

Agenda

Item #3



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  
Benjamin Dyer, Candidate Registrar

Date: December 11, 2012

Re: Proposed Finding of Violation and Penalty against Rep. Alan M. Casavant

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Rep. Alan M. Casavant ran for re-election in 2012 for the Maine House of Representatives, District 137. In conducting a routine review of Rep. Casavant's 11-Day Pre-General campaign finance report, Candidate Registrar Sandy Thompson noticed that his 2012 campaign reported receiving a \$1,000 loan on September 14, 2012 from the Casavant for Mayor Fund. The Casavant for Mayor Fund contained campaign funds remaining from his 2011 Biddeford mayoral campaign. The fund had a \$2,163 cash balance at the end of the campaign, according to a report he filed in December 2011 with the Biddeford City Clerk.

After raising additional contributions in the first two weeks of October, Rep. Casavant's legislative campaign reported repaying the loan to the Mayoral Fund on October 20, 2012. So, the campaign had access to the over-the-limit funds for one month and six days, during the last two months of the campaign.

### **Legal Requirements**

*Contribution Limitations.* Under the Election Law, no donor may make a contribution of more than \$350.00 to a legislative candidate, unless the contribution is from the candidate or the candidate's spouse or domestic partner. (21-A M.R.S.A. §§ 1015(1) & (2)) Maine voters enacted low contribution limits for legislative candidates of \$250 in a citizen initiative in 1996, which were later increased to \$350 by the Maine Legislature.

The Maine Election Law's definition of contributions suggests that a loan is a form of contribution. The term contribution is defined as

**2. Contribution.** The term "contribution:"

A. Includes:

- (1) A gift, subscription, loan, advance or deposit of money or anything of value made for the purpose of influencing the nomination or election of any person to state, county or municipal office .... (emphasis added)

(21-A M.R.S.A. § 1012(2)(A)(1)) The Commission has adopted a rule interpreting a loan to be a form of contribution at the time it is made and that is subject to the candidate's contribution limit. The Commission's rule states:

A loan is a contribution at the time it is made unless the loan was made by a financial institution in the State of Maine in the ordinary course of business. Loans continue to be contributions until they are repaid. Loans are subject to the candidate contribution limitations, except for loans made by the candidate, the candidate's spouse, or a financial institution in the State of Maine in the ordinary course of business . . .

Commission Rules, Chapter 1, Section 6(2). While some candidates may wish for a more flexible approach, this rule is binding on candidates.

The Commission's guidebooks and forms provide plain notice to candidates of the Commission's policy (*see* attached guidance). The interpretation that a loan is a contribution and is subject to contribution limits is not unique to Maine. The federal government has adopted a similar policy for congressional candidates (*see* pages from the August 2011 Federal Election Commission Campaign Guide for Candidates and Candidate Committees, pages 13-14)

*Civil Penalty.* A person who accepts or makes a contribution that exceeds the contribution limitations may be assessed a penalty of no more than the amount by which the contribution exceeded the limitation. (21-A M.R.S.A. § 1004-A(2)).

### **Response from Rep. Casavant**

In response to a finding of violation and \$125 penalty proposed by the Commission staff, Rep. Casavant submitted a letter dated December 3, 2012. In the letter, Rep. Casavant states that neither he nor his campaigns' staffs were aware that a loan counted as a contribution. He also contends that the penalty proposed by the Commission staff is excessive. Rep. Casavant argues there was no harm to the public because as the loan was accounted for in the House campaign finance reports and the money, originally raised for his mayoral campaign, was always intended for an election. He argues that law is unclear about whether loans from one of a candidate's campaign to another are actually prohibited. He further argues that the loan did not impinge on the spirit of the Ethics Laws since there was no "outside" influence as the loan was simply money flowing from one of Rep. Casavant's account to another. Finally, Rep. Casavant believes the size of the fine suggests that, rather than a mere error, he was in some way acting unethically, which he strongly denies.

### **Staff Recommendation**

Rep. Casavant has raised some valid points that deserve consideration by the Commission. The Commission staff accepts that Rep. Casavant did not knowingly violate the Election Law by allowing his 2012 House campaign to borrow money from his 2011 mayoral campaign. Because the funds were under his control rather than from an outside source, the contribution limits may not have been triggered as a concern. We appreciate that candidates may be tempted to think of a loan as a temporary receipt that is different than a cash contribution. In this case, Rep. Casavant's opponent did raise significantly more funds than Rep. Casavant, even counting the over-the-limit loan.

Nonetheless, the staff believes a moderate penalty is appropriate to underscore to candidates that they need to be careful not to accept contributions, including loans, over the \$350 limit. The Commission has provided ample guidance in both the Guidebook and on campaign finance reporting forms that loans are forms of contributions and are subject to contribution limits.

Accordingly, the staff recommends that at your December 19, 2012 meeting you find that Rep. Casavant violated 21-A M.R.S.A. § 1015(2) by accepting a \$1,000 contribution from his 2011 mayoral committee that was in excess of the \$350 limit.

