



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

## MEMORANDUM

To: Interested Persons  
From: Jonathan Wayne, Executive Director  
Date: October 8, 2009  
Subject: Invitation to Comment on Proposed Rule Amendments

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### *Summary of Proposed Amendments*

The Ethics Commission is soliciting comments on proposed amendments to Chapter 3, Section 4(4) of the Commission's Rules (attached). This rule sets forth the procedures that the Commission would use if there was insufficient money in the Maine Clean Election (MCE Fund) to pay public campaign funds to candidates. The general procedure set forth in 21-A M.R.S.A. § 1125(13) (attached) is that the Commission will reduce the public funds payments made to Maine Clean Election Act (MCEA) candidates and will authorize the candidates to raise campaign contributions up to \$350 per contributor per election for House and Senate candidates and up to \$750 per contributor per election for gubernatorial candidates.

In the proposed amendment, the Commission would reduce payments to all candidates (House, Senate, and Governor) proportionately. The Commission would, as much as possible, reserve money in the Fund to pay matching funds to candidates and would seek to avoid allowing MCEA candidates to fundraise in the final six weeks before a general election. These proposals were based on comments received by the Commission on July 30, 2009 in a previous rulemaking. The Commission staff included these policy choices in the draft rule for purposes of generating discussion and no decisions have been made by the Commissioners as to how to reduce public funds payments. MCEA candidates could dispose of unspent contributions similar to traditionally financed candidates under 21-A M.R.S.A. § 1017(8) (attached).

### *Opportunities to Comment*

**The Commission will hold a public hearing on Thursday, November 19, 2009 at 9:00 a.m. at which you are invited to comment on the changes to the rule.** The public hearing will be held in Room 208 of the Burton M. Cross Office Building, 111 Sewall Street in Augusta.

Written and e-mailed comments are also welcome. **If you submit written comments by Monday, November 9, I will include your comments in the packet that the Commissioners read before the November 19 hearing.** (My e-mail address is Jonathan.Wayne@maine.gov.) The deadline for written and e-mailed comments is 5:00 p.m. on December 4, 2009.

In addition to your policy suggestions, the Commission would welcome specific language changes you would like to propose.

### *Possible Topics for Comment*

The Commission members would be interested in all comments from the public on the proposed amendments. In particular, the Commission staff invites comments on the following issues in case it should be necessary to reduce candidates' MCEA payments in 2010:

- Should the Commission reduce payments for House, Senate, and gubernatorial candidates proportionately?
- Is it better to
  - A. reduce the initial payments received by all candidates in June
  - B. reduce the matching funds payments that all candidates are eligible to receive (usually candidates receive matching funds in September or October), or
  - C. let each candidate decide which payment will be reduced (for example, the Commission could presumptively reduce the matching funds payments for each candidate, unless the candidate alerts the Commission that the candidate prefers a reduction in the June initial payment and to remain eligible to receive the full matching funds).
- If it is necessary to reduce matching funds payments, should the Commission permit the candidates to raise the funds earlier (for example, beginning in June) and to deposit them in a separate account to avoid candidates raising funds in the last few weeks before the general election?

### *Steps after November 19, 2009 Public Hearing*

The Commission likely will make any amendments to the rule at its January 2010 meeting. The date for that meeting has not been determined. The rule changes would be considered routine technical, so they would not be submitted to the Legislature for its consideration.

If you have any questions, please telephone me at 287-4179. Thank you for your consideration of the proposed amendments.

**Chapter 3, Section 4(4). Distributions Not to Exceed Amount in Fund Authorizing Contributions due to Shortfall in the Fund.**

