

Agenda

Item #5

**Proposed Changes to Maine Clean Election Act
Guidelines – Promotional Items**



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 February 18, 2015
Re: Potential Change in Policy on Promotional Items

Introduction

This memo presents a proposal for amending the Commission's Maine Clean Election Act Expenditure Guidelines on the subject of promotional items. This issue came up at Commission's December 2014 meeting when the staff asked the Commission to review a candidate's purchase of 25 sweatshirts and 75 aluminum water bottles. The staff volunteered to come up with an alternative approach for next year's elections while the issue was relatively fresh.

Candidates sometimes purchase items to give away to volunteers or members of the public in order to promote their candidacy:

More common

- Apparel that creates visibility at public events, such as t-shirts or baseball caps
- Other forms of inexpensive advertising that supporters can attach to their clothes or vehicles, such as buttons, lapel stickers or bumper stickers.
- Small, edible items provided as a goodwill gesture or to initiate a conversation at a public event, such as candy.

Less common

- A 2012 MCEA candidate wished to distribute coolers advertising the candidate
- Candidates occasionally have an interest purchasing fleeces or sweatshirts for the candidate or supporters to wear
- Some candidates buy smaller items containing advertising (*e.g.*, pens or key rings)

Proposed Rationale for Regulating Expenditures

The Election Law states that the Commission "shall publish guidelines outlining permissible campaign-related expenditures." (21-A M.R.S.A. § 1125(6)) In past election years, the Commission staff has proposed limits on candidate spending *in order to maintain the public's confidence in the MCEA program*. We believe that the public's trust in the program could be damaged if the public sees expenditures that are wasteful, frivolous, self-enriching. This harm is not necessarily remedied if the candidate loses the election. The purpose of limits is not to punish candidates, but rather to let them know that this publicly-financed program does have restrictions, in advance of when they qualify.

Language Applicable for 2014 Elections

At a meeting on December 12, 2013, the Commissioners adopted revised MCEA Expenditure Guidelines for the 2014 elections. The Commission staff proposed a new paragraph on promotional items in order to address some purchases by a 2012 candidate (coolers, sweatshirts, bags, mugs and styrofoam covers for cans).

Candidates may spend MCEA funds for inexpensive items to promote their candidacies or to gain visibility at public events, such as buttons, baseball caps, t-shirts, or candy to be distributed at parades and fairs. Spending MCEA funds on more expensive items, such as sweatshirts, fleeces, or coolers, is not permitted.

Expenditures by Paige Brown

At your December 2014 meeting, the Commission considered purchases by House candidate Paige Brown:

Items	Per Unit Price	Total
25 Sweatshirts	\$26.44 each	\$661
80 Aluminum water bottles	\$7.50 each	\$600
	Total	\$1,261

The Commission found that the sweatshirts were outside the guidelines, and assessed a \$100 penalty.

Proposed Language for 2014 Elections

The Commission staff regrets proposing 2014 guidelines that were out-of-step with Commissioners' views on promotional items. For discussion purposes, we propose the following for 2016:

Candidates may spend MCEA funds for inexpensive items to promote their candidacies or to gain visibility at public events. Purchases of apparel generally should not cost more than \$10 per item. Candidates may purchase other types of promotional items, but the cost should not exceed \$5 per item. Candidates may purchase up to two pieces of outerwear (e.g., fleeces or sweatshirts) to promote their election.

Thank you for your consideration of this item.



2014 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.

