



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

Commission Meeting 12/18/2020
Agenda Item #3

To: Commission
From: Jonathan Wayne, Executive Director
Date: December 9, 2020
Re: Complaint - Campaign Signs without a Disclaimer Statement

In the 2020 general election, Timothy H. Goodwin was a candidate for the Maine House of Representatives, District 23, which includes part of Standish, Maine. He challenged the incumbent, Rep. Lester Ordway. Sometime around October 20, 2020, Mr. Goodwin contacted Candidate Registrar Emma Burke concerning signs posted around Standish stating "VOTE NO ON GOODWIN." The signs did not include the name and address of the person who paid for the signs or any statement of whether a candidate authorized them. Ms. Burke called Rep. Ordway, who denied authorizing the signs. Based on information received from Mr. Goodwin, Ms. Burke called Steve Collins who operates the Oak Hill General Store in Standish. He confirmed that he paid for the signs, and said that he would add his name to the signs.

On Oct. 23, 2020, Mr. Goodwin filed a signed complaint with the Commission by email, asserting that roughly 30 signs violated the Election Law because the signs did not state who paid for them. The Commission staff sent the complaint and an invitation to respond by Federal Express to Mr. Collins. He has indicated that he does not intend to participate in your December 18 meeting, and is not expected to respond in writing.

At this time, the Commission staff does not know the cost of the signs. Our initial assumption was that this was a solo effort by Mr. Collins, but we can't discount the possibility that others were involved in the financial activity. The Commission staff believes a penalty is appropriate to reinforce the "paid for" disclaimer requirement. Given the small cost of the signs (in the range of \$200+), we are unsure whether further investment of state resources investigating this matter is warranted.

Legal Requirements

Disclaimer statement. Paid communications to voters (such as signs) that expressly advocate the election or defeat of a candidate must clearly state the name and address of the person who paid for the communication. 21-A M.R.S. §§ 1014(1) & (2). If no candidate authorized the communication, § 1014(2) requires the communication to include a specific disclosure statement: “NOT PAID FOR OR AUTHORIZED BY ANY CANDIDATE.”

Title 21-A, section 1014 contains an exception for campaign signs costing no more than \$100 paid for by one or more individuals who are not required to register with the Commission and who are acting without authorization by any candidate or party committee. 21-A M.R.S. § 1014(6)(B).

Pursuant to § 1014(4), the Commission may assess a penalty for a violation of the disclaimer statute:

Enforcement. A violation of this section may result in a civil penalty of no more than 100% of the amount of the expenditure in violation, except that an expenditure for yard signs lacking the required information may result in a maximum civil penalty of \$ 200. In assessing a civil penalty, the commission shall consider, among other things, how widely the communication was disseminated, whether the violation was intentional, whether the violation occurred as the result of an error by a printer or other paid vendor and whether the communication conceals or misrepresents the identity of the person who financed it.

Independent expenditure reporting.¹ Persons spending more than \$250 for express advocacy communications independently of the candidates in the election are required to file a financial report of an independent expenditure with this office, under 21-A M.R.S. § 1019-B(4). The independent expenditure reporting requirement is in Chapter 13, subchapter II of the Election Law. Section 1020-A(8-A) contains a general grant of

¹ Mr. Goodwin did not raise this compliance issue in his complaint. You may wish to give this issue consideration as a separate enforcement issue, but at this time it is not verified that Mr. Collins or anyone spent more than \$250 on the campaign signs, which is the financial trigger for this report to be required.

authority to assess a penalty if a candidate, party committee, or independent spender altogether fails to file a campaign finance report:

8-A. Penalties for failure to file report. The penalty for failure to file a report required under this subchapter may not exceed the maximum [late-filing] penalties as provided in subsection 5-A.

21-A M.R.S. § 1020-A(8-A). The maximum penalty for filing an independent expenditure report late is generally \$5,000, under 21-A M.R.S. § 1020-A(5-A)(A-1).

Correspondence and Discussions with Interested Persons

Sometime around October 20, 2020, Tim Goodwin notified Candidate Registrar Emma Burke concerning signs opposing him that did not contain the required “paid for” disclaimer statement. This resulted in a conversation on or around October 20 between Ms. Burke and Steve Collins. He acknowledged paying for the signs and said that he would write his name on the signs. She told him it was possible that a complaint might be filed and that the Commission could assess a penalty. He said that he would not pay any penalty.

On October 23, 2020, Mr. Goodwin submitted a signed letter complaining about the noncompliant signs. In the complaint, he asserts that a handful of the signs have the name and address of Steve Collins written on them, along with the date they were posted, but that “a majority” of the signs do not contain the name.² He claimed that at least 30 had been posted around Standish and included photos of 23 signs

Mr. Goodwin sent a follow-up letter on Oct. 30 stating that he could not tell that Mr. Collins had added his name to any of the signs. His Oct. 30 letter is attached. We have also included photos of signs that were *not* included in his Oct. 23 complaint.

