

Agenda

Item #2



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

To: Commission Members and Counsel

From: Jonathan Wayne, Executive Director

Date: February 5, 2008

Re: Request from Legal and Veterans Affairs Committee for Rulemaking

The Joint Standing Committee on Legal and Veterans Affairs (LVA) oversees the Ethics Commission. On January 31, the LVA Committee directed the Commission to initiate a rulemaking on the issue of the "paid for" disclosure on campaign signs that a candidate purchased in a previous election and that the candidate is reusing in a current campaign. I expect to receive a letter from the LVA Committee before your February 11 meeting. I propose that you initiate the rulemaking at the February 11 meeting, because the committee would like the rule to be in effect for this election year.

Signs and other communications to voters relating to candidates (*e.g.*, mailings, flyers, and advertisements) must state "the name and address of the person who made or financed the expenditure for the communication" and a statement whether the candidate has authorized the communication. (21-A M.R.S.A. § 1014) The requirement applies to communications that were paid for by the candidate or by independent groups (*e.g.*, the political parties). Some candidates use the name of their campaign committee – rather than the candidate's personal name – in the disclosure. I have attached some examples of the disclosure that are listed in the Commission's guidebook for candidates. The purpose of the disclosure is to inform the public about the party who is responsible for the communication and to allow the public to contact that party.

At the January 31 meeting, the LVA Committee directed the Commission to adopt a rule which would apply to signs reused by candidates. Under the rule, candidates would not be required to update the disclosure as long as the address of the person financing the expenditure is accurate. The letter from the Committee may provide additional guidance to the Commission.

SECTION 7. EXPENDITURES

7. Candidate Expenditures for Communications to Voters. When candidates or their campaign committees make an expenditure to finance a communication to voters, the communications must include the name and address of the candidate, campaign treasurer or committee financing the communication and must state that the communication was authorized by the candidate, as required by Title 21-A, chapter 13, subchapter II [§ 1014]. If a candidate re-uses campaign signs which were purchased by the candidate or the candidate's committee for a previous election, the candidate is not required to update the name and address of the person financing the communication as long as the address in the disclosure is accurate.

Title 21-A, §1014, Publication or distribution of political statements

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§1014. Publication or distribution of political statements

1. Authorized by candidate. Whenever a person makes an expenditure to finance a communication expressly advocating the election or defeat of a clearly identified candidate through broadcasting stations, newspapers, magazines, outdoor advertising facilities, publicly accessible sites on the Internet, direct mails or other similar types of general public political advertising or through flyers, handbills, bumper stickers and other nonperiodical publications, the communication, if authorized by a candidate, a candidate's authorized political committee or their agents, must clearly and conspicuously state that the communication has been so authorized and must clearly state the name and address of the person who made or financed the expenditure for the communication. The following forms of political communication do not require the name and address of the person who made or authorized the expenditure for the communication because the name or address would be so small as to be illegible or infeasible: ashtrays, badges and badge holders, balloons, campaign buttons, clothing, coasters, combs, emery boards, envelopes, erasers, glasses, key rings, letter openers, matchbooks, nail files, noisemakers, paper and plastic cups, pencils, pens, plastic tableware, 12-inch or shorter rulers, swizzle sticks, tickets to fund-raisers and similar items determined by the commission to be too small and unnecessary for the disclosures required by this section. [2005, c. 301, §10 (amd).]

2. Not authorized by candidate. If the communication described in subsection 1 is not authorized by a candidate, a candidate's authorized political committee or their agents, the communication must clearly and conspicuously state that the communication is not authorized by any candidate and state the name and address of the person who made or financed the expenditure for the communication. If the communication is in written form, the communication must contain at the bottom of the communication in print that is no smaller in size than 10-point bold print, Times New Roman font, the words "NOT PAID FOR OR AUTHORIZED BY ANY CANDIDATE." [2003, c. 510, Pt. F, §1 (amd); c. 599, §15 (aff).]

2-A. Communication. If a communication that names or depicts a clearly identified candidate is disseminated during the 21 days before an election through the media described in subsection 1, the communication must state the name and address of the person who made or financed the communication and a statement that the communication was or was not authorized by the candidate. [2005, c. 301, §11 (new).]

3. Broadcasting prohibited without disclosure. No person operating a broadcasting station within this State may broadcast any communication, as described in subsections 1 and 2, without an oral or written visual announcement of the name of the person who made or financed the expenditure for the communication. [1985, c. 161, §6 (new).]

3-A. In-kind contributions of printed materials. A candidate, political committee or political action committee shall report on the campaign finance report as a contribution to the candidate, political committee or political action committee any contributions of in-kind printed materials to be used in the support of a candidate or in the support or defeat of a cause to be voted upon at referendum. Any in-kind contributions of printed materials used or distributed by a candidate, political committee or political action committee must include the name or title of that candidate, political committee or political action committee as the authorizing agent for the printing and distribution of the in-kind contribution.

The use or distribution of in-kind printed materials contributed to a candidate, political committee or political action committee must be reported as an expenditure on the campaign finance report of that candidate, political committee or political action committee. [1991, c. 839, §9 (new).]

