

Agenda

Item #4



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: July 14, 2008

Re: Proposed Rulemaking regarding Seed Money for Gubernatorial Candidates

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At your June 27, 2008 meeting, the Ethics Commission held a public hearing for the purpose of receiving testimony on the qualifications for gubernatorial candidates seeking Maine Clean Election Act funding. In its written and oral testimony, the Maine Citizens for Clean Elections (MCCE) proposed that the Commission amend its rules to allow gubernatorial candidates seeking public funding to raise up to \$100,000 in seed money contributions, rather than the current maximum of \$50,000. Under the state's Administrative Procedure Act, "[a]ny person may petition an agency for the adoption or modification of any rule," although the agency is not required to initiate a rule-making unless the petition is made by 150 or more registered voters (5 M.R.S.A. § 8055, attached).

In the design of the Maine Clean Election Act, seed money functions as limited private financing which candidates may receive in order to start and run their campaigns until they meet the qualifying requirements to receive public funding. The candidates may collect seed money contributions only from individuals, and each contributor may give up to \$100.

*Current \$50,000 Limitation for Gubernatorial Candidates*

Under the current statute (21-A M.R.S.A. § 1125(2), attached), gubernatorial candidates seeking Clean Election funding may raise up to \$50,000 in seed money prior to turning in their qualifying papers. (Senate candidates may collect up to \$1,500 in seed money, and House candidates may collect up to \$500.) As originally enacted by Maine voters in 1996, the statute provides the Commission with the authority to amend these amounts ("The commission may, by rule, revise these amounts to ensure the effective implementation of this chapter.")

This feature of the program means that 2010 gubernatorial candidates who declare an intention in 2008 or 2009 to qualify for Maine Clean Election Act financing will only be able to raise and spend a maximum of \$50,000 until they submit their qualifying contributions, which likely will occur around April 2010. The concern underlying the MCCE's proposal appears to be that the \$50,000 maximum will not be sufficient for some 2010 candidates to run a vigorous statewide campaign prior to qualifying for public funding.

The MCCE proposal seems intended to make the public financing program more attractive to 2010 candidates who may be considering in the coming months whether to qualify for public

financing. The MCCE notes that the \$50,000 maximum was drafted in the 1990's, that in 2007 the Legislature made the qualifying process for gubernatorial candidates more difficult (by 30%), and that some campaign costs such as travel and printing have become more expensive. It argues that "[c]andidates must be able to raise and spend adequate resources to lay the groundwork for a successful campaign." The MCCE states that it has had conversations with potential 2010 candidates, and that the issue has been raised in those conversations.

### *Past Experience*

In the 2002 and 2006 elections, a total of six gubernatorial candidates have qualified to receive Maine Clean Election Act funding. Only one of the candidates, Peter Mills, collected the maximum amount. Most candidates have collected significantly less:

2006	Pat LaMarche	\$13,630
2006	Chandler Woodcock	\$24,325
2006	Peter Mills	\$50,000
2006	Barbara Merrill	\$6,255
2002	James Libby	\$11,985
2002	Jonathan Carter	\$23,266

Nevertheless, more gubernatorial candidates with significant campaign fundraising experience may be considering Maine Clean Election Act funding in 2010 than in prior election years, because no incumbent is running for re-election and because the program has proven itself to be a viable funding alternative for major party and other candidates.

### *Staff Recommendation*

The staff believes that the rule change suggested by the MCCE is worth considering, for a few reasons:

- To be a viable campaign financing option, the Maine Clean Election Act program does have to meet the needs of candidates who would like to participate in it. It is quite possible that some 2010 gubernatorial candidates who get an early start on campaign activity in 2008 or 2009 will have concerns that they will be limited by the \$50,000 maximum.
- There appears to be no obvious downside to raising the maximum seed money from \$50,000 to \$100,000. It would not increase the cost of the program. It does not seem to favor or disfavor any candidate or political party.
- While the Legislature could amend the \$50,000 limitation by statute, that amendment might not be enacted until spring 2009, when some candidates have already made decisions about how they will fund their campaigns. A rule amendment by the Commission this year could be considered by the Legal and Veterans Affairs Committee when it begins holding public hearings in January 2009.

Thank you for your consideration of the proposal.

cycle, the more difficult it is for candidates to make an informed choice about how to fund their campaigns. Potential candidates are wrestling with that decision right now and are likely to make up their minds within the next 6 months to a year, so this is no time to make big, fundamental changes.

As this process unfolds, we will actively engage in all public discussions to make sure the public interest is upheld. We will oppose changes that codify an advantage for major party candidates. We will consider changes that are relatively uncomplicated, enhance the viability of the system and are consistent with the principles that underlie the Maine Clean Election Act.

 **Non-statutory change to enhance viability: Raise the Seed Money cap**

As important as it is to keep “fringe” candidates from receiving public funds, it is equally critical to ensure that the Clean Election option appeals to Maine’s strongest, most viable gubernatorial candidates.

While we believe the timing is not right for statutory changes, we do want to recommend that the Commission begin the rulemaking process to increase the Seed Money cap for gubernatorial candidates. The cap that is in effect today is \$50,000, an amount that was set back in the early 1990s when the law was drafted.

