

Agenda

Item #6



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 21, 2009

Re: Proposed Update to Commission's Guidelines on Spending Maine Clean Election Act Funds

The Maine Clean Election Act (MCEA) requires candidates to spend MCEA funds on "campaign-related purposes." (21-A M.R.S.A. § 1125(6)) The statute does not define campaign-related purposes, but rather requires "the Commission [to] publish guidelines outlining permissible campaign-related expenditures." Id.

The Commission staff recommends updating the 2008 guidelines for the 2010 elections to recognize that gubernatorial candidates will be running and to reflect a 2009 statutory change in record-keeping requirements. I have attached the proposed guidelines which show insertions and deletions, and a few notes in the left margin for your consideration.

In past election years, the Commission has published the expenditures guidelines in a two-page format. The staff was preliminarily intending to re-use this format for the 2010 guidelines, after removing the deleted language. If you approve of the proposed language at the July 30 meeting, the Commission staff could investigate whether a three-page format would be more readable for candidates.



2008¹⁰ EXPENDITURE GUIDELINES

For Maine Clean Election Act Candidates

Candidates must spend Maine Clean Election Act (MCEA) funds for campaign-related purposes and not for other purposes such as the candidate's personal benefit, party-building, or to promote another candidate's campaign.

- Expenditures for "campaign-related purposes" are those which are traditionally accepted as necessary to promote the election of a candidate to political office. Candidates using MCEA funds must also take into account the public nature of the funds, the underlying objectives of the MCEA, and the reasonableness of the expenditures under the circumstances. In Maine, traditional campaign expenses have included:

- Printing and mailing costs;
- Political advertising expenses;
- Campaign communications such as signs, bumper stickers, T-shirts, or caps with campaign slogans, etc.;
- Office supplies;
- Campaign events (e.g., food, rent of tent or hall, etc.);
- Campaign staff expenses;
- Campaign travel expenses, such as fuel and tolls; and
- An entry fee for an event organized by a party committee, charity, or community organization or an ad in an event publication, as long as the expenditure benefits the candidate's campaign;

- Candidates may not use MCEA funds for personal expenses. This means candidates may not borrow from or use MCEA funds for personal or other non-campaign expenses, even if temporarily and with the intention of repaying the funds. Personal expenses are for goods and services that the candidate would otherwise purchase independently of the campaign, such as:

- Day-to-day household food items and supplies;
- Vehicle and transportation expenses unrelated to the campaign;
- Mortgage, rent, or utility payments for the candidate's personal residence, even if part of the residence is being used by the campaign; and
- Clothing, including attire for political functions such as business suits or shoes.

- Maine Clean Election Act funds may not be spent to:

- make independent expenditures supporting or opposing any candidate, ballot measure, or political committee;
- assist in any way the campaign of any candidate other than the candidate for whom the funds were originally designated;
- contribute to another candidate, a political committee, or a party committee, other than in exchange for goods and services;
- pay a consultant, vendor, or campaign staff, other than in exchange for campaign goods or services;
- make a thank-you gift (including a gift card) to a volunteer or supporter;
- compensate the candidate for services provided by the candidate;
- make a donation to a charity or a community organization, other than in exchange for campaign goods or services;
- promote political or social positions or causes other than the candidate's campaign;
- pay civil penalties, fines, or forfeitures to the Commission, or defend the candidate in enforcement proceedings brought by the Commission; or
- assist the candidate in a recount of an election.

■ Guidelines on Selected Issues

Approved by
Commission
for 2006
elections

- *Electronics and Other Personal Property.* Goods purchased with MCEA funds that could be converted to personal use after the campaign (e.g., computers, fax machines, and cellular telephones) must be reported on Schedules B and E of the candidate reporting form. No later than 42 days after the general election, the goods must be sold at fair market value and the proceeds returned to the Maine Clean Election Fund. Candidates are welcome to lease electronic and other equipment.
- *Food.* Candidates may spend a reasonable amount of MCEA funds on food for campaign events or to feed volunteers while they are working. Legislative candidates may not use MCEA funds to purchase food that is consumed only by the candidate and/or the candidate's spouse. Gubernatorial candidates may use MCEA funds to purchase meals for the candidate and/or the candidate's spouse if associated with travel for campaign purposes.
- *Car Travel.* MCEA campaigns may reimburse the candidate or campaign workers for their car travel, as long as the person reimbursed has kept a travel log. For 2008¹⁰, the campaign may make a travel reimbursement up to the number of miles traveled (as reported in the log) multiplied by \$0.4244. Campaigns must keep the travel logs for two years, and provide them to the Commission if requested. Candidates and their spouses or domestic partners may spend any amount of their personal funds for campaign travel without seeking reimbursement. Other individuals may spend up to \$100 of their personal funds to pay for travel without making a contribution to the campaign.

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Commission
for 2006
elections
(also in
Commission
Rules)

- *Lodging.* Candidates may use MCEA funds to pay for lodging if necessary for campaign purposes, but must keep lodging expenses reasonable.
- *Post-Election Notes and Parties.* Candidates may spend up to the following maximum amounts of MCEA funds on post-election parties, thank you notes, or advertising to thank supporters or voters: \$250 for State Representative candidates, and \$750 for State Senate candidates, and \$2,500 for gubernatorial candidates. Candidates may also use personal funds for these purposes.
- *Campaign Training.* Candidates may use MCEA funds for tuition or registration costs to receive training on campaigning or policy issues.
- *Salary and Compensation.* Candidates may use MCEA funds to pay for campaign-related services by staff or consultants, provided that compensation is made at or below fair market value and sufficient records are maintained to show what services were received. Documentation must include a description of the labor performed by the staff member or consultant, and an itemization of any goods or services purchased from other vendors including date, vendor, and amount.

