties. Ms. Thompson said that those communications did not include members of the general public who may be interested in commenting.

Mr. Ketterer asked what the deadline was to submit proposed statute changes. Mr. Wayne said that the Commission could submit a bill up until 90 days after the election.

Mr. Friedman said that the Commission staff should reach out to not only leaders from the major parties, but also groups like Maine Citizens for Clean Elections.

Mr. Ketterer said that the Commission could post a public notice and invite members of the public to communicate with the Commission by e-mail or other means.

Ms. Thompson said that the Commission members should participate in any discussion of rule or statute changes.

Ms. Ginn Marvin said that she was not aware of anyone complaining that the Commission was not open to input from the public.

Ms. Thompson recommended that part of the next Commission meeting be devoted to a public workshop on leadership PACs.

Mr. Friedman said that the Commission should rely on staff to know who would have an interest in commenting on a particular issue and notify those parties about the opportunity to comment at a Commission meeting.

Ms. Thompson asked Mr. Friedman if he agreed with her proposal for a public workshop. Mr. Friedman said that he would support a workshop if input from interested parties was not sufficient.

Ms. Thompson said that statutory recommendations on leadership PACs could result in substantial changes. Ms. Thompson said that the Commission was responsible for representing the public with any proposed changes.

Ms. Gardiner said that people were more likely to send a written communication than come to Augusta for a Commission meeting.

Ms. Thompson said that holding a hearing demonstrates the Commission's transparency and openness to comments.

Mr. Wayne suggested that a public workshop on leadership PACs be held at the December 12 meeting. Mr. Wayne said that the staff would send out an e-mail to all candidates, PACs, lobbyists, and party committees informing them of the workshop and the option of sending written comments.

Mr. Wayne said that many people were concerned about the costs of publicly financing gubernatorial campaigns. Mr. Wayne asked if the Commission would prefer to hold a public workshop on that issue or hear recommendations from staff.

Ms. Thompson said that she agreed with Jonathan's suggestions about holding public workshops on leadership PACs and gubernatorial Clean Elections qualification.

The Commission members and staff agreed to discuss both items as part of a single workshop during the December 12 meeting.

Mr. Friedman asked Mr. Wayne if his notice to interested groups was extensive enough. Mr. Wayne said that he would also send a written notice to party leadership. Mr. Ketterer suggested putting out a press release.

Mr. Wayne said that a proposed statutory change would allow radio advertisements financed by a candidate to omit the candidate's address.

Mr. Wayne said that a proposed change would expand the 21-day presumption period for independent expenditures to 60 days. Mr. Wayne said that a paid-for disclosure would not be required if the communication was not made for the purpose of influencing the candidate's election.

Mr. Wayne said that a proposed change would only require live phone calls to mention who paid for the call, with surveys and research polls being excluded from the disclosure requirement.

Ms. Ginn Marvin asked what the disclosure requirement would be if the caller was a volunteer. Mr. Wayne said that there may not be a need for a disclosure statement if no expenditure was made. Ms. Gardiner said that the requirement to disclose who paid for a phone call was consistent with the disclosure requirement for written materials.

Mr. Wayne said that under current law, a volunteer would not have to state who was making the call.

Mr. Wayne said that a proposed change would apply contribution limits to sole proprietorships in the same way it is applied to multiple businesses with the same owner.

Mr. Wayne said that a proposed change would eliminate the requirement for replacement candidates to file a replacement candidate report 15 days after they are appointed. Mr. Wayne said that the requirement is no longer necessary since most replacement candidates submit seed money reports. Mr. Wayne said that privately financed replacement candidates would not have to file a report until 6 days before the election.

Ms. Thompson asked about the removal of the disclosure requirement for communications that were not made for the purpose of influencing an election. Ms. Thompson asked how the change was connected with the Commission's discussion of how to define express advocacy. Ms. Gardiner said that the proposed change would require a disclosure statement on any communication that depicts a clearly identified candidate, so there is an exception for communications depicting a candidate that are not election-related.

Alison Smith said that a 60-day presumption period before the general election would be reasonable, but that 60 days before a primary election would be too long. Ms. Smith asked if voter guides and similar mailings were required to contain disclosure statements. Mr. Wayne said that the disclosure was not required in these cases, although some groups include disclosure statements voluntarily.

Ms. Smith said that the rebuttable presumption could be used if a communication was not campaign-related. Mr. Friedman said that the group paying for an ad may not be familiar with the rebuttable presumption requirements.

Mr. Wayne recommended that the staff consider the issue further and then present its views at the December 12 meeting.

Mr. Wayne said that a proposed change would increase the 21-day presumption period before a general election to a 60-day period. Mr. Wayne said that it would be presumed that a communication made within the presumption period that named or depicted a clearly identified candidate in a race involving a Maine Clean Election Act candidate was intended to influence the election unless the party making the expenditure filed a statement of rebuttable presumption.

Mr. Wayne said that a 60-day presumption period before the primary election could be problematic due to its closeness to the end of the legislative session. Mr. Wayne said that legislators may wish to send constituent communications during this time. Mr. Wayne recommended a 30-day presumption period before the primary election. Mr. Wayne said that the change could increase the amount of matching funds distributed and result in independent expenditures being made earlier.

Mr. Ketterer said that he supported increasing the presumption period to 60 days before the general election.

Mr. Friedman asked how the staff arrived at the 60-day proposal. Mr. Wayne said that the end of September and the beginning of October tend to be when outside groups begin to try to influence the election. Mr. Wayne said that the 60-day period mirrors a federal law applying to Congressional candidates.

Mr. Wayne said that a proposed change would reduce from 5 to 3 the number of notices that must be sent to a candidate who has not filed a campaign finance report before the Commission could refer that candidate to the attorney general. Mr. Wayne said that the 5-notice requirement was the result of a compromise in a previous bill before the legislature.

Newell Augur, appearing on behalf of the Senate Democratic Campaign Committee, said that people generally realize that communications sent out close to the election could be construed as

campaign-related. Mr. Augur said that there was still a question of what constitutes express advocacy, which is not addressed by extending the presumption period to 60 days before the election.

Mr. Wayne said that a proposed change would make the statute consistent in setting a \$1,500 threshold of contributions or expenditures requiring an organization to register as a PAC.

Mr. Wayne said that a proposed change would require PACs to keep invoices but not cancelled checks. Mr. Wayne said that Dan Billings commented that the requirement to keep an invoice or receipt should only apply to expenditures made with the intent of influencing an election. Mr. Wayne said that he had not yet discussed the proposal with the staff auditor. Mr. Ketterer recommended discussing the matter again at the December 12 meeting.

Mr. Wayne said that a proposed change would give the Commission the ability to deny or revoke the certification of candidates to receive Maine Clean Election Act funds. Mr. Wayne said that the proposal would prevent certification in the event that a candidate made a material false statement in a report or other document submitted to the Commission. Mr. Wayne said that if a candidate had a prior request for certification revoked for reasons of fraud or a substantial violation, the Commission could deny a subsequent request for certification. Mr. Wayne said that the proposal would give candidates with outstanding penalties who applied for Maine Clean Election Act certification 10 business days to pay the penalty. Mr. Wayne said that the proposal would give the Commission staff additional time to investigate those provisions if the candidate is notified. Mr. Wayne said that the proposal also allows for certification to be revoked after the fact.

Ms. Thompson asked about the definition of a material false statement. Ms. Gardiner said that a material false statement would have to be relevant to the criteria needed to qualify for public funding.

Mr. Wayne said that the prevention of certification due to past instances of fraud could be seen as controversial. Mr. Ketterer said that only major violations would prevent a candidate from being certified in a future election.

Mr. Friedman asked if an automatic disqualification would result. Mr. Ketterer said that the Commission would have discretion over each case.

Ms. Gardiner said that the Commission may want to limit the time a candidate requesting certification is given to pay an outstanding penalty to 3 business days rather than 10 as originally proposed.

Mr. Wayne said that a proposed change would allow for revoking the certification of candidates who misrepresented to contributors the purpose of collecting \$5 qualifying contributions. Mr.

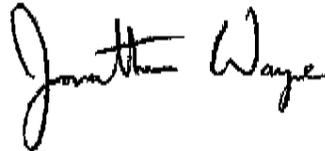
Wayne said that other reasons for revocation would include failing to comply with seed money restrictions, spending or raising private funds for the campaign, making false statements or material misrepresentations, or otherwise substantially violating the Commission's laws and rules.

Mr. Wayne said that a proposed change would allow the Commission staff to investigate lobbyists.

Mr. Ketterer said that the proposal was a good idea. Mr. Ketterer said that the legislature was sometimes reluctant to give subpoena power.

The Commission decided on the 19th as the tentative date of its January meeting.

Respectfully submitted,

A handwritten signature in black ink that reads "Jonathan Wayne". The signature is written in a cursive style with a large initial "J" and a long, sweeping underline.

Jonathan Wayne  
Executive Director

# Agenda Item #2



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

To: Commission Members  
From: Jonathan Wayne  
Date: March 29, 2007  
Re: Request for Recommendation from Appropriations Committee

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At an Appropriations Committee meeting on March 16, 2007, State Senator Karl Turner inquired whether the Ethics Commission would make a recommendation regarding whether the Maine Clean Election Act (MCEA) should continue to fund candidates for Governor. This request apparently was prompted by concerns about the cost of the gubernatorial portion of the MCEA, a potentially large shortfall in 2010, and an interest (I believe) in using some of the revenues to the Maine Clean Election Fund for other governmental purposes.

#### **History and Rationale of Maine Clean Election Act**

The Maine Clean Election Act was enacted by Maine voters in 1996. It provided a voluntary program of full public financing for candidates for the Legislature and for Governor. One purpose of the program is to preserve or increase public confidence in the executive branch.

The state has held two elections for Governor in which MCEA funding has been available. In the 2002 gubernatorial elections, two candidates received MCEA funding:

- Jonathan Carter
- Hon. James Libby (primary election only)

In 2006, four candidates for Governor qualified for public funding under the Maine Clean

Election Act:

- Hon. Chandler E. Woodcock
- Hon. S. Peter Mills (primary election only);
- Pat LaMarche; and
- Hon. Barbara E. Merrill

The staff's overall assessment of the MCEA in the 2006 gubernatorial election is that it succeeded as a viable public funding alternative for four candidates. The MCEA provided sufficient funding for a two-term Republican State Senator, Chandler Woodcock, to challenge an incumbent Democratic Governor in the general election, and for another Legislator, Peter Mills, to compete in the Republican primary election. The program also provided financing to two non-major party candidates who captured a total of 31.1% of the general election vote and who likely could not have run comparable campaigns through private fundraising. All four candidates qualified fairly for the public financing, and the Commission has found no serious misuse of the MCEA funds to date.

#### **Transfers from the Maine Clean Election Fund**

In 2002 and 2003, the Legislature transferred from the Maine Clean Election Fund large amounts to use for other purposes. At that time, the understanding was that the money would be returned if necessary to pay for the MCEA. While some of those funds were returned in 2005 and 2006, about \$3.1 million has not been returned:

2002 and 2003 transfers from the Fund	\$6,725,000
Amounts returned in 2005 and 2006	\$3,600,000
Total unreturned	\$3,125,000

Thus, a good portion of the potential shortfall in 2010 discussed below is because of the Legislature's transfers in 2002 and 2003.

### **Potential Shortfall in 2010**

In figures that I provided to Rep. Sawin Millett of the Appropriations Committee which he shared with Sen. Turner, I suggested the shortfall for 2010 could be as much as \$5.96 million. Those projections were intended to be very preliminary, and the shortfall could be significantly less. In my opinion, it is premature to project what the shortfall in the Maine Clean Election Fund will be for the 2010 elections. Any shortfall in 2010 would be dependent on developments that will unfold this year and in 2008:

- At this time, we do not know how much in total will be paid to 2008 candidates and how much will be left for the 2010 elections.
- Later this session, it is quite possible that the Legislature will make it harder for legislative or gubernatorial candidates to qualify for MCEA funding. In 2010, this could result in more funds being available and a smaller demand by candidates.
- In 2007, the Commission has a decision to make about whether to increase the amounts of the initial payments to legislative candidates in 2008, as it did in 2006. That decision is discretionary for the Commission. To keep costs down, the Commission staff is inclined to keep payments the same in 2008, which would result in savings for 2010.

### **Potential Strategy for Shifting Funds from Legislative to Gubernatorial Candidates in 2010**

The Commission's past practice is that when a candidate first qualifies for matching funds for the general election, the Commission does not just pay the amount that the candidate is authorized to spend. Rather, the Commission pays the maximum amount of matching funds which the candidate could possibly qualify for. In 2006, the Commission advanced more than \$2,000,000 in matching funds to candidates which they were not authorized to spend and which were returned after the election. One way to direct more funds to the gubernatorial program is to advance fewer funds to legislative candidates which they are not authorized to spend.

### **Legislative Proposals for 2007**

At least six bills have been introduced to make it more difficult for candidates for Governor to qualify for MCEA funding. No bills have been submitted to eliminate the gubernatorial program. Because the Maine Clean Election Act was enacted directly by Maine voters, in my opinion funding for candidates for Governor should only be repealed after an opportunity for comment in committee from legislative and other proponents of the system and from the public generally. To repeal the gubernatorial portion of the MCEA through the budget bill or as an amendment on the floor of the Legislature would not allow the public with an opportunity to comment on the value of this voter-initiated law. Opponents of publicly funding 2010 candidates for Governor will have an opportunity to introduce an after-deadline bill in the 2008 session or to wait until the 2009 legislative session when more information will be known.

### Staff Analysis and Recommendation

To respond to Sen. Turner's request, the staff believes you have three options:

- (1) *Support gubernatorial funding.* Recommend that Maine Clean Election Act funding for candidates for Governor should continue in 2010, and reassure the Appropriations Committee that the Commission will make recommendations in 2009 about funding for the program. For example, the Commission could advance fewer matching funds to legislative candidates, or request the unreturned \$3.1 million that was transferred from the Fund.
- (2) *Neutral position.* Express that because the Maine Clean Election Act was enacted by Maine voters, any repeal of public funding for candidates for Governor on the basis of cost is a decision for the Legislature to make.
- (3) *Oppose gubernatorial funding.* Recommend that the gubernatorial program be suspended for the 2010 elections, or terminated.

My recommendation is that you adopt option #1, or possibly #2. Maine voters directly approved public funding for candidates for the Governor and the Legislature, and entrusted the program to the Commission. The Legislature is better positioned than the Commission to make a judgment that the state cannot afford the gubernatorial part of the MCEA. It is possible that the 2010 shortfall could mostly be resolved through transferring back the remaining \$3.1 million to the Maine Clean Election Fund and decreasing the amount of matching funds advanced to legislative candidates which they are not authorized to spend.

# Agenda

## Item #3



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

To: Commission Members

From: Jonathan Wayne, Executive Director

Date: March 30, 2007

Re: Two More Improvements to Commission Bill

On February 5, 2007, the Commission staff submitted to the Revisor of Statutes the draft legislation which you approved at the January meeting. Because the bill has not been printed or heard yet, the staff seeks your approval to submit two amendments to the bill.

