Agenda Item #1

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

MEMORANDUM

To: Interested Parties

From: Jonathan Wayne, Executive Director

Date: January 29, 2007

Subject: Opportunity to Comment on Proposed Rule Amendments

Attachment: Maine APA Notice of Rule-making

The Ethics Commission is soliciting comments on proposed changes to the Commission's Rules. You may view the proposed changes on the Commission's website, www.maine.gov/ethics, or you may call us to obtain a printed copy by mail.

The Commission will hold a public hearing on Wednesday, February 14, at 9:00 a.m. at which you are invited to comment on the changes to the forms or the rules. Written and e-mailed comments are also welcome. The deadline for written and e-mailed comments is 5:00 p.m. on February 28. The Commission will make any changes at its March meeting (date to be determined).

The changes relating to the Maine Clean Election Act would be considered major substantive, and the Commission will submit any major substantive amendments to the Legislature for its consideration following the Commission's March meeting.

If you have any questions, please telephone me or Paul Lavin, Assistant Director, at 287-4179. Please send e-mail comments to Paul.Lavin@Maine.gov. Thank you for your consideration of the proposed amendments.

OFFICE LOCATED AT: 242 STATE STREET, AUGUSTA, MAINE
WEBSITE: WWW.MAINE.GOV/ETHICS

PHONE: (207) 287-4179 FAX: (207) 287-6775

NOTICE OF RULE-MAKING

94-270 - Commission on Governmental Ethics and Election Practices RULE TITLE OR SUBJECT: Ch. 1, Procedures Ch. 3, Maine Clean Election Act and Related Provisions PROPOSED RULE NUMBER: 2007-P22, P23 CONCISE SUMMARY: The proposed rule amendments would: remove specific inconsistencies between the statutes and rules; remove the requirement that oral or insufficient written reports of violations be placed on the Commission's agenda; allow the staff to take testimony under oath pursuant to a subpoena issued by the Commission; clarify when a contribution is deemed to be received; specify a candidate's reporting requirements for expenditures made by consultants and for reimbursements for expenditures made with a credit card or personal funds; clarify the period of time during which the Commission is prohibited from discussing matters before it; confirm that qualifying contributions received more than five days prior to the filing of a Declaration of Intent are not valid; change the content of the receipt and acknowledgement form; clarify when proof of voter registration verification must be received by the Commission; establish the procedure by which a candidate would request certification; clarify the procedure for calculating matching funds; allow the Commission to require the return of Maine Clean Election Act funds for unsupported expenditures; establish a new procedure for vehicle travel reimbursement, including maintaining a travel log; and allow gubernatorial candidates to reserve certain amounts of Maine Clean Election Act funds to defray expenses associated with an audit by the Commission. A copy of the proposed rule amendments is available on the Ethics Commission's website - www.maine.gov/ethics or by calling (207) 287-4179. THIS RULE WILL NOT HAVE A FISCAL IMPACT ON MUNICIPALITIES STATUTORY AUTHORITY: 1 MRSA §1003; 21-A MRSA §1126 PUBLIC HEARING: Wednesday, February 14, 2007, 9:00 a.m., Ethics Commission Office, 242 State Street, Augusta, Maine 04333. DEADLINE FOR COMMENTS: 5:00 p.m. on Wednesday, February 28, 2007 AGENCY CONTACT PERSON: Jonathan Wayne, Executive Director, Commission on Governmental Ethics and Election Practices, 135 State House Station, Augusta, Maine TELEPHONE: (207) 287-4179

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

MEMORANDUM

To: Interested Persons

From: Paul Lavin, Assistant Director

Date: January 30, 2007

Re: Summary of Proposed Amendments to Ethics Commission Rules

The Commission is proposing changes to Chapters 1 (Procedures) and Chapter 3 (Maine Clean Election Act) of the Commission's Rules. The public hearing on the proposed rule changes will be held on Wednesday, February 14, 2007, at 9:00 a.m. at the Commission's office at 242 State Street, Augusta. Written and e-mailed comments are also welcome. The deadline for written and e-mailed comments is 5:00 p.m. on February 28, 2007.

This memo summarizes the proposed changes. Changes which are word and structure changes are listed at the end of each section of this memo.

I. CHANGES TO CHAPTER 1: PROCEDURES

All proposed changes to Chapter 1 are routine technical rules with the exception of a new provision (Section 7(7)) regarding voter guides and scorecards.

Section 3 – Meetings (page 4)

The proposed change in subsection 1 would require that the Commission meet once a month in any year in which primary and general elections are being held and eliminates the requirement that the Commission establish a meeting schedule at the beginning of the year.

Section 4 – Initiation of Proceedings (pages 7 – 10)

The changes to subsection 2(A) clarify that the Commission staff will review reports filed under chapter 13 and chapter 14 of Title 21-A. The proposed change eliminates the 15 day time period for remedying errors and omissions on campaign finance reports and gives the staff and the filer the flexibility to work out a reasonable time period, which may be longer or shorter than 15 days. The proposed change would also allow the staff to extend the time period. The list of examples of nonconformance with reporting requirements is eliminated. Paragraph 5 which is a detailed description of contributions is moved to Section 6 – Contributions and Other Receipts without change.

The provision that requires the Executive Director to submit a list of matters resolved administratively to the Commission at each meeting is eliminated. Added to the list of factors that the Director considers in recommending an action or a penalty to the Commission is whether a late filed report impacts an opposing candidate's eligibility for matching funds. The proposed change also eliminates the requirement that a copy of written requests for investigation be promptly sent to the Commission Chair. These requests as well as all related responses and materials are submitted to the full Commission in advance of every meeting. The requirement that the Director list all oral or insufficient reports of violations on the agenda is eliminated.

Section 5 – Fact Finding and Investigations (page 12)
The proposed change would allow the Commission staff to take testimony pursuant to a subpoena issued by the Commission.

Section 6 – Contributions and Other Receipts (pages 12 – 14)
A new subsection 1 is added to clarify that the date of a contribution is the date it is received by the candidate, candidate's committee, party committee, political action committee, or their agents.

A new subsection 7 is added to include the provisions moved from Section 4(2). There were no other changes to this subsection.

Section 7 – Expenditures (pages 14 – 16)
Subsection 1 is amended to clarify that when a consultant or other employee or agent of a candidate, candidate's committee or political action committee makes a payment for goods or services out of a retainer or fee, that payment must be reported by the candidate or committee as a separate expenditure on the candidate's or the political action committee's report. The proposed change clarifies that merely reporting the retainer or fee paid to the consultant is not sufficient.

Similarly, subsection 5 clarifies that when a candidate or agent pays for campaign-related goods or services with personal funds or a credit card, the payment to the vendor or payee must be reported, not just the reimbursement to the candidate or agent.

Subsection 7 is a new provision that creates a rebuttable presumption that an organization's voter guide or legislative scorecard is made to influence an election if more than 500 copies are sent within 60 days of a general election to individuals who are not members of the organization. Factors that will be considered in rebutting the presumption would be the content of the publication, its timing, and other purposes it serves. This is a major substantive rule.

Section 8 – Prohibited Communications (page 16)
This proposed change clarifies that Commission members may talk with the press or interested persons after it has made its final determination after the appeal period has expired or all administrative and judicial remedies have been exhausted.

Minor changes
Section 5 (page 12): "Likely to be of critical importance" is changed to "necessary."

Section 6(3) (formerly subsection 2) (page 13): Name and address are included in the items to be reported. "Traditionally" is replaced with "privately." In subsection 6 (formerly subsection 5), "debtor" is replaced with "customer."

Section 9(3), "privately" replaces "traditionally."

II. CHANGES TO CHAPTER 3 – MAINE CLEAN ELECTION ACT AND RELATED PROVISIONS

Section 2 – Procedures for Participation (pages 1 – 6)
The proposed changes to subsection 1 clarify that any qualifying contributions received more than 5 days before a candidate files a Declaration of Intent with the Commission will not count towards the required minimum. Under the proposed changes in subsection 2(G), the Declaration of Intent will also include an affirmation that the candidate has read and will comply with the guidelines on using public funds.

In subsection 4 (page 4), the Commission proposes changes to the content of the receipt and acknowledgement form that candidates use in collecting qualifying contributions and signatures. The contributor's phone number will be required. The form will contain a clear and conspicuous statement that the candidate is seeking public funding for his or her campaign. If anyone other than the candidate collects the contributions and signatures, that person's name, address, and telephone number will have to be on the form as well as signed affirmation that the contributions were collected by valid means. Candidates will no longer be required to sign each form, but will affirm that he or she complied with all qualifying contribution requirements on the new certification request form (see below).

The change in paragraph G (page 6) clearly states that proof of voter verification submitted after the end of a qualifying period will not be accepted by the Commission.

Paragraph H is eliminated (page 6). This provision allowed candidates to submit photocopies of receipt and acknowledgement forms to the Commission as long as the verified originals are submitted to the Commission within 10 days.

Section 3 (pages 7 – 8)
The changes to this section clarify, but do not alter the procedure to request certification with the exception of creating a form for the candidate to complete requesting certification.

Section 5 – Distribution of Funds to Certified Candidates (pages 9 – 15)
With one exception, the changes to subsection 3 (page 10) do not alter how matching funds are calculated. The changes specify the steps in the calculations under three scenarios:

- When all candidates in the race are certified candidates;
- When the matching fund calculation is the result of the nonparticipating candidate's financial activity, and
- When a race has certified and nonparticipating candidates but the latter's campaign totals are less than those of the certified candidate(s).

The proposed change to the matching fund calculation is that seed money and an unspent primary campaign balance will not count in calculating matching funds if only certified candidates are involved.

Subsections E through J have not been changed other than being placed after new subsection D.

Section 7 – Record Keeping and Reporting (pages 16 – 18)
The changes to subsection 1 would make it consistent with 2005 statutory changes which require a campaign treasurer to keep bank account records and vendor invoices. The Commission would have the ability to require the return of funds if a candidate or treasurer cannot produce supporting documentation for an expenditure or for the failure to keep records. The candidate would have an opportunity for a hearing prior to any determination requiring the return of funds.

The change to subsection 1(A) clarifies that MCEA funds can be commingled with unspent seed money and that matching funds can only be spent after the candidate receives authorization.

The Commission proposes eliminating the pro rata reimbursement for vehicle travel expenses based on actual expenses. The change would simplify travel reimbursement by requiring that all reimbursements use the standard mileage rate prescribed for employees of the State of Maine. The change also allows the Commission to disallow travel reimbursements that lack supporting documentation. Under the proposed change, candidates can choose to reimburse themselves and volunteers at a rate lower than the standard.

The Commission conducts audits of all MCEA gubernatorial candidates. The proposed change would allow primary and general election candidates to reserve $1000 and $2500, respectively, to defray the costs associated with an audit.

Minor changes
Sections 1 and 5(3)(J) (pages 1 and 14): "Traditionally" is replaced with "privately."

Section 2(3)(F) (page 3): This change is only a rewording of the paragraph.

Sections 4(1), 5(1)(A), and 5(3)(I)(pages 8, 9, and 14): "Bureau of Accounts and Control" is changed to "Office of the Controller."

The informational note on page 9 is deleted.

Section 5(4) (page 14): This change is only a rewording of the subsection.

