



August 10, 2016

Jonathan Wayne
Executive Director
Commission on Governmental Ethics and Election Practices
135 State House Station
Augusta, ME 04333-0135

Re: Invitation to Comment on Proposed Rule Amendment – House Parties

Dear Director Wayne:

Maine Citizens for Clean Elections (MCCE) is pleased to submit these comments regarding the proposed rule amendment governing certain applications of 21-A M.R.S.A. § 1012(2)(B)(2) – the so-called “house party rule.”

We commend the Commission and staff for working hard to address this issue, and we fully support the proposed rule resulting from that effort.

House parties are a welcomed and positive feature of election campaigns in Maine. They provide a crucial opportunity for voters and candidates to engage in direct conversations unmediated by the constraints of social media, advertisements, or consultants. MCCE views house parties as a true and valuable form of direct democracy. Voters should be able to host house parties without fear of running afoul of legal requirements.

Nonetheless, reasonable questions have arisen about where to draw the line between these traditional grass roots activities and large scale campaign events that could have the effect of creating a *de facto* political action committee (PAC) with undisclosed donations in ways not intended by the law.

These questions focus on whether invitations mailed on a large scale are consistent with the traditional role of house parties and similar small events. The proposed rule answers the question by specifying that the cost of invitations is exempt only to the extent that they are paid by “a single volunteer providing the real property” for the event. Since the exception is capped at \$250, this allows an adequate fund for the cost of invitations. Since the exception is limited to the volunteer who provides the property, it does not open the door to bulk mailings that have the effect of simply promoting the candidate.

This is a proper use of the Commission’s rulemaking authority. The underlying statutory provision refers to the use of “real . . . property,” but leaves some uncertainty about whether others who are not providing the “real . . . property” could claim the exemption. The proposed rule ties the house party exception more tightly to the real property upon which an event occurs, which is exactly what the law intended. The proper role of agency rulemaking is to clarify such ambiguities, and we find that the Commission’s proposal here is exactly the right way to fulfill that function. In short, the new rule is well-grounded in the statute, the historical experience of Maine campaigns, and common sense.

Maine Citizens for Clean Elections • PO Box 18187, Portland, ME 04112 • info@mainecleanelections.org

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The proposed rule shows that it is possible to promote and support vital grassroots activities without allowing house parties to become "shadow PACs" that lack transparency and accountability under ordinary campaign finance laws. We strongly support it and expect that candidates across Maine will welcome the clarification.

Attached please find letters to the Commission dated May 24, 2016 and June 28, 2016 in which MCCE discussed the treatment of house parties.

Thank you for this opportunity to comment.

Sincerely,



Robert S. Howe



May 24, 2016

Jonathan Wayne
Executive Director
Commission on Governmental Ethics and Election Practices
135 State House Station
Augusta, ME 04333-0135

Re: Invitations, Food and Beverages Exemptions in 21-A M.R.S.A. §1012(2)

Dear Director Wayne:

Please accept these comments regarding provisions in §1012(2) relating to payments for invitations, food and beverages. The exemption in §1012(2) is at the center of item #3 on the Commission's agenda for the meeting of May 25, 2016 ("Request to Investigate Invitations Mailed in Support of Hon. Benjamin Chipman.")

I submit these comments on behalf of Maine Citizens for Clean Elections ("MCCE"). MCCE is a nonprofit organization dedicated to educating and engaging the public on matters of money in politics and campaign finance law, and to encouraging citizens to participate in our electoral system and in government to make ours a more politically responsive democracy. MCCE has been at the forefront of Maine campaign finance reform issues for over two decades, and we have frequently appeared before the Commission and the legislature to provide our public-interest perspective on important issues relating to the Maine Clean Election Act, disclosure laws, and private campaign financing. MCCE was the architect of the supplemental funding system and transparency reforms included in the successful 2015 citizen initiative campaign.

MCCE is strictly non-partisan and does not take sides in political campaigns. We do not take a position on the dispute in agenda item #3. We only hope to offer our public-interest perspective based on years of experience in this arena and a suggestion for moving forward.

Under Maine law, certain campaign-related costs are exempted from the definition of "contribution," which means that ordinary limitations and reporting requirements do not apply. The principle behind this exemption is sound: grassroots events and related activities voluntarily conducted by active supporters of a candidate are among the most beneficial types of campaign activities. Accordingly, they should not be burdened by concerns about paperwork or by the need to research legal technicalities beyond the knowledge of typical citizens.