The first amendment would require the Commission to audit the campaigns of candidates for Governor who qualify to receive Maine Clean Election Act funding, and would require candidates for Governor to keep additional documents regarding seed money if collecting \$15,000 in seed money becomes mandatory for gubernatorial candidates. I have attached proposed language.

The second amendment is to increase the amount of the initial payment that candidates for Governor receive from \$400,000 to \$600,000 and to reduce the maximum possible matching funds that a candidate could receive by \$200,000.

	<b>Initial Payment For General Election</b>	<b>Maximum Matching Funds for General Election</b>	<b>Total for General Election</b>
Current Law	\$400,000	\$800,000	\$1,200,000
Staff Proposal	\$600,000	\$600,000	\$1,200,000

#### **Experience in the 2006 Gubernatorial Election**

In the 2006 election for Governor, MCEA candidates Woodcock, LaMarche, and Merrill each received an initial payment of \$400,000 in June, but most of their matching funds were received after October 12 – in the last 25 days before the general election – particularly for Chandler Woodcock.

<b>Payments for 2006 General Election</b>	<b>Merrill</b>	<b>Woodcock</b>	<b>LaMarche</b>
Payments on or before 10/12/06	\$406,040.02 (44%)	\$405,883.37 (37%)	\$404,221.75 (44%)
Payments after 10/12/06	\$509,692.05 (56%)	\$697,844.75 (63%)	\$510,939.92(56%)
Total	\$915,732.07	\$1,103,728.12	\$915,161.67

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

	Date	Merrill	Woodcock	LaMarche
Initial Payment	6/9/06	\$400,000.00		
	6/14/06		\$400,000.00	\$400,000.00
Matching Funds	9/29/06	\$6,040.02	\$5,883.37	\$4,221.75
	10/10/06	\$253.06		\$253.06
	10/13/06	\$35,001.55	\$37,133.87	\$35,001.55
	10/16/06	\$7,211.44	\$7,211.44	\$7,211.44
	10/17/06			\$198,319.90
	10/18/06	\$198,319.90	\$198,319.90	
	10/24/06	\$70,905.69	\$189,688.74	\$70,905.69
	10/25/06	\$8,329.32	\$16,434.32	\$8,329.32
	10/26/06	\$46,158.61	\$45,776.27	\$46,158.61
	10/28/06	\$78,744.59	\$161,330.31	\$78,744.59
	10/31/06	\$25,751.94	\$24,574.53	\$25,751.94
	11/1/06		\$12,275.37	\$1,247.87
	11/3/06	\$39,015.95		\$39,015.95
	11/4/06		\$5,100.00	
Total for General Election		\$915,732.07	\$1,303,727.58	\$1,115,155.02

Because a large portion of their funds were received so late, the candidates were less able to make the advertising choices available to privately financed candidates who are able to schedule fundraisers and have more control over their finances. In their comments to the Commission staff for the study report it has been preparing, both the Woodcock and Merrill campaigns expressed dismay at not having sufficient funds to run television advertisements in early October or September – either to define the public image of their candidates or (in Woodcock's case) to respond to independent expenditures by the other major party.

The Commission staff believes the current payment schedule detracts from the viability of the MCEA as an alternative source of financing for candidates for Governor. The staff recommends increasing the amount of the June initial payment to \$600,000, and

decreasing the maximum amount of matching funds to \$600,000. This 50-50 split would allow MCEA candidates for Governor who have demonstrated significant support within the state through the qualification process to better plan their general election advertising and to purchase ads in early October or September, if desired. Also, it would relieve privately financed candidates from the burden of artificially keeping their general election expenditures low by paying for goods and services in the primary election or encouraging PACs and political parties to fund early advertising.

It seems unlikely that increasing the initial payment would increase the cost of the MCEA program. Under current law, MCEA candidates for Governor receive an initial payment of \$400,000 plus matching funds that are very likely to exceed \$200,000. (The 2006 candidates for Governor received the \$400,000 initial payment plus \$515,162 - \$703,728 in matching funds.) Two factors lead us to this conclusion:

- The two major parties and their national affiliates have demonstrated a willingness to spend very large amounts for television advertising to influence the race for Governor. The Maine Democratic Party paid more than \$1.1 million to a single firm for television commercials in the Governor's race, and the national Republican Governors Association spent \$447,765 on a television advertising campaign in support of Chandler Woodcock.
- Governor Baldacci's 2006 campaign demonstrates that a privately financed candidate for Governor has the potential to raise in excess of \$1 million even with the \$500 contribution limit.

With both independent expenditures and the receipts of well-financed traditional candidates triggering matching funds, future MCEA candidates likely would receive under current law an initial payment of \$400,000 and at least \$200,000 in matching funds. We believe the proposal to make an initial payment of \$600,000 would not increase the cost of the program – it would simply make the timing of the payments more sensible.

New language is shaded

**2. Restrictions on Contributions—limits for participating candidates.** Subsequent to becoming a candidate as defined by section 1, subsection 5 and prior to certification, a participating candidate may not accept contributions, except for seed money contributions. A participating candidate must limit the candidate's total seed money contributions to the following amounts:

- A. Fifty thousand dollars for a gubernatorial candidate;
- B. One thousand five hundred dollars for a candidate for the State Senate; or
- C. Five hundred dollars for a candidate for the State House of Representatives.

The commission may, by rule, revise these amounts to ensure the effective implementation of this chapter. ~~All seed money contributions must be deposited into a separate campaign account with a bank or other financial institution. Candidates for Governor must obtain a contribution card or other form signed by the contributor that contains the contributor's residential address, mailing address, and telephone number, a statement that the seed money contribution was made with his or her personal funds and was not reimbursed by any source, and any other information deemed necessary by the Commission. Candidates for Governor also must keep a photocopy of all seed money contributions made by check or money order, copies of all electronic transactions from credit card companies, and bank or other account statements for the campaign account.~~

**2-A. Seed money report.** Seed money contributions and expenditures must be reported according to procedures developed by the commission. A candidate must report the name, residential address, and the occupation and employer of every individual contributor. ~~The commission may require a gubernatorial candidate to submit, with the seed money report, a contribution card or other form signed by the contributor certifying that the seed money contribution was made with his or her personal funds and was not reimbursed by any source.~~

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**4. Filing with commission.** A participating candidate must submit qualifying contributions, receipt and acknowledgement forms, proof of verification of voter registration, and a seed money report to the commission during the qualifying period according to procedures developed by the commission, except as provided under

subsection 11. ~~Candidates for Governor must also submit photocopies of all electronic contributions made by check or money order, copies of all electronic transactions from credit-card companies, contribution cards required by Subsection 2, and bank or other account statements for the campaign account.~~

**12-A. Required records.** The treasurer shall obtain and keep:

- A. Bank or other account statements for the campaign account covering the duration of the campaign;
- B. A vendor invoice stating the particular goods or services purchased for every expenditure of \$50 or more; and
- C. A record proving that a vendor received payment for every expenditure of \$50 or more in the form of a cancelled check, receipt from the vendor or bank or credit card statement identifying the vendor as the payee.

The treasurer shall preserve the records for 2 years following the candidate's final campaign finance report for the election cycle. The candidate and treasurer shall submit photocopies of the records to the commission upon its request.

~~12-B. Audit requirements for candidates for governor. The commission shall audit the campaigns of candidates for Governor who qualify for financing under this chapter to verify compliance with election and campaign laws and regulations. Within one month of declaring an intention to qualify for public financing, a candidate for Governor, the campaign treasurer, and any other relevant campaign staff shall meet with the staff of the commission to discuss audit standards and record-keeping requirements.~~

# Agenda

## Item #4



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

To: Administrative Procedure Officer  
Office of the Secretary of State of Maine

From: Paul Lavin, Assistant Director

Date: March 29, 2007

Re: Amendments to Routine Technical Rules in Chapter 1 of the Commission's Rules  
(94-270 C.M.R. Chapter 1)

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STATEMENT OF FACTUAL AND POLICY BASIS FOR AMENDMENTS  
AND SUMMARY OF AND RESPONSE TO COMMENTS

**Chapter 1, Section 3.1**

*Factual and Policy Basis:* The adopted rule requires the Commission to meet once a month in any year in which primary and general elections will be held. This amendment makes the rule consistent with the statute (21-A M.R.S.A. § 1002). It also eliminates the requirement that the Commission establish a meeting schedule at the beginning of the year. Given the schedules of the Commission members, this procedure has not been practicable. The current practice is to set a meeting schedule on a quarterly basis, if possible.

*Comments:* The Commission received no comments on the adopted rule.

**Chapter 1, Section 4.2**

Paragraph A

*Factual and Policy Basis:* The adopted rule removes the requirement that a filer remedy errors and omissions in reports within 15 days of being notified by the Commission staff. Instead, the rule allows the staff to establish a reasonable time period for the corrections to be made and to extend that time period for good cause. This is not substantially different from the procedure in the rule currently. The Commission staff must notify the filer of the deficiencies in the report and give the filer 15 days to remedy to problems. If the filer does not, the Commission staff may "establish a reasonable grace period within which the filer must comply." Given that that the 15 day deadline is already flexible, the amendment is not a significant departure. Some errors and omissions in reports may need more than 15 days to rectify. Others may be of such a serious nature that they must be corrected sooner than 15 days (*e.g.*, errors or omissions that could result in a publicly funded candidate not receiving matching funds). The amended rule gives the Commission staff the discretion to establish a time period which takes into consideration a variety of factors, such as the nature of the error or omission, the filer's capacity to respond

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within certain time periods, and the need for the public and other filers to have complete and correct information in campaign finance reports at critical junctures in the election cycle.

The adopted rule also relocates subparagraph 5 of this paragraph, which outlines the method for determined to which election a contribution should be attributed, and places it in Section 6 “Contributions and Other Receipts” which is a more appropriate placement.

Paragraph B

This paragraph was removed to reflect current Commission practice.

Paragraph C

The adopted rule adds to the list of considerations to the Director’s recommendations whether a late filed report had an effect on a certified candidate’s eligibility for matching funds. A candidate who does not receive matching funds in a timely manner can be seriously disadvantaged in his or her campaign.

Paragraph E

The provision in paragraph E that states that the Director will place on the agenda for a Commission meeting any oral or insufficient report of a violation is removed. The Commission staff takes any report of violations of campaign finance laws very seriously. If an individual provides an oral report of a violation, the staff will ask for more information and will tell the individual to submit a complaint or request for an investigation in writing. If the complaint involves matters that are not within the Commission’s jurisdiction, the individual is referred to the department or agency that should be handling the matter. However, if the claims lack substance or specifics or if the individual will not submit a complaint in writing, the Commission staff considers the potential for harm to the filer if claims that are not substantiated or are lacking in merit are presented at a public meeting.

*Comments:* Daniel Walker, Esq., representing the Maine Democratic Party commented that the proposed amendment to eliminate the 15-day period to correct errors and omissions on campaign finance reports would remove an incentive to correct reports quickly. Mr. Walker stated that there should be hard lines drawn about when reports had to be corrected. He said that he understood that the intent of the rule change was to create flexibility to establish a reasonable time for candidates to correct reports but thought that a fixed deadline was preferable.

There were no other comments to other amendments to Section 4.2.

*Response to comments:* The Commission adopted the proposed rule. The elimination of the 15-day period allows the Commission staff to determine an appropriate response time within which a filer can remedy errors and omissions in campaign finance reports depending of the specific circumstances. A mandatory 15-day time restricts the Commission staff’s ability to require a more immediate correction if that would be in the best interests of other filers and the public.

## **Chapter 1, Section 5**

### *Factual and Policy Basis:*

The adopted rule would allow the Commission staff to take testimony pursuant to a subpoena issued by the Commission. This rule will allow the staff to conduct investigations in an efficient and timely manner. Currently, sworn testimony can only be given to Commission members at a public hearing. Since the Commission only meets once a month or sometime less frequently, the current rule create a significant restriction on the staff's ability to conduct investigations that have been authorized by the Commission.

*Comments:* The Commission received no comments on the adopted rule.

## **Chapter 1, Section 6.1**

The adopted rule specifies that the date of a contribution is the date it is received by a candidate, a political action committee, a party committee, or their agents. This rule addresses confusion that filers have had regarding whether the date of a contribution is the day it is received or deposited or made by the contributor.

*Comments:* The Commission received no comments on the adopted rule.

## **Chapter 1, Section 7.1**

*Factual and Policy Basis:* The adopted rule is a clarification of the existing rule and does not make any substantive changes. The rule requires candidates and political action committees (the rule does not apply to party committees) to report expenditures made on their behalf by consultants, employees of other agents as though they were made by the candidate or the political action committee. That means that these expenditures must be itemized as required under 21-A M.R.S.A. § 1017(5) to indicate the date and purpose of each expenditure and the name of each payee or creditor. The adopted rule does add a statement that reporting the total amount of a retainer or fee paid to a consultant or other agent is not sufficient to comply with the rule. The adopted rule is consistent with the reporting requirement under the statute and with the legislative intent underlying campaign finance disclosure laws.

*Comments:* Daniel Walker, Esq., representing the Maine Democratic Party, commented that he had consulted with a number of people familiar with running campaigns and received a unanimous reaction of concern about the adopted rule. Mr. Walker said that the adopted rule would create an unwieldy burden on candidates and committees because it would require third party vendors to keep track of every expenditure made on behalf of a candidate or committee. For example, he said that if a fee is paid to a media consultant to design a media spot, the candidate or committee would report that expenditure and the vendor (the media consultant) would have to keep track of every expenditure the vendor makes from the fee. Mr. Walker said that this would double the activity. He also commented that this requirement would put a burden on people who are familiar with the political system but not with the reporting requirements. Mr.

Walker stated that the adopted rule was incongruent with the intent of the campaign finance laws. He said that the point of the laws was to even the playing field for funding but not for strategy. The adopted rule, he said, would expose how a vendor does business, which was not the intent of the law. He also said that the requirement would slow the reporting process down. Mr. Walker commented that the rule's focus was really only on the total amount spent in order to determine if a Maine Clean Election Act candidate should get matching funds.

Daniel Billings, Esq., who spoke on his own behalf, commented that he thought Mr. Walker raised a good point about the requirement for third party expenditures to be itemized on a candidate's or committee's campaign finance report. He referred to an example from the Woodcock for Governor campaign which used a consultant to produce television ads. He said that the expenditure to the consultant was reported by the campaign as an expenditure for television advertisements. However, the consultant used the fee to hire other people necessary to produce an ad, *e.g.*, camera crew, graphic designers, etc. Mr. Billings said that he did not think that the details of how much was paid to each person who worked on the ad production were necessary. He said that he did not think that was the intent of the adopted rule but that it could be interpreted that way. However, he said that there would be a problem if a candidate or committee simply wrote a big check to a consultant or vendor without reporting any level of detail about how the money was used. He said that there were two issues involved in reporting: leveling the playing field and the accountability for public funds, which needs some level of detail. He suggested that the adopted rule may not get at the problem exactly but that it would be inappropriate to allow a candidate or committee to write one check to a consultant or vendor to cover all their campaign expenditures without any breakdown.