94-270 COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES

Chapter 1: PROCEDURES

SUMMARY: This Chapter describes the nature and operation of the Commission, and establishes procedures by which the Commission's actions will be governed.

SECTION 1. DEFINITIONS

In addition to the definitions provided in Title 21-A, chapters 1, 13, and 14, the following definitions shall apply to the rules of the Commission, unless the context otherwise requires:

1. Act. "Act" means the Maine Clean Election Act, Title 21-A, chapter 14.

2. Association. "Association" means a group of two or more persons, who are not all members of the same immediate family, acting in concert.

3. Campaign Deficit. "Campaign deficit" means debts, liabilities, and unmet financial obligations from all previous campaigns as reported to the Commission on campaign termination report forms required by Title 21-A, chapter 13, subchapter II [§ 1017(9)].

4. Campaign Surplus. "Campaign surplus" means money, equipment, property and other items of value remaining after retiring previous campaign deficit as reported to the Commission on campaign termination report forms required by Title 21-A, chapter 13, subchapter II [§ 1017(9)].

5. Candidate. "Candidate" has the same meaning as in Title 21-A, chapter 1, subchapter I [§ 1(5)], and includes individuals running for office as a write-in candidate.

   INFORMATIONAL NOTE: All contributions made after the day of the general election to a candidate who has liquidated all debts and liabilities associated with that election are deemed to be made in support of the candidate's candidacy for a subsequent election, pursuant to section. 4.2.A(5)(e) of this rule. A candidate who collects funds subsequent to an election for purposes other than retiring campaign debt is required to register with the Commission. Title 21- A, chapter 13, subchapter II [§ 1013-A].

6. Certified Candidate. "Certified candidate" has the same meaning as in the Act [§ 1122(1)].

7. Commission. "Commission" means the Commission on Governmental Ethics and Election Practices established by Title 5, section 12004-G, subsection 33, and 1 M.R.S.A. section 1001 et seq.

8. Contribution. "Contribution" has the same meaning as in Title 21-A, chapter 13, subchapter II [§ 1012(2)].

9. Election. "Election" means any primary, general or special election for Governor, State Senator or State Representative. The period of a primary election begins on the day a person becomes a candidate as defined in 21-A M.R.S.A. §1(5) and ends on the date of the primary election. The period of a general election begins on the day following the previous primary election and ends on the date of the general election. The period of a special election begins on the date of proclamation of the special election and ends on the date of the special election.

10. Expenditure. "Expenditure" has the same meaning as in Title 21-A, chapter 13, subchapter II [§ 1012(3)].

11. Fund. "Fund" means the Maine Clean Election Fund established by the Act [§ 1124].

12. In-Kind Contribution. "In-kind contribution" means any gift, subscription, loan, advance or deposit of anything of value other than money made for the purpose of influencing the nomination or election of any person to political office or for the initiation, support or defeat of a ballot question.

13. Member. A "member" of a membership organization includes all persons who currently satisfy the requirements for membership in the membership organization, have affirmatively accepted the membership organization's invitation to become a member, and either:

    A. pay membership dues at least annually, of a specific amount predetermined by the membership organization; or

    B. have some other significant financial attachment to the membership organization, such as significant investment or ownership stake in the organization; or

    C. have a significant organizational attachment to the membership organization that includes direct participatory rights in the governance of the organization, such as the right to vote on the organization's board, budget, or policies.

    Members of a local union are considered to be members of any national or international union of which the local union is a part, of any federation with

which the local, national, or international union is affiliated, and of any other unions which are members or affiliates of the federation. Other persons who have an enduring financial or organizational attachment to the membership organization are also members, including retired members or persons who pay reduced dues or other fees regularly to the membership organization.

14. Nonparticipating Candidate. "Nonparticipating candidate" has the same meaning as in the Act [§ 1122(5)].

15. Participating Candidate. "Participating candidate" has the same meaning as in the Act [§ 1122(6)].

16. Qualifying Contribution. "Qualifying Contribution" has the same meaning as in the Act [§ 1122(7)].

17. Qualifying Period. "Qualifying period" has the same meaning as in the Act, except that for special elections, vacancies, withdrawals, deaths, disqualifications or replacements of candidates, the qualifying period shall be the period designated in section 8 of this chapter [§ 1122(8)].

18. Seed Money Contribution. "Seed money contribution" has the same meaning as in the Act [§ 1122(9)].

19. Write-In Candidate. "Write-in candidate" means a person whose name does not appear on the ballot under the office designation to which a voter may wish to elect the candidate.

SECTION 2.ORGANIZATION

1. Commission. The Commission on Governmental Ethics and Election Practices is an independent agency of the State, consisting of five (5) members appointed by the Governor, subject to review by the joint standing committee of the Legislature having jurisdiction over legal affairs and confirmation by the Legislature in accordance with Title 1, section 1002, subsection 1. The Commission members will elect one member to serve as Chair. Except for the Chair, the members of the Commission have no individual authority.

2. Office.

   A. The Commission employs such staff as may be authorized by the Legislature. A Director supervises the staff and is responsible for all day-to-day operations. In the interim between Commission meetings, the Director reports to the Chair, who acts on behalf of the Commission on certain administrative matters. The Commission's offices are located in the Public Utilities Commission Building at 242 State Street in Augusta,

where any filing or written submission may be made between the hours of 8 a.m. and 5 p.m. on any day when state government offices are open, except that filings by facsimile or electronic means, where otherwise permitted by rule, may be transmitted at any time. The office has a mailing address of 135 State House Station, Augusta, Maine 04333.

B. All records of the Commission are maintained in these offices, where they are available for inspection or copying, except as particular records are made confidential by law. The cost of copying Commission documents is set by the Director of the Commission, subject to reasonable limitations and approval of the Commission.

C. During any period when the position of Director is vacant, the Chair of the Commission will appoint an acting Director.

SECTION 3. MEETINGS

1. Regular Meetings. The Commission ~~will~~shall meet at least once per month in any year in which primary and general elections are held~~four times during the course of any year in which a general election is held, and at least twice during every other year. A tentative schedule of meetings for each calendar year will be adopted at the first meeting in each year. A meeting will be held as early as possible after the appointment of (a) new commission member(s) in each even-numbered year to select a Chair~~.

2. Special Meetings. The Commission may meet at any time at the call of the Secretary of State, the President of the Senate, the Speaker of the House of Representatives, the Chairman of the Commission, or a majority of its members. Each member of the Commission must have at least 24 hours notice of the time, place and purpose of the meeting. If written notice is not feasible, telephone notice satisfies the foregoing requirement.

3. Agenda. The Director will prepare a written agenda for each meeting of the Commission. The agenda will contain items of business to be considered, staff findings and recommendations, and will include the date, time and location of the meeting. When possible, the agenda will be mailed to each Commission member at least 7 days before the meeting.

4. Notice. In addition to the public notice required by the public meetings law, 1 M.R.S.A. Section 406, notice of Commission meetings will be given to those directly involved or affected by matters pending before the Commission, as follows:

A. Legislative Ethics. When a properly filed request or referral is made for an advisory opinion on a question of legislative ethics, notice that the matter

has been placed on the agenda for a Commission meeting will be given by mail to the Legislator whose circumstances or conduct is at issue, or to the Presiding Officer of either House referring the inquiry. When a complaint alleging a violation of the laws on legislative ethics is filed, the Legislator will be informed promptly of the nature of the allegations and the existence of any investigation by the Commission. Notice that the matter has been placed on the agenda for a Commission hearing will be given by certified mail to both the Legislator and the complainant not less than 10 days before the date set for a hearing.

B. Campaign Reports and Finances Law; Lobbyist Disclosure Law. Notice of the Commission's consideration of any noncompliance with the requirements of the Campaign Reports and Finances Law or Lobbyist Disclosure Law will be provided to any person or organization alleged to have committed a violation and to any person who has officially requested a Commission investigation or determination.

C. Other Matters.

(1) With respect to any other matter presented to the Commission, notice will be given to the person or organization whose conduct is at issue, and to any complainant, except as provided in Section 3, subsection 1, paragraph B of these rules.

(2) The notice will include the date, time, and location of the Commission meeting. If mail notice of a meeting is not feasible, the staff will make best efforts to give oral notice to Commission members or to those entitled to notice under this provision.

5. Public Meetings. All meetings, hearings or sessions of the Commission will be open to the general public unless, by an affirmative vote of at least 3 members, the Commission requires the exclusion of the public, pursuant to 1 M.R.S.A. Section 1005 or 1 M.R.S.A. Section 1013(3).

6. Quorum. Every decision of the Commission must be made at a meeting at which at least 3 members of the Commission are present and voting. When it is impossible or impractical for a member of the Commission to travel to Augusta to attend a meeting in person, the member may participate in the meeting by telephone. That member will be considered present at the meeting and part of the quorum.

At least 2 members must be present in person for the conduct of a meeting or public hearing before the Commission. If fewer than 3 members are present in person for a hearing, however, objections to rulings of the presiding officer concerning the conduct of the hearing must be preserved until a meeting of the

Commission at which a quorum is present in person. The presiding officer at a meeting or public hearing must be present in person.

7. Minutes.

A. The Director will prepare minutes of each business meeting of the Commission. These minutes will be the official record of Commission meetings, and will accurately record all matters considered.

B. The minutes will record any executive session of the Commission and its subject matter, but will not report the proceedings of the executive session. Likewise, minutes will not be taken of any public hearing held by the Commission, since hearings are separately recorded.

SECTION 4. INITIATION OF PROCEEDINGS

1. Legislative Ethics. The Commission is authorized to investigate and make advisory recommendations to either House of the Maine Legislature concerning legislative conflicts of interest or any breach of the legislative ethics set forth in 1 M.R.S.A. Sections 1001 - 1023. The Commission's opinion may be sought by three methods, or the Commission may act on its own motion.

A. Legislator's Own Conduct.

(1) A Legislator seeking an advisory opinion with respect to his or her own circumstances or conduct should make a written request for an opinion, setting forth the pertinent facts with respect to the legislative matter at issue and the circumstances of the Legislator giving rise to the inquiry.

(2) The request will be officially filed only when received at the offices of the Commission. The Director will promptly send a copy of the request to the Chair, and the matter will be placed on the agenda for the next Commission meeting, or if necessary, at a special meeting.

(3) An oral request by a Legislator for an opinion with respect to his or her own circumstances will not be considered an official request for an advisory opinion, and a Legislator making such a request will be so notified, by letter, and encouraged to file a written request.

B. Complaints. Any written complaint will be included in the agenda of the next Commission meeting.

(1) Complaint by a Legislator. Copies of any sworn complaint filed by a Legislator will promptly be sent to the Legislator against whom the complaint has been lodged and to the Commission Chair, in each case identifying the Legislator making the complaint. A complaint invokes the Commission's authority only if made under oath and only if it addresses an alleged conflict of interest relating to circumstances arising during the term of the legislature then in office.

(2) Other Complaints.

(a) The Director will review each complaint to determine whether the matter relates to the Commission's statutory mandate. When a complaint is filed, the Director, in consultation with Commission Counsel, will review the matter to determine whether the complaint has sufficient merit to warrant recommending the calling of a meeting. When a meeting is called, the Commission will determine in executive session whether to hear the complaint. If the nature of the complaint clearly does not fall within the scope of the Commission's jurisdiction, the Director will so notify the complainant by letter within 14 days of receiving the complaint. In such cases, the respondent need not be notified. The Commission may reverse any administrative decision.