Title 21-A, §1014, Publication or distribution of political statements

3-B. Newspapers. A newspaper may not publish a communication described in subsection 1 or 2 without including the disclosure required by this section. For purposes of this subsection, "newspaper" includes any printed material intended for general circulation or to be read by the general public. When necessary, a newspaper may seek the advice of the commission regarding whether or not the communication requires the disclosure.

[2005, c. 308, §1 (new).]

4. Enforcement. An expenditure, communication or broadcast made within 10 days before the election to which it relates that results in a violation of this section may result in a civil fine of no more than \$200. An expenditure, communication or broadcast made more than 10 days before the election that results in a violation of this section may result in a civil fine of no more than \$100 if the violation is not corrected within 10 days after the candidate or other person who committed the violation receives notification of the violation from the commission. If the commission determines that a person violated this section with the intent to misrepresent the name or address of the person who made or financed the communication or whether the communication was or was not authorized by the candidate, the commission may impose a fine of no more than \$5,000 against the person responsible for the communication. Enforcement and collection procedures must be in accordance with section 1020-A.

[2005, c. 542, §1 (amd).]

5. Automated telephone calls. Automated telephone calls that name a clearly identified candidate must clearly state the name of the person who made or financed the expenditure for the communication, except for automated telephone calls paid for by the candidate that use the candidate's voice in the telephone call.

[2005, c. 301, §12 (new).]

PL 1985, Ch. 161, §6 (NEW).
PL 1987, Ch. 188, §17 (AMD).
PL 1989, Ch. 504, §5,6,31 (AMD).
PL 1991, Ch. 466, §37 (AMD).
PL 1991, Ch. 839, §8-10 (AMD).
PL 1995, Ch. 483, §6 (AMD).
PL 2003, Ch. 302, §1 (AMD).
PL 2003, Ch. 510, §F1 (AMD).
PL 2003, Ch. 510, §F2 (AFF).
PL 2003, Ch. 599, §15 (AFF).
PL 2005, Ch. 301, §10-12 (AMD).
PL 2005, Ch. 308, §1 (AMD).
PL 2005, Ch. 542, §1 (AMD).



CHAPTER 13

Disclosure on Campaign Communications

Disclosure on Campaign Communications

Whenever a person makes an expenditure to finance a communication expressly advocating the election or defeat of a clearly identified candidate through broadcasting stations, newspapers, magazines, campaign signs or outdoor advertising facilities, publicly accessible websites, direct mails or other similar types of general public political advertising, or through flyers, handbills, bumper stickers, and other non-periodical publications, the communication, if authorized by a candidate, a candidate's authorized political committee, or their agents, must clearly and conspicuously state that the communication has been so authorized. The communication must also clearly state the name and address of the person who made or financed the expenditure for the communication.

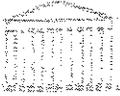
In addition, these requirements apply to any communication that names or depicts a clearly identified candidate and that is disseminated to voters in the last 21 days before the primary election or in the last 35 days before the general election.

The following are examples of suitable attribution statements for political communications financed:

By a Candidate

- Paid for and authorized by John Doe, 2 Main Street, Pinetree City
- Paid for and authorized by the candidate, 2 Main Street, Pinetree City (where the candidate's full name is clearly stated in the communication)

JOHN DOE
FOR SENATE
Paid for and authorized by John Doe, 2 Main Street, Pinetree City

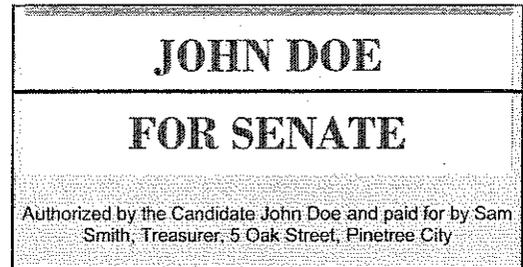


By a Candidate's Political Committee

- Authorized by the Candidate and paid for by the Committee to Elect John Doe,
2 Main Street, Pinetree City

By a Candidate's Agents

- Authorized by Candidate John Doe and paid for by Sam Smith, Treasurer, 5 Oak Street, Pinetree City;
- Paid for by the Candidate and authorized by John Jones, Chairman of Committee to Reelect John Doe, 1 Cool Street, Pinetree City



Communications Exempt from Disclosure

Certain items are exempt from the disclosure requirement because of their small size: ashtrays, badges and badge holders, balloons, campaign buttons, clothing, coasters, combs, emery boards, envelopes, erasers, glasses, key rings, letter openers, matchbooks, nail files, noisemakers, paper and plastic cups, pencils, pens, plastic tableware, 12-inch or shorter rulers, swizzle sticks, and tickets to fund-raisers. The Commission may exempt similar items if it determines those items are too small and, therefore, it would be unnecessary to include the required disclosure.

Automated Telephone Calls

Prerecorded automated telephone calls and scripted live telephone calls that name a clearly identified candidate during the 21 days before a primary election or 35 days before a general election must include the name of the person who made or financed the communication, except that the disclosure is not required for prerecorded automated calls paid for by the candidate using the candidate's voice and are made in support of that candidate.

Communications Not Authorized by the Candidate

Similar requirements apply to communications that are paid for by third-parties such as political action committees, party committees and individuals and that are not authorized by the candidates. Those communications must disclose the person who made or financed the communication and that the communication was not authorized by the candidate or campaign.