Lacey Sloan of Limerick, a candidate for House District 138 in the 2006 election, commented in writing that she supports the adopted rule.

*Response to comments:* The Commission adopted the proposed rule. The amendments to the rule did not create any new or additional reporting requirements for candidates or committees or interpret the rule any differently from past practice. A reference to the Commission's guidebook for candidates is illustrative of this point:

*Expenditures Made by a Consultant or Firm*

If you hire a consultant or firm to assist your campaign, and the consultant or firm makes expenditures on behalf of you and your campaign, you must report those expenditures as though the campaign made them directly. It is your responsibility to find out about expenditures made by your consultants and to report those expenditures. You need to deduct those costs from the amounts you have reported on Schedule B that you paid to the consultant (so the costs are not double-reported), and you should note in the remarks column that the expenditures were made by the consultant.

The rule serves several purposes. First, campaign finance reporting requirements provide for the detailed public disclosure of political contributions and campaign expenditures. The legislative

intent behind these requirements would be subverted if a candidate or committee were able to report a large payment to a consultant who would in turn use that money to make numerous individual expenditures, which would never be itemized on a campaign finance report. Second, the rule demands that candidates who are publicly funded provide details of how those public funds are spent. The staff understands the concern that the rule could be interpreted to require a level of detail that would be burdensome on the candidate or committee and that would not provide any better information to the public. However, those concerns can be addressed either with individual candidates or committees or through instructional materials on the reporting forms, e-filing website or guidebooks for candidates and committees.

*Changes to the adopted rule:* The staff made several minor word changes to the adopted rule that do not make any substantive changes to the rule but do improve internal consistency.

### **Chapter 1, Section 7.5**

*Factual and Policy Basis:* The adopted rule clarifies the reporting requirements for expenditures made with the personal funds or credit card of a candidate or agent of a candidate for which the campaign makes reimbursement. It does not make any substantive changes to the reporting requirements for candidates.

*Comments:* Lacey Sloan of Limerick commented in writing that she supports the adopted rule.

### **Chapter 1, Section 7.7**

The proposed rule on voter guides or scorecards was deleted pending potential changes in the statutes regarding independent expenditures and the registration requirements of entities which make expenditures to influence an election or referendum.

*Comments:* Lacey Sloan of Limerick commented in writing that a voter guide is similar to a party candidate listing or “slate card” and should not be considered an expenditure.

*Response to comments:* Voter guides or scorecards do have similarities to party candidate listings. However, under the statute, the exception for party candidate listings is only available to party committees.

### **Chapter 1, Section 8**

*Factual and Policy Basis:* The adopted rule clarifies that Commission members may talk with the press or interested persons after it has made its final determination after the appeal period has expired or all administrative and judicial remedies have been exhausted.

*Comments:* The Commission received no comments on the adopted rule.

## Chapter 1: PROCEDURES

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SUMMARY: This Chapter describes the nature and operation of the Commission, and establishes procedures by which the Commission's actions will be governed.

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## SECTION 1. DEFINITIONS

In addition to the definitions provided in Title 21-A, chapters 1, 13, and 14, the following definitions shall apply to the rules of the Commission, unless the context otherwise requires:

1. Act. "Act" means the Maine Clean Election Act, Title 21-A, chapter 14.
2. Association. "Association" means a group of two or more persons, who are not all members of the same immediate family, acting in concert.
3. Campaign Deficit. "Campaign deficit" means debts, liabilities, and unmet financial obligations from all previous campaigns as reported to the Commission on campaign termination report forms required by Title 21-A, chapter 13, subchapter II [§ 1017(9)].
4. Campaign Surplus. "Campaign surplus" means money, equipment, property and other items of value remaining after retiring previous campaign deficit as reported to the Commission on campaign termination report forms required by Title 21-A, chapter 13, subchapter II [§ 1017(9)].
5. Candidate. "Candidate" has the same meaning as in Title 21-A, chapter 1, subchapter I [§ 1(5)], and includes individuals running for office as a write-in candidate.

INFORMATIONAL NOTE: All contributions made after the day of the general election to a candidate who has liquidated all debts and liabilities associated with that election are deemed to be made in support of the candidate's candidacy for a subsequent election, pursuant to section. 4.2.A(5)(e) of this rule. A candidate who collects funds subsequent to an election for purposes other than retiring campaign debt is required to register with the Commission. Title 21- A, chapter 13, subchapter II [§ 1013-A].

6. Certified Candidate. "Certified candidate" has the same meaning as in the Act [§ 1122(1)].

7. Commission. “Commission” means the Commission on Governmental Ethics and Election Practices established by Title 5, section 12004-G, subsection 33, and 1 M.R.S.A. section 1001 et seq.
8. Contribution. “Contribution” has the same meaning as in Title 21-A, chapter 13, subchapter II [§ 1012(2)].
9. Election. “Election” means any primary, general or special election for Governor, State Senator or State Representative. The period of a primary election begins on the day a person becomes a candidate as defined in 21-A M.R.S.A. §1(5) and ends on the date of the primary election. The period of a general election begins on the day following the previous primary election and ends on the date of the general election. The period of a special election begins on the date of proclamation of the special election and ends on the date of the special election.
10. Expenditure. “Expenditure” has the same meaning as in Title 21-A, chapter 13, subchapter II [§ 1012(3)].
11. Fund. “Fund” means the Maine Clean Election Fund established by the Act [§ 1124].
12. In-Kind Contribution. “In-kind contribution” means any gift, subscription, loan, advance or deposit of anything of value other than money made for the purpose of influencing the nomination or election of any person to political office or for the initiation, support or defeat of a ballot question.
13. Member. A “member” of a membership organization includes all persons who currently satisfy the requirements for membership in the membership organization, have affirmatively accepted the membership organization’s invitation to become a member, and either:
  - A. pay membership dues at least annually, of a specific amount predetermined by the membership organization; or
  - B. have some other significant financial attachment to the membership organization, such as significant investment or ownership stake in the organization; or
  - C. have a significant organizational attachment to the membership organization that includes direct participatory rights in the governance of the organization, such as the right to vote on the organization’s board, budget, or policies.

Members of a local union are considered to be members of any national or international union of which the local union is a part, of any federation with

which the local, national, or international union is affiliated, and of any other unions which are members or affiliates of the federation. Other persons who have an enduring financial or organizational attachment to the membership organization are also members, including retired members or persons who pay reduced dues or other fees regularly to the membership organization.

14. Nonparticipating Candidate. "Nonparticipating candidate" has the same meaning as in the Act [§ 1122(5)].
15. Participating Candidate. "Participating candidate" has the same meaning as in the Act [§ 1122(6)].
16. Qualifying Contribution. "Qualifying Contribution" has the same meaning as in the Act [§ 1122(7)].
17. Qualifying Period. "Qualifying period" has the same meaning as in the Act, except that for special elections, vacancies, withdrawals, deaths, disqualifications or replacements of candidates, the qualifying period shall be the period designated in section 8 of this chapter [§ 1122(8)].
18. Seed Money Contribution. "Seed money contribution" has the same meaning as in the Act [§ 1122(9)].
19. Write-In Candidate. "Write-in candidate" means a person whose name does not appear on the ballot under the office designation to which a voter may wish to elect the candidate.

## SECTION 2. ORGANIZATION

1. Commission. The Commission on Governmental Ethics and Election Practices is an independent agency of the State, consisting of five (5) members appointed by the Governor, subject to review by the joint standing committee of the Legislature having jurisdiction over legal affairs and confirmation by the Legislature in accordance with Title 1, section 1002, subsection 1. The Commission members will elect one member to serve as Chair. Except for the Chair, the members of the Commission have no individual authority.
2. Office.
  - A. The Commission employs such staff as may be authorized by the Legislature. A Director supervises the staff and is responsible for all day-to-day operations. In the interim between Commission meetings, the Director reports to the Chair, who acts on behalf of the Commission on certain administrative matters. The Commission's offices are located in the Public Utilities Commission Building at 242 State Street in Augusta,

where any filing or written submission may be made between the hours of 8 a.m. and 5 p.m. on any day when state government offices are open, except that filings by facsimile or electronic means, where otherwise permitted by rule, may be transmitted at any time. The office has a mailing address of 135 State House Station, Augusta, Maine 04333.

- B. All records of the Commission are maintained in these offices, where they are available for inspection or copying, except as particular records are made confidential by law. The cost of copying Commission documents is set by the Director of the Commission, subject to reasonable limitations and approval of the Commission.
- C. During any period when the position of Director is vacant, the Chair of the Commission will appoint an acting Director.

### SECTION 3. MEETINGS

1. Regular Meetings. The Commission ~~will~~shall meet at least once per month in any year in which primary and general elections are held~~four times during the course of any year in which a general election is held, and at least twice during every other year. A tentative schedule of meetings for each calendar year will be adopted at the first meeting in each year. A meeting will be held as early as possible after the appointment of (a) new commission member(s) in each even-numbered year to select a Chair.~~
2. Special Meetings. The Commission may meet at any time at the call of the Secretary of State, the President of the Senate, the Speaker of the House of Representatives, the Chairman of the Commission, or a majority of its members. Each member of the Commission must have at least 24 hours notice of the time, place and purpose of the meeting. If written notice is not feasible, telephone notice satisfies the foregoing requirement.
3. Agenda. The Director will prepare a written agenda for each meeting of the Commission. The agenda will contain items of business to be considered, staff findings and recommendations, and will include the date, time and location of the meeting. When possible, the agenda will be mailed to each Commission member at least 7 days before the meeting.
4. Notice. In addition to the public notice required by the public meetings law, 1 M.R.S.A. Section 406, notice of Commission meetings will be given to those directly involved or affected by matters pending before the Commission, as follows:
  - A. Legislative Ethics. When a properly filed request or referral is made for an advisory opinion on a question of legislative ethics, notice that the matter

has been placed on the agenda for a Commission meeting will be given by mail to the Legislator whose circumstances or conduct is at issue, or to the Presiding Officer of either House referring the inquiry. When a complaint alleging a violation of the laws on legislative ethics is filed, the Legislator will be informed promptly of the nature of the allegations and the existence of any investigation by the Commission. Notice that the matter has been placed on the agenda for a Commission hearing will be given by certified mail to both the Legislator and the complainant not less than 10 days before the date set for a hearing.

- B. Campaign Reports and Finances Law; Lobbyist Disclosure Law. Notice of the Commission's consideration of any noncompliance with the requirements of the Campaign Reports and Finances Law or Lobbyist Disclosure Law will be provided to any person or organization alleged to have committed a violation and to any person who has officially requested a Commission investigation or determination.
- C. Other Matters.
  - (1) With respect to any other matter presented to the Commission, notice will be given to the person or organization whose conduct is at issue, and to any complainant, except as provided in Section 3, subsection 1, paragraph B of these rules.
  - (2) The notice will include the date, time, and location of the Commission meeting. If mail notice of a meeting is not feasible, the staff will make best efforts to give oral notice to Commission members or to those entitled to notice under this provision.
- 5. Public Meetings. All meetings, hearings or sessions of the Commission will be open to the general public unless, by an affirmative vote of at least 3 members, the Commission requires the exclusion of the public, pursuant to 1 M.R.S.A. Section 1005 or 1 M.R.S.A. Section 1013(3).
- 6. Quorum. Every decision of the Commission must be made at a meeting at which at least 3 members of the Commission are present and voting. When it is impossible or impractical for a member of the Commission to travel to Augusta to attend a meeting in person, the member may participate in the meeting by telephone. That member will be considered present at the meeting and part of the quorum.

At least 2 members must be present in person for the conduct of a meeting or public hearing before the Commission. If fewer than 3 members are present in person for a hearing, however, objections to rulings of the presiding officer concerning the conduct of the hearing must be preserved until a meeting of the

Commission at which a quorum is present in person. The presiding officer at a meeting or public hearing must be present in person.

7. Minutes.
  - A. The Director will prepare minutes of each business meeting of the Commission. These minutes will be the official record of Commission meetings, and will accurately record all matters considered.
  - B. The minutes will record any executive session of the Commission and its subject matter, but will not report the proceedings of the executive session. Likewise, minutes will not be taken of any public hearing held by the Commission, since hearings are separately recorded.

#### SECTION 4. INITIATION OF PROCEEDINGS

1. Legislative Ethics. The Commission is authorized to investigate and make advisory recommendations to either House of the Maine Legislature concerning legislative conflicts of interest or any breach of the legislative ethics set forth in 1 M.R.S.A. Sections 1001 - 1023. The Commission's opinion may be sought by three methods, or the Commission may act on its own motion.
  - A. Legislator's Own Conduct.
    - (1) A Legislator seeking an advisory opinion with respect to his or her own circumstances or conduct should make a written request for an opinion, setting forth the pertinent facts with respect to the legislative matter at issue and the circumstances of the Legislator giving rise to the inquiry.
    - (2) The request will be officially filed only when received at the offices of the Commission. The Director will promptly send a copy of the request to the Chair, and the matter will be placed on the agenda for the next Commission meeting, or if necessary, at a special meeting.
    - (3) An oral request by a Legislator for an opinion with respect to his or her own circumstances will not be considered an official request for an advisory opinion, and a Legislator making such a request will be so notified, by letter, and encouraged to file a written request.
  - B. Complaints. Any written complaint will be included in the agenda of the next Commission meeting.