■ Required Record-Keeping

Reflects
current
law, as
amended
in 2009

The MCEA requires participating campaigns to keep bank or other account statements for the campaign account covering the duration of the campaign. ~~Two documents~~ for every expenditure ~~over~~ of \$50 or more, the campaign must also keep: (1) an invoice from the vendor stating the particular listing the goods or services purchased, and (2) a cancelled check, cash receipt, or other acceptable proof that the vendor received payment of payment to the vendor. For any services provided to the campaign by a vendor for which the campaign paid \$500 or more for the election cycle, the campaign must keep an invoice, timesheet, or other document specifying in detail the services the vendor provided, the amount paid and the basis for the compensation paid by the campaign. Please select a treasurer who will be responsible about keeping these records.

■ Auditing and Compliance

In 2008¹⁰, the Commission staff will audit all gubernatorial candidates receiving MCEA funding and at least 20% of MCEA legislative candidates. The staff ~~and will~~ review all receipts and expenditures disclosed by MCEA candidates in campaign finance reports. The Commission frequently requests additional information from candidates to verify that public funds were spent for campaign-related purposes. Candidates who misuse public funds may be required to repay some or all public funds

received, may be liable for civil penalties, and may be referred to the State Attorney General for possible criminal prosecution.

5-B. Restrictions on serving as treasurer. A certified candidate may not serve as a treasurer or deputy treasurer for that candidate's campaign.

6. Restrictions on contributions and expenditures for certified candidates.

After certification, a candidate must limit the candidate's campaign expenditures and obligations, including outstanding obligations, to the revenues distributed to the candidate from the fund and may not accept any contributions unless specifically authorized by the commission. Candidates may also accept and spend interest earned on fund revenues in campaign bank accounts. All revenues distributed to a certified candidate from the fund must be used for campaign-related purposes. The candidate, the treasurer, the candidate's committee authorized pursuant to section 1013-A, subsection 1 or any agent of the candidate and committee may not use these revenues for any but campaign-related purposes. The commission shall publish guidelines outlining permissible campaign-related expenditures.



6-A. Assisting a person to become an opponent. A candidate or a person who later becomes a candidate and who is seeking certification under subsection 5, or an agent of that candidate, may not assist another person in qualifying as a candidate for the same office if such a candidacy would result in the distribution of revenues under subsections 7 and 8 for certified candidates in a contested election.

6-B. Expenditures as payment to household members. A candidate may not make expenditures using fund revenues to pay the candidate, a member of the candidate's household or a business, corporation or nonprofit entity in which the candidate or a member of the candidate's household holds a significant proprietary or financial interest, unless the candidate submits evidence according to procedures established by the commission that the expenditure will be made:

- A. For a legitimate campaign-related purpose;
- B. To an individual or business that provides the goods or services being purchased in the normal course of their occupation or business; and
- C. In an amount that is reasonable taking into consideration current market value and other factors the commission may choose to consider.

This subsection does not prohibit reimbursement to a member of a candidate's household when made in accordance with this chapter and rules adopted by the commission.

7. Timing of fund distribution. The commission shall distribute to certified candidates revenues from the fund in amounts determined under subsection 8 in the following manner.

- A. Within three (3) days after certification, for candidates certified prior to March 15th of the election year, revenues from the fund must be distributed as if the candidates are in an uncontested primary election.
- B. Within three (3) days after certification, for all candidates certified between March 15th and April 15th of the election year, revenues from the fund must be distributed according to whether the candidate is in a contested or uncontested primary election.

New record-keeping requirement

and certified candidates shall report any money collected, all campaign expenditures, obligations and related activities to the commission according to procedures developed by the commission. If a certified candidate pays fund revenues to a member of the candidate's immediate family or household or a business or nonprofit entity affiliated with a member of the candidate's immediate family or household, the candidate must disclose the family candidate's relationship to the payee in a manner prescribed by the commission. Upon the filing of a final report for any primary election in which the candidate was defeated and for all general elections that candidate shall return all unspent fund revenues to the commission. In developing these procedures, the commission shall utilize existing campaign reporting procedures whenever practicable. The commission shall ensure timely public access to campaign finance data and may utilize electronic means of reporting and storing information.

Sec. 21. 21-A MRSA §1125, sub-§12-A, as amended by PL 2007, c. 443, Pt. B, §6, is further amended to read:

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, cash receipt from the vendor or bank or credit card statement identifying the vendor as the payee; and

D. For any services provided to the campaign by a vendor for which the candidate paid \$500 or more for the election cycle, invoices, timesheets or other documentation specifying in detail the services the vendor provided, the amount paid and the basis for the compensation paid by the campaign.



The treasurer shall preserve the records for 23 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.

Sec. 22. 21-A MRSA §1125, sub-§13, as enacted by IB 1995, c. 1, §17, is amended to read:

13. Distributions not to exceed amount in fund. The commission may not distribute revenues to certified candidates in excess of the total amount of money deposited in the fund as set forth in section 1124. Notwithstanding any other provisions of this chapter, if the commission determines that the revenues in the fund are insufficient to meet distributions under subsections ~~8-A~~ or 9, the commission may permit certified candidates to accept and spend contributions, reduced by any seed money contributions, aggregating no more than ~~\$500~~\$750 per donor per election for gubernatorial candidates and ~~\$250~~\$350 per donor per election for State Senate and State House candidates, up to the applicable amounts set forth in subsections ~~8-A~~ and 9 according to rules adopted by the commission.

Sec. 23. 21-A MRSA §1127, sub-§1, as amended by PL 2005, c. 542, §6, is further amended to read: