2010 Election Year

COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES
Mail: 135 State House Station, Augusta, Maine 04333
Office: 45 Memorial Circle, Augusta, Maine

Website: www.maine.gov/ethics
Phone: 207-287-4179
Fax: 207-287-6775

REPORTING REQUIREMENTS FOR INDEPENDENT EXPENDITURES – 2010 GENERAL ELECTION

These instructions are intended to provide information about how to report independent expenditures. For detailed information about making independent expenditures, including information on express advocacy, special requirements if a Maine Clean Election Act candidate is affected by an independent expenditure, membership communications, and other topics, please see the Commission staff's memo, Advice Regarding Independent Expenditures for the 2010 General Election, or contact the Commission staff at (207) 287-4179. The statute and rules governing independent expenditures are 21-A M.R.S.A. § 1019-B and Commission Rules, Chapter 1, Section 10 (94-270 CMR Chapter 1, Section 10).

WHEN DO INDEPENDENT EXPENDITURES HAVE TO BE REPORTED?

It is important to note that it is the total or aggregate amount spent per candidate for the election that matters in determining whether an independent expenditure has to be reported, not simply the amount of a single expenditure. When an independent expenditure report has to be filed depends on the amount and the timing of the expenditure.

Independent expenditures aggregating:

- more than $250 per candidate made on or before September 6 must be reported in the September Summary Report due by 5:00 p.m. on September 7.
- more than $250 per candidate made on or after September 7 through October 19 must be reported within 48 hours of exceeding the $250 threshold (each time the $250 threshold is exceeded, a report must be filed within 48 hours).
- more than $100 but not more than $250 made on or before September 30 must be reported in the October Summary Report due by 5:00 p.m. on October 12 (do not report any expenditures previously reported).
- more than $100 but not more than $250 made on or before October 19 must be reported in the 14-Day Pre-Election Report due by 5:00 p.m. on October 19 (do not report any expenditures previously reported).
- more than $100 per candidate made on of after October 20 must be reported within 24 hours of exceeding the $100 threshold (each time the $100 threshold is exceeded, a report must be filed within 24 hours).

An independent expenditure report filed after October 25 is required to include additional information on Schedule B-IE-3 of the report.

WHAT ARE THE SPECIAL REQUIREMENTS IF A MAINE CLEAN ELECTION ACT CANDIDATE IS IN THE RACE?

If you disseminate a communication that names or depicts a clearly identified candidate during the final weeks before an election and there is a Maine Clean Election Act candidate in the race, any expenditure made for the design, production, or dissemination of the communication will be presumed to be an independent expenditure. This presumption applies even if the communication does not expressly advocate for the election or defeat of a candidate. Due to a recent court decision, *Nat'l Organization for Marriage v. McKee (D. Me. August 19, 2010)*, the presumption cannot be rebutted.

WHAT IS THE TIME PERIOD DURING WHICH THE PRESUMPTION APPLIES?

The presumption period applies to communications that name or depict a clearly identified candidate that are disseminated within the 35 days before the general election, including election day – September 29 to November 2.

DOES THE PRESUMPTION EVER APPLY TO EXPENDITURES THAT ARE MADE BEFORE THE PRESUMPTION PERIOD BEGINS?

Yes. If the expenditure to design, produce or disseminate the communication is made before the presumption period and the communication itself is disseminated or is intended to be disseminated within the presumption period, the expenditure is presumed to be an independent expenditure and must be reported.

IMPORTANT INFORMATION ABOUT EXPENDITURES

The legal definition of expenditure includes not just the making of a payment but also "[a] contract, promise or agreement, expressed or implied, whether or not legally enforceable, to make any expenditure." (21-A M.R.S.A. § 1012(3)(A)(3)) The Commission views this as requiring the reporting of an unpaid obligation as an independent expenditure. The Maine Clean Election Act explicitly requires that "obligations" be considered when determining whether a Maine Clean Election Act candidate is entitled to receive matching funds.

What is an expenditure?

- any obligation to pay for a good or service
- the placement of an order for goods and services
- a promise or agreement (even an implied one) that payment will be made
- the signing of a contract for a good or service
- the delivery of a good or service even if payment has not been made
- the payment for a good or service

When is an expenditure made?

The earliest of the following events:

- the placement of an order for a good or service
- a promise or an agreement to pay
- the signing of a contract for a good or service
- the delivery of a good or service
- the making of a payment for a good or service

HOW DO I REPORT INDEPENDENT EXPENDITURES?

If you or your organization makes an independent expenditure, you must file the attached report with the Commission. The independent expenditure report form is also available on the Commission's website at www.maine.gov/ethics under "Forms and Guides." The filer must report the date, amount, payee, and purpose of the expenditure, and must allocate the cost among the different candidates affected by the expenditure, indicating whether the expenditure was made in support of or in opposition to each candidate. The Election Law requires the report to contain a notarized statement disclosing whether the expenditure was made in cooperation or consultation with the candidate, so please locate a notary public in advance of the filing deadline.

HOW DO I FILE AN INDEPENDENT EXPENDITURE REPORT?

Independent expenditure reports can be filed in person at the Commission's office during regular business hours (Monday through Friday from 8:00 a.m. to 5:00 p.m.). Filers may also submit the reports anytime by fax to (207) 287-6775, provided that the original report is received by the Commission within five calendar days. If the deadline for an independent expenditure report falls on a weekend or holiday, the report must be filed on that day, usually by fax. On the Saturday and Sunday before an election, the Commission office is open and staffed from 8:00 a.m. to 5:30 p.m. and reports can be filed in person on those days. Otherwise, the report must be faxed to the Commission at (207) 287-6775. Independent expenditure reports cannot be filed electronically on the Commission's website because they must be notarized.