We recommend assessing a penalty of \$125 under 21-A M.R.S.A. §1004-A(2) to underscore the importance of the requirement that candidates not accept more than \$350 from any source other than the candidate, the candidate's spouse or domestic partner. We view the category of over-the-limit contributions to be potentially a serious violation, although there were mitigating circumstances in this case.

We viewed the proposed \$125 penalty not as gravely as Rep. Casavant perceives it. Candidates who have committed more serious violations have been assessed penalties significantly higher by the Commission. If you conclude a smaller penalty is appropriate, the staff has no objection. The Commission rarely assesses penalties for over-the-limit cash contributions or loans, so there is little danger of a penalty that is disproportionate to similar violations.

Thank you for your consideration of this memorandum.

**SCHEDULE C  
 LOAN TRANSACTIONS**

▪ Loan types: FI for financial institution; IND for individual; and OTH for other sources.

LENDER	LOAN TYPE	LOAN BALANCE AT BEGINNING OF PERIOD	LOAN TRANSACTIONS FOR THIS REPORTING PERIOD				LOAN BALANCE AT END OF PERIOD
			DATE	NEW LOAN OR ADDITIONAL AMOUNT LOANED	AMOUNT REPAID	AMOUNT FORGIVEN	
CASAVANT FOR MAYOR FUND 22 MEETINGHOUSE ROAD BIDDEFORD ME 04005	IND		09/14/2012	\$1,000.00			\$1,000.00
<b>TOTAL LOAN TRANSACTIONS ⇒</b>		\$0.00		\$1,000.00	\$0.00	\$0.00	\$1,000.00

**SCHEDULE B  
 EXPENDITURES**

EXPENDITURE TYPES	
CNS Campaign consultants	POL Polling and survey research
CON Contribution to other candidate, party, committee	POS Postage for U.S. Mail and mail box fees
EQP Equipment (office machines, furniture, cell phones, etc.)	PRO Other professional services
FND Fundraising events	PRT Print media ads only (newspapers, magazines, etc.)
FOD Food for campaign events, volunteers	RAD Radio ads, production costs
LIT Print and graphics (flyers, signs, palmcards, t-shirts, etc.)	SAL Campaign workers' salaries and personnel costs
MHS Mail house (all services purchased)	TRV Travel (fuel, mileage, lodging, etc.)
OFF Office rent, utilities, phone and internet services, supplies	TVN TV or cable ads, production costs
OTH Other	WEB Website design, registration, hosting, maintenance, etc.
PHO Phone banks, automated telephone calls	

*Only these expenditure types require a remark: CNS, EQP, FND, OTH, PRO, SAL, TRV.*

DATE OF EXPENDITURE	PAYEE	REMARK	TYPE	AMOUNT
10/20/2012	US POST OFFICE	Clincher cards	POS	\$115.00
10/18/2012	MACH 3 MEDIA	Mailings to households	MHS	\$3,873.00
10/10/2012	UNION HOUSE PIZZA	Catering for fund raiser	FOD	\$345.00
10/20/2012	CASAVANT FOR MAYOR	Repayment of earlier loan.	OTH	\$1,000.00
<b>TOTAL EXPENDITURES</b> ⇨				<b>\$5,333.00</b>

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RECEIVED

DEC 10 2012

Maine Ethics Commission

December 3, 2012

Mr. Jonathan Wayne  
Maine Ethics Commission

Mr. Wayne and Members of the Ethics Commission:

I have given considerable thought to my proposed fining regarding contributions in the form of a loan to my political campaign. There are a number of reasons why I believe the fine to be excessive and without merit. I list them as follows:

- 1) There was no intent to deceive or to circumvent the laws as written. The loan was publicly and properly recorded for all to see, and neither I, nor anyone associated with my campaign, understood that loans were considered, by law, to be contributions. It was our view that loans are mechanisms simply to be repaid.
- 2) I gained no inherent political advantage by obtaining that loan. The pragmatic reality is that I had no funds. In fact, if you review my primary records, you will see that I had to borrow money from myself to produce literature for that June campaign. At the time of general election campaigning, my opponent had already secured more than \$15,000 for his war chest, and I needed a quick injection of cash to print the necessary literature to serve as palm cards, and a few assorted other items. The timing was of the essence, as delaying the knocking on doors was not in my political best interests, as I was so far behind my opponent in his canvassing of the two towns. This injection of cash was necessary, because I had no scheduled fundraiser until weeks after the billing for the literature, and donated funds were slow in arriving.
- 3) Ironically and importantly, the loan was from a campaign account in which my name appears, to another campaign account in which my name appears. The intent of both accounts were/are my election.

I should also note that my mayoral campaign was never informed of the necessity of post-election forms or requirements. Somehow, we missed that information, though, when requested, said information was immediately provided. The money from my mayoral account had essentially remained dormant. It was sitting there, with no immediate plan of action. Because the money was accessible, and because it was my full intent to repay the loan as quickly as possible, and because the paperwork and timing of getting a bank loan was problematic, I decided that the easiest mechanism was to simply borrow from an existing account which already was created for my own political purposes, albeit a mayoral campaign. I saw nothing wrong with that whatsoever, unless the loan had never been repaid. That would have been fraudulent, but that was never the case or the intent. When I asked other individuals within both campaigns if that was permitted, the answers were yes. Should I have called the Ethics Committee? In retrospect, yes, but the underlying reality is that there was no intent to deceive, gain political advantage or do anything unethical. It was a pragmatic decision, and I need to emphasize that the final responsibility rests with me, and with me alone.

