

Agenda

Item #9



Guidance on Reporting under 21-A M.R.S.A. § 1056-B

What is the § 1056-B reporting requirement?

Most organizations that raise or spend money to influence a statewide ballot question in Maine form a political action committee (PAC) for that purpose, and file regular PAC reports with the Commission. Some advocacy, charitable, or other organizations do not qualify as PACs under the Election Law, but they are interested in raising and spending money to influence ballot questions. In 2000, the Maine Legislature enacted 21-A M.R.S.A. § 1056-B to create a reporting requirement for these non-PAC organizations. Under this section,

[a]ny person not defined as a political committee who solicits and receives contributions or makes expenditures, other than by contribution to a political action committee, aggregating in excess of \$1,500 for the purpose of initiating, promoting, defeating or influencing in any way a ballot question must file a report with the Commission.

The complete language of 21-A M.R.S.A. § 1056-B is attached to this memo.

Does the requirement apply only to individuals?

No. Under Maine Election law, the term "person" includes individuals, committees, firms, partnerships, corporations, associations, groups or organizations.

What contributions are covered by § 1056-B? [STAFF ADVICE, 12/20/06]

Section 1056-B covers "contributions ... made for the purpose of initiating, promoting, defeating, or influencing in any way a ballot question" The Commission interprets this to include:

- funds which the contributor specified were given for the purpose of promoting or opposing a ballot question;
- funds provided in response to a solicitation which would lead the contributor to believe that the funds would be used specifically for the purpose of promoting or opposing a ballot question; and
- funds which can reasonably be determined to have been provided by the contributor for the purpose of promoting or opposing a ballot question when

viewed in the context of the contribution and the recipient's activities regarding a ballot question.

Funds provided in response to a solicitation which would lead the contributor to believe that the funds would be used to support an organization's general activities, rather than activities relating to a ballot question, are not covered by § 1056-B.

What expenditures are covered by §1056-B? [STAFF ADVICE, 12/20/06]

Section 1056-B covers "expenditures made for the purpose of initiating, promoting, defeating, or influencing in any way a ballot question" The Commission interprets this to include:

- expenditures for communications to voters for the purpose of promoting or opposing a ballot question, including advertising on television, radio, and print media; literature that is mailed or distributed by hand to voters; automated telephone calls and scripted calls from live callers; signs, bumper stickers, and other forms of outdoor advertising;
- staff time promoting or opposing the ballot question at public or press events;
- staff time canvassing (conducting door-to-door visits to) voters;
- travel expenses paid to employees or volunteers who are conducting activities to promote or oppose a ballot question;
- staff time preparing presentations, testimony, letters to the editor, opinion pieces, articles for publication, or press releases to promote or oppose a ballot question;
- research or technical analysis including the writing of reports, where the organization knows or reasonably should know that the research will be used to promote or oppose a ballot question; and
- expenditures to distribute research or technical analysis regarding a ballot question for the purpose of encouraging voters to vote yes, or no, on the question.

This list is not intended to be exhaustive and is similar to the types of expenditures reported by political action committees to promote or defeat a ballot question.

What expenditures are not covered by § 1056-B? [STAFF ADVICE, 12/20/06]

Expenditures made merely to educate voters or others in a neutral way about a ballot question are not covered by § 1056-B. These would include:

- hosting a meeting at which advocates or members of the public are invited to present their views on the ballot question, provided that the sponsors of the event make reasonable efforts to ensure that the forum is balanced;
- ~~costs of distributing~~ news stories, commentary, or editorials concerning a ballot question ~~distributed~~ through the facilities of a broadcasting station, newspaper, magazine, or other periodical publication, unless the facilities are owned or controlled by persons otherwise engaged in other advocacy activities to promote or oppose the ballot question; and
- research or analysis of a ballot question which is not conducted for the purpose of initiating, promoting, or defeating the ballot question. This could include research that is conducted in a neutral fashion and is intended to be communicated to opinion leaders, in academic settings, or to the public at large. When statewide ballot questions are pending, it is not unusual for individuals with specialized skills (e.g., academics, attorneys, educational institutions, pollsters) to be hired to undertake research or analysis concerning the ballot question. If these activities are neutral and not made for the purpose of promoting or defeating the question, they would not be covered by § 1056-B.

Do “expenditures [made] for the purpose of initiating ... a ballot question” include payments to staff or other expenses incurred in drafting legislation intended as a ballot question?

Yes. If an organization pays its employees (or incurs other expenses) to draft legislation that the organization intends will be submitted to the Secretary of State as a direct initiative (even if submitted by a different organization), those expenses should be counted as expenditures made to initiate a ballot question.

If an organization pays its employees to draft legislation and the organization truly does not know whether the legislation will be submitted as a ballot question, those costs are not covered by 21-A M.R.S.A. § 1056-B. If the legislation is later approved by the Secretary of State for circulation as a petition for a direct initiative, however, the drafting costs should be considered a covered expense at the time the petition is approved.

If an organization’s only financial activity with respect to a ballot question is providing monetary contributions to a PAC, does the organization need to file reports under § 1056-B?

No. If an organization’s only expenditures in connection with a ballot question are contributions to a PAC, the organization is not required to file a § 1056-B report.

