

Agenda

Item #3



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

MEMORANDUM

To: Interested Parties

From: Jonathan Wayne, Executive Director

Date: July 8, 2009

Subject: Invitation to Comment on Proposed Rule Amendments

The Ethics Commission is soliciting comments on proposed amendments to the Commission's Rules. In case you are interested in commenting, I have enclosed a copy of the proposed amendments and a summary of the changes.

The Commission will hold a public hearing on Thursday, July 30, 2009 at 9:00 a.m. at which you are invited to comment on the changes to the rules. The public hearing will be held in Room 208 of the Burton M. Cross Office Building, 111 Sewall Street in Augusta. Written and e-mailed comments are also welcome. (My e-mail address is Jonathan.Wayne@maine.gov.) The deadline for written and e-mailed comments is 5:00 p.m. on August 14, 2009.

The Commission members would be interested in all comments from the public on the proposed rules. In particular, the Commission and its staff invite comments on the following issues:

Chapter 1, Section 6(7) – Receiving contributions for the general election before the primary election. As directed by the Maine Legislature in its 2009 session, the Commission proposes to amend its rules to permit candidates to receive contributions for the general election *before* the primary election, provided that the candidate designates in campaign finance reports that the contributions were received for the general election, the candidate segregates the general election contributions from campaign funds for the primary election, and the candidate does not use the general election contributions to promote the candidate's nomination in the primary election.

Chapter 1, Section 6(8) – Contributions from minors. The Commission has proposed a rule which sets standards for candidates' collection of contributions from minors (persons 17 years old or younger). The proposed rule is based on a federal regulation (11 C.F.R. 110.19). It would require that the minor make the contribution knowingly and voluntarily, and that the contribution be made with funds owned or controlled by the minor.

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

PHONE: (207) 287-4179

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FAX: (207) 287-6773

Chapter 3, Section 4(4) – MCEA Candidates' Collection of Contributions. The Commission is proposing amendments to its rule on procedures for Maine Clean Election Act candidates to collect traditional campaign contributions if the Commission determines that there will be insufficient money in the Maine Clean Election Fund to make payments to candidates. The Commission is interested in comments on whether the Commission's Maine Clean Election Act expenditure guidelines should apply to candidates' spending of traditional campaign contributions. Under the rule as drafted, candidates would deposit the contributions into the same bank account as MCEA funding received from the state. Another option would be to permit candidates to segregate the contributions in a separate bank account, and to specify that the expenditure guidelines would not apply to the spending of the contributions.

The Commission likely will make any amendments to its rules at its September 24, 2009 meeting. The rule changes would be considered routine technical, so they would not be submitted to the Legislature for its consideration.

If you have any questions, please telephone me at 287-4179. Thank you for your consideration of the proposed amendments.

Chapter 1: PROCEDURES

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, §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~~ at 45 Memorial Circle 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 statute or 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 shall meet at least once per month in any year in which primary and general elections are held. The Commission shall meet at least once each month in any year in which primary and general elections are held. The Commission Chair, or if a Chair has not yet been selected, the Senior Commissioner in terms of service on the Commission, shall set a date for a meeting in January of the year of required monthly meetings. The dates of monthly meetings for each month of the year shall be selected at that meeting and shall be adhered to unless changed at a properly called meeting. In years not meeting the foregoing requirements, the Chair shall call for an organization meeting to set monthly meeting dates which best appear to meet the needs of the Commission.~~

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.~~ Each member of the Commission must have at least 24 hours notice of the time, place and purpose of the meeting in writing unless written notice is not possible. In such case, notice must be given by the staff by phone, fax, e-mail or other means available. Each Commissioner may notify the staff of his or her preference for notification and the staff shall prepare a log of its actions in notifying Commissioners.
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.~~ The agenda must be mailed to each Commissioner at least 7 days before the meeting unless a different schedule is approved by the Chair who shall provide notice to the Commissioners of the change and the reasons therefore.
4. **Notice.** In addition to the public notice required by the public meetings law, 1 M.R.S.A. §406, notice of Commission meetings shall be given to those directly involved in a matter 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, the Maine Clean Election Act, 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, except that notice of the Commission's consideration of issuing subpoenas to conduct an investigation need not be given.
 - C. **Contents of Notice**
 - (1) 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. §1005 or 1 M.R.S.A. §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 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.
2. 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. The Commission may consider any reported loan to be a cash contribution if it remains unpaid four years after the election in which it was incurred.
3. 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 privately financed candidates and for seed money contributions to candidates participating in the Maine Clean Election Act. Candidates, political action committees, and party committees must make a reasonable effort to obtain the employment information of the contributor. If a candidate or 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.