(b) An oral complaint by any person alleging a conflict of interest concerning any legislator does not constitute a complaint under 1 M.R.S.A. Section 1013(2)(B), and a person registering such a complaint will be so notified, by letter.

C. Referral by Presiding Officer. When a Legislator has requested an advisory opinion from the Presiding Officer of the House of which he/she is a member, and the Presiding Officer has referred the inquiry directly to the Commission, the Director will arrange a meeting of the Commission as soon as possible to consider the question.

2. Election Campaign Reporting.

A. Report Review. The Commission staff will review all ~~filings made~~ reports filed pursuant to 21-A M.R.S.A., ~~Sections 1001 – 1062~~chapters 13 and 14 to ~~ascertain any apparent violations of~~verify compliance with the ~~filing~~ reporting requirements set by statute or rule. ~~Reports and registrations will be checked for violations against a standardized checklist.~~ Notice of any

omission, error, or violation will be given by mail to the filer and a copy of the notice and any other communication made to or from the filer relating to the problem(s) will be placed in the filer's record. The Commission will establish a reasonable time period for the filer to~~The notice will include a request that the filer~~ remedy any omission or error ~~within 15 days of the date of the notice~~. If the filer fails to respond within that time frame, the Commission staff may extend the time ~~contact the filer to establish a reasonable grace~~ period within which the filer must comply or place ~~. If the filer does not rectify the problem,~~ the matter ~~will be placed~~ on the agenda of the next Commission meeting, along with all documents relating to the case. Additionally, any apparent violations or occurrences of substantial nonconformance with the requirements of the law will be placed on the agenda of the next meeting.~~, including, but not limited to, the following:~~

~~(1) Failure to properly sign a required report,~~

~~(2) Failure to file a required report or registration,~~

~~(3) Late filing of a required report or registration outside the grace period,~~

~~(4) Failure to disclose contributions received or expenditures made of more than $500 in the aggregate on reports due after the 12th day before an election, or~~

~~(5) Exceeding contribution limitations. For the purposes of the limitations imposed by 21-A M.R.S.A. Section 1015(1), 21-A M.R.S.A. Section 1015(2), 21-A M.R.S.A. Section 1015(3), and 21-A M.R.S.A. Section 1056, the following guidelines shall apply:~~

~~(a) All contributions made to a candidate through the day of the primary election for which the candidate seeks office are deemed to be made in the primary election.~~

~~(b) Notwithstanding division (c) below, if a candidate loses in the primary, all contributions made to that candidate for the purpose of liquidating debts and liabilities associated with the candidate's candidacy are deemed to be made in the primary election.~~

~~(c) All contributions made to a candidate from the day after the primary election through the date of the general election for which the candidate seeks office are deemed to be made in the general election.~~

~~(d) Notwithstanding division (c) below, all contributions made after the general election to a general election candidate for the purpose of reducing debts and liabilities associated with the candidate's candidacy are deemed to be made in the general election.~~

~~(e) All contributions made after the day of the general election to a candidate who has liquidated all debts and liabilities associated with that election are deemed to be made in support of the candidate's candidacy for a subsequent election.~~

~~(6) Divisions (a) through (e) above shall apply to any write-in candidate who has qualified under 21-A M.R.S.A. Section 723, or who has received contributions or made expenditures with the intent of qualifying as a candidate.~~

~~B. The Commission will determine whether a report substantially conforms to the requirements of the law. At each meeting, the Director will submit a summary of all cases resolved administratively. The Commission may reverse any administrative decision.~~

~~C~~B. Late Reports and Registrations. Where required by statute, notice of failure to file a required report will be timely sent by Commission staff. When a report or registration is filed late, the Director's recommendations will be based on the following considerations:

(1) Lateness of report or registration,

(2) Reason for lateness,

(3) Kind of report (more stringent application for pre-election reports),

(4) Amount of campaign funds not properly reported,

(5) Previous record of the filer, ~~and~~

(6) Good faith effort of the filer to remedy the matter~~.~~; and

(7) Whether the late filing had an effect on a certified candidate's eligibility for matching funds.

~~D~~C. Reports of noncompliance with the provisions of the campaign registration and reporting laws that may come to the attention of the Commission staff from any source other than review of the reports filed will be reported to the Commission Chair. Any person (as defined in 21-A M.R.S.A. Section 1001) may make an official request for a Commission investigation or determination by filing a written request at the Commission's office, setting forth such facts with sufficient details as are necessary to specify the alleged violation. Statements should be made upon personal knowledge. Statements which are not based upon personal knowledge must identify the source of the information which is the basis for the request, so that respondents and Commission staff may adequately respond to the request. A copy of any such written request will be promptly mailed to ~~the Commission Chair as well as to~~ the candidate or organization alleged to have violated the statutory requirements. An official request will be placed on the agenda of the next Commission meeting.

~~E~~D. An oral report of a violation, or a written request containing insufficient detail to specify the violation charged, does not constitute an official request for a Commission determination, and a person registering such a complaint will be so notified. ~~The Director will list any oral report of a violation, or insufficient written report, on the agenda of the Commission's next meeting, but no action will be taken except upon the Commission's initiative. The person alleged to have committed a violation will be notified of the Commission meeting.~~

~~F~~E. If the Director and Counsel are in agreement that the subject matter of a request for an investigation is clearly outside the jurisdiction of the Commission, the staff may forward the request to the appropriate authority or return it to the person who made the request, provided that the staff notifies the Commission members of the action at the next Commission meeting.

~~G~~F. The signature of a person authorized to sign a report or form constitutes certification by that person of the completeness and accuracy of the information reported. The use of a password in filing an electronic report constitutes certification of the completeness and accuracy of the report.

3. Lobbyist Disclosure Procedures.

A. Report Review. The Commission staff will monitor all filings made pursuant to 3 M.R.S.A. Section 311 et seq. for timeliness, legibility, and completeness. The staff will send the lobbyist a notice of any apparent reporting deficiency, including failure to use prescribed forms. The notice will include a request that the deficiency be corrected within 15 business

days of the notice. If remedy is not made, it will be noted on the agenda of the next Commission meeting. The Commission may reject reports that are incomplete or illegible.

B. Late Registrations and Reports. Notice will be given by mail to any lobbyist whose registration, monthly disclosure report, or annual report is delinquent. In the case of a late monthly report, the notice must be mailed within 7 business days following the filing deadline for the report. In the case of late annual reports and registrations, the notice must be mailed within 15 business days following the filing deadline. The notice must include a statement specifying the amount assessed. A penalty of $100 will be assessed the lobbyist for every month that a monthly disclosure report is late and a penalty of $200 will be assessed the lobbyist and employer for every month a registration or annual report is filed late. For purposes of 3 M.R.S.A. Section 319(1), the month will end on the 15th day of the month following the month in which a report was due. Any failure to submit a required report, registration, or penalty fee will be noted on the Commission agenda.

C. Suspensions. The Commission may suspend any person from lobbying who fails to file a required report or pay an assessed fee. A notice of the suspension must be mailed to the lobbyist by U.S. Certified Mail within three days following the suspension. Reinstatement will occur on the date the required report or payment is received in the Commission office. A notice of the reinstatement must be mailed to the lobbyist by U.S. Certified Mail or given directly to the lobbyist within three days following receipt of the required report or payment.

D. Request for Penalty Waiver. A lobbyist may request a waiver of any late penalty the lobbyist incurs. The request must be made in writing to the Commission and must state the reason for the delinquency. Any such request must be noted on the agenda of the next Commission meeting. Only the Commission may grant penalty waivers.

E. Request for Waiver of Nonsession Reporting Requirement. A lobbyist may request a waiver of the monthly nonsession reporting requirement set forth in 3 M.R.S.A. Section 317(4) if the lobbyist does not expect to be engaged in lobbying when the Legislature is not in session. The Director is authorized to provisionally grant such waivers pending approval by the Commission. Provisional waivers may be granted only where a request is properly filed, the statement properly completed, and where there is no apparent reason to doubt the statement is true. During the period in which the waiver is effective, reports will not be required. If lobbying is resumed during the period for which the waiver was granted, the lobbyist must file

a monthly disclosure report for the month or months lobbying was conducted.

F. Faxing Duly Executed Lobbyist Registration, Reports. Any registration or report required by 3 M.R.S.A. ch. 15 may be provisionally filed by transmission of a facsimile copy of the duly executed report to the Commission, provided that the original of the same report is received by the Commission within 5 calendar days thereafter.

SECTION 5. FACT FINDING AND INVESTIGATIONS

1. Before Commission Meeting. With respect to any inquiry, report or request for Commission action properly filed in accordance with the preceding section, the Director may conduct such preliminary fact finding as is deemed prudent and desirable. When the Director and Counsel find a basis for a preliminary investigation, they will recommend such steps to the Chair as necessary. Pursuant to reviewing reports or finding of fact, the Director, in consultation with Counsel, will prepare a summary of findings and recommendations for inclusion on the agenda. The Chair is authorized to issue subpoenas in the name of the Commission to compel the attendance of witnesses or the production of records, documents or other evidence when the Chair and the Commission's Counsel are in agreement that the testimony or evidence sought by the subpoena is ~~likely to be of critical importance~~necessary to disposition of the matter; and to issue any subpoena in the name of the Commission on behalf of any person having a statutory right to an agency subpoena. Any oral testimony compelled by a subpoena issued by this provision will be presented ~~initially and exclusively~~ to the Commission or its staff.

2. By the Commission. Once any matter is reached on the agenda of a Commission meeting, the Commission will control any further investigation or proceedings. No hearings will be held except by direction of the Commission. On a case-by-case basis, the Commission may authorize its Chair, Director, or any ad hoc committee of its members, to conduct further investigative proceedings on behalf of the Commission between Commission meetings. Any authorization so conferred will be fully reflected in the minutes of the Commission meeting.

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.

~~1~~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.

~~2~~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 ~~traditionally~~privately financed candidates and for seed money contributions to candidates participating in the Maine Clean Election Act. Candidates and political action committees must make a reasonable effort to obtain the employment information of the contributor. If a candidate or political action 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.

~~3~~4. Unless specifically exempted under Title 21-A M.R.S.A. Sections 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.

~~4~~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.

~~5~~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 ~~debtors~~customers that are of similar risk and size of obligation.

7. For the purposes of the limitations imposed by 21-A M.R.S.A. Section 1015(1), 21-A M.R.S.A. Section 1015(2), 21-A M.R.S.A. Section 1015(3), and 21-A M.R.S.A. Section 1056, the following guidelines shall apply:

A. All contributions made to a candidate through the day of the primary election for which the candidate seeks office are deemed to be made in the primary election.

B. Notwithstanding division (c) below, if a candidate loses in the primary, all contributions made to that candidate for the purpose of liquidating debts and liabilities associated with the candidate's candidacy are deemed to be made in the primary election.

C. All contributions made to a candidate from the day after the primary election through the date of the general election for which the candidate seeks office are deemed to be made in the general election.

D. Notwithstanding division (e) below, all contributions made after the general election to a general election candidate for the purpose of reducing debts and liabilities associated with the candidate's candidacy are deemed to be made in the general election.

E. All contributions made after the day of the general election to a candidate who has liquidated all debts and liabilities associated with that election are deemed to be made in support of the candidate's candidacy for a subsequent election.

