

Agenda

Item #5



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

To: Commission Members

From: Jonathan Wayne, Executive Director

Date: December 19, 2008

Re: Proposed Changes to Chapter 1 and Chapter 3 Commission Rules

The staff has considered some issues that have arisen in the 2008 and previous elections and would like to propose some changes to Chapters 1 and 3 of the Commission's rules. The proposed changes are attached, and an explanation of the changes is set forth below.

At your December 29 meeting, we would like to discuss with you the scheduling of the rule-making. The staff needs to work with the Commission's counsel on some changes to Chapter 2, and those changes are not ready at this time. The staff feels under some pressure to complete major substantive (Chapter 3) rules so that they will be submitted to the Legislature not too late in the 2009 session.

Chapter 1

Section 6(2) – Loans

Under the statutory definition of contribution and this subsection of the Commission's rules, a loan to a candidate or political action committee is a form of contribution. In the Commission reporting form, however, loans are listed under a separate schedule than cash contributions. Under 21-A M.R.S.A. § 1017(3-A)(E), candidates must file semi-annual campaign finance reports indefinitely after an election if they have unpaid loans or debts over \$100. Some candidates continue to file reports for several years because of loans they have made to their campaigns.

We propose a change to Section 6(2) to allow the Commission to convert a reported loan to be a cash contribution if it remains unpaid for four years after the election. If a campaign has not repaid a loan (usually from the candidate) within four years, we believe it is reasonable for it to be publicly disclosed as a cash contribution rather than as a loan.

Section 6(3) – Reporting Contributors' Occupation and Place of Business

The staff proposes an amendment to clarify that party committees must make a reasonable effort to obtain a contributor's occupation and principle place of business, which is legally required by 21-A M.R.S.A. § 1017-A(1).

Section 6(6) – Unpaid Debts

The Commission receives reports from PACs and candidates showing debts that remain unpaid. For example, a traditionally financed gubernatorial candidate from the 2006 election continues to owe a debt to a commercial vendor in the amount of \$17,351.77. Some PACs have reported debts that are quite old. All contributions to candidates are subject to a limit of \$250 or \$500. The staff proposes including time periods in the Commission rules which would create a rebuttable presumption that a candidate or political committee had received a contribution if they continued to have a debt to the vendor that remained unpaid over a period of four years.

Section 11 – Reporting Schedule for Ballot Question Committees

Under current 21-A M.R.S.A. § 1056-B(1), ballot question committees must file campaign finance reports according to a reporting schedule that the Commission has established taking into consideration the PAC report schedule. The Commission adopted Section 11 of its rules to establish that reporting schedule.

The staff believes it would be simpler for the reporting schedule to be stated in statute rather than in Commission rule, and that it should be stated in statute that ballot question committees are on the same reporting schedule as PACs. Therefore, the Commission staff proposes separately to amend § 1056-B (1) and proposes deleting Section 11 of the Commission's Chapter 1 rules.

Chapter 3

Section 5(3)(F) – Independent Expenditure Reports

The staff proposes a clarification to the Commission's rule that it may exercise its independent judgment in deciding whether a reported independent expenditure is in support or in opposition to a candidate when awarding matching funds.

Section 7(2)(B)(2-A) – Primary Election Matching funds

In 2008, the Commission staff encountered an unusual circumstance that a candidate for the State Senate had received a large amount of matching funds for the primary election which he did not spend for that election. (Relatively few candidates qualify to receive matching funds to keep them on an even playing field with their opponent in a primary election.) The candidate voluntarily repaid this large amount of unspent funding to the Commission. The staff proposes that candidates should return unspent primary election matching funds to the Commission in order to improve the matching funds for the general election.

Section 7(2)(C) – Property and Equipment purchased with MCEA funds

Under the current rule, if a campaign uses MCEA funds to purchase property and equipment that could be converted to the candidate's personal use after an election (e.g., a computer or cell phone), after the election the campaign must sell the property or equipment for fair market value and return the proceeds to the Commission. The Commission's auditors have been dissatisfied with the fair market value requirement because it has proved to be difficult to advise candidates on what is acceptable fair market value and the Commission has only received about 50% of the original purchase price. Although most candidates are sensitive to this issue, a very small number of candidates have apparently attempted to take advantage of this requirement.

Based on advice from former auditor, Sumner Field, we propose a different formula for what must be obtained by a campaign in a post-election sale of property or equipment. Thank you for your consideration of these rule changes.