WHAT IF THE COST OF A COMMUNICATION IS LESS THAN $100 PER CANDIDATE?

If the person making the communication did not spend or obligate more than $100 per candidate to design, produce, or disseminate the communication, no independent expenditure report is necessary. However, once the aggregated costs for any candidate exceed $100, a report must be filed for independent expenditures regarding that candidate.

Please note that if an organization uses materials produced by another entity (*e.g.*, a legislative scorecard), the cost of producing that material must be included in the total amount for that communication.

If you have any questions about whether an expenditure for a communication has to be reported as an independent expenditure, please contact the Commission staff at (207) 287-4179 or refer to the Commission staff's memo, Advice Regarding Independent Expenditures for the 2010 Elections, on the Commission's website, www.maine.gov/ethics.

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INDEPENDENT EXPENDITURE REPORT – 2010 GENERAL ELECTION

Name of Person/Committee Making Expenditure(s) _____

Mailing Address _____

City, Zip Code _____ Telephone _____

The requirement to file an independent expenditure report is based on the total or aggregate amount spent per candidate for the election. When the total expenditures per candidate exceeds the threshold amount, a report must be filed by the appropriate deadline.

Please check the appropriate box for the report you are filing and complete the notarized affidavit and attached schedules.

Reports must be filed on weekends and holidays if that is when they are due by faxing the report to the Commission (287-6775). The Commission must receive the signed original report within 5 days after the fax was received.

Is this an amendment to a previously filed report? ☐ *Yes* ☐ *No* *Date report was filed:* _____		
TOTAL INDEPENDENT EXPENDITURES OVER $250 PER CANDIDATE		
MADE BEFORE SEPTEMBER 7, 2010:		
☐ **September Summary Report**	**Expenditures through September 6**	**Due by 5:00 p.m. on September 7**
MADE ON OR AFTER SEPTEMBER 7 THROUGH OCTOBER 19, 2010:		
☐ **48-Hour Report**		**Within 48 hours of exceeding $250**
TOTAL INDEPENDENT EXPENDITURES OVER $100 PER CANDIDATE BUT NOT MORE THAN $250		
MADE BEFORE OCTOBER 20, 2010:		
☐ **October Summary Report**	**Expenditures through September 30**	**Due by 5:00 p.m. on October 12**
☐ **14-Day Pre-Election Report**	**Expenditures through October 19**	**Due by 5:00 p.m. on October 19**
TOTAL INDEPENDENT EXPENDITURES OVER $100 PER CANDIDATE WITHIN 13 DAYS BEFORE THE ELECTION		
MADE ON OR AFTER OCTOBER 20 THROUGH NOVEMBER 2, 2010:		
☐ **24-Hour Report**		**Within 24 hours of exceeding $100**

I CERTIFY THAT THE INFORMATION IN THIS REPORT IS TRUE, CORRECT AND COMPLETE.

_____ _____

Signature of PAC or Party Treasurer, or
Other Authorized Person Making Expenditure(s)

Date

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AFFIDAVIT

STATE OF _____

COUNTY OF _____

I, _____, being duly sworn, attest that I made each of the expenditures listed in the attached report independently, and not in cooperation, consultation, or concert with, or at the request or suggestion of, the candidates named in the report or the authorized committees or agents of the candidates.

_____
Signature of Affiant

Sworn to before me, this _____ day of _____ 2010

_____
(Notary Public/Attorney at Law)

My commission expires: _____

Schedule B-IE-1

CANDIDATE(S) SUPPORTED/OPPOSED

- **Please list all candidates that were the subjects of independent expenditures.**
- **If more than one candidate was the subject of the expenditure, allocate the expenditure among the candidates.**

Office sought by candidate (including district # or county)	Candidate's name	Indicate whether expenditure was made in support of or in opposition to the candidate	Amount expended this reporting period for each candidate
Total expenditures for all candidates this reporting period. ⇒ *This amount should equal the total independent expenditures listed on Schedule B-IE-2, Line C.*			

Schedule B-IE-2

PAYMENTS AND OBLIGATIONS

- **Please indicate the date, payee, expenditure type, and amount of each expenditure.**
- **If you are reporting an agreement or obligation to make a <u>future payment</u>, please check (√) the box next to the expenditure type.**

Expenditure Types			
LIT	Printing and graphics (flyers, signs, palmcards, etc.)	PRT	Print media ads only (newspapers, magazines)
MHS	Mail house (all services purchased)	RAD	Radio ads, production costs
PHO	Phone banks, automated telephone calls	TVN	TV or cable ads, production costs
POL	Polling and research survey	WEB	Website design, registration, hosting, maintenance, etc.
POS	Postage for U.S. Mail and mail box fees	OTH	Other (include description)

Date of expenditure	Payee, address, zip code	Expenditure type	√	Amount
			A. Expenditures for this page ⇒	
			B. Total for all other Schedule B-IE-2 pages (if any) ⇒	
			C. Total independent expenditures for this reporting period (A+B). ⇒ *This amount should equal the total amount for all candidates listed on Schedule B-IE-1.*	

Schedule B-IE-3

EXPENDITURE DETAILS

- **If you file an independent expenditure report after October 25, 2010 for the general election, you must provide the following information.**

1. The date on which the person making the expenditure placed the order with the vendor for the goods or services	
2. The approximate date when the vendor began providing design or any other services in connection with the expenditure	
3. The date on which the person making the expenditure first learned of the total amount of the expenditure	
4. A statement why the expenditure could not be reported by the eighth day before the election	