F. Subparagraphs A through E above shall apply to any write-in candidate who has qualified under 21-A M.R.S.A. Section 723, or who has received contributions or made expenditures with the intent of qualifying as a candidate.

SECTION 7. EXPENDITURES

1. Expenditures By Consultants, Employees, and Other Agents of a Political Campaign. Each ~~E~~expenditures of campaign funds made ~~on behalf of a candidate, political committee, or political action committee~~ by any person, agency, firm, organization, etc. employed or retained for the purpose of organizing, directing, managing or assisting the candidate, the candidate's committee, or the political action committee ~~shall be deemed expenditures by the candidate or committee. Such expenditures~~ must be reported separately by the candidate or committee as if made or incurred by the candidate or committee directly. The report must include the name of the third party vendor or payee to whom the payment was made, the date of the payment, and the purpose and amount of the expenditure. It is not sufficient to report only the total retainer or fee paid to the person, agency, firm, organization, etc., if that retainer or fee was used to pay third party vendors or payees for campaign-related goods and services.

2. Expenditures By Political Action Committees. In addition to the requirements set forth in 21-A M.R.S.A. Section 1060(4), the reports must contain the purpose of each expenditure and the name of each payee and creditor.

3. Timing of Reporting Expenditures.

A. Placing an order with a vendor for a good or service; signing a contract for a good or service; the delivery of a good or the performance of a service by a vendor; or a promise or an agreement (including an implied one) that a payment will be made constitutes an expenditure, regardless whether any payment has been made for the good or service.

B. Expenditures must be reported at the earliest of the following events:

(1) The placement of an order for a good or service;
(2) The signing of a contract for a good or service;
(3) The delivery of a good or the performance of a service by a vendor;
(4) A promise or an agreement (including an implied one) that a payment will be made; or
(5) The making of a payment for a good or service.

C. At the time the duty to report an expenditure arises, the person submitting the report is required to determine the value of goods and services to be rendered (preferably through a written statement from the vendor) and to report that value as the amount of the expenditure. If the expenditure involves more than one candidate election, the report must include an allocation of the value to each of those candidate elections.

4. Advance Purchases of Goods and Services for the General Election.

A. Consulting services, or the design, printing or distribution of campaign literature or advertising, including the creation and broadcast of radio and television advertising, contracted or paid for prior to the primary election must be received prior to the primary election in order to be considered primary election expenditures.

B. If the Commission receives a complaint stating that a candidate or a committee purchased goods or services before a primary election for use in the general election, the Commission may request that the candidate or committee distinguish which of the goods and services were used in the primary election and which were used in the general election.

5. All campaign-related payments made with the personal funds or credit card of the ~~a~~ candidate or ~~by~~ an individuals authorized by the candidate ~~for the purpose of influencing the candidate's nomination or election~~ must be reported as expenditures in the reporting period during which the payment to the vendor or payee is made~~, including payments made with the personal funds or credit card of the candidate or authorized individual~~. The candidate must report the name of the vendor or payee to whom the payment was made, the date of the payment, and the

purpose and amount of the expenditure. When the expenditure is reported, the candidate should indicate the person ~~making~~who made the payment by entering "Paid by [name of candidate or supporter]" in the remarks section of the expenditure schedule. It is not sufficient to report only the name of the candidate or authorized individual to whom reimbursement was made and the total amount of the reimbursement.

6. Multiple expenditures for bank fees and for vehicle travel may be reported in an aggregate amount, provided that the candidate or committee identifies the time period of the expenditures in the remarks section of the report.

7. Printed voter guides and legislative scorecards

A. An organization's expenditures on printed voter guides, legislative scorecards, or similar publications will be presumed to be made to influence an election if more than 500 copies of the publication are distributed within 60 days of a general election to individuals who are not members of the organization.

B. If any matter is pending before the Commission regarding an organization that has incurred expenditures covered by paragraph 7(A), the organization may attempt to rebut the presumption with whatever evidence it believes is relevant, including:

1. the content of the publication;

2. the timing and mode of distribution; and

3. other purposes served by the publication, such as education or recruitment of new members.

References to the election, voting in the election, or to individuals as "candidates," will be considered as factors in favor of the presumption.

SECTION 8. PROHIBITED COMMUNICATIONS

Commission members shall not discuss any specific case under investigation, or any case which may reasonably be expected to be the subject of investigation, as long as the matter is pending before the Commission~~and, where applicable, until anybody to whom the Commission renders an advisory opinion has concluded its action and any appeals therefrom have been exhausted~~. Members of the Commission may discuss its final determination regarding the matter with members of the press or other interested persons only after the appeal period has expired if no appeal is filed, or if an appeal is filed, only after the appellant has exhausted all administrative or judicial remedies.

SECTION 9. ACCELERATED REPORTING SCHEDULE

1. General. In addition to other reports required by law, any candidate for Governor, State Senator or State Representative who is not certified as a Maine Clean Election Act candidate under Title 21-A, section 1121 et seq., and who has a certified candidate as an opponent in an election must comply with the following reporting requirements on forms prescribed, prepared, and provided by the Commission.

   INFORMATIONAL NOTE: Title 21-A, section 1017 prescribes reporting requirements for candidates.

2. 101% Report. Any candidate subject to this section, who receives, spends or obligates more than 1% in excess of the primary or general election distribution amounts for a Maine Clean Election Act candidate opponent in the same race, must file with the Commission, within 48 hours of such receipt, expenditure, or obligation, a report detailing the candidate's total campaign contributions, receipts, expenditures and obligations to date. The Commission will notify all candidates who have an opposing certified candidate of the applicable distribution amounts and of the 101% Report requirement.

3. Any ~~traditionally~~privately funded candidate with a Maine Clean Election Act opponent shall file the following three reports detailing the candidate's total campaign contributions, obligations and expenditures to date, except that a candidate who has not received, spent, or obligated the amount sufficient to require a report under subsection 2 may file an affidavit, by the date the report is due, attesting that the candidate has not received, spent or obligated that amount:

   A. a report filed not later than 5:00 p.m. on the 42nd day before the date on which an election is held that is complete as of the 44th day before the date of that election;

   B. a report filed not later than 5:00 p.m. on the 21st day before the date on which an election is held that is complete as of the 23rd day before the date of that election; and

   C. a report filed not later than 5:00 p.m. on the 12th day before the date on which an election is held that is complete as of the 14th20th day before the date of that election.

4. 24-Hour Report. Any candidate who is required to file a 101% report must file an updated report with the Commission reporting single expenditures of $1,000 or more by candidates for Governor, $750 by candidates for State Senator, and $500 by candidates for State Representative made after the 14th day before any election

and more than 24 hours before 5:00 p.m. on the date of that election. The report must be submitted to the Commission within 24 hours of those expenditures.

5. Filing by Facsimile or Electronic Means. For purposes of this section, reports may be filed by facsimile or by other electronic means acceptable to the Commission, and such reports will be deemed filed when received by the Commission provided that the original of the same report is received by the Commission within 5 calendar days thereafter.

SECTION 10. REPORTS OF INDEPENDENT EXPENDITURES

1. General. Any person, party committee, political committee or political action committee that makes an independent expenditure aggregating in excess of $100 per candidate in an election must file a report with the Commission according to this section.

2. Definitions. For purposes of this section, the following phrases are defined as follows:

   A. "Clearly identified," with respect to a candidate, has the same meaning as in Title 21-A, chapter 13, subchapter II.

   B. "Expressly advocate" means any communication that uses phrases such as "vote for the Governor," "reelect your Representative," "support the Democratic nominee," "cast your ballot for the Republican challenger for Senate District 1," "Jones for House of Representatives," "Jean Smith in 2002," "vote Pro-Life" or "vote Pro-Choice" accompanied by a listing of clearly identified candidates described as Pro-Life or Pro-Choice, "vote against Old Woody," "defeat" accompanied by a picture of one or more candidate(s), "reject the incumbent," or communications of campaign slogan(s) or individual word(s), which in context can have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidate(s), such as posters, bumper stickers, advertisements, etc. which say "Pick Berry," "Harris in 2000," "Murphy/Stevens" or "Canavan!".

   C. "Independent expenditure" has the same meaning as in Title 21-A, section 1019-B. Any expenditure made by any person in cooperation, consultation or concert with, or at the request or suggestion of, a candidate, a candidate's political committee or their agents is considered to be a contribution to that candidate and is not an independent expenditure.

3. Reporting Schedules. Independent expenditures must be reported to the Commission in accordance with the following provisions:

A. Independent expenditures aggregating in excess of $100 per candidate per election but not in excess of $250 made by any person, party committee, political committee or political action committee must be reported to the Commission in accordance with the following reporting schedule, except that expenditures made in the last 11 days before an election must be reported within 24 hours of the expenditure.

(1) Quarterly Reports.

(a) A report must be filed on January 15th and be complete as of January 5th;
(b) A report must be filed on April 10th and be complete as of March 31st;
(c) A report must be filed on July 15th and be complete as of July 5th; and
(d) A report must be filed on October 10th and be complete as of September 30th.

(2) Pre-Election Report. A report must be filed on the 12th day before the election is held and be complete as of that day.

If the total of independent expenditures made to support or oppose a candidate exceed $100, each subsequent amount spent to support or oppose the candidate must be reported as an independent expenditure. As long as the total amount spent with respect to the candidate does not exceed $250, all reports must be filed according to the deadlines in this paragraph. If the total amount spent per candidate exceeds $250, the reports must be filed in accordance with paragraph B.

[NOTE: FOR EXAMPLE, IF A COMMITTEE MAKES THREE $80 EXPENDITURES IN SUPPORT OF A CANDIDATE ON SEPTEMBER 20, THE 15TH DAY BEFORE THE ELECTION AND THE 8TH DAY BEFORE THE ELECTION, THOSE THREE EXPENDITURES MUST BE REPORTED ON OCTOBER 10th, AND THE 12TH AND 7TH DAYS BEFORE THE ELECTION, RESPECTIVELY.]

B. Independent expenditures aggregating in excess of $250 per candidate per election made by any person, party committee, political committee or political action committee must be reported to the Commission within 24 hours of those expenditures. If any additional expenditures, regardless of amount, increase the total spent per candidate above the threshold of $250, each additional expenditure must be reported within 24 hours.

[NOTE: FOR EXAMPLE, IF A COMMITTEE HAS REPORTED INDEPENDENT EXPENDITURES TOTALING $300 IN SUPPORT OF

A CANDIDATE, AND THE COMMITTEE MAKES AN ADDITIONAL $50 INDEPENDENT EXPENDITURE IN SUPPORT OF THE CANDIDATE, THE ADDITIONAL $50 EXPENDITURE MUST BE REPORTED WITHIN 24 HOURS.]

C. Reports must contain information as required by Title 21-A, chapter 13, subchapter II (§§ 1016-1017-A), and must clearly identify the candidate and indicate whether the expenditure was made in support of or in opposition to the candidate. Reports filed after the eighth day before an election must include 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; and

4. a statement why the expenditure could not be reported by the eighth day before the election.

D. A separate 24-Hour Report is not required for expenditures reported in an independent expenditure report.

4. Multi-Candidate Expenditures. When a person or organization is required to report an independent expenditure for a communication that supports multiple candidates, the cost should be allocated among the candidates in rough proportion to the benefit received by each candidate.