Interestingly, in reading the laws, I note that there is no applicable clause that relates to my peculiar circumstances. As I indicated previously, I shifted funds for a loan from one account, headed by my name, to another, headed by my name. There was no third party involved whatsoever. I suspect that the intent of the law was to prevent a third party from injecting funds

into a campaign, hence, in theory, wielding influence of some sort. In this case, that never happened. I was influencing me!

- 4) One of the tenets of the Clean Election philosophy is to limit outside influence. There was no outside influence in this matter. I borrowed money from my own account, thus keeping myself away from any and all outside influences.
- 5) If you look at my financial records, you will note that my campaigns are fiscally responsible and conservative. I reuse everything. Even my signs are from campaigns two and three elections ago! In this particular campaign, when outside money is factored into the equation, you can see that I was outspent five or six to one. I do not thus see how this loan, in any way, gave me any political advantage in terms of funding.
- 6) The size of the fine implies, at least to me, that what I did was unethical. I resent that implication, as I maintain a high standard of ethics in my politics, as well as in my lifestyle. I may have been ignorant in the given matter, but I was not unethical. I feel that the size of the imposed fine puts me in a category in which individuals clearly take advantage of the system, which I did not. This is what I find to be most troubling: the implication. If I had done something via malice or deceit, and if that action had played a role in altering the fairness of the campaign, I would agree to such a fine, but in this case, ignorance was the cause, and there was absolutely no advantage. This fine, by my standards, is not a slap on the wrist, but instead suggests a serious offense, and it is that judgment that I believe to be out of proportion to the action of myself.
- 7) I think that it is important to look at my actions in terms of the objectives of Ethics Laws in the determination of a level playing field and the need to reduce or eliminate outside influences through money. I sincerely believe that my actions are not connected to either goals. Instead, they are an aberration of the intent, and, if the need is present, the law itself should be clearly rewritten. I think that if you look closely, the act of one of my campaigns lending money to another campaign (money that was repaid) seems to fail the test of Ethics objectives.

I hope that this letter clarifies matters, and I hope for your reconsideration of the penalty.

Sincerely,



Alan Casavant  
22 Meetinghouse Road  
Biddeford, Maine 04005



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

November 20, 2012

Hon. Alan M. Casavant  
22 Meetinghouse Road  
Biddeford, ME 04005

Dear Representative Casavant:

Thank you for the information you e-mailed concerning the \$1,000 loan received by your 2012 legislative campaign committee. As you know, in conducting a routine review of your September campaign finance report, Candidate Registrar Sandy Thompson noticed that your 2012 campaign for House District 137 reported receiving a \$1,000 loan on September 14, 2012 from the Casavant for Mayor Fund. The Casavant for Mayor Fund contains your campaign funds from your 2011 Biddeford mayoral campaign. The fund had a \$2,163 cash balance at the end of the campaign, according to a report you filed in December 2011 with the Biddeford City Clerk. Your House campaign reported repaying the loan to the Mayoral Fund on October 20, 2012.

**Applicable Law Concerning Loans and Contribution Limits**

*Contribution limitations.* Under the Election Law, no donor may make a contribution of more than \$350 to a legislative candidate, unless the contribution is from the candidate or the candidate's spouse or domestic partner. (21-A M.R.S.A. §§ 1015(1) & (2)) Under the Commission's statute and rules, loans are a form of contribution and are subject to the candidate's contribution limit, except for loans from financial institutions made in the ordinary course of business. (21-A M.R.S.A. §§ 1012(2)(A)(1); Commission Rules, Chapter 1, Section 6(2) The Commission's Rule states

A loan is a contribution at the time it is made unless the loan was made by a financial institution in the State of Maine in the ordinary course of business. Loans continue to be contributions until they are repaid. Loans are subject to the candidate contribution limitations, except for loans made by the candidate, the candidate's spouse, or a financial institution in the State of Maine in the ordinary course of business. ....

*Civil penalty.* A person who accepts or makes a contribution that exceeds the contribution limitations may be assessed a penalty of no more than the amount by which the contribution exceeded the limitation. (21-A M.R.S.A. § 1004-A)

OFFICE LOCATED AT: 45 MEMORIAL CIRCLE, AUGUSTA, MAINE  
WEBSITE: WWW.MAINE.GOV/ETHICS

PHONE: (207) 287-4179

FAX: (207) 287-6775

Hon. Alan M. Casavant  
Page 2  
November 20, 2012

**Commission's Consideration of this Matter**

The Commission will be meeting on December 19, 2012 at 9:00 a.m. at the Commission office in Augusta. At the meeting, the Commission staff will recommend that the Commissioners find that your 2012 legislative campaign violated the contribution limit in 21-A M.R.S.A. § 1015(2) by accepting a \$1,000 contribution from your 2011 mayoral committee that was in excess of the \$350 limit. The staff intends to recommend the assessment of a penalty of \$125.