² Under Maine’s Highway Law, signs may be placed temporarily in the public right of way provided that they meet certain conditions, including the inclusion of the name and address of the person who posted the signs and the date erected. 23 M.R.S. § 1913-A(1)(L).

On November 13, 2020, we sent a letter to Mr. Collins by regular and certified mail notifying him of Mr. Goodwin's complaint and inviting him to respond. We sent the letter to 3 Ossipee Trail W in Standish, the physical address of the Oak Hill General Store.

On November 24, 2020, I called Mr. Collins at his store. He said that half a dozen people paid for the signs against Tim Goodwin. He said he paid for about 20 signs. I asked who printed the signs. He said that he didn't arrange for the printing, so he didn't know but it might have been somebody in Bridgton. I asked him who arranged for the signs to be printed, and he declined to tell me. He said that he had not seen my letter concerning Tim Goodwin's complaint. I told him that the Commission was meeting to consider the complaint on December 18, 2020. He said that he did not want to participate in the meeting. After this conversation, I compared notes with Ms. Burke. She said that when she talked to Mr. Collins during October, he said he paid for the signs and did not mention other people being involved.

On November 25, 2020, I called Mr. Collins again. I asked him how much he had paid for the signs. He declined to tell me and told me it was none of my business. Assuming he would not cooperate further, I ended the phone call.

On or around November 30, 2020, the two envelopes that we had sent to Mr. Collins at the 3 Ossipee Trail W in Standish were returned to us by the U.S. Postal Service, marked with stickers stating "No Mail Receptacle" and "No Such Number." That day, we sent the complaint and invitation to respond to Mr. Collins by Federal Express overnight delivery to the address of his store and by regular mail to a post office box listed for his store in online databases.

Federal Express has provided a proof-of-delivery confirmation that includes the information "Signed for by: SCOLLINS" with a delivery date of December 1, 2020. The invitation to respond delivered to Mr. Collins provided him with effective notice that the Commission may find him in violation of the disclaimer or independent expenditure

reporting requirements at its December 18 meeting, and may assess a penalty. We believe we have met the notice and opportunity to respond requirements necessary for the assessment of a civil penalty. To date, we have received no written response from him.

On Nov. 24, 2020 Emma Burke researched the cost of 25 single-sided plastic yard signs with wire wickets. She consulted ten vendors. Most included shipping costs in the cost estimates. Half of the prices she received were above \$250 and half were below \$250.

Analysis and Recommendation

The Commission staff is happy to conduct any further fact-finding or investigation you believe is necessary in this matter. Given the modest cost of the signs (\$200+), however, we are not sure whether further expenditure of state resources is warranted.

The Commission staff recommends that you find that Steve Collins violated 21-A M.R.S. § 1014(2). The campaign signs expressly advocated Mr. Goodwin's defeat. Mr. Collins has twice acknowledged paying for the signs in conversations with the Commission staff. Rep. Ordway denied authorizing the signs, and Mr. Goodwin (the only other candidate for House District #23) did not authorize them. The signs (at least a majority) are in violation because they did not state Mr. Collins' name and address, and do not contain the statement "NOT PAID FOR OR AUTHORIZED BY ANY CANDIDATE." The staff recommends assessing a civil penalty of \$200, which is the maximum penalty for not including a disclaimer statement on yard signs.

The Commission staff contemplated recommending a finding of violation and penalty against Mr. Collins for not filing an independent expenditure report. At the time of the writing of this memo, however, we feel the facts are not sufficiently developed to recommend a violation and penalty for this potential violation. We do not know the details of the financial activity, particularly whether the cost of the signs exceeded \$250 which is the trigger for the requirement to file an IE report. Thank you for your consideration of this memo.

October 23, 2020

Tim Goodwin
9 Oak Hill Rd
Standish, ME 04084

Commission William Lee, III, Esq
Maine Ethics Commission
45 Memorial Cir,
Augusta, ME 04330

Commissioner William Lee, III, Esq:

Attached are pictures of 23 signs that were on display in Standish on October 20, 2020. There was another in the window of Standish Auto Care that I did not take a picture of. Because some of these signs are two signs back-to-back, this represents a purchase of at least 27 single-sided signs. (I believe there are at least 30—a double-decker showed up later in the day and a sign that was placed in front of my house with name and address on the face was not spotted on the 20th.)

None of these signs have a "paid for by" disclosure statement on them. I believe 27 signs would cost more than the \$100 minimum required for such disclosure.

A handful of these signs have the name Steve Collins, 3 Ossipee Trail W, Standish on them along with the date they were placed. A majority of those (on public property) have no such labeling. I believe it is possible Cliff Strumph, owner of Standish Auto Care, made the purchase.