Specifically, under §1012(2) volunteers may pay a limited amount – \$250 per election¹ – for "invitations, food and beverages" purchased in connection with "voluntary personal services" of that volunteer for use at "candidate-related activities." This is often referred to as "the house party exception" because the

¹ The original house party limit of \$50 per person was increased by the legislature to \$100 many years ago, and then increased again to \$250 in 2013.

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volunteer's use of his or her home and furnishings (i.e. "real or personal property") is specifically exempted from the definition of "contribution." This exemption is available to volunteers of all candidates, whether privately funded or using Clean Election funds.

Over time, use of this exemption has gradually increased and expanded in ways that raise concerns. We do not believe the legislature, through its amendment of the statute, or the Commission, through its interpretation of it, meant to open up a major loophole, but precedents were set in small matters that have become more consequential over time. Regardless of what the Commission decides on this agenda item, we are now concerned that the house party exemption has expanded beyond its original intent – which we heartily endorse -- to the point that campaigns can use it to legally evade other limitations in campaign finance law. We don't have a firm proposal at this writing about how to put this genie back in the bottle for the remainder of the 2016 cycle, but we are interested in exploring some options.

We respectfully suggest that you convene a small working group of stakeholders and others knowledgeable about Maine campaign law to discuss this issue. That group might recommend approaches for balancing the unquestioned value of volunteer-provided campaign events with the need to ensure the effectiveness of the existing regulatory system, including its contribution limits, disclosure, and spending restrictions.

We would be more than happy to participate in such a group and help Commission staff identify others who may have valuable perspectives on this question.

Thank you for the opportunity to comment on this item. A representative of MCCE will be present for the Commission's meeting.

Sincerely,



Andrew Bossie

Executive Director

cc: Hon. Benjamin Chipman
Steven J. Biel



June 28, 2016

Jonathan Wayne
Executive Director
Commission on Governmental Ethics and Election Practices
135 State House Station
Augusta, ME 04333-0135

Re: Invitations, Food and Beverages Exemptions in 21-A M.R.S.A. §1012(2)

Dear Director Wayne:

Thank you for the opportunity to offer additional comments regarding the “house party” exemption.¹

House parties and similar events facilitate direct contact between voters and candidates, encouraging grass roots engagement in the political process. However, candidates in the midst of a competitive campaign may stretch the exemption to the far extremes of its intended purpose, opening the door to extra-legal, undisclosed, PAC-like activity. Candidates and others would benefit from the Commission clarifying the exemption as soon as possible. Doing so would serve the public interest, as well.

We appreciate that the Commission is continuing to work on this issue, and we endorse the clarifying language included with the agenda for this week’s meeting with two slight modifications, offered below. First, we suggest a rephrasing of the second-from-last sentence in order to avoid possible confusion about what it means to be a “host” in this context. Second, we suggest an edit to the final sentence to prevent any confusion about the concept of “coordination” and to reinforce that the costs of invitations may only be borne by the person(s) providing the physical premises for the activity:

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

¹ 21-A M.R.S.A. §1012(2) provides: “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” Similar wording appears in other parts of Title 21-A.

MCCE Action is a 501(c)4 nonpartisan organization that works in the public interest to advocate for, increase public support for, defend and improve the Maine Clean Election Act and related campaign finance law.

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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 providing the real property for the event. ~~The exception does not apply if the candidate coordinates m~~Multiple volunteers may not to share the costs of an invitation except when more than one person (e.g. spouses) provides the real property at which the event is held.

This approach provides a reasonable limitation to the house party exemption consistent with the purposes of the underlying statute and its legislative history. It allows the exemption to be claimed by volunteers who are bringing food or beverages to an activity, but it restricts the exemption for the cost of invitations to the person (or persons) who provides the venue for the event.

We are confident that new language clarifying how the house party exemption will be applied would go a long way toward eliminating uncertainty and minimizing the likelihood that additional proceedings relating to house parties will be required during this cycle. We support including this language in the Commission's rules as soon as possible, and we will encourage candidates to abide by this interpretation during the period in which the rules are pending.

MCCE has no position on any matter relating to house parties that has previously come before the Commission. We acknowledge the uncertainty that has pervaded this issue, and our support for the solution outlined above should not be construed as criticism of any campaign that followed a more lenient interpretation in the past.

Over the next several months MCCE will review whether to suggest or support additional measures to the Commission and/or the 128th Legislature. We look forward to working with the Commission and staff in that undertaking.

Thank you for the opportunity to comment on this item. Representatives of MCCE are available to further discuss the house party exemption if that would be helpful.

Sincerely,



Robert S. Howe