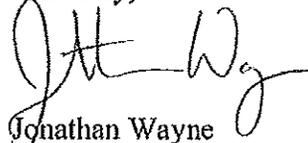
The rationale for the proposed penalty is to underscore the importance of the requirement that candidates not accept more than \$350 from any source other than the candidate, the candidate's spouse or domestic partner. The Commission's reporting form and guidance materials for legislative and municipal candidates advise candidates that loans are a form of contribution and are subject to the contribution limits (some samples are attached).

We suggest that you respond to the proposed finding of violation and penalty in writing through a letter addressed to Walter F. McKee, Chair, Maine Ethics Commission, 135 SHS, Augusta, ME 04333. If you respond in writing, please submit it no later than Friday, December 7.

You are also welcome to respond to the recommended finding of violation and penalty by attending the meeting and speaking to the Commissioners directly. That might be advisable, since the Commissioners sometimes assess penalties in amounts that are larger or smaller than those recommended by the Commission staff.

Please contact me at 287-4179 if you have any questions.

Sincerely,

  
Jonathan Wayne  
Executive Director

**SECTION 6. CONTRIBUTIONS AND OTHER RECEIPTS**

1. The date of a contribution is the date it is received by a candidate, an agent of the candidate, a candidate's committee, a party committee and its agents, or a political action committee and its agents.
2.  A loan is a contribution at the time it is made unless the loan was made by a financial institution in the State of Maine in the ordinary course of business. Loans continue to be contributions until they are repaid. Loans are subject to the candidate contribution limitations, except for loans made by the candidate, the candidate's spouse, or a financial institution in the State of Maine in the ordinary course of business. The Commission may consider any reported loan to be a cash contribution if it remains unpaid four years after the election in which it was incurred.
3. Candidates and political action committees must report the name, address, occupation and employer of each individual contributor who gives, in the aggregate, more than \$50 for the reporting period. The reporting is required for private contributions raised by privately financed candidates and for seed money contributions to candidates participating in the Maine Clean Election Act. Candidates, political action committees, and party committees must make a reasonable effort to obtain the employment information of the contributor. If a candidate or committee is unable to obtain the information from the contributor in response to a request, the candidate or committee shall indicate "information requested" in the occupation and employer sections of the campaign finance report.
4. Unless specifically exempted under Title 21-A M.R.S.A. §§ 1012 and 1052 or this section, the provision of any goods or services without charge or at a charge that is less than the usual and customary charge for such goods or services is an in-kind contribution. Examples of such goods and services include, but are not limited to: equipment, facilities, supplies, personnel, advertising, and campaign literature. If goods or services are provided at less than the usual and customary charge, the amount of the in-kind contribution is the difference between the usual and customary charge and the amount charged the candidate or political committee. A commercial vendor that has provided a discount to a candidate or political committee because of a defect in performance or other business reason has not made a contribution if the vendor grants substantially similar discounts to other customers in the ordinary course of the vendor's business.
5. An employer that has authorized an employee to provide services without charge to a candidate or political committee during the employee's paid work-time has made an in-kind contribution to the candidate or political committee. No contribution has been made if the employee is providing services as a volunteer outside of the employee's paid work-time.
6. A commercial vendor that has extended credit to a candidate or political committee has not made a contribution if the credit is extended in the ordinary course of the vendor's business and the terms are substantially similar to extensions of credit made to nonpolitical customers that are of similar risk and size of obligation. The Commission shall presume any debt that remains unpaid more than six months after the election in which the debt was incurred to be a contribution to the candidate or political committee unless the candidate or committee provides clear and convincing evidence to the Commission that they intend to raise funds or take other measures to satisfy the debt. The Commission shall determine whether any debt that remains unpaid for more than four years after the election should be deemed a contribution to the candidate or

## 21A § 1012. Definitions

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

**1. Clearly identified.** "Clearly identified," with respect to a candidate, means that:

- A. The name of the candidate appears;
- B. A photograph or drawing of the candidate appears; or
- C. The identity of the candidate is apparent by unambiguous reference.

**2. Contribution.** The term "contribution:"

A. Includes:

- 
- (1) A gift, subscription, loan, advance or deposit of money or anything of value made for the purpose of influencing the nomination or election of any person to state, county or municipal office or for the purpose of liquidating any campaign deficit of a candidate, except that a loan of money to a candidate by a financial institution in this State made in accordance with applicable banking laws and regulations and in the ordinary course of business is not included;
  - (2) A contract, promise or agreement, express or implied, whether or not legally enforceable, to make a contribution for such purposes;
  - (3) Funds received by a candidate or a political committee that are transferred to the candidate or committee from another political committee or other source; and
  - (4) The payment, by any person other than a candidate or a political committee, of compensation for the personal services of other persons that are provided to the candidate or political committee without charge for any such purpose; and

B. Does not include:

- (1) The value of services provided without compensation by individuals who volunteer a portion or all of their time on behalf of a candidate or political committee;
- (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 \$100 with respect to any election;
- (3) The sale of any food or beverage by a vendor for use in a candidate's campaign at a charge less than the normal comparable charge, if the charge to the candidate is at least equal to the cost of the food or beverages to the vendor and if the cumulative value of the food or beverages does not exceed \$100 with respect to any election;