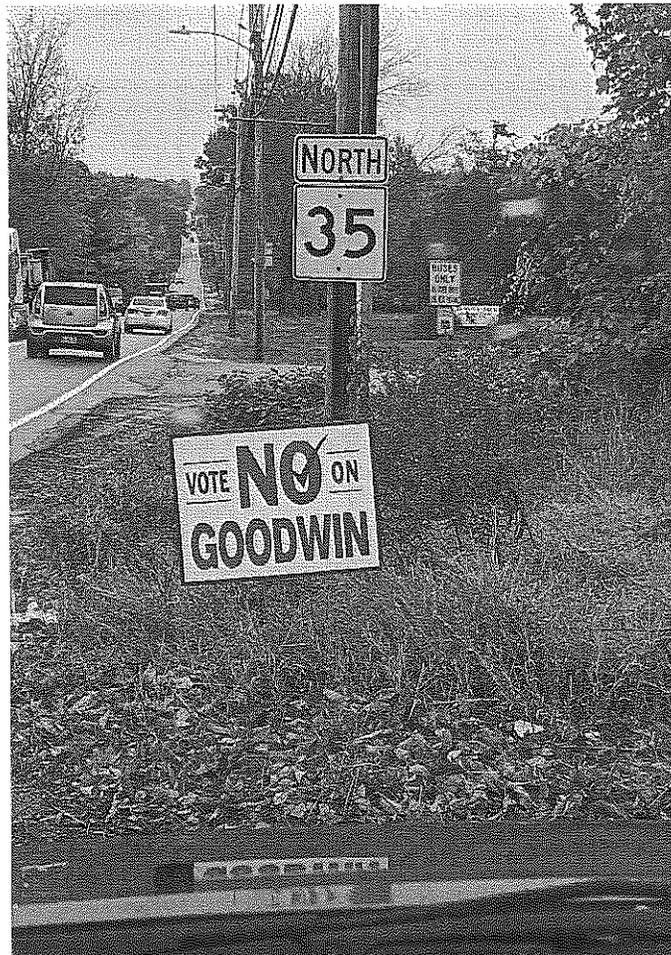
I have notified Emma Burke and she contacted Steve Collins on October 20th to inform him of the disclosure requirement. As of today, the signs are still about town and I have not seen any disclosure statements added.

This letter is my official complaint to the Ethics Commission regarding the missing "paid for by" statement on the twenty-three signs pictured plus the one in the window at Standish Auto Care.

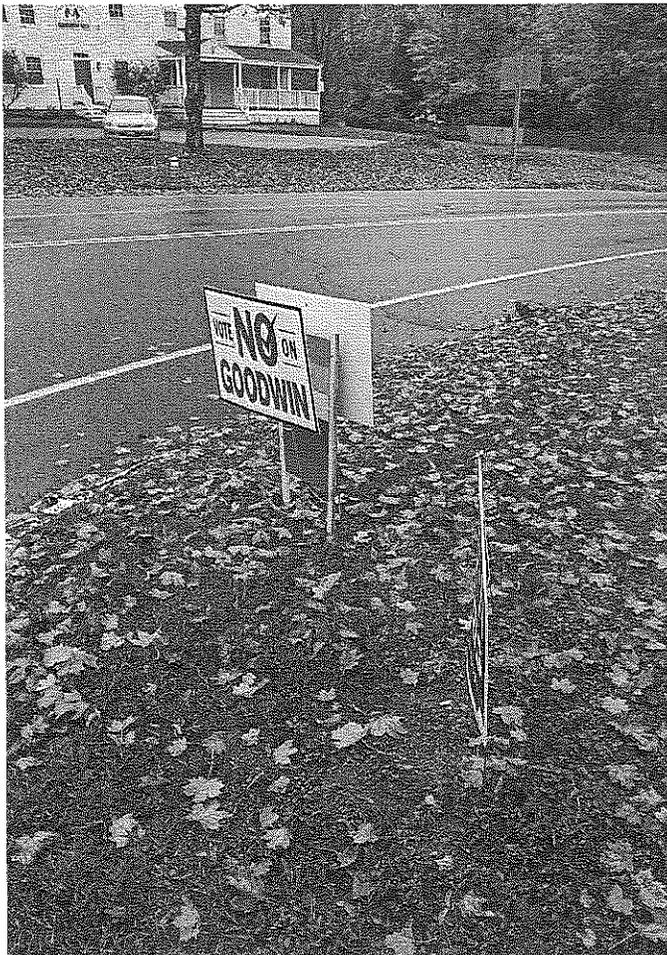
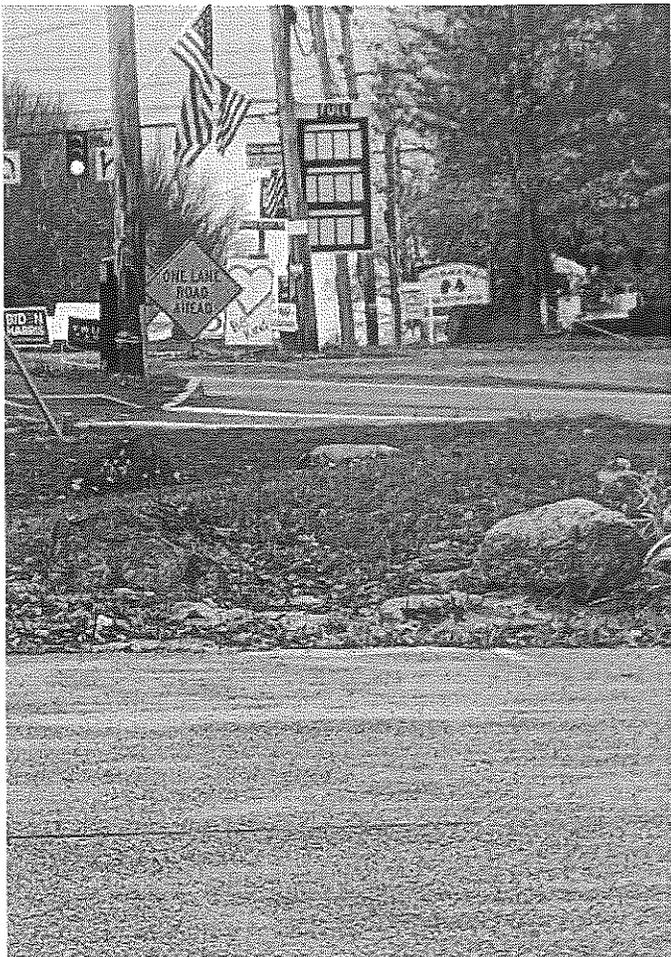
Sincerely,