- (1) Complaint by a Legislator. Copies of any sworn complaint filed by a Legislator will promptly be sent to the Legislator against whom the complaint has been lodged and to the Commission Chair, in each case identifying the Legislator making the complaint. A complaint invokes the Commission's authority only if made under oath and only if it addresses an alleged conflict of interest relating to circumstances arising during the term of the legislature then in office.
  - (2) Other Complaints.
    - (a) The Director will review each complaint to determine whether the matter relates to the Commission's statutory mandate. When a complaint is filed, the Director, in consultation with Commission Counsel, will review the matter to determine whether the complaint has sufficient merit to warrant recommending the calling of a meeting. When a meeting is called, the Commission will determine in executive session whether to hear the complaint. If the nature of the complaint clearly does not fall within the scope of the Commission's jurisdiction, the Director will so notify the complainant by letter within 14 days of receiving the complaint. In such cases, the respondent need not be notified. The Commission may reverse any administrative decision.
    - (b) An oral complaint by any person alleging a conflict of interest concerning any legislator does not constitute a complaint under 1 M.R.S.A. Section 1013(2)(B), and a person registering such a complaint will be so notified, by letter.
- C. Referral by Presiding Officer. When a Legislator has requested an advisory opinion from the Presiding Officer of the House of which he/she is a member, and the Presiding Officer has referred the inquiry directly to the Commission, the Director will arrange a meeting of the Commission as soon as possible to consider the question.
2. Election Campaign Reporting.
    - A. Report Review. The Commission staff will review all ~~filings made reports filed~~ pursuant to 21-A M.R.S.A., ~~Sections 1001—1062~~ chapters 13 and 14 ~~to ascertain any apparent violations of~~ verify compliance with the filing reporting requirements set by statute or rule. ~~Reports and registrations will be checked for violations against a standardized checklist.~~ Notice of any

omission, error, or violation will be given by mail to the filer and a copy of the notice and any other communication made to or from the filer relating to the problem(s) will be placed in the filer's record. The Commission will establish a reasonable time period for the filer to~~The notice will include a request that the filer~~ remedy any omission or error ~~within 15 days of the date of the notice.~~ If the filer fails to respond within that time frame, the Commission staff may extend the time~~contact the filer to establish a reasonable grace~~ period within which the filer must comply or place~~. If the filer does not rectify the problem,~~ the matter will ~~be placed~~ on the agenda of the next Commission meeting, along with all documents relating to the case. Additionally, any apparent violations or occurrences of substantial nonconformance with the requirements of the law will be placed on the agenda of the next meeting, ~~including, but not limited to, the following:~~

- ~~(1) — Failure to properly sign a required report,~~
- ~~(2) — Failure to file a required report or registration,~~
- ~~(3) — Late filing of a required report or registration outside the grace period,~~
- ~~(4) — Failure to disclose contributions received or expenditures made of more than \$500 in the aggregate on reports due after the 12th day before an election, or~~
- ~~(5) — Exceeding contribution limitations. For the purposes of the limitations imposed by 21-A M.R.S.A. Section 1015(1), 21-A M.R.S.A. Section 1015(2), 21-A M.R.S.A. Section 1015(3), and 21-A M.R.S.A. Section 1056, the following guidelines shall apply:~~
  - ~~(a) — All contributions made to a candidate through the day of the primary election for which the candidate seeks office are deemed to be made in the primary election.~~
  - ~~(b) — Notwithstanding division (c) below, if a candidate loses in the primary, all contributions made to that candidate for the purpose of liquidating debts and liabilities associated with the candidate's candidacy are deemed to be made in the primary election.~~
  - ~~(c) — All contributions made to a candidate from the day after the primary election through the date of the general election for which the candidate seeks office are deemed to be made in the general election.~~

~~(d) — Notwithstanding division (e) below, all contributions made after the general election to a general election candidate for the purpose of reducing debts and liabilities associated with the candidate's candidacy are deemed to be made in the general election.~~

~~(e) — All contributions made after the day of the general election to a candidate who has liquidated all debts and liabilities associated with that election are deemed to be made in support of the candidate's candidacy for a subsequent election.~~

~~(6) — Divisions (a) through (e) above shall apply to any write-in candidate who has qualified under 21 A.M.R.S.A. Section 723, or who has received contributions or made expenditures with the intent of qualifying as a candidate.~~

~~B. — The Commission will determine whether a report substantially conforms to the requirements of the law. At each meeting, the Director will submit a summary of all cases resolved administratively. The Commission may reverse any administrative decision.~~

EB. Late Reports and Registrations. Where required by statute, notice of failure to file a required report will be timely sent by Commission staff. When a report or registration is filed late, the Director's recommendations will be based on the following considerations:

- (1) Lateness of report or registration,
- (2) Reason for lateness,
- (3) Kind of report (more stringent application for pre-election reports),
- (4) Amount of campaign funds not properly reported,
- (5) Previous record of the filer, ~~and~~
- (6) Good faith effort of the filer to remedy the matter; and
- (7) Whether the late filing had an effect on a certified candidate's eligibility for matching funds.

- DC. Reports of noncompliance with the provisions of the campaign registration and reporting laws that may come to the attention of the Commission staff from any source other than review of the reports filed will be reported to the Commission Chair. Any person (as defined in 21-A M.R.S.A. Section 1001) may make an official request for a Commission investigation or determination by filing a written request at the Commission's office, setting forth such facts with sufficient details as are necessary to specify the alleged violation. Statements should be made upon personal knowledge. Statements which are not based upon personal knowledge must identify the source of the information which is the basis for the request, so that respondents and Commission staff may adequately respond to the request. A copy of any such written request will be promptly mailed to ~~the Commission Chair as well as to~~ the candidate or organization alleged to have violated the statutory requirements. An official request will be placed on the agenda of the next Commission meeting.
- ED. An oral report of a violation, or a written request containing insufficient detail to specify the violation charged, does not constitute an official request for a Commission determination, and a person registering such a complaint will be so notified. ~~The Director will list any oral report of a violation, or insufficient written report, on the agenda of the Commission's next meeting, but no action will be taken except upon the Commission's initiative. The person alleged to have committed a violation will be notified of the Commission meeting.~~
- FE. If the Director and Counsel are in agreement that the subject matter of a request for an investigation is clearly outside the jurisdiction of the Commission, the staff may forward the request to the appropriate authority or return it to the person who made the request, provided that the staff notifies the Commission members of the action at the next Commission meeting.
- GF. The signature of a person authorized to sign a report or form constitutes certification by that person of the completeness and accuracy of the information reported. The use of a password in filing an electronic report constitutes certification of the completeness and accuracy of the report.
3. Lobbyist Disclosure Procedures.
- A. Report Review. The Commission staff will monitor all filings made pursuant to 3 M.R.S.A. Section 311 et seq. for timeliness, legibility, and completeness. The staff will send the lobbyist a notice of any apparent reporting deficiency, including failure to use prescribed forms. The notice will include a request that the deficiency be corrected within 15 business

days of the notice. If remedy is not made, it will be noted on the agenda of the next Commission meeting. The Commission may reject reports that are incomplete or illegible.

- B. **Late Registrations and Reports.** Notice will be given by mail to any lobbyist whose registration, monthly disclosure report, or annual report is delinquent. In the case of a late monthly report, the notice must be mailed within 7 business days following the filing deadline for the report. In the case of late annual reports and registrations, the notice must be mailed within 15 business days following the filing deadline. The notice must include a statement specifying the amount assessed. A penalty of \$100 will be assessed the lobbyist for every month that a monthly disclosure report is late and a penalty of \$200 will be assessed the lobbyist and employer for every month a registration or annual report is filed late. For purposes of 3 M.R.S.A. Section 319(1), the month will end on the 15th day of the month following the month in which a report was due. Any failure to submit a required report, registration, or penalty fee will be noted on the Commission agenda.
- C. **Suspensions.** The Commission may suspend any person from lobbying who fails to file a required report or pay an assessed fee. A notice of the suspension must be mailed to the lobbyist by U.S. Certified Mail within three days following the suspension. Reinstatement will occur on the date the required report or payment is received in the Commission office. A notice of the reinstatement must be mailed to the lobbyist by U.S. Certified Mail or given directly to the lobbyist within three days following receipt of the required report or payment.
- D. **Request for Penalty Waiver.** A lobbyist may request a waiver of any late penalty the lobbyist incurs. The request must be made in writing to the Commission and must state the reason for the delinquency. Any such request must be noted on the agenda of the next Commission meeting. Only the Commission may grant penalty waivers.
- E. **Request for Waiver of Nonsession Reporting Requirement.** A lobbyist may request a waiver of the monthly nonsession reporting requirement set forth in 3 M.R.S.A. Section 317(4) if the lobbyist does not expect to be engaged in lobbying when the Legislature is not in session. The Director is authorized to provisionally grant such waivers pending approval by the Commission. Provisional waivers may be granted only where a request is properly filed, the statement properly completed, and where there is no apparent reason to doubt the statement is true. During the period in which the waiver is effective, reports will not be required. If lobbying is resumed during the period for which the waiver was granted, the lobbyist must file

a monthly disclosure report for the month or months lobbying was conducted.

- F. Faxing Duly Executed Lobbyist Registration, Reports. Any registration or report required by 3 M.R.S.A. ch. 15 may be provisionally filed by transmission of a facsimile copy of the duly executed report to the Commission, provided that the original of the same report is received by the Commission within 5 calendar days thereafter.

## SECTION 5. FACT FINDING AND INVESTIGATIONS

1. Before Commission Meeting. With respect to any inquiry, report or request for Commission action properly filed in accordance with the preceding section, the Director may conduct such preliminary fact finding as is deemed prudent and desirable. When the Director and Counsel find a basis for a preliminary investigation, they will recommend such steps to the Chair as necessary. Pursuant to reviewing reports or finding of fact, the Director, in consultation with Counsel, will prepare a summary of findings and recommendations for inclusion on the agenda. The Chair is authorized to issue subpoenas in the name of the Commission to compel the attendance of witnesses or the production of records, documents or other evidence when the Chair and the Commission's Counsel are in agreement that the testimony or evidence sought by the subpoena is ~~likely to be of critical importance~~ necessary to disposition of the matter; and to issue any subpoena in the name of the Commission on behalf of any person having a statutory right to an agency subpoena. Any oral testimony compelled by a subpoena issued by this provision will be presented ~~initially and exclusively~~ to the Commission or its staff.
2. By the Commission. Once any matter is reached on the agenda of a Commission meeting, the Commission will control any further investigation or proceedings. No hearings will be held except by direction of the Commission. On a case-by-case basis, the Commission may authorize its Chair, Director, or any ad hoc committee of its members, to conduct further investigative proceedings on behalf of the Commission between Commission meetings. Any authorization so conferred will be fully reflected in the minutes of the Commission meeting.

## SECTION 6. CONTRIBUTIONS AND OTHER RECEIPTS

1. The date of a contribution is the date it is received by a candidate, an agent of the candidate, a candidate's committee, a party committee and its agents, or a political action committee and its agents.
- ~~12.~~ A loan is a contribution at the time it is made unless the loan was made by a financial institution in the State of Maine in the ordinary course of business. Loans continue to be contributions until they are repaid. Loans are subject to the

candidate contribution limitations, except for loans made by the candidate, the candidate's spouse, or a financial institution in the State of Maine in the ordinary course of business.

23. Candidates and political action committees must report the name, address, occupation and employer of each individual contributor who gives, in the aggregate, more than \$50 for the reporting period. The reporting is required for private contributions raised by ~~traditionally~~privately financed candidates and for seed money contributions to candidates participating in the Maine Clean Election Act. Candidates and political action committees must make a reasonable effort to obtain the employment information of the contributor. If a candidate or political action committee is unable to obtain the information from the contributor in response to a request, the candidate or committee shall indicate "information requested" in the occupation and employer sections of the campaign finance report.
34. Unless specifically exempted under Title 21-A M.R.S.A. Sections 1012 and 1052 or this section, the provision of any goods or services without charge or at a charge that is less than the usual and customary charge for such goods or services is an in-kind contribution. Examples of such goods and services include, but are not limited to: equipment, facilities, supplies, personnel, advertising, and campaign literature. If goods or services are provided at less than the usual and customary charge, the amount of the in-kind contribution is the difference between the usual and customary charge and the amount charged the candidate or political committee.
45. An employer that has authorized an employee to provide services without charge to a candidate or political committee during the employee's paid work-time has made an in-kind contribution to the candidate or political committee. No contribution has been made if the employee is providing services as a volunteer outside of the employee's paid work-time.
56. A commercial vendor that has extended credit to a candidate or political committee has not made a contribution if the credit is extended in the ordinary course of the vendor's business and the terms are substantially similar to extensions of credit made to nonpolitical ~~debtors~~customers that are of similar risk and size of obligation.
7. For the purposes of the limitations imposed by 21-A M.R.S.A. Section 1015(1), 21-A M.R.S.A. Section 1015(2), 21-A M.R.S.A. Section 1015(3), and 21-A M.R.S.A. Section 1056, the following guidelines shall apply:

  - A. All contributions made to a candidate through the day of the primary election for which the candidate seeks office are deemed to be made in the primary election.

- B. Notwithstanding division (c) below, if a candidate loses in the primary, all contributions made to that candidate for the purpose of liquidating debts and liabilities associated with the candidate's candidacy are deemed to be made in the primary election.
- C. All contributions made to a candidate from the day after the primary election through the date of the general election for which the candidate seeks office are deemed to be made in the general election.
- D. Notwithstanding division (e) below, all contributions made after the general election to a general election candidate for the purpose of reducing debts and liabilities associated with the candidate's candidacy are deemed to be made in the general election.
- E. All contributions made after the day of the general election to a candidate who has liquidated all debts and liabilities associated with that election are deemed to be made in support of the candidate's candidacy for a subsequent election.
- F. Subparagraphs A through E above shall apply to any write-in candidate who has qualified under 21-A M.R.S.A. Section 723, or who has received contributions or made expenditures with the intent of qualifying as a candidate.

## SECTION 7. EXPENDITURES

1. Expenditures By Consultants, Employees, and Other Agents of a Political Campaign. Each Expenditures made on behalf of a candidate, political committee, or political action committee by any person, agency, firm, organization, etc. employed or retained for the purpose of organizing, directing, managing or assisting the candidate, the candidate's committee, or the political action committee shall be deemed expenditures by the candidate or committee. Such expenditures must be reported separately by the candidate or committee as if made or incurred by the candidate or committee directly. The report must include the name of the third party vendor or payee to whom the expenditure was made, the date of the expenditure, and the purpose and amount of the expenditure. It is not sufficient to report only the total retainer or fee paid to the person, agency, firm, organization, etc., if that retainer or fee was used to pay third party vendors or payees for campaign-related goods and services.
2. Expenditures By Political Action Committees. In addition to the requirements set forth in 21-A M.R.S.A. Section 1060(4), the reports must contain the purpose of each expenditure and the name of each payee and creditor.

3. Timing of Reporting Expenditures.
  - A. Placing an order with a vendor for a good or service; signing a contract for a good or service; the delivery of a good or the performance of a service by a vendor; or a promise or an agreement (including an implied one) that a payment will be made constitutes an expenditure, regardless whether any payment has been made for the good or service.
  - B. Expenditures must be reported at the earliest of the following events:
    - (1) The placement of an order for a good or service;
    - (2) The signing of a contract for a good or service;
    - (3) The delivery of a good or the performance of a service by a vendor;
    - (4) A promise or an agreement (including an implied one) that a payment will be made; or
    - (5) The making of a payment for a good or service.
  - C. At the time the duty to report an expenditure arises, the person submitting the report is required to determine the value of goods and services to be rendered (preferably through a written statement from the vendor) and to report that value as the amount of the expenditure. If the expenditure involves more than one candidate election, the report must include an allocation of the value to each of those candidate elections.
4. Advance Purchases of Goods and Services for the General Election.
  - A. Consulting services, or the design, printing or distribution of campaign literature or advertising, including the creation and broadcast of radio and television advertising, contracted or paid for prior to the primary election must be received prior to the primary election in order to be considered primary election expenditures.
  - B. If the Commission receives a complaint stating that a candidate or a committee purchased goods or services before a primary election for use in the general election, the Commission may request that the candidate or committee distinguish which of the goods and services were used in the primary election and which were used in the general election.
5. All campaign-related payments made with the personal funds or credit card of the a-candidate or by an individuals authorized by the candidate for the purpose of influencing the candidate's nomination or election must be reported as expenditures in the reporting period during which the payment to the vendor or payee is made, including payments made with the personal funds or credit card of the candidate or authorized individual. The candidate must report the name of the vendor or payee to whom the payment was made, the date of the expenditure, and

the purpose and amount of the expenditure. When the expenditure is reported, the candidate should indicate the person ~~making~~ who made the payment by entering “Paid by [name of candidate or supporter]” in the remarks section of the expenditure schedule. It is not sufficient to report only the name of the candidate or authorized individual to whom reimbursement was made and the total amount of the reimbursement.