## 21A § 1015. Limitations on contributions and expenditures

**1. Individuals.** An individual may not make contributions to a candidate in support of the candidacy of one person aggregating more than \$1,500 in any election for a gubernatorial candidate, more than \$350 for a legislative candidate, more than \$350 for a candidate for municipal office and beginning January 1, 2012 more than \$750 for a candidate for municipal office or more than \$750 in any election for any other candidate. This limitation does not apply to contributions in support of a candidate by that candidate or that candidate's spouse or domestic partner. Beginning December 1, 2010, contribution limits in accordance with this subsection are adjusted every two years based on the Consumer Price Index as reported by the United States Department of Labor, Bureau of Labor Statistics and rounded to the nearest amount divisible by \$25. The commission shall post the current contribution limit and the amount of the next adjustment and the date that it will become effective on its publicly accessible website and include this information with any publication to be used as a guide for candidates.

 **2. Committees; corporations; associations.** A political committee, political action committee, other committee, firm, partnership, corporation, association or organization may not make contributions to a candidate in support of the candidacy of one person aggregating more than \$1,500 in any election for a gubernatorial candidate, more than \$350 for a legislative candidate, more than \$350 for a candidate for municipal office and beginning January 1, 2012 more than \$750 for a candidate for municipal office or more than \$750 in any election for any other candidate. Beginning December 1, 2010, contribution limits in accordance with this subsection are adjusted every two years based on the Consumer Price Index as reported by the United States Department of Labor, Bureau of Labor Statistics and rounded to the nearest amount divisible by \$25. The commission shall post the current contribution limit and the amount of the next adjustment and the date that it will become effective on its publicly accessible website and include this information with any publication to be used as a guide for candidates.

**3. Aggregate contributions.** No individual may make contributions to candidates aggregating more than \$25,000 in any calendar year. This limitation does not apply to contributions in support of a candidate by that candidate or that candidate's spouse or domestic partner.

**4. Political committees; intermediaries.** For the purpose of the limitations imposed by this section, contributions made to any political committee authorized by a candidate to accept contributions on the candidate's behalf are considered to be contributions made to that candidate. If the campaign activities of a political action committee within a calendar year primarily promote or support the nomination or election of a single candidate, contributions to the committee that were solicited by the candidate are considered to be contributions made to the candidate for purposes of the limitations in this section. For purposes of this subsection, solicitation of contributions includes but is not limited to the candidate's appearing at a fundraising event organized by or on behalf of the political action committee or suggesting that a donor make a contribution to that committee.

For the purposes of the limitations imposed by this section, all contributions made by a person, either directly or indirectly, on behalf of a particular candidate that are in any way

## 21-A § 1004-A. Penalties

The commission may assess the following penalties in addition to the other monetary sanctions authorized in this chapter.

**1. Late campaign finance report.** A person that files a late campaign finance report containing no contributions or expenditures may be assessed a penalty of no more than \$100.

 **2. Contribution in excess of limitations.** A person that accepts or makes a contribution that exceeds the limitations set out in section 1015, subsections 1 and 2 may be assessed a penalty of no more than the amount by which the contribution exceeded the limitation.

**3. Contribution in name of another person.** A person that makes a contribution in the name of another person, or that knowingly accepts a contribution made by one person in the name of another person, may be assessed a penalty not to exceed \$5,000.

**4. Substantial misreporting.** A person that files a campaign finance report that substantially misreports contributions, expenditures or other campaign activity may be assessed a penalty not to exceed \$5,000.

**5. Material false statements.** A person that makes a material false statement or that makes a statement that includes a material misrepresentation in a document that is required to be submitted to the commission, or that is submitted in response to a request by the commission, may be assessed a penalty not to exceed \$5,000.

When the commission has reason to believe that a violation has occurred, the commission shall provide written notice to the candidate, party committee, political action committee, committee treasurer or other respondent and shall afford them an opportunity to appear before the commission before assessing any penalty. In determining any penalty under subsections 3, 4 and 5, the commission shall consider, among other things, the level of intent to mislead, the penalty necessary to deter similar misconduct in the future and the harm suffered by the public from the incorrect disclosure. A final determination by the commission may be appealed to the Superior Court in accordance with Title 5, chapter 375, subchapter 7 and the Maine Rules of Civil Procedure Rule 80C.

Penalties assessed pursuant to this section that have not been paid in full within 30 days after issuance of a notice of the final determination may be enforced in accordance with section 1004-B.