Tim Goodwin













October 30, 2020

Tim Goodwin
9 Oak Hill Rd
Standish, ME 04084

Commission William Lee, III, Esq
Maine Ethics Commission
45 Memorial Cir,
Augusta, ME 04330

Commissioner William Lee, III, Esq:

Attached are pictures of twenty-five signs that were on display in Standish on October 29, 2020. There was another in the window of Standish Auto Care that I did not take a picture of. Because some of these signs are two signs back-to-back, this represents a purchase of at least 31 single-sided signs.

I reported these signs to your office last week and Emma Burke notified Steve Collins (whose name is on some of the signs) about the disclosure requirement on October 20, 2020. I have not seen a disclosure statement added to any of the signs.

This letter is my official complaint to the Ethics Commission regarding the still missing "paid for by" statement on the twenty-five signs pictured plus the one in the window at Standish Auto Care.

Sincerely,

A handwritten signature in black ink, appearing to read 'T. Goodwin', with a stylized flourish at the end.

Tim Goodwin









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

November 13, 2020

By Regular and Certified Mail, Return Receipt Requested

Steve Collins
3 Ossipee Trail W
Standish, Maine 04084

Dear Mr. Collins:

Timothy H. Goodwin filed the attached complaint with the Maine Ethics Commission concerning signs stating "VOTE NO ON GOODWIN" that were posted around Standish before the November 3, 2020 general election. During a conversation with a Commission employee on or around October 20, 2020, you acknowledged paying for the signs. Mr. Goodwin's opponent, Lester Ordway, has told this office that he did not authorize the signs.

Potential disclosure statement violation. Under the Election Law (21-A M.R.S. § 1014(2)), these signs were required to include a disclosure statement of the name and address of the person who paid for them. If no candidate authorized the signs, they were also required to include a specific disclosure statement "NOT PAID FOR OR AUTHORIZED BY ANY CANDIDATE."

Potential independent expenditure report violation. Persons spending more than \$250 for signs or other communications to voters expressly advocating for or against a candidate that are made independently of the candidates in the election are required to file a financial report of an independent expenditure with this office, under 21-A M.R.S. § 1019-B(4).

Commission's Meeting on December 18, 2020

The Commission will be considering Mr. Goodwin's complaint at a meeting on December 18, 2020 at 9:00 a.m. which will be held by videoconference.

The Commission members will be deciding whether or not the persons who paid for the signs violated 21-A M.R.S. §§ 1014(2) & 1019-B(4). They may wish to assess a penalty for the failure to include the required disclosure statement on the signs or file an independent expenditure report with this office.

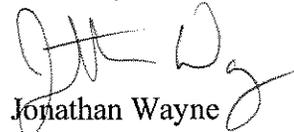
Steve Collins
Page 2
November 13, 2020

Your Opportunity to Respond

You are invited to respond to the complaint with any information you believe the Commission ought to know concerning this matter. If you would like to respond, please send me an email at Jonathan.Wayne@maine.gov or a letter at Maine Ethics Commission, 135 SHS, Augusta, ME 04333 by December 1, 2020. In your response, please confirm whether you paid for the signs and how much they cost.

Please call me at 287-4179 to confirm you received this letter and are aware that Mr. Goodwin's complaint will be considered at the December 18 meeting. Because the Commission may assess civil penalties against you, I want to make sure you understand your opportunity to respond. Thank you.