4. Unless specifically exempted under Title 21-A M.R.S.A. §§ 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.
5. 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.
6. 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 customers that are of similar risk and size of obligation. The Commission shall presume any debt that remains unpaid more than six months after the election in which the debt was incurred to be a contribution to the candidate or political committee unless the candidate or committee provides clear and convincing evidence to the Commission that they intend to raise funds or take other measures to satisfy the debt. The Commission shall determine whether any debt that remains unpaid for more than four years after the election should be deemed a contribution to the candidate or committee. The Commission may take into consideration any evidence it believes is relevant, including evidence that the creditor did not intend to make a contribution to the candidate or committee or that the candidate or committee is unable to pay the debt.
7. For the purposes of the limitations imposed by 21-A M.R.S.A. §1015(1), 21-A M.R.S.A. §1015(2), 21-A M.R.S.A. §1015(3), and 21-A M.R.S.A. §1056, the following guidelines shall apply:

Ch. 286, § 10

- 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.~~ For all contributions received through the day of the primary election by candidates enrolled in a political party, the candidate shall designate on the applicable campaign finance report whether the candidate received the contribution for purposes of influencing the primary or the general election. If a candidate receives a contribution before the primary election and designates it for the general election, the candidate must deposit the contribution in an account that is separate from all funds received for the primary election and may not use the contribution in any way to promote the candidate's nomination 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 general election 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 ~~for~~ 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. §723, or who has received contributions or made expenditures with the intent of qualifying as a candidate.
8. An individual who is 17 years old or younger (a minor) may make contributions to a candidate if
- A. the decision to contribute is made knowingly and voluntarily by the minor;
- B. the funds, goods, or services contributed are owned or controlled by the minor, such as income earned by the minor, the proceeds of a trust for which the minor is the beneficiary, funds withdrawn by the minor from a financial account opened and maintained in the minor's name, or a gift not excluded by paragraph C; and
- C. the contribution is not made from the proceeds of a gift, the purpose of which was to provide funds to be contributed to a candidate, or is not in any other way controlled by another individual.

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

Ch. 190, § A-20

~~When a person or organization is required under 21-A M.R.S.A. §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 by 11:59 p.m. 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 also file the following reports by 11:59 p.m. on the following deadlines:~~
- A. ~~A report must be filed on the 11th day before the election is held and be complete as of the 14th 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 14th 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. §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. During a legislative session, lobbyists, lobbyist associates, and their employers may not give, offer or promise a contribution to a political action committee, ballot question committee, or party committee of which the Governor, a member of the Legislature, a constitutional officer, or staff or agent of these officials is a treasurer, officer, or primary fund-raiser or decision maker. During the session, these political committees may not solicit or accept a contribution from lobbyists, lobbyist associates, or their employers, but they may accept contributions from other individuals and organizations.~~
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.

Ch. 286, § 1

Chapter 3: MAINE CLEAN ELECTION ACT AND RELATED PROVISIONS

SECTION 2. PROCEDURES FOR PARTICIPATION

1. **Declaration of Intent.** A participating candidate must file a Declaration of Intent 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 any qualifying contributions collected more than five days before 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. 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 two hundred 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.

Ch. 363, § 2

C. Required seed money for gubernatorial candidates. To qualify to receive Maine Clean Election Act funding, a candidate for Governor must collect at least \$40,000 in seed money contributions from registered voters in Maine during the qualifying period. The candidate must obtain documentation of the contributions as required by the Act [§1125(2-B)].

Ch. 363, § 5

E. D. 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.

E. E. 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. F. 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. G. 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. H. **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 filing a Declaration of Intent with the Commission will not be counted toward the eligibility requirement. Qualifying contributions must be acknowledged and reported on forms provided by the Commission.

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) For qualifying contributions made by check or by money order, a 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) For contributions made over the Internet, the Commission may establish an automated system by which the contributor can verify his or her voter registration based on data derived from the Central Voter Registration System. If the contributor is unable to verify the voter registration, the participating candidate must obtain written verification from the Registrar.
- ~~(3)~~ (4) 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.

Ch. 190, § B-1,
21-A M.R.S.A.
§ 1125(3)

- 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.