## 21-A § 1004-B. Enforcement of penalties assessed by the commission

The commission staff shall collect the full amount of any penalty and the return of Maine Clean Election Act funds required by the commission to be returned for a violation of the statutes or rules administered by the commission and has all necessary powers to carry out these duties. Failure to pay the full amount of any penalty assessed by the commission or return of Maine Clean Election Act funds is a civil violation by the candidate, treasurer, party committee, political action committee or other person. Thirty days after issuing the notice of

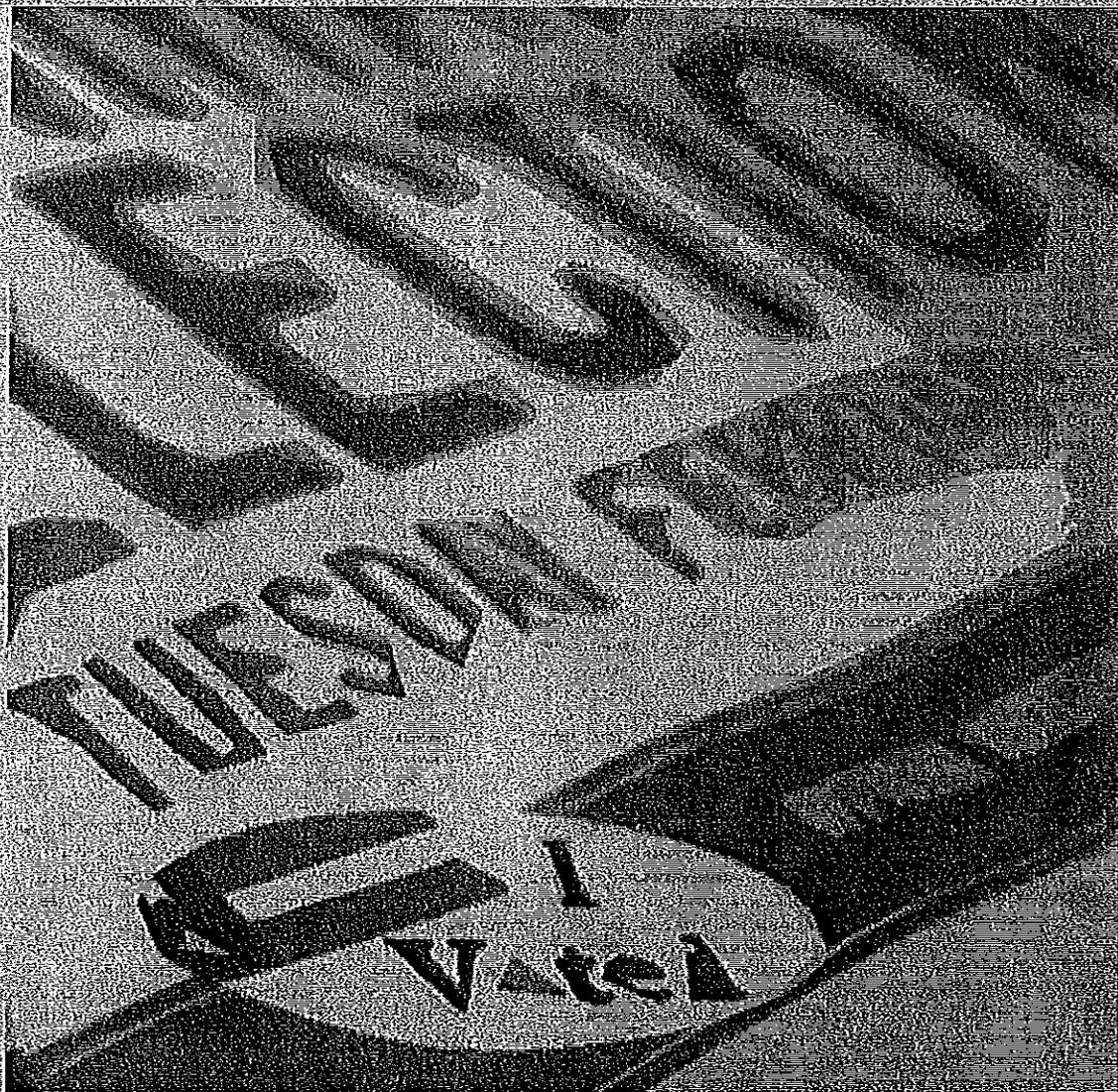
COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES  
135 STATE HOUSE STATION  
AUGUSTA, MAINE 04333

# 2012 Candidate's Guide

*Running for Office in Maine*

Traditionally Financed

Legislative and County Candidates





You are allowed to ask others not to spend money in support of your candidacy. Even if another person or organization were to spend money subsequently, merely making a request not to make an independent expenditure would not by itself constitute cooperation in the view of the Commission staff.

- provide up to 40 hours of assistance by paid employees to a candidate in each election (primary or general);
- recruit and oversee volunteers for campaign activities involving three or more candidates; or
- coordinate campaign events involving three or more candidates.

This exception applies only to state party committees (Democratic, Green-Independent, and Republican), and does not apply to local party committees, caucus committees, or other political action committees (PACs).

**Other Exempt Goods and Services.** Certain goods and services are excluded from the legal definition of "contribution." The campaign's receipt of these items is not an in-kind contribution. Candidates and treasurers are encouraged to familiarize themselves with these "exempt" goods and services. They are listed in the Appendix of this Guide.

Some examples of exempt goods and services are:

- a trade association, commercial business, or labor union may donate office space or office equipment to a campaign, provided that there is no additional cost,
- state, county, and local party committees may spend money to produce a slate card ("party candidate listing") to promote three or more candidates. This exception is not available to caucus committees and other PACs.