Sincerely,



Jonathan Wayne
Executive Director

cc: Timothy H. Goodwin
Hon. Lester Ordway

Dear Customer,

The following is the proof-of-delivery for tracking number: 772213478506

Delivery Information:

Status:	Delivered	Delivered To:	
Signed for by:	SCOLLINS	Delivery Location:	3 OSSIPPEE TRL W
Service type:	FedEx Ground		Standish, ME, 04084
Special Handling:	Direct Signature Required	Delivery date:	Dec 1, 2020 13:37

Shipping Information:

Tracking number:	772213478506	Ship Date:	Nov 30, 2020
		Weight:	1.0 LB/0.45 KG

Recipient:

Shipper:
Maine Ethics Commission, Maine Ethics Commission
45 Memorial Circle
2nd Floor
Augusta, ME, US, 04333





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

To: Executive Director Jonathan Wayne
From: Emma Burke, Candidate Registrar
Date: November 24, 2020
Re: Average Cost of Yard Signs

I have reviewed the cost of yard signs with the following vendors: Signs on the Cheap, Victory Store, Sign Rocket, Super Cheap Signs, Just Yard Signs, Dirt Cheap Signs, Political Lawn Signs, Speedy Signs USA, Crazy Cheap Political Signs, and Good Guys Signs. All of these vendors were used by candidates in 2020 to purchase yard signs for their campaigns. Using the websites of these vendors, I have determined what would be the current cost of ordering 25 single-sided, 18" by 24" corrugated plastic yard signs with wire wickets. These prices do include shipping, except where noted, and do not include any discounts.

Signs on the Cheap - \$283.25
Victory Store - \$175.64
Sign Rocket - \$290.60
Super Cheap Signs - \$260.15
Just Yard Signs - \$204.00
Dirt Cheap Signs - \$155.25 (*without shipping*)
Political Lawn Signs - \$235.75
Speedy Signs USA - \$251.95 (*without shipping*)
Crazy Cheap Political Signs - \$443.75
Good Guys Signs - \$176.04

As can be seen, there is a wide variety of prices for the same order, with five of the ten vendors producing prices greater than \$250, and the other five under \$250. However, it is important to note that it is quite possible that Mr. Collins used a local print shop for his sign purchase, and typically local print shops cost more than online vendors.

21-A M.R.S. § 1014**§ 1014. Publication or distribution of political communications**

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, cable television systems, newspapers, magazines, campaign signs or other 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. A communication financed by a candidate or the candidate's committee is not required to state the address of the candidate or committee that financed the communication. If a communication that is financed by someone other than the candidate or the candidate's authorized committee is broadcast by radio, only the city and state of the address of the person who financed the communication must be stated.

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, except that a communication broadcast by radio is only required to state the city and state of the address of the person that financed 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 12-point bold print, Times New Roman font, the words "NOT PAID FOR OR AUTHORIZED BY ANY CANDIDATE."

2-A. Other communications. Whenever a person makes an expenditure to finance a communication that names or depicts a clearly identified candidate and that is disseminated during the 28 days, including election day, before a primary election, during the 35 days, including election day, before a special election or during the period of time from Labor Day to the election day for a general 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, except that a communication broadcast by radio is only required to state the city and state of the address of the person that financed the communication. The disclosure is not required if the communication was not made for the purpose of influencing the candidate's nomination for election or election.

2-B. Top 3 funders; independent expenditures. A communication that is funded by an entity making an independent expenditure as defined in section 1019-B, subsection 1 must conspicuously include the following statement:

"The top 3 funders of (name of entity that made the independent expenditure) are (names of top 3 funders)."

The information required by this subsection may appear simultaneously with any statement required by subsection 2 or 2-A. A communication that contains a visual aspect must include the statement in written text. A communication that does not contain a visual aspect must include an audible statement. This statement is required only for communications made through broadcast or cable television, broadcast radio, Internet audio programming, direct mail or newspaper or other periodical publications.

A cable television or broadcast television communication must include both an audible and a written statement. For a cable television or broadcast television communication 30 seconds or less in duration, the audible statement may be modified to include only the single top funder.

21-A M.R.S. § 1014

The top funders named in the required statement consist of the funders providing the highest dollar amount of funding to the entity making the independent expenditure since the day following the most recent general election day.

A. For purposes of this subsection, "funder" includes:

- (1).** Any entity that has made a contribution as defined in section 1052, subsection 3 to the entity making the independent expenditure since the day following the most recent general election day; and
- (2)** Any entity that has given a gift, subscription, loan, advance or deposit of money or anything of value, including a promise or agreement to provide money or anything of value whether or not legally enforceable, except for transactions in which a fair value is given in return, since the day following the most recent general election day.

B. If funders have given equal amounts, creating a tie in the ranking of the top 3 funders, the tie must be broken by naming the tying funders in chronological order of the receipt of funding until 3 funders are included in the statement. If the chronological order cannot be discerned, the entity making the independent expenditure may choose which of the tying funders to include in the statement. In no case may a communication be required to include the names of more than 3 funders.

C. The statement required under this subsection is not required to include the name of any funder who has provided less than \$1,000 to the entity making the independent expenditure since the day following the most recent general election day.

D. If only one or 2 funders must be included pursuant to this subsection, the communication must identify the number of funders as "top funder" or "top 2 funders" as appropriate. If there are no funders required to be included under this subsection, no statement is required.