6. Multiple expenditures for bank fees and for vehicle travel may be reported in an aggregate amount, provided that the candidate or committee identifies the time period of the expenditures in the remarks section of the report.

## SECTION 8. PROHIBITED COMMUNICATIONS

Commission members shall not discuss any specific case under investigation, or any case which may reasonably be expected to be the subject of investigation, as long as the matter is pending before the Commission ~~and, where applicable, until anybody to whom the Commission renders an advisory opinion has concluded its action and any appeals therefrom have been exhausted.~~ Members of the Commission may discuss its final determination regarding the matter with members of the press or other interested persons only after the appeal period has expired and no appeal is filed, or if an appeal is filed, only after the appellant has exhausted all administrative or judicial remedies.

## SECTION 9. ACCELERATED REPORTING SCHEDULE

1. General. In addition to other reports required by law, any candidate for Governor, State Senator or State Representative who is not certified as a Maine Clean Election Act candidate under Title 21-A, section 1121 et seq., and who has a certified candidate as an opponent in an election must comply with the following reporting requirements on forms prescribed, prepared, and provided by the Commission.

INFORMATIONAL NOTE: Title 21-A, section 1017 prescribes reporting requirements for candidates.

2. 101% Report. Any candidate subject to this section, who receives, spends or obligates more than 1% in excess of the primary or general election distribution amounts for a Maine Clean Election Act candidate opponent in the same race, must file with the Commission, within 48 hours of such receipt, expenditure, or obligation, a report detailing the candidate’s total campaign contributions, receipts, expenditures and obligations to date. The Commission will notify all candidates who have an opposing certified candidate of the applicable distribution amounts and of the 101% Report requirement.
3. Any ~~traditionally~~ privately funded candidate with a Maine Clean Election Act opponent shall file the following three reports detailing the candidate’s total campaign contributions, obligations and expenditures to date, except that a

candidate who has not received, spent, or obligated the amount sufficient to require a report under subsection 2 may file an affidavit, by the date the report is due, attesting that the candidate has not received, spent or obligated that amount:

- A. a report filed not later than 5:00 p.m. on the 42nd day before the date on which an election is held that is complete as of the 44th day before the date of that election;
  - B. a report filed not later than 5:00 p.m. on the 21st day before the date on which an election is held that is complete as of the 23rd day before the date of that election; and
  - C. a report filed not later than 5:00 p.m. on the 12th day before the date on which an election is held that is complete as of the 14th20th day before the date of that election.
4. **24-Hour Report.** Any candidate who is required to file a 101% report must file an updated report with the Commission reporting single expenditures of \$1,000 or more by candidates for Governor, \$750 by candidates for State Senator, and \$500 by candidates for State Representative made after the 14th day before any election and more than 24 hours before 5:00 p.m. on the date of that election. The report must be submitted to the Commission within 24 hours of those expenditures.
  5. **Filing by Facsimile or Electronic Means.** For purposes of this section, reports may be filed by facsimile or by other electronic means acceptable to the Commission, and such reports will be deemed filed when received by the Commission provided that the original of the same report is received by the Commission within 5 calendar days thereafter.

## SECTION 10. REPORTS OF INDEPENDENT EXPENDITURES

1. **General.** Any person, party committee, political committee or political action committee that makes an independent expenditure aggregating in excess of \$100 per candidate in an election must file a report with the Commission according to this section.
2. **Definitions.** For purposes of this section, the following phrases are defined as follows:
  - A. "Clearly identified," with respect to a candidate, has the same meaning as in Title 21-A, chapter 13, subchapter II.
  - B. "Expressly advocate" means any communication that uses phrases such as "vote for the Governor," "reelect your Representative," "support the Democratic nominee," "cast your ballot for the Republican challenger for Senate District 1," "Jones for House of Representatives," "Jean Smith in

2002," "vote Pro-Life" or "vote Pro-Choice" accompanied by a listing of clearly identified candidates described as Pro-Life or Pro-Choice, "vote against Old Woody," "defeat" accompanied by a picture of one or more candidate(s), "reject the incumbent," or communications of campaign slogan(s) or individual word(s), which in context can have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidate(s), such as posters, bumper stickers, advertisements, etc. which say "Pick Berry," "Harris in 2000," "Murphy/Stevens" or "Canavan!".

- C. "Independent expenditure" has the same meaning as in Title 21-A, section 1019-B. 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 and is not an independent expenditure.

3. Reporting Schedules. Independent expenditures must be reported to the Commission in accordance with the following provisions:

- A. Independent expenditures aggregating in excess of \$100 per candidate per election but not in excess of \$250 made by any person, party committee, political committee or political action committee must be reported to the Commission in accordance with the following reporting schedule, except that expenditures made in the last 11 days before an election must be reported within 24 hours of the expenditure.

(1) Quarterly Reports.

- (a) A report must be filed on January 15th and be complete as of January 5th;
- (b) A report must be filed on April 10th and be complete as of March 31st;
- (c) A report must be filed on July 15th and be complete as of July 5th; and
- (d) A report must be filed on October 10th and be complete as of September 30th.

- (2) Pre-Election Report. A report must be filed on the 12th day before the election is held and be complete as of that day.

If the total of independent expenditures made to support or oppose a candidate exceed \$100, each subsequent amount spent to support or oppose the candidate must be reported as an independent expenditure. As long as the total amount spent with respect to the candidate does not exceed \$250, all reports must be filed according to the deadlines in this

paragraph. If the total amount spent per candidate exceeds \$250, the reports must be filed in accordance with paragraph B.

[NOTE: FOR EXAMPLE, IF A COMMITTEE MAKES THREE \$80 EXPENDITURES IN SUPPORT OF A CANDIDATE ON SEPTEMBER 20, THE 15TH DAY BEFORE THE ELECTION AND THE 8TH DAY BEFORE THE ELECTION, THOSE THREE EXPENDITURES MUST BE REPORTED ON OCTOBER 10th, AND THE 12TH AND 7TH DAYS BEFORE THE ELECTION, RESPECTIVELY.]

- B. Independent expenditures aggregating in excess of \$250 per candidate per election made by any person, party committee, political committee or political action committee must be reported to the Commission within 24 hours of those expenditures. If any additional expenditures, regardless of amount, increase the total spent per candidate above the threshold of \$250, each additional expenditure must be reported within 24 hours.

[NOTE: FOR EXAMPLE, IF A COMMITTEE HAS REPORTED INDEPENDENT EXPENDITURES TOTALING \$300 IN SUPPORT OF A CANDIDATE, AND THE COMMITTEE MAKES AN ADDITIONAL \$50 INDEPENDENT EXPENDITURE IN SUPPORT OF THE CANDIDATE, THE ADDITIONAL \$50 EXPENDITURE MUST BE REPORTED WITHIN 24 HOURS.]

- C. Reports must contain information as required by Title 21-A, chapter 13, subchapter II (§§ 1016-1017-A), and must clearly identify the candidate and indicate whether the expenditure was made in support of or in opposition to the candidate. Reports filed after the eighth day before an election must include the following information:
1. the date on which the person making the expenditure placed the order with the vendor for the goods or services;
  2. the approximate date when the vendor began providing design or any other services in connection with the expenditure;
  3. the date on which the person making the expenditure first learned of the total amount of the expenditure; and
  4. a statement why the expenditure could not be reported by the eighth day before the election.
- D. A separate 24-Hour Report is not required for expenditures reported in an independent expenditure report.

4. Multi-Candidate Expenditures. When a person or organization is required to report an independent expenditure for a communication that supports multiple candidates, the cost should be allocated among the candidates in rough proportion to the benefit received by each candidate.
  - A. The allocation should be in rough proportion to the number of voters who will receive the communication and who are in electoral districts of candidates named or depicted in the communication. If the approximate number of voters in each district who will receive the communication cannot be determined, the cost may be divided evenly among the districts in which voters are likely to receive the communication.

[NOTE: FOR EXAMPLE, IF CAMPAIGN LITERATURE NAMING SENATE CANDIDATE X AND HOUSE CANDIDATES Y AND Z ARE MAILED TO 10,000 VOTERS IN X'S DISTRICT AND 4,000 OF THOSE VOTERS RESIDE IN Y'S DISTRICT AND 6,000 OF THOSE VOTERS LIVE IN Z'S DISTRICT, THE ALLOCATION OF THE EXPENDITURE SHOULD BE REPORTED AS: 50% FOR X, 20% FOR Y, and 30% FOR Z.]
  - B. If multiple county or legislative candidates are named or depicted in a communication, but voters in some of the candidates' electoral districts will not receive the communication, those candidates should not be included in the allocation.

[NOTE: FOR EXAMPLE, IF AN EXPENDITURE ON A LEGISLATIVE SCORECARD THAT NAMES 150 LEGISLATORS IS DISTRIBUTED TO VOTERS WITHIN A TOWN IN WHICH ONLY ONE LEGISLATOR IS SEEKING RE-ELECTION, 100% OF THE COST SHOULD BE ALLOCATED TO THAT LEGISLATOR'S RACE.]
  - C. If a candidate who has received matching funds because of a multi-candidate communication believes that he or she deserves additional matching funds because the communication disproportionately concerns his or her race, the Commission may grant additional matching funds in proportion to the relative treatment of the candidates in the communication.
5. Rebuttable Presumption. Under Title 21-A M.R.S.A. §1019-B(1)(B), an expenditure made 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 during the 21 days before an election will be presumed to be an independent expenditure, unless the person making the expenditure submits a written statement to the Commission within 48 hours of the expenditure stating that the cost was not incurred with the intent to influence the nomination, election or defeat of a candidate.

A. The following types of communications may be covered by the presumption if the specific communication satisfies the requirements of Title 21-A M.R.S.A. §1019-B(1)(B):

- (1) Printed advertisements in newspapers and other media;
- (2) Television and radio advertisements;
- (3) Printed literature;
- (4) Recorded telephone messages;
- (5) Scripted telephone messages by live callers; and
- (6) Electronic communications.

This list is not exhaustive, and other types of communications may be covered by the presumption.

B. The following types of communications and activities are not covered by the presumption, and will not be presumed to be independent expenditures under Title 21-A M.R.S.A. Section 1019-B(1)(B):

- (1) news stories and editorials, unless the facilities distributing the communication are owned or controlled by the candidate or a political committee;
- (2) activity or communication designed to encourage individuals to register to vote or to vote if that activity or communication does not name or depict a clearly identified candidate;
- (3) any communication from a membership organization to its members or from a corporation to its stockholders if the organization or corporation is not organized primarily for the purpose of influencing the nomination or election of any person for state or county office;
- (4) the use of offices, telephones, computers, or similar equipment when that use does not result in additional cost to the provider; and
- (5) other communications and activities that are excluded from the legal definition of “expenditure” in the Election Law.

C. If an expenditure is covered by the presumption and is greater, in the aggregate, than \$100 per candidate per election, the person making the expenditure must file an independent expenditure report or a signed written statement that the expenditure was not made with the intent to influence the nomination, election or defeat of a candidate. The filing of independent expenditure reports should be made in accordance with the filing schedule in subsections 3(A) and 3(B) of this rule. Independent

expenditures aggregating \$100 or less per candidate per election do not require the filing of an independent expenditure report or a rebuttal statement.

- D. If a committee or association distributes copies of printed literature to its affiliates or members, and the affiliates or members distribute the literature directly to voters, the 21-day period applies to the date on which the communication is disseminated directly to voters, rather than the date on which the committee or association distributes the literature to its affiliates or members.
- E. For the purposes of determining whether a communication is covered by the presumption, the date of dissemination is the date of the postmark, hand-delivery, or broadcast of the communication.
- F. An organization that has been supplied printed communications covered by the presumption and that distributes them to voters must report both its own distribution costs and the value of the materials it has distributed, unless the organization supplying the communications has already reported the costs of the materials to the Commission. If the actual costs of the communications cannot be determined, the organization distributing the communication to voters must report the estimated fair market value.
- G. If a person wishes to distribute a specific communication that appears to be covered by the presumption and the person believes that the communication is not intended to influence the nomination, election or defeat of a candidate, the person may submit the rebuttal statement to the Commission in advance of disseminating the communication for an early determination. The request must include the complete communication and be specific as to when and to whom the communication will be disseminated.

#### SECTION 11. REPORTS OF BALLOT QUESTION CAMPAIGN ACTIVITY BY PERSONS AND ORGANIZATIONS OTHER THAN POLITICAL ACTION COMMITTEES

When a person or organization is required under 21-A M.R.S.A. Section 1056-B to file reports because of contributions or expenditures of more than \$1,500 made in support of or in opposition to a ballot question, the reports must be filed according to the following schedule:

- 1. Quarterly Reports. Reports must be filed on the following deadlines until the date of the election on which the question is on the ballot:
  - A. A report must be filed on January 15th and be complete as of January 5th;
  - B. A report must be filed on April 10th and be complete as of March 31st;

- C. A report must be filed on July 15th and be complete as of July 5th; and
  - D. A report must be filed on October 10th and be complete as of September 30th.
2. Pre- and Post-Election Reports. The person or organization must file the following reports:
    - A. A report must be filed on the 6th day before the election is held and be complete as of the 12th day before the election.
    - B. A report must be filed on the 42nd day after the election is held and be complete as of the 35th day after the election.
  3. 24-Hour Reports. Any contribution or expenditure in excess of \$500 made after the 12th day before the election and more than 24 hours before the election must be reported within 24 hours of that contribution or expenditure or by noon of the first business day after the contribution or expenditure, whichever is later.

## SECTION 12. CAMPAIGN CONTRIBUTIONS DURING LEGISLATIVE SESSION

1. Seed Money Contributions. Legislators and other individuals covered by Title 1 M.R.S.A. Section 1015(3)(B) may not intentionally solicit or accept a seed money contribution from a lobbyist or lobbyist associate during any period of time in which the Legislature is convened until final adjournment.
2. Acceptance of Contributions Through Political Action Committees. During a legislative session, political action committees that are closely associated with a Legislator, such as committees organized to elect a candidate or Legislator to a leadership position or committees organized to elect the candidates of a legislative caucus, may not intentionally solicit or accept a contribution from a lobbyist, lobbyist associate, or employer. During the legislative session, these political action committees may accept contributions from individuals and organizations that are not lobbyists, lobbyist associates, and their employers. Lobbyists, lobbyist associates, and employers may not contribute to political action committees closely associated with a Legislator during a legislative session, unless their contributions are segregated in a fund that is not used to influence the election or defeat of any incumbent Legislators.
3. Making a Contribution Through a Political Action Committee. During a legislative session, an organization that employs a lobbyist may not make a contribution through a political action committee with which the organization is affiliated or direct that the affiliated political action committee make a contribution to a Legislator.