**LOANS ARE CONTRIBUTIONS**

**Loans Subject to Contribution Limits.** Under the Election Law, non-commercial loans are considered contributions to the candidate. They are subject to the maximum amounts that a contributor may provide to a candidate per election. For legislative candidates, the contribution limit is \$350 per election and for county candidates the limit is \$750 per election.

Party candidates have two elections—the primary and general—and unenrolled candidates have only one election—the general. Please see the chart on page 5.

**Loans Not Subject to Contribution Limits.** These limitations do not apply to loans from the candidate and the candidate's spouse or partner, who can lend – or contribute – an unlimited amount to the campaign.

Loans to a candidate made by a financial institution in Maine in the ordinary course of business are not considered to be contributions and are not subject to the contribution limits.

**GOODS AND SERVICES: NOT CONTRIBUTIONS**

**Assistance from State Party Committees.** Candidates may receive some assistance from paid employees of a state party committee without that help constituting an in-kind contribution. State party committees may:



# CHAPTER 4

## Contributions and Expenditures: Prohibitions and Restrictions

### DEFINITION OF CONTRIBUTION

The term "contribution" is defined in the Election Law to include:

*"A gift, subscription, loan, advance or deposit of money or anything of value made for the purpose of influencing the nomination or election of any person to state, county or municipal office or for the purpose of liquidating any campaign deficit of a candidate . . ."*

21-A M.R.S.A. § 1012(2)

For further explanation of what is a contribution, please refer to 21-A M.R.S.A. § 1012(2) (copied in the Appendix).

### CONTRIBUTION LIMIT: \$750 PER CONTRIBUTOR

An individual, political committee, party committee, corporation or association may not make contributions to a municipal candidate aggregating more than \$750.

Only U.S. citizens and persons holding valid green cards may make contributions to candidates or candidates' committees.

This limit applies to the aggregate of all contributions – cash, in-kind, and loans – made by a contributor. This limit does

not apply to contributions made by the candidate, the candidate's spouse, or domestic partner.

CONTRIBUTION LIMITS PER CONTRIBUTOR FOR 2012 ELECTIONS: MUNICIPAL CANDIDATES
<b>\$750.00</b>
Please note: In December 2012 (and every two years thereafter), the contribution limit will be adjusted according to the CPI (Consumer Price Index) as reported by the U.S. Department of Labor.

### LOANS ARE CONTRIBUTIONS

**Loans Subject to Contribution Limits.** Under Maine Election Law, non-commercial loans are considered contributions to the candidate. They are subject to the contribution limit of \$750.

**Loans Not Subject to Contribution Limits.** These limitations do not apply to loans from the candidate and the candidate's spouse or partner, who can lend – or contribute – an unlimited amount to the campaign.

Loans to a candidate made by a financial institution in Maine in the ordinary course of business are not considered to be contributions and are not subject to the contribution limits.

### AGGREGATE CONTRIBUTION LIMIT: \$25,000 PER YEAR

No individual may make contributions to candidates aggregating more than \$25,000 in any calendar year.



CANDIDATE'S FULL NAME \_\_\_\_\_

Page \_\_\_\_ of \_\_\_\_  
(Schedule C only)

**SCHEDULE C  
LOANS AND LOAN REPAYMENTS**

- List all new and continuing loans that were unpaid at any time during this reporting period.
- If a loan amount is forgiven, the amount forgiven must also be entered as a contribution on Schedule A.
- \* Loans cannot exceed \$350 in any election for municipal candidates, except loans made by the candidate, the candidate's spouse or domestic partner, or a financial institution in the State of Maine

	COLUMN 1	COLUMN 2	COLUMN 3	COLUMN 4	COLUMN 5
LENDER	LOAN BALANCE AT BEGINNING OF PERIOD	ACTIVITY THIS PERIOD (report amount and date)			LOAN BALANCE AT END OF PERIOD (1+2) - 3 - 4
		AMOUNT LOANED THIS PERIOD	AMOUNT REPAYD THIS PERIOD	AMOUNT FORGIVEN THIS PERIOD	
		DATE  AMOUNT	DATE  AMOUNT	DATE  AMOUNT	
		DATE  AMOUNT	DATE  AMOUNT	DATE  AMOUNT	
		DATE  AMOUNT	DATE  AMOUNT	DATE  AMOUNT	
		DATE  AMOUNT	DATE  AMOUNT	DATE  AMOUNT	
		DATE  AMOUNT	DATE  AMOUNT	DATE  AMOUNT	
<b>Totals for each column</b>		Enter on Schedule F, line 2	Enter on Schedule F, line 8	Enter on Schedule A	Enter on Schedule F, line 10

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## CHAPTER 3

# Understanding Contributions

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### I. What Is a Contribution

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A contribution is anything of value given, loaned or advanced to influence a federal election. It is important to understand which receipts are considered contributions because:

- Contributions count toward the threshold that determines whether an individual has qualified as a candidate under the *Federal Election Campaign Act* (the Act). 100.3(a).
- Contributions are subject to the Act's prohibitions against contributions from certain sources.
- Contributions are subject to the Act's limits on the amount of contributions.