E. When compiling the list of top funders, an entity making an independent expenditure may disregard any funds that the entity can show were used for purposes unrelated to the candidate mentioned in the communication on the basis that funds were either spent in the order received or were strictly segregated in other accounts.

F. In any communication consisting of an audio broadcast of 30 seconds or less or a print communication of 20 square inches or less, the requirements of this subsection are satisfied by including the name of the single highest funder only.

G. If the list of funders changes during the period in which a recurring communication is aired or published, the statement appearing in the communication must be updated at the time that any additional payments are made for that communication.

H. The commission may establish by routine technical rule, adopted in accordance with Title 5, chapter 375, subchapter 2-A, forms and procedures for ensuring compliance with this subsection. Rules adopted pursuant to this paragraph must ensure that the information required by this subsection is effectively conveyed for a sufficient duration and in a sufficient font size or screen size where applicable without undue burden on the ability of the entity to make the communication. The rules must also provide an exemption for types of communications for which the required statement would be impossible or impose an unusual hardship due to the unique format or medium of the communication.

3. Broadcasting prohibited without disclosure. No person operating a broadcasting station or cable television system within this State may broadcast any communication, as described in subsections 1 to 2-A, without an oral or written visual announcement of the disclosure required by this section.

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 ballot question. Any in-kind contributions of printed materials used or distributed by a candidate, political committee or political action committee must include

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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.

3-B. Newspapers. A newspaper may not publish a communication described in subsections 1 to 2-A 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, including a version of the newspaper displayed on a website owned or operated by the newspaper. When necessary, a newspaper may seek the advice of the commission regarding whether or not the communication requires the disclosure.

4. Enforcement. A violation of this section may result in a civil penalty of no more than 100% of the amount of the expenditure in violation, except that an expenditure for yard signs lacking the required information may result in a maximum civil penalty of \$ 200. In assessing a civil penalty, the commission shall consider, among other things, how widely the communication was disseminated, whether the violation was intentional, whether the violation occurred as the result of an error by a printer or other paid vendor and whether the communication conceals or misrepresents the identity of the person who financed it. If the person who financed the communication or who committed the violation corrects the violation within 10 days after receiving notification of the violation from the commission by adding the missing information to the communication, the commission may decide to assess no civil penalty.

5. Telephone calls. Prerecorded automated telephone calls and scripted live telephone communications that name a clearly identified candidate during the 28 days, including election day, before a primary election, during the 35 days, including election day, before a special election or during the period of time from Labor Day to the general election day for a general election must clearly state the name of the person who made or financed the expenditure for the communication and whether the communication was authorized by a candidate, except for prerecorded automated telephone calls paid for by the candidate that use the candidate’s voice in the telephone call and that are made in support of that candidate. Telephone surveys that meet generally accepted standards for polling research and that are not conducted for the purpose of influencing the voting position of call recipients are not required to include the disclosure.

6. Exclusions. The requirements of this section do not apply to:

A. Handbills or other literature produced and distributed at a cost not exceeding \$ 100 and prepared by one or more individuals who are not required to register or file campaign finance reports with the commission and who are acting independently of and without authorization by a candidate, candidate’s authorized campaign committee, party committee, political action committee or ballot question committee or an agent of a candidate, candidate’s authorized campaign committee, party committee, political action committee or ballot question committee;

B. Campaign signs produced and distributed at a cost not exceeding \$ 100, paid for by one or more individuals who are not required to register or file campaign finance reports with the commission and who are acting independently of and without authorization by a candidate, candidate’s authorized campaign committee, party committee, political action committee or ballot question committee or an agent of a candidate, candidate’s authorized campaign committee, party committee, political action committee or ballot question committee;

C. Internet and e-mail activities costing less than \$ 100, as excluded by rule of the commission, paid for by one or more individuals who are not required to register or file campaign finance reports with the commission and who are acting independently of and without authorization by a candidate, candidate’s authorized campaign committee, party committee, political action committee or ballot question committee or an agent of a candidate, candidate’s authorized campaign committee, party committee, political action committee or ballot question committee;

D. Communications in which the name or address of the person who made or authorized the expenditure for the communication would be so small as to be illegible or infeasible, including communications on items such as ashtrays, badges and badge holders, balloons, campaign buttons, clothing, coasters, combs, emery boards, envelopes, erasers, glasses, key rings, letter openers,

21-A M.R.S. § 1014

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 and in electronic media advertisements where compliance with this section would be impractical due to size or character limitations; and

E. Campaign signs that are financed by the candidate or candidate's authorized committee and that clearly identify the name of the candidate and are lettered or printed individually by hand.

21-A M.R.S. § 1019-B

Current with the Second Regular Session and Chapter 2 of the Revisor's Report for the 129th Maine Legislature.