A. The allocation should be in rough proportion to the number of voters who will receive the communication and who are in electoral districts of candidates named or depicted in the communication. If the approximate number of voters in each district who will receive the communication cannot be determined, the cost may be divided evenly among the districts in which voters are likely to receive the communication.

[NOTE: FOR EXAMPLE, IF CAMPAIGN LITERATURE NAMING SENATE CANDIDATE X AND HOUSE CANDIDATES Y AND Z ARE MAILED TO 10,000 VOTERS IN X'S DISTRICT AND 4,000 OF THOSE VOTERS RESIDE IN Y'S DISTRICT AND 6,000 OF THOSE VOTERS LIVE IN Z'S DISTRICT, THE ALLOCATION OF THE EXPENDITURE SHOULD BE REPORTED AS: 50% FOR X, 20% FOR Y, and 30% FOR Z.]

B. If multiple county or legislative candidates are named or depicted in a communication, but voters in some of the candidates' electoral districts will not receive the communication, those candidates should not be included in the allocation.

[NOTE: FOR EXAMPLE, IF AN EXPENDITURE ON A LEGISLATIVE SCORECARD THAT NAMES 150 LEGISLATORS IS DISTRIBUTED TO VOTERS WITHIN A TOWN IN WHICH ONLY ONE LEGISLATOR IS SEEKING RE-ELECTION, 100% OF THE COST SHOULD BE ALLOCATED TO THAT LEGISLATOR'S RACE.]

C. If a candidate who has received matching funds because of a multi-candidate communication believes that he or she deserves additional matching funds because the communication disproportionately concerns his or her race, the Commission may grant additional matching funds in proportion to the relative treatment of the candidates in the communication.

5. Rebuttable Presumption. Under Title 21-A M.R.S.A. §1019-B(1)(B), an expenditure made to design, produce or disseminate a communication that names or depicts a clearly identified candidate in a race involving a Maine Clean Election Act candidate and that is disseminated during the 21 days before an election will be presumed to be an independent expenditure, unless the person making the expenditure submits a written statement to the Commission within 48 hours of the expenditure stating that the cost was not incurred with the intent to influence the nomination, election or defeat of a candidate.

A. The following types of communications may be covered by the presumption if the specific communication satisfies the requirements of Title 21-A M.R.S.A. §1019-B(1)(B):

(1) Printed advertisements in newspapers and other media;
(2) Television and radio advertisements;
(3) Printed literature;
(4) Recorded telephone messages;
(5) Scripted telephone messages by live callers; and
(6) Electronic communications.

This list is not exhaustive, and other types of communications may be covered by the presumption.

B. The following types of communications and activities are not covered by the presumption, and will not be presumed to be independent expenditures under Title 21-A M.R.S.A. Section 1019-B(1)(B):

(1) news stories and editorials, unless the facilities distributing the communication are owned or controlled by the candidate or a political committee;

(2) activity or communication designed to encourage individuals to register to vote or to vote if that activity or communication does not name or depict a clearly identified candidate;

(3) any communication from a membership organization to its members or from a corporation to its stockholders if the organization or corporation is not organized primarily for the purpose of influencing the nomination or election of any person for state or county office;

(4) the use of offices, telephones, computers, or similar equipment when that use does not result in additional cost to the provider; and

(5) other communications and activities that are excluded from the legal definition of "expenditure" in the Election Law.

C. If an expenditure is covered by the presumption and is greater, in the aggregate, than $100 per candidate per election, the person making the expenditure must file an independent expenditure report or a signed written statement that the expenditure was not made with the intent to influence the nomination, election or defeat of a candidate. The filing of independent expenditure reports should be made in accordance with the filing schedule in subsections 3(A) and 3(B) of this rule. Independent expenditures aggregating $100 or less per candidate per election do not require the filing of an independent expenditure report or a rebuttal statement.

D. If a committee or association distributes copies of printed literature to its affiliates or members, and the affiliates or members distribute the literature directly to voters, the 21-day period applies to the date on which the communication is disseminated directly to voters, rather than the date on which the committee or association distributes the literature to its affiliates or members.

E. For the purposes of determining whether a communication is covered by the presumption, the date of dissemination is the date of the postmark, hand-delivery, or broadcast of the communication.

F. An organization that has been supplied printed communications covered by the presumption and that distributes them to voters must report both its own distribution costs and the value of the materials it has distributed, unless the organization supplying the communications has already reported the costs of the materials to the Commission. If the actual costs of the communications cannot be determined, the organization distributing the communication to voters must report the estimated fair market value.

G. If a person wishes to distribute a specific communication that appears to be covered by the presumption and the person believes that the communication is not intended to influence the nomination, election or defeat of a candidate, the person may submit the rebuttal statement to the Commission in advance of disseminating the communication for an early determination. The request must include the complete communication and be specific as to when and to whom the communication will be disseminated.

SECTION 11. REPORTS OF BALLOT QUESTION CAMPAIGN ACTIVITY BY PERSONS AND ORGANIZATIONS OTHER THAN POLITICAL ACTION COMMITTEES

When a person or organization is required under 21-A M.R.S.A. Section 1056-B to file reports because of contributions or expenditures of more than $1,500 made in support of or in opposition to a ballot question, the reports must be filed according to the following schedule:

1. Quarterly Reports. Reports must be filed on the following deadlines until the date of the election on which the question is on the ballot:

   A. A report must be filed on January 15th and be complete as of January 5th;

   B. A report must be filed on April 10th and be complete as of March 31st;

   C. A report must be filed on July 15th and be complete as of July 5th; and

   D. A report must be filed on October 10th and be complete as of September 30th.

2. Pre- and Post-Election Reports. The person or organization must file the following reports:

   A. A report must be filed on the 6th day before the election is held and be complete as of the 12th day before the election.

   B. A report must be filed on the 42nd day after the election is held and be complete as of the 35th day after the election.

3. 24-Hour Reports. Any contribution or expenditure in excess of $500 made after the 12th day before the election and more than 24 hours before the election must be reported within 24 hours of that contribution or expenditure or by noon of the first business day after the contribution or expenditure, whichever is later.

SECTION 12. CAMPAIGN CONTRIBUTIONS DURING LEGISLATIVE SESSION

1. Seed Money Contributions. Legislators and other individuals covered by Title 1 M.R.S.A. Section 1015(3)(B) may not intentionally solicit or accept a seed money contribution from a lobbyist or lobbyist associate during any period of time in which the Legislature is convened until final adjournment.

2. Acceptance of Contributions Through Political Action Committees. During a legislative session, political action committees that are closely associated with a Legislator, such as committees organized to elect a candidate or Legislator to a leadership position or committees organized to elect the candidates of a legislative caucus, may not intentionally solicit or accept a contribution from a lobbyist, lobbyist associate, or employer. During the legislative session, these political action committees may accept contributions from individuals and organizations that are not lobbyists, lobbyist associates, and their employers. Lobbyists, lobbyist associates, and employers may not contribute to political action committees closely associated with a Legislator during a legislative session, unless their contributions are segregated in a fund that is not used to influence the election or defeat of any incumbent Legislators.

3. Making a Contribution Through a Political Action Committee. During a legislative session, an organization that employs a lobbyist may not make a contribution through a political action committee with which the organization is affiliated or direct that the affiliated political action committee make a contribution to a Legislator.

STATUTORY AUTHORITY:

1 M.R.S.A. § 1003(1); 21-A M.R.S.A. § 1126.

EFFECTIVE DATE: April 29, 1987

AMENDED: December 28, 1991
December 14, 1994

REPEALED AND REPLACED: November 1, 1998; also converted to MS Word 2.0 format.

AMENDED: January 14, 2004 (date of adoption of routine technical amendments)
April 8, 2005 (date of adoption of routine technical amendments)
April 8, 2005 (date of provisional adoption of major substantive amendments)
July 13, 2005 (date of final adoption of major substantive amendments)

94-270 COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES

Chapter 2: HEARING PROCEDURES

NO PROPOSED RULE CHANGES FOR CHAPTER 2.

94-270 COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES

Chapter 3: MAINE CLEAN ELECTION ACT AND RELATED PROVISIONS

SECTION 1. APPLICABILITY

This chapter applies to candidates running for Governor, State Senator and State Representative who choose the alternative campaign financing option established by the Maine Clean Election Act for elections to be held beginning in the year 2000. Candidates participating in the Maine Clean Election Act must comply with these rules and all other applicable election and campaign laws and regulations. Some sections in this chapter also apply to and impose obligations on ~~traditionally~~privately financed candidates and political committees that raise contributions and make expenditures in races involving Maine Clean Election Act candidates.

SECTION 2. PROCEDURES FOR PARTICIPATION

1. Declaration of Intent. A participating candidate must file a Declaration of Intent ~~before~~ within five days of collecting qualifying contributions. The Commission will provide a form for this purpose.

2. Content. The Declaration of Intent must include the following information:

   A. an affirmation that the candidate is seeking certification as a Maine Clean Election Act candidate;

   B. an affirmation that the candidate understands that ~~has not collected~~ any qualifying contributions collected more than five days before ~~signing~~ filing the Declaration of Intent will not be counted toward the eligibility requirement;

   C. an affirmation that the candidate has not accepted any contributions, except for seed money contributions, after becoming a candidate;

   D. an affirmation that the candidate has disposed of any campaign surplus before becoming a candidate for the new election, as required by paragraph 3.C [Campaign Surplus] of this section;

   E. an affirmation that if the candidate has any campaign deficit, that the candidate will not accept contributions to repay that deficit as a participating candidate or certified candidate, except that the candidate may forgive any campaign loans to himself or herself made during any previous campaigns;

F. an affirmation that the candidate will continue to comply with applicable seed money restrictions and other requirements of the Act including, but not limited to, procedures for collecting qualifying contributions;

G. ~~information identifying the candidate's treasurer, political committee, campaign finance account, social security number, and/or federal tax identification number;~~ an affirmation that the candidate has read and will comply with the Commission's guidelines on permissible expenditures; and

H. authorization by the candidate for the Commission, its agents or representatives to conduct financial audits of the candidate's campaign financial records and account(s).

3. Seed Money Restrictions.

A. General. After becoming a candidate and before certification, a participating candidate may collect and spend only seed money contributions. The restrictions on seed money contributions apply to both cash and in-kind contributions.

B. Total Amount.

(1) A participating candidate must limit the candidate's total seed money contributions to the following amounts:

(a) fifty thousand dollars for a gubernatorial candidate;

(b) one thousand five hundred dollars for a candidate for the State Senate; or

(c) five hundred dollars for a candidate for the State House of Representatives.

(2) Notwithstanding any other provision of this chapter, a candidate may carry forward to a new candidacy of that candidate campaign equipment or property, subject to the reporting requirements of Title 21-A, chapter 13 [Campaign Reports and Finances].

(3) The Commission periodically will review these limitations and, through rulemaking, revise these amounts to ensure effective implementation of the Act.

C. Campaign surplus. A candidate who has carried forward campaign surplus according to Title 21-A, chapter 13, subchapter II [§ 1017(8) and §1017(9)], and who intends to become a participating candidate, must

dispose of campaign surplus in accordance with the requirements of Title 21-A, chapter 13, subchapter II [§ 1017(8)]; provided, however, that a candidate may carry forward only those portions of campaign surplus that comply with the provisions of this Act regarding seed money contributions [§ 1122(9) and 1125(2)]. Any campaign surplus (excluding campaign equipment or property) carried forward under this provision will be counted toward that candidate's total seed money limit.