STATUTORY AUTHORITY:

1 M.R.S.A. § 1003(1); 21-A M.R.S.A. § 1126.

EFFECTIVE DATE: April 29, 1987

AMENDED: December 28, 1991  
December 14, 1994

REPEALED AND REPLACED: November 1, 1998; also converted to MS Word 2.0 format.

AMENDED: January 14, 2004 (date of adoption of routine technical amendments)  
April 8, 2005 (date of adoption of routine technical amendments)  
April 8, 2005 (date of provisional adoption of major substantive amendments)  
July 13, 2005 (date of final adoption of major substantive amendments)



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

To: Administrative Procedure Officer  
Office of the Secretary of State of Maine

From: Paul Lavin, Assistant Director

Date: March 29, 2007

Re: Amendments to Major Substantive Rules in Chapter 3 of the Commission's Rules  
(94-270 C.M.R. Chapter 3)

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STATEMENT OF FACTUAL AND POLICY BASIS FOR AMENDMENTS  
AND SUMMARY OF AND RESPONSE TO COMMENTS

**Chapter 3, Sections 2.1 and 2.2**

*Factual and Policy Basis:* The adopted rule clarifies that any qualifying contributions received more than 5 days before a candidate files a Declaration of Intent with the Commission will not count towards the required minimum. This prohibition is expressed in the statute but the existing rule did not contain a reference to it. The requirement that the candidate identify the treasurer and political committee on the Declaration of Intent is removed because that information is required on the candidate registration form. The requirement that information about the campaign's financial institution and the candidate's social security or tax identification number be disclosed on the Declaration of Intent is removed for security purposes. That information must be provided to the Commission on other forms in order for the candidate to be set up as a vendor in the State's system. Under the adopted rule, the Declaration of Intent will also include an affirmation that the candidate has read and will comply with the guidelines on using public funds.

*Comments:* The Commission received no comments on the adopted rule.

**Chapter 3, Section 2.4**

*Paragraph A*

*Factual and Policy Basis:* The adopted rule changes the content of the receipt and acknowledgement form that candidates use in collecting qualifying contributions and signatures. The form will contain a clear and conspicuous statement that the candidate is seeking public funding for his or her campaign. If anyone other than the candidate collects the contributions and signatures, that person's name, address, and telephone number must be disclosed on the form as well as signed affirmation that the contributions were collected by valid means. Candidates will no longer be required to sign each form, but will affirm that he or she complied with all qualifying contribution requirements on the new certification request form. These

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WEBSITE: WWW.MAINE.GOV/ETHICS

measures will provide greater assurance that the qualifying contributions were collected by valid means, especially if the candidate uses circulators to collect contributions and signatures, and will assist Commission staff in verifying contributions.

*Comments:* Daniel Billings, Esq., commented that he thought the proposed changes were very important and should be made before the next election. As counsel for the Woodcock for Governor campaign, he was alarmed that the candidate was required to sign off on all the contributions even though the candidate was not present when the contributions were solicited and received. The proposed change brings the forms more in the line with the nominating petitions by requiring the person who collected the contribution to sign the form attesting to the validity of the contribution. If there is a problem, the Commission staff will be able to contact the person who collected the contribution. Mr. Billing commented further that he thought this was a major improvement to protect the integrity of the system.

*Changes to the adopted rule:* The adopted rule contained a provision that required contributors to provide their phone numbers on the receipt and acknowledgement form. The Commission staff reconsidered this requirement and concluded that this requirement could be an obstacle in collecting qualifying contributions. The requirement has been removed from the adopted rule.

#### Paragraph G

*Factual and Policy Basis:* The adopted rule clarifies that the proof of the contributor's voter registration, *i.e.*, the signature of the municipal registrar or clerk on the receipt and acknowledgement form, will not be accepted by the Commission after the deadline of the qualifying period. This consistent with the statute and provides a clear deadline for candidates.

*Comments:* The Commission received no comments on the adopted rule.

#### Paragraph H

*Factual and Policy Basis:* The adopted rule eliminates the option that candidates could submit photocopies of receipt and acknowledgement forms prior to the deadline of the qualifying period as long as the verified original forms were submitted to the Commission within 10 days after the photocopies were delivered to the Commission. The Commission believes that a clear deadline for the submission of qualifying contributions and verified receipt and acknowledgement forms is preferable to the floating deadlines that this provision creates.

*Comments:* The Commission received no comments on the adopted rule.

### **Chapter 3, Section 3**

*Factual and Policy Basis:* The adopted rule clarifies the procedures for requesting certification as a Maine Clean Election Act candidate. The request will be deemed complete if the candidate submits the qualifying contributions and verified receipt and acknowledgement forms, an alphabetical list of contributors, a seed money report, and a signed request for certification form to the Commission no later than 5:00 p.m. on the last day of the qualifying period. Candidates who cannot submit the alphabetical list, the seed money report, or the written request may

request an extension to do so. However, the Commission and the Commission staff would not be able to grant an extension for submitting the qualifying contributions and receipt and acknowledgment forms.

### **Chapter 3, Section 5.3**

*Factual and Policy Basis:* The adopted rule clarifies the process by which matching funds are calculated. It does not make any substantive changes about the process.

*Comments:* The Commission received no comments on the adopted rule.

*Changes to the adopted rule:* The Commission staff added a provision that specifically addresses how seed money raised by replacement candidates would be handled. This had inadvertently been omitted in the adopted rule.

### **Chapter 3, Section 5.4**

*Factual and Policy Basis:* The adopted rule is a rewording of the existing rule and does not change the substance of the rule.

*Comments:* The Commission received no comments on the adopted rule.

### **Chapter 3, Section 7.1**

*Factual and Policy Basis:* The adopted rule is consistent with 2005 statutory changes which require a campaign treasurer to keep bank account records and vendor invoices. The Commission would have the ability to require the return of funds if a candidate or treasurer cannot produce supporting documentation for an expenditure or for the failure to keep records. The candidate would have an opportunity for a hearing prior to any determination requiring the return of funds. The adopted rule is necessary to assist the Commission in ensuring that public funds are spent on campaign-related purposes.

*Comments:* The Commission received no comments on the adopted rule.

#### *Paragraph A*

*Factual and Policy Basis:* The adopted rule clarifies that MCEA funds can be commingled with unspent seed money and that matching funds can only be spent after the candidate receives authorization.

*Comments:* The Commission received no comments on the adopted rule.

#### *Paragraph C*

*Factual and Policy Basis:* The adopted rule eliminates the *pro rata* reimbursement for vehicle travel expenses based on actual expenses. The change would simplify travel reimbursement by requiring that all reimbursements be based on the standard mileage rate prescribed for employees

of the State of Maine. The change also allows the Commission to disallow travel reimbursements that lack supporting documentation. Under the proposed change, candidates can choose to reimburse themselves and volunteers at a rate lower than the standard.

*Comments:* Daniel Walker, Esq., commented that he agreed with the adopted rule. He said that candidates need to keep receipts, document travel expenditures and keep a travel log.

### **Chapter 3, Section 7.2**

#### *Paragraph B*

*Factual and Policy Basis:* The Commission conducts audits of all MCEA gubernatorial candidates. The adopted rule allows primary and general election candidates to reserve \$1,000 and \$2,500, respectively, to defray the costs associated with an audit.

*Comments:* The Commission received no comments on the adopted rule.

*Changes to the adopted rule:* At the time of the drafting of the proposed rules, the Commission had not yet conducted an audit of any gubernatorial candidates. After conducting one complete audit and being in the process of auditing two other gubernatorial campaigns, the Commission staff believes that the reserve amounts in the adopted rule are too low and proposes to increase the reserves amounts to \$2,000 for an unsuccessful gubernatorial candidate in the primary election and \$3,500 for a gubernatorial candidate in the general election.

#### **Other Comments**

Senator Plowman requested that the Commission clarify the requirement that MCEA candidates are required to file 24 Hour Reports. She reported that there was a substantial expenditure made by one of her opponents in the last three days before the general election which was not reported in a 24 Hour Report. Sen. Plowman said that there was considerable confusion about whether the requirement applied to MCEA candidates.

*Response to Comments:* Jonathan Wayne commented to Sen. Plowman that the Commission's bill proposes changes to the 24 hour reporting requirements which would make the requirement the same for all candidates. He said that MCEA candidates do have an obligation to report certain expenditures within 24 hours in the final twelve days before an election but that some candidates may not understand that.

Nancy Oden of Jonesboro, a candidate for Governor and Senate District 29, submitted the following comments in writing:

1. Require all candidates to qualify for the ballot equally (do not make independents get twice as many signatures, for example), and do not make this too difficult. The 4,000-signature requirement now in place for governor and U.S. Senate are quite sufficient to quell any but serious people.

2. Once a candidate has qualified by getting the required number of signatures verified, then that candidate and all other candidates for that office should receive the same amount of money and not be allowed to spend a penny more than their allotment.
3. Regular financial reports - more frequent than now - should be carefully monitored to ensure candidates are not spending more than their allotment.
4. No other spending should be allowed for any campaign other than the candidates' allotments.
5. Extant political parties should not be allowed loopholes to help their candidates, *e.g.*, printing campaign materials, etc.

*Response to comments:* The subject matter of the comment in item #1 is not within jurisdiction of the Ethics Commission. The other comments would require statutory change and could not be accomplished through rule-making.

## SECTION 1. APPLICABILITY

This chapter applies to candidates running for Governor, State Senator and State Representative who choose the alternative campaign financing option established by the Maine Clean Election Act for elections to be held beginning in the year 2000. Candidates participating in the Maine Clean Election Act must comply with these rules and all other applicable election and campaign laws and regulations. Some sections in this chapter also apply to and impose obligations on ~~traditionally~~ privately financed candidates and political committees that raise contributions and make expenditures in races involving Maine Clean Election Act candidates.

## SECTION 2. PROCEDURES FOR PARTICIPATION

1. Declaration of Intent. A participating candidate must file a Declaration of Intent ~~before~~ within five days of collecting qualifying contributions. The Commission will provide a form for this purpose.
2. Content. The Declaration of Intent must include the following information:
  - A. an affirmation that the candidate is seeking certification as a Maine Clean Election Act candidate;
  - B. an affirmation that the candidate understands that ~~has not collected~~ any qualifying contributions collected more than five days before ~~signing~~ filing the Declaration of Intent will not be counted toward the eligibility requirement;
  - C. an affirmation that the candidate has not accepted any contributions, except for seed money contributions, after becoming a candidate;
  - D. an affirmation that the candidate has disposed of any campaign surplus before becoming a candidate for the new election, as required by paragraph 3.C [Campaign Surplus] of this section;
  - E. an affirmation that if the candidate has any campaign deficit, that the candidate will not accept contributions to repay that deficit as a participating candidate or certified candidate, except that the candidate may forgive any campaign loans to himself or herself made during any previous campaigns;

- F. an affirmation that the candidate will continue to comply with applicable seed money restrictions and other requirements of the Act including, but not limited to, procedures for collecting qualifying contributions;
  - G. ~~information identifying the candidate's treasurer, political committee, campaign finance account, social security number, and/or federal tax identification number;~~ an affirmation that the candidate has read and will comply with the Commission's guidelines on permissible expenditures; and
  - H. authorization by the candidate for the Commission, its agents or representatives to conduct financial audits of the candidate's campaign financial records and account(s).
3. Seed Money Restrictions.
- A. General. After becoming a candidate and before certification, a participating candidate may collect and spend only seed money contributions. The restrictions on seed money contributions apply to both cash and in-kind contributions.
  - B. Total Amount.
    - (1) A participating candidate must limit the candidate's total seed money contributions to the following amounts:
      - (a) fifty thousand dollars for a gubernatorial candidate;
      - (b) one thousand five hundred dollars for a candidate for the State Senate; or
      - (c) five hundred dollars for a candidate for the State House of Representatives.
    - (2) Notwithstanding any other provision of this chapter, a candidate may carry forward to a new candidacy of that candidate campaign equipment or property, subject to the reporting requirements of Title 21-A, chapter 13 [Campaign Reports and Finances].
    - (3) The Commission periodically will review these limitations and, through rulemaking, revise these amounts to ensure effective implementation of the Act.
  - C. Campaign surplus. A candidate who has carried forward campaign surplus according to Title 21-A, chapter 13, subchapter II [§ 1017(8) and §1017(9)], and who intends to become a participating candidate, must

dispose of campaign surplus in accordance with the requirements of Title 21-A, chapter 13, subchapter II [§ 1017(8)]; provided, however, that a candidate may carry forward only those portions of campaign surplus that comply with the provisions of this Act regarding seed money contributions [§ 1122(9) and 1125(2)]. Any campaign surplus (excluding campaign equipment or property) carried forward under this provision will be counted toward that candidate's total seed money limit.

INFORMATIONAL NOTE: The Commission will provide educational materials to all former candidates who have a campaign surplus describing the requirement that individuals must dispose of campaign surplus to remain eligible for participation as a Maine Clean Election Act candidate.

- D. **Return of Contributions Not in Compliance with Seed Money Restrictions.** A participating candidate who receives a contribution exceeding the seed money per donor restriction or the total amount restriction must immediately return the contribution and may not cash, deposit, or otherwise use the contribution.
- E. **Case-by-Case Exception.** A participating candidate who has accepted contributions or made expenditures that do not comply with seed money restrictions may petition the Commission to remain eligible for certification as a Maine Clean Election Act candidate. The Commission may approve the petition and restore a candidate's eligibility for certification if the candidate successfully establishes all of the following criteria:
- (1) the failure to comply was the result of an unintentional error;
  - (2) the candidate immediately returned all contributions that did not comply with seed money restrictions or paid for goods or services contributed that did not comply with seed money restrictions;
  - (3) the candidate petitioned the Commission promptly upon becoming aware of the unintentional error; and
  - (4) the failure to comply did not involve expenditures by the participating candidate significantly in excess of seed money total amount restrictions or otherwise constitute systematic or significant infractions of seed money restrictions.
- F. After becoming a candidate and prior to certification, A accepting a loan from any source including a financial institution ~~prior to certification,~~ ~~or~~ and spending money received in the form of a loan, ~~is a~~ are violations of the seed money restrictions of the Act.

- G. Other. A seed money contributor may also make a qualifying contribution to the same participating candidate provided that the contributor otherwise meets the requirements for making a qualifying contribution.