Maine Revised Statutes Annotated by LexisNexis® > Title 21-A. Elections (Chs. 1 — 15) > Chapter 13. Campaign Reports and Finances (Subchs. 1 — 5) > Subchapter 2. Reports on Campaigns for Office (§§ 1011 — 1020-A)

§ 1019-B. Reports of independent expenditures

1. Independent expenditures; definition. For the purposes of this section, an “independent expenditure”:

- A.** Is any expenditure made by a person, party committee or political action committee, other than by contribution to a candidate or a candidate's authorized political committee, for any communication that expressly advocates the election or defeat of a clearly identified candidate; and
- B.** Is presumed to be any expenditure made to design, produce or disseminate a communication that names or depicts a clearly identified candidate and is disseminated during the 28 days, including election day, before a primary election; during the 35 days, including election day, before a special election; or from Labor Day to a general election day.

2. Rebutting presumption. A person presumed under this section to have made an independent expenditure may rebut the presumption by filing a signed written statement with the commission within 48 hours of disseminating the communication stating that the cost was not incurred with the intent to influence the nomination, election or defeat of a candidate, supported by any additional evidence the person chooses to submit. The commission may gather any additional evidence it deems relevant and material and shall determine by a preponderance of the evidence whether the cost was incurred with intent to influence the nomination, election or defeat of a candidate.

3. Report required; content; rules. [2009, c. 524, § 6 (RPR); MRSAT. 21-A, § 1019-B, sub—§ 3 (RP).]

4. Report required; content; rules. A person, party committee or political action committee that makes any independent expenditure in excess of \$250 during any one candidate's election shall file a report with the commission. In the case of a municipal election, the report must be filed with the municipal clerk.

A. A report required by this subsection must be filed with the commission according to a reporting schedule that the commission shall establish by rule that takes into consideration existing campaign finance reporting requirements. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

B. A report required by this subsection must contain an itemized account of each expenditure in excess of \$250 in any one candidate's election, the date and purpose of each expenditure and the name of each payee or creditor. The report must state whether the expenditure is in support of or in opposition to the candidate and must include, under penalty of perjury, as provided in [Title 17-A, section 451](#), a statement under oath or affirmation whether the expenditure is made in cooperation, consultation or concert with, or at the request or suggestion of, the candidate or an authorized committee or agent of the candidate.

C. A report required by this subsection 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. The commission may adopt procedures requiring the electronic filing of an

21-A M.R.S. § 1019-B

independent expenditure report, as long as the commission receives the statement made under oath or affirmation set out in paragraph B by the filing deadline and the commission adopts an exception for persons who lack access to the required technology or the technological ability to file reports electronically. The commission may adopt procedures allowing for the signed statement to be provisionally filed by facsimile or electronic mail, as long as the report is not considered complete without the filing of the original signed statement.

5. Exclusions. An independent expenditure does not include:

- A.** An expenditure made by a person in cooperation, consultation or concert with, or at the request or suggestion of, a candidate, a candidate's political committee or their agents;
- B.** A telephone survey that meets generally accepted standards for polling research and that is not conducted for the purpose of changing the voting position of the call recipients or discouraging them from voting;
- C.** A telephone call naming a clearly identified candidate that identifies an individual's position on a candidate, ballot question or political party for the purpose of encouraging the individual to vote, as long as the call contains no advocacy for or against any candidate; and
- D.** A voter guide that consists primarily of candidates' responses to surveys and questionnaires and that contains no advocacy for or against any candidate.

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§ 1020-A. Failure to file on time

1. Registration. A candidate that fails to register the name of a candidate, treasurer or political committee with the commission within the time allowed by section 1013-A, subsection 1 may be assessed a forfeiture of \$100. The commission shall determine whether a registration satisfies the requirements for timely filing under section 1013-A, subsection 1.

2. Campaign finance reports. A campaign finance report is not timely filed unless a properly signed or electronically submitted copy of the report, substantially conforming to the disclosure requirements of this subchapter, is received by the commission by 11:59 p.m. on the date it is due. Except as provided in subsection 7, the commission shall determine whether a report satisfies the requirements for timely filing. The commission may waive a penalty in whole or in part if the commission determines that the penalty is disproportionate to the size of the candidate's campaign, the level of experience of the candidate, treasurer or campaign staff or the harm suffered by the public from the late disclosure. The commission may waive the penalty in whole or in part if the commission determines the failure to file a timely report was due to mitigating circumstances. For purposes of this section, "mitigating circumstances" means:

- A. A valid emergency determined by the commission, in the interest of the sound administration of justice, to warrant the waiver of the penalty in whole or in part;
- B. An error by the commission staff;
- C. Failure to receive notice of the filing deadline; or
- D. Other circumstances determined by the commission that warrant mitigation of the penalty, based upon relevant evidence presented that a bona fide effort was made to file the report in accordance with the statutory requirements, including, but not limited to, unexplained delays in postal service or interruptions in Internet service.

3. Municipal campaign finance reports. Municipal campaign finance reports must be filed, subject to all the provisions of this subchapter, with the municipal clerk on forms prescribed by the Commission on Governmental Ethics and Election Practices. The municipal clerk shall send any notice of lateness required by subsection 6 and shall notify the commission of any late reports subject to a penalty.