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. 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. for gubernatorial candidates, the following documentation for required seed money contributions as required by the Act ([1125(2-B)]: the acknowledgement forms signed by the contributors of seed money, list of seed money contributions, photocopies of checks or money orders received from seed money contributors, and bank or merchant account statements which list contributions made by credit or debit card;

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- ~~B. C.~~ a list of all contributors and their town or city of residence, sorted alphabetically by the contributor's last name;
- ~~C. D.~~ 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. E.~~ 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. F.~~ A candidate may request an extension of time to comply with paragraphs ~~B, C, and D~~, ~~D, and E~~. 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 or B~~.
2. **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.** 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 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.**

Ch. 128, § 2

- A. **Authorization by Commission to accept contributions.** If the Commission determines that the revenues in the Fund are may be insufficient to meet distributions make payments under this chapter, the Commission will permit certified candidates to accept and spend contributions in accordance with the Act [§1125(13)]. The candidates may not accept money from any contributor exceeding the limitations set forth in the Act [§1125(13)]. Any seed money collected from a contributor during the qualifying period shall be counted toward the limitations. Depending on the timing and amount of the projected shortfall, the Commission shall determine whether the contributions will replace initial payments, matching funds which the candidate may become entitled to receive under the Act, or both.
- B. **Written notice to candidates.** 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 subsection in the event of any such shortfall. The written notice to the candidate will indicate to the candidates whether they can spend the contributions upon receipt or must await further written authorization from the Commission staff.
- C. **Procedures for candidates.** The candidates must deposit any authorized contributions into the campaign account into which Maine Clean Election Act funds have been deposited. The candidate will disclose all contributions received in regular campaign finance reports. The candidate may spend the contributions only if authorized by the Commission staff. Unauthorized expenditures of contributions will be considered a violation of this rule. The Commission's expenditure guidelines for Maine Clean Election Act funds will apply to the spending of the contributions authorized under this subsection.

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 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.
- 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. **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.
- G. **Matching Fund Cap.** Matching funds are limited as provided in the Act [§1125(9)]. ~~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.

- H. **Other.** Any distribution based on reports and accurate calculations at the time of distribution is final, notwithstanding information contained in subsequent reports.
- I. **Coordination with Other State Agencies.** The Commission will coordinate with the 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.
- J. **Disbursements with No Campaign Value.** If a 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.
- K. **Treatment of Authorized Contributions to Certified Candidates.** If a certified candidate has been authorized to collect and spend contributions pursuant to section 1125(13) of the Act and Section 4(4) of this chapter, the amount of private contributions that the candidate has been authorized to spend shall be treated as Fund revenues received by the candidate for the purpose of calculating matching funds.

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 of consulting services, or the design, printing, or distribution of campaign literature and advertising, including radio and television advertising, 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 any certified 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.



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

To: Interested Persons
From: Jonathan Wayne, Executive Director
Date: June 30, 2009
Re: Summary of Proposed Changes to Ethics Commission Rules

Chapter 1

Section 2(2)(A) – Location of Commission Office

The Commission proposes updating the reference to the Commission's location to be consistent with the Commission's new office space at 45 Memorial Circle in Augusta.

Section 3(1) – Regular Meetings of the Commission

Under the proposed change to Section 3(1), the Commission would select its meeting dates for an election year at the Commission's meeting in January of that year. The Commission would be required to adhere to the selected dates unless the Commission changed the dates at a properly called meeting. In other (odd-numbered) years, the Chair would call an organizational meeting at which the Commission would set monthly meeting dates which best appear to meet the needs of the Commission.

Section 3(2) – Special Meetings of the Commission

If the Commission holds a special meeting, each member of the Commission must receive, if possible, written notice of the time, place, and purpose of the meeting at least 24 hours before the meeting. If not possible, the Commission staff must give notice to the Commissioners by phone, fax, e-mail or other means. Each Commissioner may notify the staff of his or her preference for notification. The Commission staff would prepare a log of the notices which the staff has provided to the Commissioners.

Section 3(3) – Agenda for Commission Meeting

After preparing the agenda for a Commission meeting, the Executive Director would mail the agenda to each Commissioner at least seven days before the meeting. The Chair of the Commission may approve a different schedule for the mailing of the agenda, if the Chair provides notice to the other Commissioners of the change in schedule and the reasons for the change.

Section 6(7) – Contributions Received by a Candidate before a Primary Election

Under the Commission's current rule, any contributions received by a candidate before a primary election are deemed to be for the primary. Thus, a contributor who wishes to contribute for both the primary and the general election must wait until after the primary to make the general election contribution.

In Chapter 286 of the Public Laws of 2009, the Legislature directed the Commission to adopt a rule that allows candidates to accept contributions to be used for a general election

during the primary election period, provided that the contributions are segregated from primary election funds and the candidate designates the contribution in campaign finance reports to be for the general election.

