



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

Commission Meeting 06/29/2016

Agenda Item #4

To: Commissioners
From: Jonathan Wayne, Executive Director
Date: June 21, 2016
Re: Interpreting the House Party Exception through a Rulemaking or Guidance

At the May 25, 2016 meeting, you expressed interest in recommendations from the staff on a possible rule or administrative guidance that would interpret the house party exception in 21-A M.R.S.A. § 1012(2)(B)(2):

(2) The use of real or personal property and the cost of invitations, food and beverages, voluntarily provided by an individual to a candidate in rendering voluntary personal services for candidate-related activities, if the cumulative value of these activities by the individual on behalf of any candidate does not exceed \$250 with respect to any election;

One Option – Paying for invitations, food or beverages as an incidental cost of volunteering

After conferring with counsel, the Commission staff has drafted a proposed rule that is consistent with the apparent purpose of the statutory exception of permitting volunteers to pay for certain incidental expenses in the course of volunteering. The provision would be a new paragraph 11 in Chapter 1, Section 6 (“Contributions and Other Receipts”):

11. The statutory exception to the definition of “contribution” in 21-A M.R.S.A. § 1012(2)(B)(2) may be claimed by an individual who provides real or personal property or pays for invitations, food or beverages as an incidental cost of providing voluntary personal services for a candidate-related activity. The costs of food and beverages are exempt only if they relate to the personal services provided by the volunteer (for example, assisting at a house party, or hosting an evening of envelope-stuffing by volunteers). The costs of invitations for a campaign event are exempt only if paid for by a volunteer who will be hosting the event. The exception does not apply if the candidate coordinates multiple volunteers to share the costs of an invitation.

Other options

The Commission staff is happy to work on any other proposed rule or guidance that you prefer. We considered other options. We drafted a rule that incorporated the residential requirement in federal law, but that did not seem appropriate after Maine omitted this condition in 1976.

Another alternative would be to interpret the \$250 limit as applying to total costs of *all* volunteers associated with a single activity or event:

11. The statutory exception in 21-A M.R.S.A. § 1012(2)(B)(2) may be claimed if the cumulative cost of invitations, food and beverages provided by all individuals volunteering their personal services and time at a candidate-related activity or event does not exceed \$250 per activity or event. Any amount in excess of \$250 is an in-kind contribution to the candidate. The candidate may use campaign funds to pay costs in excess of \$250 to avoid accepting an in-kind contribution.

We are concerned, however, that this could be construed as going beyond the statute, which imposes a cumulative \$250 limit “per election.”

Statutory Change as a Long-Term Solution

Each year, the Commission staff typically works with the Commissioners in the fall or early winter to develop an agency bill for the next legislative session. We tentatively plan to begin that process in October or November 2016. If you would like to move in a particular direction on the house party exception, please let us know.

Regular Rulemaking Procedures

If you decide at your June 29 meeting to initiate a rulemaking using regular procedures, the Commission could take the following proposed steps:

- The Commission staff would promptly send an invitation to comment to interested persons.
- The Commission staff could notify all candidates of the proposed rule change to put them on notice of new potential limits on the exception.
- The Secretary of State would publish a notice of the rulemaking in daily newspapers on Wednesday, July 6.
- You could hold a public hearing at your next regular meeting (July 27) to receive comments, if you wish. A hearing is not required, but that has been the usual practice of the Commission. The alternative is to simply invite written comments over a minimum 20-day period, but if more than 5 interested people request a hearing, one must be held.
- You could establish a deadline for written comments of Monday, August 8 (the statute requires a minimum of 10 days for written comments after a hearing).
- After considering whether to make any changes to the proposed rule based on comments from the public, you could adopt the final rule on August 31 (or sooner if you wish to hold an earlier meeting).

Emergency Rulemaking Procedures

An administrative agency may engage in an emergency rulemaking if “necessary to avoid an immediate threat to public health, safety or general welfare.” 5 MRSA 8054(1).

Under this provision, an agency may modify normal rulemaking procedures “to the minimum extent required to enable adoption of rules designed to mitigate or alleviate the threat found.” An emergency rule is in effect for only 90 days, however, so regular rulemaking is required to make a more permanent change. The Commission would be required to make specific findings “with respect to the existence of an emergency, including any modifications of procedures” in the basis statement for the rule amendments prepared at the end of the rulemaking.

Thank you for your consideration of this memo.