4. Repealed. Pursuant to its terms, eff. Aug. 1, 2002.

4-A. Basis for penalties. The penalty for late filing of a report required under this subchapter is a percentage of the total contributions or expenditures for the filing period, whichever is greater, multiplied by the number of calendar days late, as follows:

- A. For the first violation, 2%;
- B. For the 2nd violation, 4%; and
- C. For the 3rd and subsequent violations, 6%.

Any penalty of less than \$ 10 is waived.

Violations accumulate on reports with filing deadlines in a 2-year period that begins on January 1st of each even-numbered year. Waiver of a penalty does not nullify the finding of a violation.

A report required to be filed under this subchapter that is sent by certified or registered United States mail and postmarked at least 2 days before the deadline is not subject to penalty.

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A registration or report may be provisionally filed by transmission of a facsimile copy of the duly executed report to the commission, as long as the facsimile copy is filed by the applicable deadline and an original of the same report is received by the commission within 5 calendar days thereafter.

5. Repealed. Pursuant to its terms, eff. Aug. 1, 2002.

5-A. Maximum penalties. Penalties assessed under this subchapter may not exceed:

A. Five thousand dollars for reports required under section 1017, subsection 2, paragraph B, C, D, E or H; section 1017, subsection 3-A, paragraph B, C, D, D-1 or F; and section 1017, subsection 4, except that if the dollar amount of the financial activity that was not timely filed or did not substantially conform to the reporting requirements of this subchapter exceeds \$50,000, the maximum penalty is 100% of the dollar amount of that financial activity;

A-1. Five thousand dollars for reports required under section 1019-B, subsection 4, except that if the dollar amount of the financial activity that was not timely filed or did not substantially conform to the reporting requirements of this subchapter exceeds \$50,000, the maximum penalty is 100% of the dollar amount of that financial activity;

B. Five thousand dollars for state party committee reports required under section 1017-A, subsection 4-A, paragraphs A, B, C and E, except that if the dollar amount of the financial activity that was not timely filed or did not substantially conform to the reporting requirements of this subchapter exceeds \$50,000, the maximum penalty is 100% of the dollar amount of that financial activity;

C. One thousand dollars for reports required under section 1017, subsection 2, paragraphs A and F and section 1017, subsection 3-A, paragraphs A and E; or

D. Five hundred dollars for municipal, district and county committees for reports required under section 1017-A, subsection 4-B.

E. Repealed. Laws 2011, c. 558, § 5.

6. Request for a commission determination. If the commission staff finds that a candidate or political committee has failed to file a report required under this subchapter, the commission staff shall mail a notice to the candidate or political committee within 3 business days following the filing deadline informing the candidate or political committee that a report was not received. If a candidate or a political committee files a report required under this subchapter late, a notice of preliminary penalty must be sent to the candidate or political committee whose registration or campaign finance report was not received by 11:59 p.m. on the deadline date, informing the candidate or political committee of the staff finding of violation and preliminary penalty calculated under subsection 4-A and providing the candidate or political committee with an opportunity to request a determination by the commission. Any request for a determination must be made within 14 calendar days of receipt of the commission's notice. A candidate or political committee requesting a determination may either appear in person or designate a representative to appear on the candidate's or political committee's behalf or submit a sworn statement explaining the mitigating circumstances for consideration by the commission. A final determination by the commission may be appealed to the Superior Court in accordance with Title 5, chapter 375, subchapter 7 and the Maine Rules of Civil Procedure, Rule 80C.

7. Final notice of penalty. If a determination has been requested by the candidate or political committee and made by the commission, notice of the commission's final determination and the penalty, if any, imposed pursuant to this subchapter must be sent to the candidate and the political committee.

If a determination is not requested, the preliminary penalty calculated by the commission staff is final. The commission staff shall mail final notice of the penalty to the candidate and treasurer. A detailed summary of all notices must be provided to the commission.

8. Failure to file report. The commission shall notify a candidate who has failed to file a report required by this subchapter, in writing, informing the candidate of the requirement to file a report. The notice must be sent by certified mail. If a candidate fails to file a report after 2 notices have been sent by the commission,

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the commission shall send a final notice by certified mail informing the candidate of the requirement to file and that the matter may be referred to the Attorney General for criminal prosecution. A candidate who fails to file a report as required by this subchapter after the commission has sent the notices required by this subsection is guilty of a Class E crime.

8-A. Penalties for failure to file report. The penalty for failure to file a report required under this subchapter may not exceed the maximum penalties as provided in subsection 5-A.

9. List of late-filing candidates. The commission shall prepare a list of the names of candidates who are late in filing a report required under section 1017, subsection 2, paragraph C or D or section 1017, subsection 3-A, paragraph B or C within 30 days of the date of the election and shall make that list available for public inspection.

10. Enforcement. A penalty assessed pursuant to this section that has not been paid in full within 30 days after issuance of a notice of the final determination may be enforced in accordance with section 1004-B.