INFORMATIONAL NOTE: The Commission will provide educational materials to all former candidates who have a campaign surplus describing the requirement that individuals must dispose of campaign surplus to remain eligible for participation as a Maine Clean Election Act candidate.

D. Return of Contributions Not in Compliance with Seed Money Restrictions. A participating candidate who receives a contribution exceeding the seed money per donor restriction or the total amount restriction must immediately return the contribution and may not cash, deposit, or otherwise use the contribution.

E. Case-by-Case Exception. A participating candidate who has accepted contributions or made expenditures that do not comply with seed money restrictions may petition the Commission to remain eligible for certification as a Maine Clean Election Act candidate. The Commission may approve the petition and restore a candidate's eligibility for certification if the candidate successfully establishes all of the following criteria:

(1) the failure to comply was the result of an unintentional error;

(2) the candidate immediately returned all contributions that did not comply with seed money restrictions or paid for goods or services contributed that did not comply with seed money restrictions;

(3) the candidate petitioned the Commission promptly upon becoming aware of the unintentional error; and

(4) the failure to comply did not involve expenditures by the participating candidate significantly in excess of seed money total amount restrictions or otherwise constitute systematic or significant infractions of seed money restrictions.

F. After becoming a candidate and prior to certification, ~~A~~accepting a loan from any source including a financial institution ~~prior to certification, or~~and spending money received in the form of a loan, ~~is a~~are violations of the seed money restrictions of the Act.

G. Other. A seed money contributor may also make a qualifying contribution to the same participating candidate provided that the contributor otherwise meets the requirements for making a qualifying contribution.

4. Qualifying Contributions.

A. General. A participating candidate may collect qualifying contributions only during the relevant qualifying period. Qualifying contributions collected more than five days before ~~and only after~~ filing a Declaration of Intent with the Commission will not be counted toward the eligibility requirement. Qualifying contributions must be acknowledged and reported on ~~using~~ forms provided by the Commission. ~~The forms will include an affirmation by the contributor that the contributor received nothing of value in exchange for the signature and contribution.~~

The forms must include:

(1) the name, residential address, telephone number, and signature of the contributor;

(2) an affirmation by the contributor that the contribution was made with his or her personal funds, in support of the candidate and that the contributor did not receive anything of value in exchange for his or her signature and contribution;

(3) a clear and conspicuous statement that the candidate is collecting signatures and qualifying contributions in order to obtain public funding to finance the candidate's campaign;

(4) the signature of the municipal registrar or his or her designee verifying the voter registration of the contributors listed on the form; and

(5) the signature of any person, other than the candidate, who circulated the forms and collected signatures and contributions, whether the services were provided for compensation or on a volunteer basis, affirming that he or she collected the qualifying contributions, that the contributor signed the form in the circulator's presence, that to the best of the circulator's knowledge and belief each signature is the signature of the person whose name it purports to be and that the contribution came from the personal funds of the contributor, that the circulator did not give anything of value to the contributor in exchange for the contribution and signature, and that the circulator did not represent the purpose of collecting the contributions and signatures to be for any purpose other than obtaining public funds to finance the candidate's

campaign; the form must also include the residential and mailing addresses and telephone number of the circulator.

B. Required Number of Qualifying Contributions. A participating candidate must obtain the number of qualifying contributions during the qualifying period as required by the Act [§ 1122(7); § 1122(8); § 1125(3)].

C. Exchanges For Qualifying Contributions Prohibited.

(1) A participating candidate or an agent of that candidate may not give or offer to give a payment, gift, or anything of value in exchange for a qualifying contribution.

(2) This provision does not prohibit a participating candidate or that candidate's agent from collecting qualifying contributions at events where food or beverages are served, or where campaign promotional materials are distributed, provided that the food, beverage, and campaign materials are offered to all persons attending the event regardless of whether or not particular persons make a qualifying contribution to the participating candidate.

(3) This provision does not prohibit a candidate from using seed money to pay the fee for a money order provided the qualifying contributor pays the $5 amount reflected on the money order as permitted by 21-A M.R.S.A. §1125(3).

D. Checks Drawn on Business Accounts. Qualifying contributions must be made with the personal funds of the contributor. The Commission will not count a check drawn from an account with a business name toward the eligibility requirements, unless the name of the contributor is included in the name of the account or the candidate submits a written statement from the contributor indicating that he or she uses the business account for personal expenses.

E. Family Members. Family members, domestic partners, and live-in caregivers who reside in a single household may make qualifying contributions in the form of a single check or money order of more than $5 provided that:

(1) all contributors sign the receipt and acknowledgement form;
(2) all contributors are registered to vote at the address of the household; and
(3) all contributions are made with the personal funds of the contributors.

F. Verification of Registered Voters.

(1) Before submitting qualifying contributions to the Commission, a participating candidate must establish that contributors who made qualifying contributions to that candidate are registered voters.

(2) A participating candidate must obtain written verification from the Registrar of the number of persons providing qualifying contributions who are registered voters within the electoral division for the office the candidate is seeking.

(3) Upon request of a participating candidate, and within 10 business days after the date of the request, the Registrar must verify the names of contributors of qualifying contributions who are registered voters within the electoral division for the office the candidate is seeking.

G. Timing of Verification. For purposes of this chapter, the Commission will deem verification of registered voters by the Registrar at any time during the qualifying period to be an accurate verification of voter registration even if the registration status of a particular voter may have changed at the time the Commission determines certification of the participating candidate. Proof of voter verification submitted after the qualifying period will not be accepted by the Commission and those qualifying contributions will not be counted toward the number required for certification.

~~H. Submission of Verified Qualifying Contributions. A participating candidate may submit a completed request for certification to the Commission at any time during the qualifying period. The request will be deemed complete and the candidate will be certified only if:~~

~~(1) the request is accompanied by the original signed qualifying contributions forms that have been verified by the Registrar(s) of the electoral division for the office the candidate is seeking; or~~

~~(2) the candidate submits to the Commission during the qualifying period a statement that such signature forms have been submitted to the Registrar(s) for verification on a specific date and the verified signature forms will be received by the Commission within 10 business days thereafter, and submits to the Commission during the qualifying period photocopies of the signature forms.~~

SECTION 3. CERTIFICATION OF PARTICIPATING CANDIDATES

1. Request for Certification. A participating candidate may submit a completed request for certification to the Commission at any time during the qualifying period but not later than 5:00 p.m. on the last day of the relevant qualifying period. The request will be deemed complete and considered for certification only when the candidate has submitted to the Commission:

A. ~~After final submission of qualifying contributions, but not later than 5:00 p.m. on the last day of the relevant qualifying period, a participating candidate may request certification as a Maine Clean Election Act candidate.~~ the original signed receipt and acknowledgement forms that have been verified by the Registrar(s) of the electoral division for the office the candidate is seeking;

B. ~~All participating candidates must submit~~ the qualifying contributions ~~in alphabetical order to the Commission along with qualifying contribution~~ attached to the corresponding receipt and acknowledgement forms and ~~an alphabetical~~ list of all contributors and their town or city of residence, sorted alphabetically by the contributor's last name; ~~of qualifying contributions when applying for certification as a Maine Clean Election Act candidate. Candidates who do not submit the required number of original qualifying contributions within the qualifying period will not be certified.~~

C. ~~The Commission will review candidate applications for certification in the order in which they are received, except that it will give priority to those candidates who are in a contested primary election.~~ a seed money report of contributions, expenditures and obligations made or incurred after becoming a candidate, including a report of any unspent seed money; and

D. a signed request for certification on a form provided by the Commission which contains an affirmation by the candidate that he or she has complied with all seed money and qualifying contribution requirements, has established a separate federally-insured bank account for campaign purposes and, if applicable, that any person who circulated receipt and acknowledgement forms and collected qualifying contributions acted with the candidate's knowledge and consent, and any other information relevant to the certification process.

2. ~~Reporting. Together with the request for certification, a participating candidate must report all seed money contributions received, any other contributions received, and expenditures and obligations made after becoming a candidate.~~ Order of Review. The Commission will review candidate requests for certification in the order in which they are received, except that it will give priority to those candidates who are in a contested primary election.

3. Unspent Seed Money. ~~Together with the request for certification, a participating candidate must report any unspent seed money.~~ In order to distribute funds expeditiously, the Commission will deduct from the initial distribution from the Fund to a certified candidate an amount equal to the amount of unspent seed money reported by that candidate.

4. Certification. The Commission will certify a candidate as a Maine Clean Election Act candidate upon the participating candidate's satisfaction of the requirements of the Act [§ 1125] and this chapter.

5. Appeals. Any appeals challenging a certification decision by the Commission must be in accordance with the Act [§ 1125(14)].

SECTION 4. FUND ADMINISTRATION

1. Coordination with State Agencies. The Commission will coordinate with the ~~Bureau of Accounts and Control~~Office of the Controller and other relevant State agencies to ensure the use of timely and accurate information regarding the status of the Fund.

2. Publication of Fund Revenue Estimates. By September 1st preceding each election year, the Commission will publish an estimate of revenue in the Fund available for distribution to certified candidates during the upcoming year's election. The Commission will update the estimate of available revenue in the Fund after April 15th of an election year and again within 30 days after the primary election in an election year.

3. Computation of Disbursement Amounts. By July 1, 1999, and at least every 4 years after that date, the Commission will determine the amount of revenue to be distributed to certified candidates based on the type of election and office in accordance with the Act [§ 1125(8)].

4. Distributions Not to Exceed Amount in Fund. If the Commission determines that the revenues in the Fund are insufficient to meet distributions under this chapter, the Commission will permit certified candidates to accept and spend contributions in accordance with the Act [§ 1125(13)]. The Commission 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 in the event of any such shortfall.

SECTION 5. DISTRIBUTION OF FUNDS TO CERTIFIED CANDIDATES

1. Fund Distribution.

   A. Establishment of Account. Upon the certification of a participating candidate, the Commission will establish an account with the ~~Bureau of Accounts and Control~~Office of the Controller, or such other State agency as appropriate, for that certified candidate. The account will contain sufficient information to enable the distribution of revenues from the Fund to certified candidates by the most expeditious means practicable that ensures accountability and safeguards the integrity of the Fund.

   B. Manner of Distribution of Fund. The Commission will authorize distribution of revenues from the Fund to certified candidates by the most expeditious means practicable that ensures accountability and safeguards the integrity of the Fund. Such means may include, but are not limited to:

      (1) checks payable to the certified candidate or the certified candidate's political committee; or

      (2) electronic fund transfers to the certified candidate's or the certified candidate's political committee's campaign finance account.

2. Timing of Fund Distributions.

   A. Distribution of Applicable Amounts. The Commission will authorize the initial distribution of applicable amounts from the Fund to certified candidates in accordance with the time schedule specified in the Act [§ 1125(7)] and this Chapter ~~[sec. 3.4]~~.

      ~~INFORMATIONAL NOTE: An initial distribution from the Fund will not be made to a candidate until the Commission has certified that candidate in accordance with the provisions of the Act and this chapter. The initial distribution may be delayed if a candidate submits a list of qualifying contributors to the Registrar for verification during the last 10 business days of the qualifying period.~~

   B. Matching Fund Allocations. At any time after certification, revenues from the Fund may be distributed to certified candidates in accordance with subsection 3, below.