- A. Authorization by Commission to accept contributions.** If the Commission determines that the revenues in the Fund ~~are~~ may be insufficient to ~~meet distributions-~~ make payments under this chapter section 1125 of the Act, the Commission ~~will~~ may reduce payments of public campaign funds to certified candidates and permit certified candidates ~~them~~ to accept and spend contributions in accordance with the Act [§1125(13)].
- B. Limitations on permitted contributions.** If permitted to accept contributions, a certified candidate may not accept a contribution in cash or in-kind from any contributor, including the candidate and the candidate's spouse or domestic partner, that exceeds \$750 per election for gubernatorial candidates and \$350 per election for State Senate and State House candidates. A candidate may not solicit or receive any funds in the form of a loan with a promise or expectation that the funds will be repaid to the contributor. If a contributor made a seed money contribution to a candidate, the amount of the seed money contribution shall count toward the contribution limit for the primary election. For a replacement candidate or candidate in a special election, a seed money contribution shall count toward the contribution limit for the election in which the candidate is running.
- C. Apportioning reductions in public funds payments.** When the Commission has determined the amount of the projected shortfall, it shall identify which payments of public campaign funds will be reduced due to the shortfall and the amounts of the reductions. If the initial payments for the general election will be reduced, the Commission shall reduce proportionally those payments to all certified candidates, unless convincing policy reasons are present to reduce the payments differently.
- D. Campaign contributions to replace matching funds.** In apportioning a payment reduction to certified candidates, the Commission shall seek to avoid allowing certified candidates to fundraise in the final six weeks before a general election or a contested primary election. The Commission shall, as much as possible, reserve revenues in the Fund to pay matching funds to candidates. The Commission may permit candidates to raise contributions in advance that the candidate could spend as matching funds if authorized by the Commission. If permitted to raise such contributions, the candidate shall deposit them in a separate account with a bank or other financial institution. The candidate may spend the contributions as matching funds only if authorized by the Commission staff. The unauthorized expenditure of contributions raised to replace matching funds is a substantial violation of the Act and this rule.

- E. **Written notice to candidates.** The Commission shall will notify participating and certified candidates in writing of any projected shortfall in the Fund and will-specify timelines and procedures for compliance with this chapter subsection in the event of any such a shortfall.
- F. **Procedures for candidates.** The candidate shall deposit any authorized contributions into the campaign account into which Maine Clean Election Act funds have been deposited, except that any contributions raised to replace matching funds permitted under paragraph D of this subsection must be deposited in a separate account. The candidate shall disclose all contributions received in regular campaign finance reports. The Commission's expenditure guidelines for Maine Clean Election Act funds apply to the spending of the contributions authorized under this subsection. After the election, the candidate may dispose of any contributions which the candidate has not spent according to the restrictions set forth in 21-A M.R.S.A. § 1017(8).
- G. **Effect of fundraising on matching funds calculation.** If the Commission authorizes a certified candidate to accept campaign contributions pursuant to section 1125(13) of the Act and this subsection, the amount of the contributions that the candidate has been authorized to spend shall be treated as fund revenues received by the candidate for the purpose of calculating matching funds. Any reduction in the amount of public campaign funds paid to a certified candidate under sections 1125(8) or (10) of the Act will not affect the fundraising or spending threshold that triggers accelerated reporting by an opponent of the certified candidate under 21-A M.R.S.A. § 1017(3-B).

**Procedure in Maine Clean Election Act Addressing  
Insufficient Money in Maine Clean Election Fund  
(21-A M.R.S.A. § 1125(13))**

**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 or 9, the commission may permit certified candidates to accept and spend contributions, reduced by any seed money contributions, aggregating no more than \$750 per donor per election for gubernatorial candidates and \$350 per donor per election for State Senate and State House candidates, up to the applicable amounts set forth in subsections 8 and 9 according to rules adopted by the commission.



## DISPOSITION OF SURPLUS CAMPAIGN FUNDS

21-A M.R.S.A. Section 1017(8)

**Disposition of surplus.** A treasurer of a candidate registered under section 1013-A or qualified under sections 335 and 336 or sections 354 and 355 must dispose of a surplus exceeding \$100 within 4 years of the election for which the contributions were received by:

- A. Returning contributions to the candidate's or candidate's authorized political committee's contributors, as long as no contributor receives more than the amount contributed;
- B. A gift to a qualified political party within the State, including any county or municipal subdivision of such a party;
- C. An unrestricted gift to the State. A candidate for municipal office may dispose of a surplus by making a restricted or unrestricted gift to the municipality;
- D. Carrying forward the surplus balance to a political committee established to promote the same candidate for a subsequent election;
- D-1. Carrying forward the surplus balance for use by the candidate for a subsequent election;
- E. Transferring the surplus balance to one or more other candidates registered under section 1013-A or qualified under sections 335 and 336 or sections 354 and 355, or to political committees established to promote the election of those candidates, provided that the amount transferred does not exceed the contribution limits established by section 1015;
- F. Repaying any loans or retiring any other debts incurred to defray campaign expenses of the candidate;
- G. Paying for any expense incurred in the proper performance of the office to which the candidate is elected, as long as each expenditure is itemized on expenditure reports; and
- H. A gift to a charitable or educational organization that is not prohibited, for tax reasons, from receiving such a gift.

The choice must be made by the candidate for whose benefit the contributions were made.