Like all receipts, contributions are also subject to the Act's recordkeeping and reporting requirements. The section below describes different types of contributions. (Contribution limits and prohibitions are discussed in the chapters that follow.)

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### 2. Types of Contributions

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#### Gifts of Money

A contribution of money may be made by check, cash (currency), credit card or other written instrument. 100.52(c). See also AOs 1999-22, 1995-09 (contributions made over the Internet), 1991-01, 1990-04 and 1978-68.

#### Earmarked Contributions and Bundling

An earmarked contribution is one which the contributor directs (either orally or in writing) to a candidate through an intermediary or conduit. 110.6(b). Special rules govern this type of transaction; see Appendix A.

When an intermediary or conduit collects and transmits contributions to the campaign the special rules in Appendix A apply.

#### In-Kind Contributions

##### Definition

Goods or services offered free or at less than the usual charge result in an in-kind contribution. Similarly, when a person pays for services on the committee's behalf, the payment is an in-kind contribution. 100.52(d)(1) and 100.111(e)(1). An expenditure made by any person in cooperation, consultation or concert with, or at the request or suggestion of, a candidate's campaign is also considered an in-kind contribution to the candidate. 109.20. See Appendix D, "Communications."

##### Limits

The value of an in-kind contribution—the usual and normal charge—counts against the contribution limit as a gift of money does. Additionally, like any other contribution, in-kind contributions count against the contributor's limit for the next election, unless they are otherwise designated. See Chapter 4, Section 4 for more information on designating contributions. 100.52(d)(1), 100.54 and 100.111(e)(1).

##### Value

Goods (such as facilities, equipment, supplies or mailing lists) are valued at the price the item or facility would cost if purchased or rented at the time the contribution is made. For example, if someone donates a personal computer to the campaign, the contribution equals the ordinary market price of the computer at the time of the contribution.

Services (such as advertising, printing or consultant services) are valued at the prevailing commercial rate at the time the services are rendered. 100.52(d)(2) and 100.111(e)(2).

### Notifying Recipient

The contributor needs to notify the recipient candidate committee of the value of an in-kind contribution. The recipient needs this information in order to monitor the contributor's aggregate contributions and to report the correct amount.

### In-Kind Contributions Designated for More Than One Election in an Election Cycle

In Advisory Opinion 1996-29, the Commission determined that the value of an in-kind contribution of used computer equipment, received before the primary and designated in writing by the contributors for all elections in the cycle, could, in fact, be allocated among all elections in the same election cycle. The contribution was distinguishable from the type of in-kind contribution that is used for one particular election (such as printing or mailing costs related to a general election fundraiser). If the candidate had lost the primary election, the committee would have had to refund the amount designated for the general election (in this case, the candidate was active in each election within the election cycle). The total value of the contribution could not exceed the contributor's combined limit for all the elections in the cycle. The Commission did not address the issue of allocating an in-kind contribution over more than one election cycle.

### Exceptions

Under limited exemptions in the law, persons may provide certain goods and services to a committee without making contributions. For example, when services are volunteered—not paid for by anyone—the activity is not considered a contribution. 100.74. See Chapter 7 for more information.

### Proceeds from Sales

The entire amount paid to attend a political fundraiser or other political event or to purchase a fundraising item sold by a political committee is a contribution and counts against the individual's contribution limit. 100.53. For example, if a contributor pays \$100 to buy a ticket to a fundraising dinner, the entire \$100 is considered a contribution to the committee, even though the meal may have cost the committee \$30. Similarly,

if a contributor spends \$20 to buy a campaign T-shirt that cost the campaign \$5, the contributor has made a \$20 contribution. See also Chapter 14, Section 4, "Sale of Campaign Assets."

### Loans

A loan, including a loan to the campaign from a member of the candidate's family, is considered a contribution to the extent of the outstanding balance of the loan. (Bank loans, however, are not considered contributions if made in the ordinary course of business and on a basis that assures repayment. 100.82(a) through (e). See Chapter 6, Section 1.) An unpaid loan, when added to other contributions from the same contributor, must not exceed the contribution limit. Repayments made on the loan reduce the amount of the contribution. Once repaid in full, a loan no longer counts against the contributor's contribution limit. However, a loan exceeding the limit is unlawful even if it is repaid in full. Besides being reported as a contribution, a loan must be continuously reported until it is fully repaid. 100.52(a) and (b), 100.111(a) and 104.3(d). See Chapter 13, Section 17, for more information on reporting loans.



### Endorsements and Guarantees of Loans

An endorsement or guarantee of a loan, including a loan derived from a candidate's brokerage account or other line of credit, counts as a contribution to the extent of the outstanding balance of the loan. Repayments made on the loan reduce the amount of the contribution. Once the loan is repaid in full, the endorsement or guarantee no longer counts against the endorser's or guarantor's contribution limit. If a written loan agreement does not stipulate the portion for which each endorser or guarantor is liable, then individual contributions are calculated by dividing the amount of the loan by the number of persons who have endorsed or guaranteed it. 100.52(b)(3).

### Candidate's Use of Jointly Held Collateral

A limited exception to this rule is provided when a candidate uses property jointly held with the candidate's spouse to guarantee a bank loan to the campaign and the bank requires the