Chapter 1: PROCEDURES

SECTION 6. CONTRIBUTIONS AND OTHER RECEIPTS

1. The date of a contribution is the date it is received by a candidate, an agent of the candidate, a candidate's committee, a party committee and its agents, or a political action committee and its agents.
2. A loan is a contribution at the time it is made unless the loan was made by a financial institution in the State of Maine in the ordinary course of business. Loans continue to be contributions until they are repaid. Loans are subject to the candidate contribution limitations, except for loans made by the candidate, the candidate's spouse, or a financial institution in the State of Maine in the ordinary course of business. The Commission may convert any reported loan to a cash contribution if it remains unpaid four years after the election in which it was incurred.
3. Candidates and political action committees must report the name, address, occupation and employer of each individual contributor who gives, in the aggregate, more than \$50 for the reporting period. The reporting is required for private contributions raised by privately financed candidates and for seed money contributions to candidates participating in the Maine Clean Election Act. Candidates, ~~and~~ political action committees, party committees, and ballot question 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.
4. Unless specifically exempted under Title 21-A M.R.S.A. §§ 1012 and 1052 or this section, the provision of any goods or services without charge or at a charge that is less than the usual and customary charge for such goods or services is an in-kind contribution. Examples of such goods and services include, but are not limited to: equipment, facilities, supplies, personnel, advertising, and campaign literature. If goods or services are provided at less than the usual and customary charge, the amount of the in-kind contribution is the difference between the usual and customary charge and the amount charged the candidate or political committee.
5. An employer that has authorized an employee to provide services without charge to a candidate or political committee during the employee's paid work-time has made an in-kind contribution to the candidate or political committee. No contribution has been made if the employee is providing services as a volunteer outside of the employee's paid work-time.
6. A commercial vendor that has extended credit to a candidate or political committee has not made a contribution if the credit is extended in the ordinary course of the vendor's business and the terms are substantially similar to extensions of credit made to

nonpolitical customers that are of similar risk and size of obligation. The Commission shall presume any debt that remains unpaid more than six months after the election in which the debt was incurred to be a contribution to the candidate or political committee unless the candidate or committee provides clear and convincing evidence to the Commission that they intend to raise funds or take other measures to satisfy the debt. Any debt that remains unpaid for more than four years after the election shall be deemed a contribution to the candidate or committee, unless the candidate or committee provides clear and convincing evidence to the Commission that the creditor has not intended to make a contribution to the candidate or committee and that the candidate or committee is unable to pay the debt.

7. For the purposes of the limitations imposed by 21-A M.R.S.A. §1015(1), 21-A M.R.S.A. §1015(2), 21-A M.R.S.A. §1015(3), and 21-A M.R.S.A. §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. §723, or who has received contributions or made expenditures with the intent of qualifying as a candidate.

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. §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 by 11:59 p.m. 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 December 31st;~~
 - ~~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 June 30th 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 also file the following reports by 11:59 p.m. on the following deadlines:
 - ~~A. A report must be filed on the 11th day before the election is held and be complete as of the 14th 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 14th 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.~~

Chapter 3: MAINE CLEAN ELECTION ACT AND RELATED PROVISIONS

SECTION 5. DISTRIBUTION OF FUNDS TO CERTIFIED CANDIDATES [SUBSECTIONS 1, 2, AND 4 OMITTED]**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. **Matching Fund Computation Involving Only 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 by a replacement candidate in a general 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 that the express-advocacy. The Commission is not bound by a statement in an independent expenditure report that the disclosed payment was made in support or in opposition to a candidate. 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.
- 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.
- H. **Other.** Any distribution based on reports and accurate calculations at the time of distribution is final, notwithstanding information contained in subsequent reports.
- I. **Coordination with Other State Agencies.** The Commission will coordinate with the 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.
- J. **Disbursements with No Campaign Value.** If a 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.

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 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 must be based on the standard mileage rate prescribed for employees of the State of Maine for the year in which the election occurs. 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.
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 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 matching 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 \$2,000 in order to defray expenses associated with an audit by the Commission.
 - (2-A) **Unspent Matching Funds for Successful Primary Election Candidates.** Upon the filing of the 42-day post-primary election report for a primary election in which a certified candidate was successful, that candidate must return any unspent matching funds received for the primary election. Matching funds received for the primary election may not be used for campaign expenditures for the general election.
 - (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 \$3,500 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 purchased for \$25 or more must be liquidated as specified below 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. Property and equipment purchased for \$25 or more and less than \$100 must be liquidated for no less than 50% of the original purchase price.~~

- (3) Property and equipment purchased for \$100 or more and less than \$1000 must be liquidated for no less than 75% of the original purchase price.
- (4) Property and equipment purchased for \$1,000 or more shall be presumed to have a useful life of five years and to reduce in value according to straight-line depreciation. Accordingly, when the campaign liquidates the property or equipment, the campaign shall obtain at least the value of the property on the day of the candidate's final election. [NOTE: FOR EXAMPLE, IF A CANDIDATE PURCHASED A PERSONAL COMPUTER FOR \$2,000 SIX MONTHS BEFORE THE CANDIDATE'S FINAL ELECTION, THE CANDIDATE SHALL LIQUIDATE THE COMPUTER FOR NO LESS THAN \$1,800 (\$2,000 REDUCED BY 6/60 MONTHS).]
- (5) In addition to the minimum amounts set forth in subparagraphs (2), (3), and (4), any property or equipment purchased in the final three weeks before the candidate's election or after the election shall be liquidated for no less than 95% of the original purchase price.