



MEMORANDUM

To: Interested Parties
From: Jonathan Wayne, Executive Director
Date: November 23, 2020
Subject: Invitation to Comment on Proposed Rule Amendment

The Maine Ethics Commission is inviting comments on a proposed amendment to the Commission's rules (attached) that would address whether a candidate who has accepted traditional campaign contributions that do not comply with seed money restrictions should have an opportunity to participate in the Maine Clean Election Act (MCEA) program, especially if the candidate chooses to run for a different office.

Seed Money Provision in the MCEA

In order to be eligible for MCEA funding, a candidate must declare his or her intent to qualify for the funding on the Commission's forms. At that point, the candidate is considered to be a "participating candidate," as defined in the MCEA. 21-A M.R.S. § 1122(6). If the candidate qualifies for MCEA funding, the candidate is a "certified candidate." 21-A M.R.S. § 1122(1).

Participating candidates may collect limited seed money contributions before they qualify for MCEA funding. Seed money contributions are donations of up to \$100 from individuals. Participating candidates may not collect seed money from associations, organizations, or political committees. Under the seed money provision in the MCEA:

2-A. Seed money restrictions. To be eligible for certification, a participating candidate may collect and spend only seed money contributions subsequent to becoming a candidate and prior to certification. A participating candidate may not solicit, accept or collect seed money contributions after certification as a Maine Clean Election Act candidate.

A. All goods and services received prior to certification must be paid for with seed money contributions, except for goods and services that are excluded from the definition of contribution in section 1012, subsection 2, paragraph B. It is a violation of this chapter for a certified candidate to use fund revenues received after certification to pay for goods and services received prior to certification. ...

21-A M.R.S. § 1125(2-A) (underlining not in original). The MCEA seed money provision permits a participating candidate to petition the Commission if they have accepted contributions or made expenditures that do not comply with the seed money restrictions. 21-A M.R.S. § 1125(2-A)(B). The Commission has adopted a rule setting out the conditions under which the Commission may grant such a petition.¹

In providing advice to candidates, the Commission has been asked whether a candidate who has registered as a traditionally financed candidate and collected contributions that do not qualify with the seed money restrictions (*i.e.*, they have accepted contributions over \$100 or from sources other than individuals) may subsequently qualify for MCEA funding.

In the rule amendment that is being proposed for public comment, if the candidate is continuing to run for the same office, they could not participate in the MCEA program. If, however, the candidate has decided to run for a different office, the candidate could petition the Commission to qualify for MCEA funding on two conditions:

- The candidate would need to return any contributions from sources other than individuals and any portion of a contribution over \$100.
- The candidate had received sufficient contributions, or portions thereof, that comply with seed money restrictions to pay for all expenditures made prior to petitioning the Commission.

¹ Under the Commission's rule, the Commission may approve the petition if the participating candidate's acceptance of non-compliant contributions was due to an unintentional error, the candidate immediately returns the non-compliant contributions, the candidate petitions the Commission promptly upon being aware of the error, and the failure to comply does not involve expenditures significantly in excess of the seed money total amount restrictions. 94-270 C.M.R. ch. 1, § 2(3)(F).

The reason for the proposed distinction is that a candidate who has decided to run for a different office (*e.g.*, a House candidate who has decided to run for State Senate or Governor) may have valid reasons to seek MCEA funding that were not apparent when they chose to run for the first office.

How to comment. The Commission will hold a hearing to receive comments during its meeting on Friday, December 18, 2020 at 9:00 a.m. The meeting will be held by zoom videoconference. If you would like to participate in the conference to comment on the proposed amendment, please fill out the online form at [this link](#)² by December 16. (The link is posted in the Notices section of the Commission’s homepage at www.maine.gov/ethics.) You will receive an invitation to participate in the meeting by email on December 17. The meeting will be streamed to the Commission’s YouTube channel. Or, please email written comments to Lorrie.Brann@maine.gov no later than 5:00 p.m. on Tuesday, January 5, 2021. The Commission will decide whether to adopt any amendment at its meeting on January 27, 2021.

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

² https://forms.office.com/Pages/ResponsePage.aspx?id=q6g_QX0gYkubzeoajy-GThb7SCsuWQtJkVpb0qDrP3IUOVkxRzAxN0pOVE0wRUEyNkVWM041UjJDMY4u

Chapter 3: MAINE CLEAN ELECTION ACT AND RELATED PROVISIONS

SECTION 2. PROCEDURES FOR PARTICIPATION

1. **Declaration of Intent.** A participating candidate must file a Declaration of Intent 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 any qualifying contributions collected more than five days before 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 (D) [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. 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) two hundred thousand dollars for a gubernatorial candidate;
 - (b) three thousand dollars for a candidate for the State Senate; or
 - (c) one thousand 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. Required seed money for gubernatorial candidates. [Repealed.]

- D. 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.

- E. 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.
- F. 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.
- G. **Loans during qualifying period.** After becoming a candidate and prior to certification, accepting a loan from any source including a financial institution and spending money received in the form of a loan, are violations of the seed money restrictions of the Act.
- H. **Seed money donors.** A seed money contributor may also make a qualifying contribution to the same candidate provided that the contributor otherwise meets the requirements for making a qualifying contribution.
- I. **Personal funds to open bank account.** A candidate may deposit personal funds of the candidate in a campaign account in order to meet the opening deposit requirements of the financial institution. If a financial institution requires a minimum balance to keep an account open or to avoid fees, the candidate may maintain personal funds in the account for that sole purpose at the minimum amount necessary to satisfy the terms of the financial institution. These funds will not be considered an in-kind contribution to the candidate's campaign or commingling of personal and campaign funds, provided that the candidate does not spend these funds for purposes of promoting the candidate's nomination or election.
- J. **Accepting traditional campaign contributions before seeking Maine Clean Election Act funding.** If a candidate has accepted contributions as a traditionally financed candidate that do not comply with seed money restrictions:
- (1) The candidate is ineligible to qualify for Maine Clean Election Act funding for the same office.
 - (2) The candidate may petition the Commission to qualify for Maine Clean Election Act funding for a different office at least one month before the certification deadline if the candidate disposes of non-compliant contributions in accordance with written guidance from the Commission and the candidate has received sufficient contributions, or portions thereof, that comply with seed money restrictions to pay for all expenditures made prior to petitioning the Commission.

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