4. Qualifying Contributions.

- A. General. A participating candidate may collect qualifying contributions only during the relevant qualifying period. Qualifying contributions collected more than five days before and only after filing a Declaration of Intent with the Commission will not be counted toward the eligibility requirement. Qualifying contributions must be acknowledged and reported on using forms provided by the Commission. The forms will include an affirmation by the contributor that the contributor received nothing of value in exchange for the signature and contribution.

The forms must include:

- (1) the name, residential address and signature of the contributor;
- (2) an affirmation by the contributor that the contribution was made with his or her personal funds, in support of the candidate and that the contributor did not receive anything of value in exchange for his or her signature and contribution;
- (3) a clear and conspicuous statement that the candidate is collecting signatures and qualifying contributions in order to obtain public funding to finance the candidate's campaign;
- (4) the signature of the municipal registrar or his or her designee verifying the voter registration of the contributors listed on the form; and
- (5) the signature of any person, other than the candidate, who circulated the forms and collected signatures and contributions, whether the services were provided for compensation or on a volunteer basis, affirming that he or she collected the qualifying contributions, that the contributor signed the form in the circulator's presence, that to the best of the circulator's knowledge and belief each signature is the signature of the person whose name it purports to be and that the contribution came from the personal funds of the contributor, that the circulator did not give anything of value to the contributor in exchange for the contribution and signature, and that the circulator did not represent the purpose of collecting the contributions and signatures to be for any purpose other than obtaining public funds to finance the candidate's

campaign; the form must also include the residential and mailing addresses and telephone number of the circulator.

- B. Required Number of Qualifying Contributions. A participating candidate must obtain the number of qualifying contributions during the qualifying period as required by the Act [§ 1122(7); § 1122(8); § 1125(3)].
- C. Exchanges For Qualifying Contributions Prohibited.
- (1) A participating candidate or an agent of that candidate may not give or offer to give a payment, gift, or anything of value in exchange for a qualifying contribution.
  - (2) This provision does not prohibit a participating candidate or that candidate's agent from collecting qualifying contributions at events where food or beverages are served, or where campaign promotional materials are distributed, provided that the food, beverage, and campaign materials are offered to all persons attending the event regardless of whether or not particular persons make a qualifying contribution to the participating candidate.
  - (3) This provision does not prohibit a candidate from using seed money to pay the fee for a money order provided the qualifying contributor pays the \$5 amount reflected on the money order as permitted by 21-A M.R.S.A. §1125(3).
- D. Checks Drawn on Business Accounts. Qualifying contributions must be made with the personal funds of the contributor. The Commission will not count a check drawn from an account with a business name toward the eligibility requirements, unless the name of the contributor is included in the name of the account or the candidate submits a written statement from the contributor indicating that he or she uses the business account for personal expenses.
- E. Family Members. Family members, domestic partners, and live-in caregivers who reside in a single household may make qualifying contributions in the form of a single check or money order of more than \$5 provided that:
- (1) all contributors sign the receipt and acknowledgement form;
  - (2) all contributors are registered to vote at the address of the household; and
  - (3) all contributions are made with the personal funds of the contributors.

- F. Verification of Registered Voters.
- (1) Before submitting qualifying contributions to the Commission, a participating candidate must establish that contributors who made qualifying contributions to that candidate are registered voters.
  - (2) A participating candidate must obtain written verification from the Registrar of the number of persons providing qualifying contributions who are registered voters within the electoral division for the office the candidate is seeking.
  - (3) Upon request of a participating candidate, and within 10 business days after the date of the request, the Registrar must verify the names of contributors of qualifying contributions who are registered voters within the electoral division for the office the candidate is seeking.
- G. Timing of Verification. For purposes of this chapter, the Commission will deem verification of registered voters by the Registrar at any time during the qualifying period to be an accurate verification of voter registration even if the registration status of a particular voter may have changed at the time the Commission determines certification of the participating candidate. Proof of voter verification submitted after the qualifying period will not be accepted by the Commission and those qualifying contributions will not be counted toward the number required for certification.
- ~~H. Submission of Verified Qualifying Contributions. A participating candidate may submit a completed request for certification to the Commission at any time during the qualifying period. The request will be deemed complete and the candidate will be certified only if:~~
- ~~(1) the request is accompanied by the original signed qualifying contributions forms that have been verified by the Registrar(s) of the electoral division for the office the candidate is seeking; or~~
  - ~~(2) the candidate submits to the Commission during the qualifying period a statement that such signature forms have been submitted to the Registrar(s) for verification on a specific date and the verified signature forms will be received by the Commission within 10 business days thereafter, and submits to the Commission during the qualifying period photocopies of the signature forms.~~

### SECTION 3. CERTIFICATION OF PARTICIPATING CANDIDATES

1. Request for Certification. A participating candidate may submit a completed request for certification to the Commission at any time during the qualifying period but not later than 5:00 p.m. on the last day of the relevant qualifying period. The request will be deemed complete and considered for certification only when the candidate has submitted to the Commission:

- A. After final submission of qualifying contributions, but not later than 5:00 p.m. on the last day of the relevant qualifying period, a participating candidate may request certification as a Maine Clean Election Act candidate. the qualifying contributions attached to the corresponding original receipt and acknowledgement forms that have been verified by the Registrar(s) of the electoral division for the office the candidate is seeking;
- B. All participating candidates must submit the qualifying contributions in alphabetical order to the Commission along with qualifying contribution forms and an alphabetical list of all contributors and their town or city of residence, sorted alphabetically by the contributor's last name; of qualifying contributions when applying for certification as a Maine Clean Election Act candidate. Candidates who do not submit the required number of original qualifying contributions within the qualifying period will not be certified.
- C. The Commission will review candidate applications for certification in the order in which they are received, except that it will give priority to those candidates who are in a contested primary election. a seed money report of contributions, expenditures and obligations made or incurred after becoming a candidate, including a report of any unspent seed money; and
- D. a signed request for certification on a form provided by the Commission which contains an affirmation by the candidate that he or she has complied with all seed money and qualifying contribution requirements, has established a separate federally-insured bank account for campaign purposes and, if applicable, that any person who circulated receipt and acknowledgement forms and collected qualifying contributions acted with the candidate's knowledge and consent, and any other information relevant to the certification process.
- E. A candidate may request an extension of time to comply with paragraphs B, C and D. The Commission staff shall grant all reasonable requests or state in writing the reasons for denying the request. The Commission and the Commission staff may not grant an extension of time to comply with paragraph A.

2. ~~Reporting. Together with the request for certification, a participating candidate must report all seed money contributions received, any other contributions received, and expenditures and obligations made after becoming a candidate.~~Order of Review. The Commission will review candidate requests for certification in the order in which they are received, except that it will give priority to those candidates who are in a contested primary election.
3. ~~Unspent Seed Money. Together with the request for certification, a participating candidate must report any unspent seed money.~~In order to distribute funds expeditiously, the Commission will deduct from the initial distribution from the Fund to a certified candidate an amount equal to the amount of unspent seed money reported by that candidate.
4. Certification. The Commission will certify a candidate as a Maine Clean Election Act candidate upon the participating candidate's satisfaction of the requirements of the Act [§ 1125] and this chapter.
5. Appeals. Any appeals challenging a certification decision by the Commission must be in accordance with the Act [§ 1125(14)].

#### SECTION 4. FUND ADMINISTRATION

1. ~~Coordination with State Agencies. The Commission will coordinate with the Bureau of Accounts and Control~~Office of the Controller and other relevant State agencies to ensure the use of timely and accurate information regarding the status of the Fund.
2. Publication of Fund Revenue Estimates. By September 1st preceding each election year, the Commission will publish an estimate of revenue in the Fund available for distribution to certified candidates during the upcoming year's election. The Commission will update the estimate of available revenue in the Fund after April 15th of an election year and again within 30 days after the primary election in an election year.
3. Computation of Disbursement Amounts. By July 1, 1999, and at least every 4 years after that date, the Commission will determine the amount of revenue to be distributed to certified candidates based on the type of election and office in accordance with the Act [§ 1125(8)].
4. Distributions Not to Exceed Amount in Fund. If the Commission determines that the revenues in the Fund are insufficient to meet distributions under this chapter, the Commission will permit certified candidates to accept and spend contributions in accordance with the Act [§ 1125(13)]. The Commission will notify participating and certified candidates in writing of any projected shortfall in the

Fund and will specify timelines and procedures for compliance with this chapter in the event of any such shortfall.

## SECTION 5. DISTRIBUTION OF FUNDS TO CERTIFIED CANDIDATES

### 1. Fund Distribution.

- A. Establishment of Account. Upon the certification of a participating candidate, the Commission will establish an account with the ~~Bureau of Accounts and Control~~ Office of the Controller, or such other State agency as appropriate, for that certified candidate. The account will contain sufficient information to enable the distribution of revenues from the Fund to certified candidates by the most expeditious means practicable that ensures accountability and safeguards the integrity of the Fund.
- B. Manner of Distribution of Fund. The Commission will authorize distribution of revenues from the Fund to certified candidates by the most expeditious means practicable that ensures accountability and safeguards the integrity of the Fund. Such means may include, but are not limited to:
- (1) checks payable to the certified candidate or the certified candidate's political committee; or
  - (2) electronic fund transfers to the certified candidate's or the certified candidate's political committee's campaign finance account.

### 2. Timing of Fund Distributions.

- A. Distribution of Applicable Amounts. The Commission will authorize the initial distribution of applicable amounts from the Fund to certified candidates in accordance with the time schedule specified in the Act [§ 1125(7)] and this Chapter ~~[sec. 3.4]~~.

~~INFORMATIONAL NOTE: An initial distribution from the Fund will not be made to a candidate until the Commission has certified that candidate in accordance with the provisions of the Act and this chapter. The initial distribution may be delayed if a candidate submits a list of qualifying contributors to the Registrar for verification during the last 10 business days of the qualifying period.~~

- B. Matching Fund Allocations. At any time after certification, revenues from the Fund may be distributed to certified candidates in accordance with subsection 3, below.

C. Advances.

- (1) To facilitate administration of the Matching Fund Provision of this chapter, and to encourage participation in the Act, the Commission may authorize the advance distribution of revenues from the Fund to certified candidates. In determining whether to authorize such advances and the amounts of any such advances, the Commission will consider the amount of revenue in the Fund, the number of certified candidates, the number of nonparticipating candidates, and information contained in campaign finance and independent expenditure reports.
- (2) A certified candidate may only draw upon, spend or otherwise use, such advance Fund distributions after receiving written notification from the Commission authorizing a Matching Fund allocation in a specified amount. Written notification by the Commission may be by letter, facsimile or electronic means.

3. Matching Fund Provision.

- A. General. The Commission will authorize immediately an allocation of matching funds to certified candidates in accordance with the Act when the Commission determines that the eligibility for receipt of matching funds has been triggered [§ 1125(9)].
- ~~B. Computation and Distribution. The Commission will determine a certified candidate's allocation of matching funds, if any, in the following manner:~~
  - ~~(1) The Commission first will add —~~
    - ~~(a) the sum of an opposing candidate's expenditures and obligations, or funds raised and borrowed, whichever is greater, including surplus or unspent funds carried forward from a previous primary, general, or special election to the current election; and~~
    - ~~(b) the sum of the independent expenditures made expressly advocating the defeat of the certified candidate or the election of the same opposing candidate.~~
  - ~~(2) The Commission then will subtract —~~
    - ~~(a) the sum of the independent expenditures made expressly advocating the defeat of the same opposing candidate; and~~

- ~~(b) — the sum of the independent expenditures made expressly advocating the election of the certified candidate; and~~
- ~~(c) — the sum of any matching funds already provided to the certified candidate; and~~
- ~~(d) — the sum of any seed money raised in computing matching fund eligibility for a primary, general, or special election, as applicable; or any surplus or unspent funds carried forward from a previous primary election to the subsequent general election in computing matching fund eligibility for a general election.~~
- ~~(3) — If the final computed amount is greater than the applicable distribution amount for the certified candidate, then the Commission will immediately authorize the distribution of a Matching Fund allocation to the certified candidate equal to that excess.~~
- ~~(4) — The Commission will make computations promptly upon the filing of campaign finance reports and independent expenditure reports.~~
- ~~(5) — To prevent the abuse of the Matching Fund Provision, the Commission will not base any calculation on independent expenditures that, although containing words of express advocacy, also contain other words or phrases that have no other reasonable meaning than to contradict the express advocacy. For example, expenses related to a communication saying, “Vote for John Doe — he’s incompetent and inexperienced,” will not be considered a communication in support of John Doe in the calculation of matching funds.~~

B. Matching Fund Computation Involving Only Certified Candidates.

- (1) For each certified candidate, the Commission will
  - (a) add to the initial distribution amount for that election:
    - (i) the sum of any matching funds previously provided for that election, and
    - (ii) the sum of independent expenditures made in support of each certified candidate; and
  - (b) subtract the sum of independent expenditures made in opposition to each certified candidate.

- (2) The Commission will compare the final computed amounts and will immediately authorize a matching fund allocation equal to the difference to the certified candidate with the lesser amount.
- (3) In computations involving only certified candidates, the Commission will not use seed money raised or unspent funds remaining after a primary election in computing the amount of matching funds.

C. Matching Fund Computation Based on Nonparticipating Candidates' Receipts or Expenditures. In races in which there is at least one certified and one nonparticipating candidate, and the matching fund computation is triggered by the financial activity of nonparticipating candidate, including any independent expenditures in support of the nonparticipating candidate:

- (1) The Commission will first determine the applicable amount for the nonparticipating candidate
  - (a) by adding:
    - (i) the sum of the nonparticipating candidate's expenditures, obligations and in-kind contributions, or the sum of the nonparticipating candidate's cash and in-kind contributions and loans, including surplus or unspent funds carried forward from a previous election to the current election, whichever is greater, and
    - (ii) the sum of independent expenditures made in support of the same nonparticipating candidate; and
  - (b) by subtracting the sum of independent expenditures made in opposition to the same nonparticipating.
- (2) The Commission then will determine the applicable amount for the certified candidate
  - (a) by adding:
    - (i) the amount of the initial distribution for that election;
    - (ii) the sum of independent expenditures made in support of the certified candidate;

(iii) the sum of matching fund allocations already provided to the certified candidate; and

(iv) the amount of:

a) any seed money raised by an enrolled certified candidate in a primary or special election or by a replacement candidate in a general election; or

b) any unspent funds carried forward from the primary election to the subsequent general election by an enrolled certified candidate in a general election; or

c) any seed money raised and, if applicable, any other distribution received prior to the general election distribution by an unenrolled certified candidate in a general or special election; and

(b) by subtracting the sum of independent expenditures made in opposition to the same certified candidate.

(3) The Commission will compare the final computed amounts and, if the amount for the certified candidate is less than the amount for the nonparticipating candidate, will immediately authorize a matching fund allocation equal to the difference to the certified candidate.