We have not heard legislative candidates complain that their seed money caps are inadequate, but the issue has been raised in our conversations with potential gubernatorial candidates. It is a concern worth addressing, since Seed Money is the only money available to candidates as they prepare to run for a statewide race and before public funds are received in the spring of 2010.

The statute specifically permits the Commission to revise the seed money amounts by rule in order to “ensure the effective implementation of this chapter.” We believe that raising the Seed Money cap will do just that by enhancing the attractiveness of the Clean Election system to strong candidates for governor. The change is in keeping with the higher costs for everything from gasoline to printing as well as the significantly higher qualifying threshold that 2010 candidates will be asked to meet.

If this change is made, the contribution limit for Seed Money will remain at \$100 per donor, ensuring that no individual donor wields undue influence. Corporations and political action committees will still be barred from making Seed Money contributions. It will still remain exactly what it is supposed to be: limited private money that candidates may raise early in their campaigns to get the campaign off the ground and successfully fulfill the requirements of the qualifying process.

Raising the Seed Money cap does not increase the cost of the Clean Election program. Any unspent Seed Money is deducted from the initial distribution, ensuring that candidates start out on a level playing field.

MCCE believes there is little harm in substantially increasing the Seed Money cap. Candidates must be able to raise and spend adequate resources to lay the groundwork for a successful campaign. The existing individual contribution and source limits ensure that this change will not allow big special interest money into Clean Election races.

For the purpose of kicking off your discussion, we suggest doubling it to \$100,000.

The rulemaking process will provide ample opportunity for interested parties to be heard, both on the merits of the change in general and on the specific amount, and we encourage the Commission to begin that process very soon.

### **Conclusion**

We do not foresee the day that the Commission and the Legislature will stop scrutinizing the Clean Election program. As is true of all public programs, rigor must be used to ensure that public dollars are well spent, and that the purpose of the program is being fulfilled. Evaluation is important both for accountability to the public and for guidance to lawmakers as they contemplate changes to the law.

Given the thorough examination and substantial changes that were made this year and last, we ask the Commission to keep in mind these three words: **Do no harm.**

Thank you for the opportunity to comment. We are happy to answer questions about any proposals that are under consideration today.

## 21-A §1125. Terms of participation

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## 21-A §1125. Terms of participation

**1. Declaration of intent.** A participating candidate must file a declaration of intent to seek certification as a Maine Clean Election Act candidate and to comply with the requirements of this chapter. The declaration of intent must be filed with the commission prior to or during the qualifying period, except as provided in subsection 11, according to forms and procedures developed by the commission. A participating candidate must submit a declaration of intent within 5 business days of collecting qualifying contributions under this chapter. Qualifying contributions collected before the declaration of intent has been filed will not be counted toward the eligibility requirement in subsection 3.

[ 2007, c. 443, Pt. B, §6 (AMD) .]

**2. Contribution 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; [1995, c. 1, §17 (NEW) .]
- B. One thousand five hundred dollars for a candidate for the State Senate; or [1995, c. 1, §17 (NEW) .]
- C. Five hundred dollars for a candidate for the State House of Representatives. [1995, c. 1, §17 (NEW) .]

The commission may, by rule, revise these amounts to ensure the effective implementation of this chapter.

[ 2007, c. 443, Pt. B, §6 (AMD) .]

**2-A. Seed money restrictions.** To be eligible for certification, a participating candidate may collect and spend only seed money contributions subsequent to becoming a candidate and prior to certification. A participating candidate may not solicit, accept or collect seed money contributions after certification as a Maine Clean Election Act candidate.

A. All goods and services received prior to certification must be paid for with seed money contributions, except for goods and services that are excluded from the definition of contribution in section 1012, subsection 2, paragraph B. It is a violation of this chapter for a participating candidate to use fund revenues received after certification to pay for goods and services received prior to certification. [2007, c. 443, Pt. B, §6 (NEW) .]

B. Prior to certification, a participating candidate may obligate an amount greater than the seed money collected, but may only receive that portion of goods and services that has been paid for or will be paid

**SECTION 2(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) One hundred  ~~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, accepting a loan from any source including a financial institution and spending money received in the form of a loan, 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.

## 5 §8055. Petition for adoption or modification of rules

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## 5 §8055. Petition for adoption or modification of rules

**1. Petition.** Any person may petition an agency for the adoption or modification of any rule.

[ 1977, c. 551, §3 (NEW) .]

**2. Form designated.** Each agency shall designate the form for such petitions and the procedure for their submission, consideration and disposition.

[ 1977, c. 551, §3 (NEW) .]

**3. Receipt of petition.** Within 60 days after receipt of a petition, the agency shall either notify the petitioner in writing of its denial, stating the reasons therefor, or initiate appropriate rule-making proceedings. Whenever a petition to adopt or modify a rule is submitted by 150 or more registered voters of the State, the agency shall initiate appropriate rulemaking proceedings within 60 days after receipt of the petition. The petition must be verified and certified in the same manner provided in Title 21-A, section 354, subsection 7, prior to its presentation to the agency.

[ 1985, c. 506, Pt. A, §4 (AMD) .]

### SECTION HISTORY

1977, c. 551, §3 (NEW). 1979, c. 425, §7 (AMD). 1981, c. 280, §§1,2 (AMD). 1985, c. 506, §A4 (AMD).