What if an organization donates the time of its paid employees to a PAC to influence a ballot question or makes payments to vendors for goods or services to influence a ballot question in coordination with a PAC?

Donating paid staff to a PAC, or coordinating expenditures with a PAC are in-kind contributions to the PAC. They are exempt from being counted toward the \$1,500 expenditure threshold to file a § 1056-B report; however, the PAC must report them as in-kind contributions.

An organization's expenditures to influence a ballot question may only be considered an in-kind contribution to a PAC if they are coordinated with the PAC or are accepted by a PAC. Expenditures to influence a ballot question made independently of the PAC should not be considered contributions to the PAC.

Guidance to PACs and Contributors on the Reporting of In-Kind Contributions

In 2006, some PACs involved in ballot question campaigns reported receiving significant in-kind contributions from other organizations, but provided little detail regarding the goods and services they received. In future elections, the Commission will request that PACs provide more detail about large in-kind contributions they have received. For example, if a PAC reports that it received significant paid staff time from another organization, it should include a description of those staff activities and the number of hours of staff time that were contributed. A PAC's reporting of coordinated spending made by a contributor should include a brief description of the goods and services that were purchased and their value. Contributed staff and coordinated expenditures should not be lumped together as a single contribution for the reporting period, but should be itemized as separate contributions.

Future Law Changes and Guidance

Please be aware that the Maine Legislature will consider L.D. 1394 in the 2008 session, which could amend the reporting requirements for non-PAC organizations. If legislation amending §1056-B is enacted, the Commission will offer further guidance as necessary.

If you have any questions, please telephone the Commission's PAC/Party/Lobbyist Registrar at 287-4179.

21-A M.R.S.A. § 1056-B. Reports of contributions and expenditures by persons

Any person not defined as a political committee who solicits and receives contributions or makes expenditures, other than by contribution to a political action committee, aggregating in excess of \$1,500 for the purpose of initiating, promoting, defeating or influencing in any way a ballot question must file a report with the Commission. In the case of a municipal election, a copy of the same information must be filed with the clerk of that municipality.

1. Filing requirements. A report required by this section must be filed with the Commission according to a reporting schedule that the Commission shall establish that takes into consideration existing campaign finance reporting schedule requirements in section 1059.

2. Content. A report must contain an itemized account of each contribution received and expenditure made aggregating in excess of \$100 in any election; the date of each contribution; the date and purpose of each expenditure; and the name of each contributor, payee or creditor. Total contributions or expenditures of less than \$500 in any election need not be itemized. The report must state whether the purpose for receiving contributions and making expenditures is in support of or in opposition to the ballot question.

3. Forms. A report required by this section must be on a form prescribed and prepared by the Commission. A person filing this report may use additional pages if necessary, but the pages must be the same size as the pages of the form.

Wayne, Jonathan

From: Brenda Peluso [bpeluso@nonprofitmaine.org]
Sent: Tuesday, November 27, 2007 1:22 PM
To: Wayne, Jonathan
Cc: Scott Schnapp
Subject: Re: 11/14/07 Memo

Hello and thanks for the opportunity to comment on proposed "Guidance on Reporting under 21 – A M.R.S.A. Section 1056-B".

I only have a couple of comments/questions:

1) Under "What expenditures are covered by Section 1056-B?", I believe the 6th bullet is too broad. Research that is undertaken with a broad purpose that eventually is used to influence the outcome of a ballot initiative could be interpreted to count here and I don't think that is your intention. Perhaps adding the phrase "at the time the research is conducted" would help. "...should know, at the time the research is conducted, that the research will be used to promote or oppose a ballot question."

Another approach would be to insert the word "exclusively" – "...research will be used exclusively..." But I think that narrows things a bit too much.

2) Under "What expenditures are not covered...?", do you mean in the second bullet that staff time writing op eds or letters to the editor with the purpose of influencing the outcome of a ballot initiative doesn't count? I would certainly think that staff time would count, but since the distribution is free – that would be tough to quantify its in kind contribution to your efforts.

Thanks again for the opportunity. Take care.

Best regards, Brenda Peluso
Director of Public Policy
Maine Association of Nonprofits
565 Congress Street, Suite 301
Portland, ME 04101
207.871.1885
www.nonprofitmaine.org

Advancing / Connecting / Strengthening



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: November 14, 2007

Subject: Opportunity to Comment on Ballot Question Reporting

The Ethics Commission is soliciting comments on proposed guidance on ballot question reporting. Organizations which raise or spend more than \$1,500 to influence ballot questions and which do not qualify as political action committees (PACs) must file reports with the Ethics Commission under 21-A M.R.S.A. § 1056-B. About one year ago, the Commission staff offered advice to § 1056-B filers. Now, the staff is proposing that the Commission update the guidance and make clarifications in certain areas. The new advice is mostly contained in the last 1 ½ pages of the memo. The proposed guidance would only impact PACs if they are benefiting from in-kind contributions of donated staff or expenditures by other organizations to influence ballot questions.

The Commission will consider the proposed guidance at its meeting on Friday, December 7, at 9:00 a.m., and you are invited to comment at the meeting. Written and e-mailed comments are also welcome. (My e-mail address is Jonathan.Wayne@maine.gov.) Your written comments will be most helpful if the Commission receives them no later than Wednesday, November 28, so that the Commission members can read them in advance of the meeting.

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