PERMISSIBLE CAMPAIGN-RELATED EXPENDITURES

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:

- Political advertising expenses
- Campaign communications such as signs, bumper stickers, T-shirts, or caps with campaign slogans, etc.
- Campaign events (e.g., invitations, food, tent or hall rental, etc.)
- Printing and mailing costs
- Office supplies
- Campaign staff expenses
- 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.
- Campaign travel expenses, such as fuel and tolls

PROHIBITED EXPENDITURES

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 expenses and supplies
- Mortgage, rent, or utility payments for the candidate's personal residence, even if part of the residence is being used by the campaign
- Vehicle repair and maintenance
- Non-campaign transportation expenses
- Clothing, including attire for political functions such as business suits or shoes

Maine Clean Election Act funds may not be spent to:

- pay a consultant, vendor, or campaign staff for anything other than campaign goods or services
- compensate the candidate for services provided by the candidate
- make independent expenditures supporting or opposing any candidate, ballot question, 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
- 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
- make a thank-you gift (including a gift card) to a volunteer or supporter
- pay civil penalties, fines, or forfeitures to the Commission, or defend the candidate in enforcement proceedings brought by the Commission
- assist the candidate in an election recount



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.
Property and equipment	Goods purchased with MCEA funds for \$50 or more that could be converted to personal use after the campaign (e.g., computers, fax machines, and cell phones) must be sold at fair market value and the proceeds returned to the Maine Clean Election Fund no later than 42 days after the final report for the campaign. If the campaign sells the property or equipment to the candidate or a member of the candidate's immediate family or campaign staff, the campaign must receive at least 75% of the original purchase price paid by the campaign. Candidates are welcome to lease electronic and other equipment.
Unnecessary goods	Legislative candidates may not spend MCEA funds for goods not typically necessary for a House or Senate campaign, such as office furniture, a brief case, or large storage items. If you are unsure whether an item you wish to purchase is within this category, please call the Ethics Commission for guidance.
Promotional items	Candidates may spend MCEA funds for inexpensive items to promote their candidacies or to gain visibility at public events, such as buttons, baseball caps, t-shirts, or candy to be distributed at parades and fairs. Spending MCEA funds on more expensive items, such as sweatshirts, fleeces, or coolers, is not permitted.
Office supplies	Candidates may spend MCEA funds for office supplies that they reasonably anticipate will be used for campaign purposes only. MCEA funds may not be spent for office supplies to be used for constituent communications or for other expenses associated with service as a public official. The Commission may require candidates to repay their campaign for any office supplies with a value of \$50 or more that were not used for campaign purposes or were used minimally for campaign purposes.
Food	Candidates may spend a reasonable amount of MCEA funds on food for campaign events or to feed volunteers while they are working, but must take into account the public nature of MCEA funding. Legislative candidates may not use MCEA funds to purchase food that is consumed <i>only</i> by the candidate and/or members of the candidate's immediate family. Generally, reasonable amounts for food should not exceed \$5 per person for breakfast, \$10 per person for lunch, and \$20 per person for dinner. If candidates wish to spend greater amounts per person for food, the Commission recommends that the candidate contact the Commission staff for guidance.
Lodging	Candidates may use MCEA funds to pay for lodging if necessary for campaign purposes, but must keep lodging expenses reasonable and may not exceed the lodging rates approved by the Office of State Controller for state employees conducting travel for state business. MCEA candidates may use personal funds for lodging, provided that they are not reimbursed by others.
Car travel	MCEA campaigns may reimburse the candidate or campaign workers for their car travel, as long as the person reimbursed has kept a <i>contemporaneous</i> travel log. For 2014, the campaign may make a travel reimbursement up to the number of miles traveled as reported in the log multiplied by \$0.44. Campaigns must keep the travel logs for three 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 \$350 of their personal funds to pay for travel without making a contribution to the campaign.
Campaign training	Candidates may use MCEA funds for tuition or registration costs for campaign or policy issues training.
Ballot questions	Candidates may state their position with respect to a ballot question in a communication financed with MCEA funds. Candidates may not use MCEA funds for a paid communication that primarily supports or opposes a referendum or citizen initiative.
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, \$750 for State Senate candidates, and \$2,500 for candidates for Governor. Candidates may also use personal funds for these purposes.

21-A MRSA § 1125. TERMS OF PARTICIPATION

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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.



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