

Agenda

Item #6



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

To: Commissioners

From: Jonathan Wayne, Executive Director

Date: March 21, 2011

Re: Proposed Exemptions for Internet and E-Mail Activities

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During your consideration of the Cutler Files website, the Commission staff and counsel had occasion to think through whether current campaign finance statutes and rules are sufficiently up-to-date to address electronic modes of political communication that have developed in the past five to 15 years. We believe that they should be updated to address a few issues:

- News stories, editorials, and commentary now appear frequently on websites published by traditional news outlets. Also, new communication tools offer opportunities for individuals to establish blogs or websites for publishing comment on public affairs and other topics.
- Social networking and electronic messaging have become common tools for communication.

The Commission staff believes it is worth thinking through whether new exemptions to the political disclosure laws should be created for internet activities and electronic messaging by grassroots individuals who are spending relatively little on these activities and who are acting independently of candidates, PACs, and other established political committees. The goal would be to encourage individuals to engage in personal expression about candidates and ballot questions, while still providing members of the public with valuable information about who is influencing their choices as voters.

Advice Group

We invited a group of interested persons to share their thoughts with us at a meeting on March 1, 2011. The group included Ann Luther of the League of Women Voters; Daniel

I. Billings, Chief Legal Counsel for Governor LePage; Alex Pringle, a legislative aide for the Senate Democratic Caucus; Mike Tipping of the MainePolitics.net website; and Judy Meyer, daytime managing editor of the Lewiston Sun Journal and member of the Right to Know Advisory Committee. Two invitees could not join us, including a representative of the Maine Civil Liberties Union. The staff received a variety of views that ranged from caution that creating exemptions could lead to a less-informed public to arguments for broad exemptions that would encourage personal expression. No consensus was reached, but it was an informative discussion for the Commission staff.

### Statutory Recommendations from Commission Staff

The Commission staff has not finalized its thinking with respect to all forms of internet activities. Nevertheless, we certainly endorse expanding the current “media exception” to cover news, commentary and editorials that are posted on routinely published websites.

#### Expanding the Media Exception

The exemption to the term “expenditure” for news media is set forth in 21-A M.R.S.A. § 1012(3)(B)(1). It applies to “any news story, commentary or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication ....” The Commissioners already approved some changes to the media exception at the January 2011 meeting. The Commission staff now proposes additional changes that are highlighted in the following paragraph:

- (1) Any expense incurred in the production or distribution of a news story, commentary or editorial distributed through the facilities of any broadcasting station, cable television system, website, newspaper, magazine or other periodical publication of general circulation that routinely publishes or distributes news or commentary of general interest, unless the facilities are owned or controlled by any political party, political committee, candidate, or member of the candidate’s immediate family, or their agents, or unless the facilities have been compensated for the production or distribution of the news story, commentary or editorial by any political party, political committee, candidate, member of the candidate’s immediate family, or their agents; ....

The Commission staff intends that the statutory exception would apply to news stories, editorial, and commentary that are posted on websites that are routinely published. The Commission staff envisions that the expanded exception would cover the websites of traditional newspaper and broadcast outlets, but also routinely published political blogs and bulletin boards such as Dirigo Blue ([www.dirigoblue.com](http://www.dirigoblue.com)); As Maine Goes ([www.asmainegoes.com](http://www.asmainegoes.com)); Maine Politics ([www.maine-politics.net](http://www.maine-politics.net)); and Collins Watch (<http://collinswatch.blogspot.com/>).

Proposed Exceptions to Attribution and Disclaimer Requirements (21-A MRSA 1014(6))

The Commission staff also is in favor of exempting from the “paid for” attribution and disclaimer requirement certain no-cost or low-cost forms of communication, when engaged in by grassroots individuals without any authorization by any candidate committee, PAC, or other group that files reports with the Commission. At the January 2011 meeting, you approved these exemptions, which cover:

- Handbills or other literature produced by individuals at a cost not exceeding \$100,
- Campaign signs paid for by individuals at a cost not exceeding \$100,
- Internet and e-mail activities costing less than \$100.

The Commission staff and counsel have rewritten the proposed exclusions, and we would appreciate your consideration of them:

**6. Exclusions.** The requirements of this section do not apply to

A. handbills or other literature produced and distributed at a cost not exceeding \$100 and prepared by one or more individuals who are not required to register or file campaign finance reports with the commission and who are acting independently of and without authorization by a candidate, candidate’s authorized campaign committee, party committee, political action committee, a ballot question committee, or their agents,

B. campaign signs produced and distributed at a cost not exceeding \$100, paid for by one or more individuals who are not required to register or file campaign finance reports with the commission and who are acting independently of and without authorization by a candidate, candidate’s authorized campaign committee, party committee, political action committee, ballot question committee, or their agents, and

C. internet and e-mail activities costing less than \$100, as excluded by rule of the Commission, paid for by one or more individuals who are not required to register or file campaign finance reports with the commission and who are acting independently of and without authorization by a candidate, candidate's authorized campaign committee, party committee, political action committee, ballot question committee, or their agents.

The staff continues to favor paragraph 6(C), because it would authorize the Commission to conduct a rule-making to decide which internet and e-mail activities covered by paragraph 6(C) should be exempt from the "paid for" disclaimer statute. For example, the Commission staff would be inclined to exempt individuals posting comments about political candidates on social networking websites.

We want to avoid advocating for exemptions that you do not support. So, we hope that you will express any skepticism or concerns you have about these specific proposals. Members of the advice group or others may wish to comment on these statutory proposals at the January 31 meeting, if you are open to receiving comments from the public.

Thank you for your consideration of them.