   C. Advances.

      (1) To facilitate administration of the Matching Fund Provision of this chapter, and to encourage participation in the Act, the Commission may authorize the advance distribution of revenues from the Fund

to certified candidates. In determining whether to authorize such advances and the amounts of any such advances, the Commission will consider the amount of revenue in the Fund, the number of certified candidates, the number of nonparticipating candidates, and information contained in campaign finance and independent expenditure reports.

(2) A certified candidate may only draw upon, spend or otherwise use, such advance Fund distributions after receiving written notification from the Commission authorizing a ~~M~~matching ~~F~~fund allocation in a specified amount. Written notification by the Commission may be by letter, facsimile or electronic means.

3. Matching Fund Provision.

A. General. The Commission will authorize immediately an allocation of matching funds to certified candidates in accordance with the Act when the Commission determines that the eligibility for receipt of matching funds has been triggered [§ 1125(9)].

~~B. Computation and Distribution. The Commission will determine a certified candidate's allocation of matching funds, if any, in the following manner:~~

~~(1) The Commission first will add –~~

~~(a) the sum of an opposing candidate's expenditures and obligations, or funds raised and borrowed, whichever is greater, including surplus or unspent funds carried forward from a previous primary, general, or special election to the current election; and~~

~~(b) the sum of the independent expenditures made expressly advocating the defeat of the certified candidate or the election of the same opposing candidate.~~

~~(2) The Commission then will subtract –~~

~~(a) the sum of the independent expenditures made expressly advocating the defeat of the same opposing candidate; and~~

~~(b) the sum of the independent expenditures made expressly advocating the election of the certified candidate; and~~

~~(c) the sum of any matching funds already provided to the certified candidate; and~~

~~(d) the sum of any seed money raised in computing matching fund eligibility for a primary, general, or special election, as applicable; or any surplus or unspent funds carried forward from a previous primary election to the subsequent general election in computing matching fund eligibility for a general election.~~

~~(3) If the final computed amount is greater than the applicable distribution amount for the certified candidate, then the Commission will immediately authorize the distribution of a Matching Fund allocation to the certified candidate equal to that excess.~~

~~(4) The Commission will make computations promptly upon the filing of campaign finance reports and independent expenditure reports.~~

~~(5) To prevent the abuse of the Matching Fund Provision, the Commission will not base any calculation on independent expenditures that, although containing words of express advocacy, also contain other words or phrases that have no other reasonable meaning than to contradict the express advocacy. For example, expenses related to a communication saying, "Vote for John Doe - he's incompetent and inexperienced," will not be considered a communication in support of John Doe in the calculation of matching funds.~~

B. Matching Fund Computation Involving Only Certified Candidates. If all candidates in a race are certified candidates:

(1) For each certified candidate, the Commission will

(a) add to the initial distribution amount for that election:

(i) the sum of any matching funds previously provided for that election, and

(ii) the sum of independent expenditures made in support of each certified candidate; and

(b) subtract the sum of independent expenditures made in opposition to each certified candidate.

(2) The Commission will compare the final computed amounts and will immediately authorize a matching fund allocation equal to the difference to the certified candidate with the lesser amount.

(3) In computations involving only certified candidates, the Commission will not use seed money raised or unspent funds remaining after a primary election in computing the amount of matching funds.

C. Matching Fund Computation Based on Nonparticipating Candidates' Receipts or Expenditures. In races in which there is at least one certified and one nonparticipating candidate, and the matching fund computation is triggered by the financial activity of nonparticipating candidate, including any independent expenditures in support of the nonparticipating candidate:

(1) The Commission will first determine the applicable amount for the nonparticipating candidate

(a) by adding:

(i) the sum of the nonparticipating candidate's expenditures, obligations and in-kind contributions, or the sum of the nonparticipating candidate's cash and in-kind contributions and loans, including surplus or unspent funds carried forward from a previous election to the current election, whichever is greater, and

(ii) the sum of independent expenditures made in support of the same nonparticipating candidate; and

(b) by subtracting the sum of independent expenditures made in opposition to the same nonparticipating.

(2) The Commission then will determine the applicable amount for the certified candidate

(a) by adding:

(i) the amount of the initial distribution for that election;

(ii) the sum of independent expenditures made in support of the certified candidate;

(iii) the sum of matching fund allocations already provided to the certified candidate; and

(iv) the amount of:

a) any seed money raised by an enrolled certified candidate in a primary or special election; or

b) any unspent funds carried forward from the primary election to the subsequent general election by an enrolled certified candidate in a general election; or

c) any seed money raised and, if applicable, any other distribution received prior to the general election distribution by an unenrolled certified candidate in a general or special election; and

(b) by subtracting the sum of independent expenditures made in opposition to the same certified candidate.

(3) The Commission will compare the final computed amounts and, if the amount for the certified candidate is less than the amount for the nonparticipating candidate, will immediately authorize a matching fund allocation equal to the difference to the certified candidate.

D. Matching Fund Computation Not Involving a Nonparticipating Candidate. In races in which there are two or more certified candidates and at least one nonparticipating candidate,

(1) if the matching fund computation is triggered by an independent expenditure in support of or opposition to a certified candidate, and

(2) the campaign totals, including independent expenditures, of any nonparticipating candidate in the race are equal to or less than the campaigns totals, including independent expenditures, of at least one certified candidate in the race; then

(3) the matching fund computation must be completed according to the procedure in paragraph B of this subsection.

E. The Commission will make computations promptly upon the filing of campaign finance reports and independent expenditure reports.

F. To prevent the abuse of the Matching Fund Provision, the Commission will not base any calculation on independent expenditures that, although containing words of express advocacy, also contain other words or phrases that have no other reasonable meaning than to contradict the

express advocacy. For example, expenses related to a communication saying, "Vote for John Doe -- he's incompetent and inexperienced," will not be considered a communication in support of John Doe in the calculation of matching funds.

~~C~~G. Matching Fund Cap. Matching funds are limited to 2 times the amount originally distributed to a certified candidate from the Fund for that election. Certified candidates are not entitled to cumulative matching funds for multiple opponents.

~~D~~H. Other. Any distribution based on reports and accurate calculations at the time of distribution is final, notwithstanding information contained in subsequent reports.

~~E~~I. Coordination with Other State Agencies. The Commission will coordinate with the ~~Bureau of Accounts and Control~~Office of the Controller and other relevant State agencies to implement a mechanism for the distribution of Fund revenues to certified candidates that is expeditious, ensures public accountability, and safeguards the integrity of the Fund.

~~F~~J. Disbursements With No Campaign Value. If a ~~traditionally~~privately financed candidate has received monetary contributions which are disbursed in ways that do not in any way influence the nomination or election of the candidate, those receipts will not be considered by the Commission in calculating matching funds for his or her opponent. Such disbursements may include repaying a loan received by the candidate, refunding a contribution to a contributor, or transferring funds to a party or political committee for purposes that do not relate to the candidate's race.

4. Advance Purchases of Goods and Services for the General Election.

A. If, prior to the primary election, a candidate purchases or receives in-kind contributions~~a preponderance~~ of consulting services, or the design, printing, or distribution of campaign literature and advertising, including radio and television advertising,~~purchased prior to the primary election by an opponent of a certified Maine Clean Election Act candidate prior to the primary are used~~ but uses or will use a preponderance of those services exclusively for the general election, then the portion used or to be used for the general election must be counted as a general election receipt or expenditure in calculating the amount of matching funds for ~~the~~ any certified ~~Maine Clean Election Act~~candidate in the same race.

B. If a certified candidate in a general election believes that an opponent, or person or committee making an independent expenditure, has failed to disclose an advance purchase for the general election, the certified candidate shall submit a written request for an investigation to the

Commission no later than August 30 of the election year, or within 30 days of the opponent's filing of the 42-day post-primary report, whichever is later. The request must identify the pre-primary election expenditure that is believed to be for the general election and must state a specific basis for believing that the goods and services purchased were not used for the primary election.

C. The Commission will request a response from the opposing candidate or other respondent, and will make a determination whether the expenditure should be counted toward the certified candidate's eligibility for matching funds.

SECTION 6. LIMITATIONS ON CAMPAIGN EXPENSES.

A certified candidate must:

1. limit the candidate's campaign expenditures and obligations to the applicable Clean Election Act Fund distribution amounts plus any authorized ~~M~~matching ~~F~~fund allocations;

2. not accept any contributions unless specifically authorized in writing to do so by the Commission in accordance with the Act [§ 1125(2) and § 1125(13)];

3. use revenues distributed from the Fund only for campaign-related purposes as outlined in guidelines published by the Commission, and not for personal or any other use;

4. not use revenues distributed from the Fund to purchase goods to sell for profit;

5. not spend more than the following amounts of Fund revenues on post-election parties, thank you notes, or advertising to thank supporters or voters:

   A. $250 for a candidate for the State House of Representatives;

   B. $750 for a candidate for the State Senate; and

   C. $2,500 by a gubernatorial candidate.

   The candidate may also use his or her personal funds for these purposes; and

6. not use revenues distributed from the Fund for the payment of fines, forfeitures, or civil penalties, or for the defense of any enforcement action of the Commission.

SECTION 7. RECORD KEEPING AND REPORTING

1. Record Keeping by Participating and Certified Candidates. Participating and certified candidates and their treasurers must comply with applicable record keeping requirements set forth in Title 21-A, chapter 13, subchapter II [§1016], and chapter 14 [§1125(12-A)]. Failure to keep or produce the records required under Title 21-A and these rules is a violation of the Act for which the Commission may impose a penalty. The Commission may also require the return of funds for expenditures lacking supporting documentation if a candidate or treasurer is found in violation of the record keeping requirements. The candidate or the treasurer shall have an opportunity to be heard prior to any Commission decision imposing a penalty or requiring the return of funds under this section. In addition to these specific actions, the Commission may also take any other action authorized under Title 21-A.

   A. Fiduciary Responsibility for Funds. All funds provided to a certified candidate or to a candidate's authorized political committee must be segregated from, and may not be commingled with, any other funds, other than unspent seed money. Matching fund advance revenues for which no spending authorization has been issued must be deposited in a federally insured account~~financial institution until the candidate receives~~ and may not be used until the candidate receives authorization to spend those funds.

   B. Meal Expenses. A candidate or treasurer must obtain and keep a record for each meal expenditure of more than $50. The record must include itemized bills for the meals, the names of all participants in the meals, the relationship of each participant to the campaign, and the specific, campaign-related purpose of each meal.

   C. Vehicle Travel Expenses. A candidate or treasurer must obtain and keep a record of vehicle travel expenses for which reimbursements are made from campaign funds. Reimbursement ~~may~~ must be based on the standard mileage rate prescribed for employees of the State of Maine for the year in which the election occurs. ~~using either the standard mileage rate or actual expenses. The candidate must use one method exclusively during an election campaign.~~ For each trip for which reimbursement is made, a record must be maintained showing the dates of travel, the number of miles traveled, the origination, destination and purpose of the travel, and the total amount claimed for reimbursement. A candidate may be reimbursed for vehicle travel expenses at a rate less than the standard mileage rate. A candidate may also reimburse a volunteer for vehicle travel expenses at a rate less than the standard mileage rate as long as the difference does not exceed $100 per volunteer per election. The Commission may disallow

any vehicle travel reimbursements for which the candidate or the treasurer cannot produce an accurate record.