Section 6(8) – Contributions by Minors

Candidates for state office in Maine are under contribution limitations that are among the strictest in the nation. Beginning September 12, 2009, a contributor may give up to \$350 per election to a legislative or county candidate and up to \$750 per election to a gubernatorial candidate. Candidates seeking to qualify for Maine Clean Election Act funding may collect seed money contributions of up to \$100 per contributor at the beginning of their campaigns. In the 2010 elections, candidates for Governor seeking Maine Clean Election Act (MCEA) funding will be *required* to collect at least \$40,000 in seed money contributions.

Given these limitations, the Commission proposes a rule amendment that would set forth standards for when a candidate may attribute a contribution to a minor (an individual of 17 years or younger). The amendment is based on a federal regulation (11 C.F.R. 110.19). Under this regulation, a minor may make a campaign contribution if the minor makes the decision to contribute knowingly and voluntarily, the funds for the contribution are owned or controlled by the minor, and the funds do not consist of a gift provided to the minor for purposes of allowing the minor to make a contribution.

Section 11 – Reporting Schedule for Ballot Question Committees

Under 21-A M.R.S.A. § 1056-B(1), ballot question committees are organizations other than political action committees (PACs) which spend more than \$5,000 to influence a ballot question. In Chapter 190 of the Public Laws of 2009, the Legislature amended § 1056-B(1) so that ballot question committees are required by statute to file reports according to the same schedule as PACs. The Legislature also deleted the requirement that the Commission establish a filing schedule for ballot question committees. Accordingly, the Commission proposes to delete Section 11 from Chapter 1 of the Commission's rules.

Section 12(2) – Contributions from Lobbyists During the Legislative Session

In Chapter 286, the Legislature clarified that a political action committee (PAC) may not accept a contribution from a lobbyist during the legislative session if a member of the Maine Legislature or other covered official is a treasurer, officer, or primary fundraiser or decision-maker of the PAC. The Commission proposes changes to Section 12(2) to be consistent with these statutory changes.

Chapter 3

Section 2(3)(B) and C – Seed Money Contributions for Candidates for Governor

The Commission proposes changes to these sections to be consistent with Chapter 363 of the Public Laws of 2009. Under Sections 2 and 5 of the law, a gubernatorial candidate seeking Maine Clean Election Act funding could collect up to a maximum of \$200,000 in seed money contributions and would be *required* to collect up to \$40,000 in seed money from registered Maine voters.

Section 2(F) – Verification of Voter Registration for Qualifying Contributors

In 2008, as authorized by 21-A M.R.S.A. § 1125(3), the Commission began permitting Maine voters to make \$5 qualifying contributions to MCEA candidates with a credit or debit card on the Commission’s website. For the 2010 elections, the Commission staff intends that the Commission’s website will verify whether a contributor is registered to vote in Maine by comparing the name and address of the contributor to information derived from Maine’s Central Voter Registration System. This operational change is reflected in the proposed rule.

Section 3(1) – Requesting Certification as a Maine Clean Election Act Candidate

Under Chapter 363, Section 3, gubernatorial candidates seeking MCEA funding must obtain certain documents for the required \$40,000 in seed money contributions provided by registered Maine voters, such as a written acknowledgement card signed by the contributor. The documents relating to these contributions must be submitted to the Commission during the qualifying period. The Commission proposes a change to the Commission’s rule to reflect the new requirement.

Section 4(4) – Permitting MCEA Candidates to Accept Contributions

Under the design of the MCEA, candidates in the public financing program are generally forbidden from accepting contributions. The MCEA contains an exception if the Commission determines that the revenues in the Maine Clean Election Fund may be insufficient to make payments to candidates. (21-A M.R.S.A. § 1125(13)) In that case, the Commission may authorize candidates to accept and to spend contributions.

In Resolve Chapter 128, the Legislature directed the Commission to adopt a rule implementing § 1125(13). In fact, the Commission already has an existing rule that addresses the statute (Section 4(4)). The Commission proposes changes to the rule to improve its operation in the 2010 elections, if necessary.

In the proposed rule amendment, the Commission proposes that the MCEA expenditure guidelines *would* apply to the spending of campaign contributions raised by MCEA candidates.

Section 5(3)(G) – Matching Funds Maximum

In Chapter 363, the Legislature amended the maximum amounts of matching funds which gubernatorial candidates may receive in the primary election. The Commission staff proposes a change in this section to be consistent with statute.

Section 5(3)(K) – Calculating Matching Funds if an MCEA Candidate is Authorized to Accept Campaign Contributions.

The calculation of matching funds is determined by 21-A M.R.S.A. § 1125(9). Under the rule amendment proposed by the Commission, if the Commission has authorized an MCEA candidate to accept traditional campaign contributions, those contributions are counted toward that candidate’s total revenues for purposes of calculating matching funds in that race.

Thank you for your consideration of these proposed rule amendments.