D. Matching Fund Computation Not Involving a Nonparticipating Candidate. In races in which there are two or more certified candidates and at least one nonparticipating candidate,

(1) if the matching fund computation is triggered by an independent expenditure in support of or opposition to a certified candidate, and

(2) the campaign totals, including independent expenditures, of any nonparticipating candidate in the race are equal to or less than the campaigns totals, including independent expenditures, of at least one certified candidate in the race; then

(3) the matching fund computation must be completed according to the procedure in paragraph B of this subsection.

E. The Commission will make computations promptly upon the filing of campaign finance reports and independent expenditure reports.

- F. To prevent the abuse of the Matching Fund Provision, the Commission will not base any calculation on independent expenditures that, although containing words of express advocacy, also contain other words or phrases that have no other reasonable meaning than to contradict the express advocacy. For example, expenses related to a communication saying, "Vote for John Doe -- he's incompetent and inexperienced," will not be considered a communication in support of John Doe in the calculation of matching funds.
- EG. Matching Fund Cap. Matching funds are limited to 2 times the amount originally distributed to a certified candidate from the Fund for that election. Certified candidates are not entitled to cumulative matching funds for multiple opponents.
- DH. Other. Any distribution based on reports and accurate calculations at the time of distribution is final, notwithstanding information contained in subsequent reports.
- EI. Coordination with Other State Agencies. The Commission will coordinate with the ~~Bureau of Accounts and Control~~ Office of the Controller and other relevant State agencies to implement a mechanism for the distribution of Fund revenues to certified candidates that is expeditious, ensures public accountability, and safeguards the integrity of the Fund.
- FJ. Disbursements With No Campaign Value. If a ~~traditionally~~ privately financed candidate has received monetary contributions which are disbursed in ways that do not in any way influence the nomination or election of the candidate, those receipts will not be considered by the Commission in calculating matching funds for his or her opponent. Such disbursements may include repaying a loan received by the candidate, refunding a contribution to a contributor, or transferring funds to a party or political committee for purposes that do not relate to the candidate's race.
4. Advance Purchases of Goods and Services for the General Election.
- A. If, prior to the primary election, a candidate purchases or receives in-kind contributions a preponderance of consulting services, or the design, printing, or distribution of campaign literature and advertising, including radio and television advertising, purchased prior to the primary election by an opponent of a certified Maine Clean Election Act candidate prior to the primary are used but uses or will use a preponderance of those services exclusively for the general election, then the portion used or to be used for the general election must be counted as a general election receipt or expenditure in calculating the amount of matching funds for the any certified Maine Clean Election Act candidate in the same race.

- B. If a certified candidate in a general election believes that an opponent, or person or committee making an independent expenditure, has failed to disclose an advance purchase for the general election, the certified candidate shall submit a written request for an investigation to the Commission no later than August 30 of the election year, or within 30 days of the opponent's filing of the 42-day post-primary report, whichever is later. The request must identify the pre-primary election expenditure that is believed to be for the general election and must state a specific basis for believing that the goods and services purchased were not used for the primary election.
- C. The Commission will request a response from the opposing candidate or other respondent, and will make a determination whether the expenditure should be counted toward the certified candidate's eligibility for matching funds.

#### SECTION 6. LIMITATIONS ON CAMPAIGN EXPENSES.

A certified candidate must:

1. limit the candidate's campaign expenditures and obligations to the applicable Clean Election Act Fund distribution amounts plus any authorized ~~M~~matching ~~F~~fund allocations;
2. not accept any contributions unless specifically authorized in writing to do so by the Commission in accordance with the Act [§ 1125(2) and § 1125(13)];
3. use revenues distributed from the Fund only for campaign-related purposes as outlined in guidelines published by the Commission, and not for personal or any other use;
4. not use revenues distributed from the Fund to purchase goods to sell for profit;
5. not spend more than the following amounts of Fund revenues on post-election parties, thank you notes, or advertising to thank supporters or voters:
  - A. \$250 for a candidate for the State House of Representatives;
  - B. \$750 for a candidate for the State Senate; and
  - C. \$2,500 by a gubernatorial candidate.

The candidate may also use his or her personal funds for these purposes; and

6. not use revenues distributed from the Fund for the payment of fines, forfeitures, or civil penalties, or for the defense of any enforcement action of the Commission.

## SECTION 7. RECORD KEEPING AND REPORTING

1. Record Keeping by Participating and Certified Candidates. Participating and certified candidates and their treasurers must comply with applicable record keeping requirements set forth in Title 21-A, chapter 13, subchapter II [§1016], and chapter 14 [§1125(12-A)]. Failure to keep or produce the records required under Title 21-A and these rules is a violation of the Act for which the Commission may impose a penalty. The Commission may also require the return of funds for expenditures lacking supporting documentation if a candidate or treasurer is found in violation of the record keeping requirements. The candidate or the treasurer shall have an opportunity to be heard prior to any Commission decision imposing a penalty or requiring the return of funds under this section. In addition to these specific actions, the Commission may also take any other action authorized under Title 21-A.
  - A. Fiduciary Responsibility for Funds. All funds provided to a certified candidate or to a candidate's authorized political committee must be segregated from, and may not be commingled with, any other funds, other than unspent seed money. Matching fund advance revenues for which no spending authorization has been issued must be deposited in a federally insured account financial institution until the candidate receives and may not be used until the candidate receives authorization to spend those funds.
  - B. Meal Expenses. A candidate or treasurer must obtain and keep a record for each meal expenditure of more than \$50. The record must include itemized bills for the meals, the names of all participants in the meals, the relationship of each participant to the campaign, and the specific, campaign-related purpose of each meal.
  - C. Vehicle Travel Expenses. A candidate or treasurer must obtain and keep a record of vehicle travel expenses for which reimbursements are made from campaign funds. Reimbursement may must be based on the standard mileage rate prescribed for employees of the State of Maine for the year in which the election occurs, using either the standard mileage rate or actual expenses. The candidate must use one method exclusively during an election campaign. For each trip for which reimbursement is made, a record must be maintained showing the dates of travel, the number of miles traveled, the origination, destination and purpose of the travel, and the total amount claimed for reimbursement. A candidate may be reimbursed for vehicle travel expenses at a rate

less than the standard mileage rate. A candidate may also reimburse a volunteer for vehicle travel expenses at a rate less than the standard mileage rate as long as the difference does not exceed \$100 per volunteer per election. The Commission may disallow any vehicle travel reimbursements for which the candidate or the treasurer cannot produce an accurate record.

- ~~(1) — Standard Mileage Rate. The standard mileage rate is a set rate per mile that a candidate may use to compute reimbursable vehicle travel expenses. Reimbursement should be calculated using the standard mileage rate currently prescribed for employees of the State of Maine. For each trip for which reimbursement is made, a record should be maintained showing the dates of travel, the number of miles traveled, the origination, destination and purpose of the travel, and the total amount claimed for reimbursement.~~
- ~~(2) — Actual Expenses. Actual expenses include the pro rata, campaign-related share of vehicle depreciation or lease payments, maintenance and repairs, gasoline (including gasoline taxes), oil, insurance, and vehicle registration fees, etc. For reimbursement using this method, the candidate must maintain detailed records reflecting use of the vehicle for campaign-related purposes. The records must include the dates the vehicle was used for campaign-related purposes, the total mileage the vehicle was used for campaign-related purposes, the total mileage the vehicle was used for all purposes during the period for which reimbursement is made, and the percentage of total vehicle usage that the vehicle was used for campaign-related purposes.~~

2. Reporting by Participating and Certified Candidates.

- A. General. Participating and certified candidates must comply with applicable reporting requirements set forth in Title 21-A, chapter 13, subchapter II [§ 1017].
- B. Return of Matching Fund Advances and Unspent Fund Revenues. Matching Fund advance revenues that have not been authorized for spending and unspent Fund revenues shall be returned to the Fund as follows:
- (1) Unauthorized Matching Funds. Candidates must return all ~~M~~atching ~~F~~und advance revenues for which no spending authorization was issued prior to an election to the Commission by

check or money order payable to the Fund within 2 weeks following the date of the election.

- (2) Unspent Fund Revenues for Unsuccessful Primary Election Candidates. Upon the filing of the 42-day post-primary election report for a primary election in which a certified candidate was defeated, that candidate must return all unspent Fund revenues to the Commission by check or money order payable to the Fund, except that a gubernatorial candidate may be allowed to reserve up to \$2,000 in order to defray expenses associated with an audit by the Commission.
- (3) Unspent Fund Revenues for All General and Special Election Candidates. Upon the filing of the 42-day post-election report for a general or special election, all candidates must return all unspent Fund revenues to the Commission by check or money order payable to the Fund, except that a gubernatorial candidate may be allowed to reserve up to \$3,500 in order to defray expenses associated with an audit by the Commission.

C. Liquidation of Property and Equipment. Property and equipment that is not exclusive to use in a campaign (e.g., computers and associated equipment, etc.) that has been purchased with Maine Clean Election Act funds loses its campaign-related purpose following the election. Such property and equipment must be liquidated at its fair market value and the proceeds thereof reimbursed to the Maine Clean Election Fund as unspent fund revenues in accordance with the schedule in paragraph B above.

- (1) The liquidation of campaign property and equipment may be done by sale to another person or purchase by the candidate.
- (2) Liquidation must be at the fair market value of the property or equipment at the time of disposition. Fair market value is determined by what is fair, economic, just, equitable, and reasonable under normal market conditions based upon the value of items of similar description, age, and condition as determined by acceptable evidence of value.

## SECTION 8. RECOUNTS, VACANCIES, WRITE-IN CANDIDATES, SPECIAL ELECTIONS

1. Recounts. After a primary election, if there is a recount governed by Title 21- A, chapter 9, subchapter III, article III [§ 737-A], and either the leading candidate or the 2nd-place candidate is a certified candidate, the following provisions will apply:

- A. If the margin between the leading candidate and the 2nd-place candidate is less than 1% of the total number of votes cast in that race and a recount is presumed necessary, the certified candidate immediately must halt the expenditure of revenues disbursed to the candidate from the Fund upon receiving notice of the recount until the recount is complete.
  - B. If the recount results in a changed winner, the certified candidate who originally received the disbursement must return any unspent distributions from the Fund to the Commission, payable to the Fund. If the new winner is a certified candidate, the Commission will distribute the applicable disbursement amount to the candidate.
  - C. If the margin between the leading candidate and 2nd-place candidate is 1% or greater of the total number of votes cast in that race and the 2nd-place candidate requests a recount, the leading candidate, if a certified candidate, is not required to freeze expenditures of the disbursement.
  - D. If the recount results in a changed winner, the certified candidate must return any unspent distributions from the Fund to the Commission, payable to the Fund. If the new winner is a certified candidate, the Commission will distribute the applicable disbursement amount to the candidate.
2. Death, Withdrawal, or Disqualification of a Candidate During Campaign.
- A. Death, Withdrawal, or Disqualification Before Primary Election. If a candidate dies, withdraws, or is disqualified before the primary election, the Commission will establish a qualifying period during which any replacement candidate may become a participating candidate, collect qualifying contributions, and apply to become a certified candidate.
  - B. Death, Withdrawal, or Disqualification After the Primary Election and before 5:00 p.m. on the 2nd Monday in July Preceding the General Election. If a candidate dies, withdraws, or is disqualified before 5:00 p.m. on the 2nd Monday in July preceding the general election, any replacement candidate will have a qualifying period from the time of the candidate's nomination until 30 days after the 4th Monday in July as a participating candidate to collect qualifying contributions and request certification.
  - C. Death, Withdrawal, or Disqualification after 5:00 p.m. on the 2nd Monday in July Preceding the General Election. If a candidate dies, withdraws, or is disqualified after 5:00 p.m. on the 2nd Monday in July preceding the general election, the Commission will establish a qualifying period during which any replacement candidate may become a participating candidate, collect qualifying contributions, and apply to become a certified candidate.

- D. Replacement Candidates Who Are Participating Candidates. Any replacement candidate choosing to become a participating candidate must otherwise comply with the requirements of this chapter and the Act including, but not limited to, seed money limits and qualifying contribution requirements. The Commission will notify any replacement candidates of the opportunity to participate in the Act and the procedures for compliance with this chapter during a special election.
3. Write-In Candidates.
    - A. Write-in candidates are subject to the registration requirements of Title 21-A M.R.S.A. Section 1013-A and the campaign finance reporting requirements of Section 1017, as soon as they qualify as a nominee pursuant to 21-A M.R.S.A. Section 723, file a declaration of write-on candidacy with the Secretary of State pursuant to 21-A M.R.S.A. Section 722-A, or receive contributions or make expenditures with the intent of qualifying as a candidate in the primary or general election, whichever first occurs.
    - B. Write-in candidates may not participate in the Maine Clean Election Act, except as provided in paragraph C.
    - C. A write-in candidate in a primary election who becomes a party's nominee may participate in the Maine Clean Election Act for the general election. The Commission will establish a qualifying period during which the candidate may become a participating candidate, collect qualifying contributions, and apply to become a certified candidate.
    - D. A candidate who is participating in the Maine Clean Election Act and who has no opponent listed on the ballot will be presumed to be in an uncontested election even if there are one or more individuals running as write-in candidates. The participating candidate may rebut this presumption by presenting evidence to the Commission that the write-in opponent(s) received or spent substantial campaign funds. Based upon the evidence presented, the Commission may make a determination that it is a "contested election" and make a distribution of public funds to the participating candidate on that basis.
  4. Special Election When One or More Candidates Desire to Become Certified Candidates. If a vacancy occurs in the office of Governor, Senator, or Representative because an incumbent dies, resigns, becomes disqualified, or changes residence to another electoral division, and a special election will be held to fill the vacant office, the following provisions apply:

- A. The Commission, in consultation with the Secretary of State, will establish a qualifying period during which any candidate in a special election may decide to become a participating candidate, collect qualifying contributions, and apply to become a certified candidate; and
  - B. Any candidate in a special election must otherwise comply with the requirements of this chapter and the Act including, but not limited to, seed money limits and qualifying contribution requirements. The Commission will notify any candidates of the opportunity to participate in the Act and the procedures for compliance with this chapter during a special election.
5. Return of Unspent Fund Revenues. Any time a certified candidate withdraws, is disqualified, or dies before an election, the candidate or the candidate's agent must return to the Commission all unspent amounts distributed to the candidate by check or money order payable to the fund, within 2 weeks of the termination of the candidacy.

**STATUTORY AUTHORITY:**

1 M.R.S.A. § 1003(1); 21-A M.R.S.A. § 1126.

**EFFECTIVE DATE:**

November 1, 1998

**NON-SUBSTANTIVE CHANGES:**

December 3, 1998 - minor spelling and formatting.

**2002 MAJOR SUBSTANTIVE RULE-MAKING**

**AMENDMENTS PROVISIONALLY ADOPTED:**

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July 31, 2002

**2005 MAJOR SUBSTANTIVE RULE-MAKING**

**DATE OF PROVISIONAL ADOPTION OF AMENDMENTS:**

April 8, 2005

**COMMISSION ADOPTION OF FINAL AMENDMENTS:**

July 13, 2005