~~(1) Standard Mileage Rate. The standard mileage rate is a set rate per mile that a candidate may use to compute reimbursable vehicle travel expenses. Reimbursement should be calculated using the standard mileage rate currently prescribed for employees of the State of Maine. For each trip for which reimbursement is made, a record should be maintained showing the dates of travel, the number of miles traveled, the origination, destination and purpose of the travel, and the total amount claimed for reimbursement.~~

~~(2) Actual Expenses. Actual expenses include the pro rata, campaign-related share of vehicle depreciation or lease payments, maintenance and repairs, gasoline (including gasoline taxes), oil, insurance, and vehicle registration fees, etc. For reimbursement using this method, the candidate must maintain detailed records reflecting use of the vehicle for campaign related purposes. The records must include the dates the vehicle was used for campaign-related purposes, the total mileage the vehicle was used for campaign related purposes, the total mileage the vehicle was used for all purposes during the period for which reimbursement is made, and the percentage of total vehicle usage that the vehicle was used for campaign related purposes.~~

2. Reporting by Participating and Certified Candidates.

A. General. Participating and certified candidates must comply with applicable reporting requirements set forth in Title 21-A, chapter 13, subchapter II [§ 1017].

B. Return of Matching Fund Advances and Unspent Fund Revenues. Matching ~~F~~fund advance revenues that have not been authorized for spending and unspent Fund revenues shall be returned to the Fund as follows:

(1) Unauthorized Matching Funds. Candidates must return all ~~M~~matching ~~F~~fund advance revenues for which no spending authorization was issued prior to an election to the Commission by check or money order payable to the Fund within 2 weeks following the date of the election.

(2) Unspent Fund Revenues for Unsuccessful Primary Election Candidates. Upon the filing of the 42-day post-primary election

report for a primary election in which a certified candidate was defeated, that candidate must return all unspent Fund revenues to the Commission by check or money order payable to the Fund, except that a gubernatorial candidate may be allowed to reserve up to $1,000 in order to defray expenses associated with an audit by the Commission.

(3) Unspent Fund Revenues for All General and Special Election Candidates. Upon the filing of the 42-day post-election report for a general or special election, all candidates must return all unspent Fund revenues to the Commission by check or money order payable to the Fund, except that a gubernatorial candidate may be allowed to reserve up to $2,500 in order to defray expenses associated with an audit by the Commission.

C. Liquidation of Property and Equipment. Property and equipment that is not exclusive to use in a campaign (e.g., computers and associated equipment, etc.) that has been purchased with Maine Clean Election Act funds loses its campaign-related purpose following the election. Such property and equipment must be liquidated at its fair market value and the proceeds thereof reimbursed to the Maine Clean Election Fund as unspent fund revenues in accordance with the schedule in paragraph B above.

(1) The liquidation of campaign property and equipment may be done by sale to another person or purchase by the candidate.

(2) Liquidation must be at the fair market value of the property or equipment at the time of disposition. Fair market value is determined by what is fair, economic, just, equitable, and reasonable under normal market conditions based upon the value of items of similar description, age, and condition as determined by acceptable evidence of value.

SECTION 8. RECOUNTS, VACANCIES, WRITE-IN CANDIDATES, SPECIAL ELECTIONS

1. Recounts. After a primary election, if there is a recount governed by Title 21- A, chapter 9, subchapter III, article III [§ 737-A], and either the leading candidate or the 2nd-place candidate is a certified candidate, the following provisions will apply:

A. If the margin between the leading candidate and the 2nd-place candidate is less than 1% of the total number of votes cast in that race and a recount is presumed necessary, the certified candidate immediately must halt the expenditure of revenues disbursed to the candidate from the Fund upon receiving notice of the recount until the recount is complete.

B. If the recount results in a changed winner, the certified candidate who originally received the disbursement must return any unspent distributions from the Fund to the Commission, payable to the Fund. If the new winner is a certified candidate, the Commission will distribute the applicable disbursement amount to the candidate.

C. If the margin between the leading candidate and 2nd-place candidate is 1% or greater of the total number of votes cast in that race and the 2nd-place candidate requests a recount, the leading candidate, if a certified candidate, is not required to freeze expenditures of the disbursement.

D. If the recount results in a changed winner, the certified candidate must return any unspent distributions from the Fund to the Commission, payable to the Fund. If the new winner is a certified candidate, the Commission will distribute the applicable disbursement amount to the candidate.

2. Death, Withdrawal, or Disqualification of a Candidate During Campaign.

A. Death, Withdrawal, or Disqualification Before Primary Election. If a candidate dies, withdraws, or is disqualified before the primary election, the Commission will establish a qualifying period during which any replacement candidate may become a participating candidate, collect qualifying contributions, and apply to become a certified candidate.

B. Death, Withdrawal, or Disqualification After the Primary Election and before 5:00 p.m. on the 2nd Monday in July Preceding the General Election. If a candidate dies, withdraws, or is disqualified before 5:00 p.m. on the 2nd Monday in July preceding the general election, any replacement candidate will have a qualifying period from the time of the candidate's nomination until 30 days after the 4th Monday in July as a participating candidate to collect qualifying contributions and request certification.

C. Death, Withdrawal, or Disqualification after 5:00 p.m. on the 2nd Monday in July Preceding the General Election. If a candidate dies, withdraws, or is disqualified after 5:00 p.m. on the 2nd Monday in July preceding the general election, the Commission will establish a qualifying period during which any replacement candidate may become a participating candidate, collect qualifying contributions, and apply to become a certified candidate.

D. Replacement Candidates Who Are Participating Candidates. Any replacement candidate choosing to become a participating candidate must otherwise comply with the requirements of this chapter and the Act including, but not limited to, seed money limits and qualifying

contribution requirements. The Commission will notify any replacement candidates of the opportunity to participate in the Act and the procedures for compliance with this chapter during a special election.

3. Write-In Candidates.

A. Write-in candidates are subject to the registration requirements of Title 21-A M.R.S.A. Section 1013-A and the campaign finance reporting requirements of Section 1017, as soon as they qualify as a nominee pursuant to 21-A M.R.S.A. Section 723, file a declaration of write-on candidacy with the Secretary of State pursuant to 21-A M.R.S.A. Section 722-A, or receive contributions or make expenditures with the intent of qualifying as a candidate in the primary or general election, whichever first occurs.

B. Write-in candidates may not participate in the Maine Clean Election Act, except as provided in paragraph C.

C. A write-in candidate in a primary election who becomes a party's nominee may participate in the Maine Clean Election Act for the general election. The Commission will establish a qualifying period during which the candidate may become a participating candidate, collect qualifying contributions, and apply to become a certified candidate.

D. A candidate who is participating in the Maine Clean Election Act and who has no opponent listed on the ballot will be presumed to be in an uncontested election even if there are one or more individuals running as write-in candidates. The participating candidate may rebut this presumption by presenting evidence to the Commission that the write-in opponent(s) received or spent substantial campaign funds. Based upon the evidence presented, the Commission may make a determination that it is a "contested election" and make a distribution of public funds to the participating candidate on that basis.

4. Special Election When One or More Candidates Desire to Become Certified Candidates. If a vacancy occurs in the office of Governor, Senator, or Representative because an incumbent dies, resigns, becomes disqualified, or changes residence to another electoral division, and a special election will be held to fill the vacant office, the following provisions apply:

A. The Commission, in consultation with the Secretary of State, will establish a qualifying period during which any candidate in a special election may decide to become a participating candidate, collect qualifying contributions, and apply to become a certified candidate; and

B. Any candidate in a special election must otherwise comply with the requirements of this chapter and the Act including, but not limited to, seed money limits and qualifying contribution requirements. The Commission will notify any candidates of the opportunity to participate in the Act and the procedures for compliance with this chapter during a special election.

5. Return of Unspent Fund Revenues. Any time a certified candidate withdraws, is disqualified, or dies before an election, the candidate or the candidate's agent must return to the Commission all unspent amounts distributed to the candidate by check or money order payable to the fund, within 2 weeks of the termination of the candidacy.

STATUTORY AUTHORITY:
1 M.R.S.A. § 1003(1); 21-A M.R.S.A. § 1126.

EFFECTIVE DATE:
November 1, 1998

NON-SUBSTANTIVE CHANGES:
December 3, 1998 - minor spelling and formatting.

2002 MAJOR SUBSTANTIVE RULE-MAKING

AMENDMENTS PROVISIONALLY ADOPTED:
February 13, 2002

COMMISSION ADOPTION OF FINAL RULE:
May 1, 2002

EFFECTIVE DATE:
July 31, 2002

2005 MAJOR SUBSTANTIVE RULE-MAKING

DATE OF PROVISIONAL ADOPTION OF AMENDMENTS:
April 8, 2005

COMMISSION ADOPTION OF FINAL AMENDMENTS:
July 13, 2005

Lavin, Paul

From: Lacey Sloan [sloanlaceym@hotmail.com]
Sent: Wednesday, January 31, 2007 8:16 PM
To: Lavin, Paul
Subject: NCEA changes

Dear Mr. Lavin:

I have read the proposed changes to the Maine Clean Elections law, and I support all of the changes except those proposed to subsection 7 concerning "an organization's voter guide or legislative scorecard is made to influence an election if more than 500 copies are sent within 60 days of a general election to individuals who are not members of the organization." Since most voter guides have information on more than one candidate, it seems that these would be no different than slate ads, which do not count against candidates included in the ad. I assume that the purpose of this section is to count the guide as a cost to the candidate's campaign.

I particularly support the changes to sections 6 and 7 that require expenditures made by a candidate's committee, etc., be reported, and that they reported based on the actual expenses, not just listed as "reimbursement" or "fees to consultant."

Thank you for your efforts to keep MCEA working for us all.

Lacey Sloan
155 Stone Hill Rd.
Limerick, ME 04048

Search for grocery stores. Find gratitude. Turn a simple search into something more.
http://click4thecause.live.com/search/charity/default.aspx?source=hmemtagline_gratitude&FORM=WLMTAG

Lavin, Paul

From: Nancy Oden [cleanearth@tds.net]
Sent: Thursday, February 01, 2007 10:26 AM
To: Lavin, Paul
Subject: solution

I was a state senatorial candidate last year, and have concluded that the only way to keep money out of the elections is to:

1. Require all candidates to qualify for the ballot equally (do not make independents get twice as many signatures, for example), and do not make this too difficult. The 4,000-signature requirement now in place for governor and US senate are quite sufficient to quell any but serious people.

2. Once a candidate has qualified by getting the required number of signatures verified, then that candidate and all other candidates for that office should receive the same amount of money and not be allowed to spend a penny more than their allotment.

3. Regular financial reports - more frequent than now - should be carefully monitored to ensure candidates are not spending more than their allotment.

4. No other spending should be allowed for any campaign other than the candidates' allotments.

5. Extant political parties should not be allowed loopholes to help their candidates, eg, printing campaign materials, etc.

If a truly level playing field is wanted (and it apparently is not by those already in power), then the Ethics Commission would propose legislation to make it a truly level playing field - everyone qualifies in the same way, everyone gets the same amount of money, no other monies allowed.

- Nancy Oden, Jonesboro, Maine