



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

To: Commission  
From: Jonathan Wayne, Executive Director  
Date: December 6, 2024  
Re: Supporter Pays for a Mailing on Behalf of a Political Group

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At a special meeting held on short notice on November 4, 2024, the Commission considered a situation in which CapeVoters.com (“CapeVoters”), a ballot question committee, had purchased two mailings from Spectrum Marketing Companies (“Spectrum”). It wanted to send a third mailing but did not have enough funds. A supporter, Ms. Sandi Dunham, directly paid Spectrum \$2,129.92 for the mailing with her personal credit card. CapeVoters did not reimburse Ms. Dunham. The mailing stated: “Paid for by CapeVoters.com.” This memo is intended to address some of the questions that arose in the meeting as to how to apply campaign finance law.

**(1) Was the mailing a contribution to CapeVoters?**

The term “contribution” is defined to mean: “[a] gift, subscription, loan, advance or deposit of money or anything of value made to or received by a committee for the purpose of initiating or influencing a campaign ....” 21-A M.R.S. § 1052(3)(A) (full definition in attached materials). The Commission’s rules define in-kind contribution as “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. ...” 94-270 C.M.R. ch. 1, § 6(4).

Commission staff views the mailing as a contribution by Sandi Dunham to CapeVoters because it is a gift of something of value made Ms. Dunham to CapeVoters for the purpose of influencing a campaign. It also qualifies as an in-kind contribution under the Commission’s rule because the mailing was a good or service provided to CapeVoters at no charge.

**(2) Was the mailing an expenditure by CapeVoters?**

In the definitions applicable to political action committees and ballot question committees, the term “expenditure”:

A. Includes:

- (1) A purchase, payment, distribution, loan, advance, deposit or gift of money or anything of value, made for the purpose of initiating or influencing a campaign;
- (1-A) Any purchase, payment, distribution, loan, advance, deposit or gift of money made from the campaign account described in section 1054;
- (2) A contract, promise or agreement, expressed or implied, whether or not legally enforceable, to make any expenditure for the purposes set forth in this paragraph; and
- (3) The transfer of funds by a political action committee to another candidate or political committee ....

21-A M.R.S. § 1052(4) (exclusions omitted).

At the November 4, 2024 meeting, I expressed the staff view that CapeVoters did not make an expenditure for the mailing. The rationale for that view was that CapeVoters neither paid for the mailing nor promised to pay for the mailing. In other words, I was focusing on whose bank account would be debited to pay for the mailing. Under my thinking at the time, Sandi Dunham had made an expenditure and CapeVoters had not.

After taking a closer look at the statutory definition following the meeting and conferring with counsel, I realize I was too categorical in my view that CapeVoters had not made an expenditure. Applying § 1052(4)(A)(2), it certainly is a valid interpretation of the law to determine that CapeVoters made an expenditure for the mailing because it entered into an agreement under which Spectrum would provide the mailing in exchange for receiving payment from Ms. Dunham.

**(3) Who should be listed in the “disclaimer” for the third mailing?**

When a person spends more than \$500 on a communication to voters that expressly advocates for or against a ballot question, “the communication must clearly and conspicuously state the name and address of the person who made or financed the

expenditure for the communication.” 21-A M.R.S. § 1055-A(1). The disclaimer on the third mailing stated: “Paid for by CapeVoters.com.”

At the November 4, 2024 meeting, I expressed a view that the mailing should have stated “Paid for by Sandi Dunham,” because Ms. Dunham was the person “who made or financed the expenditure for communication.” I continue to think that “Paid for by Sandi Dunham” would have been compliant.

Nevertheless, it is true that CapeVoters was the political group that:

- was responsible for the mailing,
- determined the content for the mailing, and
- entered into a contract with Spectrum.

After further reflecting on the definition of expenditure, I now believe that naming CapeVoters in the disclaimer as the person that made the expenditure was also compliant and had greater informational value for the public than naming Sandi Dunham who merely picked up the tab.

## 21-A M.R.S. § 1052. Definitions

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

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### **3. Contribution.** "Contribution" includes:

A. A gift, subscription, loan, advance or deposit of money or anything of value made to or received by a committee for the purpose of initiating or influencing a campaign, including but not limited to:

- (1) Funds that the contributor specified were given, in whole or in part, in connection with a campaign;
- (2) Funds provided in response to a solicitation that would lead the contributor to believe that the funds would be used specifically, in whole or in part, for the purpose of initiating or influencing a campaign; and
- (3) Funds that can reasonably be determined to have been provided by the contributor for the purpose of initiating or influencing a campaign when viewed in the context of the contribution and the recipient committee's activities regarding a campaign;

A-1. Any funds deposited or transferred into the campaign account described in section 1054;

B. A contract, promise or agreement, expressed or implied, whether or not legally enforceable, to make a contribution to a committee;

C. Any funds received by a committee that are to be transferred to any candidate, committee, campaign or organization for the purpose of initiating or influencing a campaign; or

D. The payment, by any person or organization, of compensation for the personal services of other persons provided to a committee that is used by the committee to initiate or influence a campaign.

"Contribution" does not include a loan of money by a financial institution made in accordance with applicable banking laws and regulations and in the ordinary course of business.

. . .

**4. Expenditure.** The term "expenditure":

A. Includes:

- (1) A purchase, payment, distribution, loan, advance, deposit or gift of money or anything of value, made for the purpose of initiating or influencing a campaign;
- (1-A) Any purchase, payment, distribution, loan, advance, deposit or gift of money made from the campaign account described in section 1054;
- (2) A contract, promise or agreement, expressed or implied, whether or not legally enforceable, to make any expenditure for the purposes set forth in this paragraph; and
- (3) The transfer of funds by a political action committee to another candidate or political committee; and [PL 2021, c. 217, §3 (AMD).]

B. Does not include:

- (1) Any news story, commentary or editorial distributed through the facilities of any broadcasting station, cable television system, newspaper, magazine or other periodical publication, unless these facilities are owned or controlled by any political party, political committee, candidate or the spouse or domestic partner of a candidate;
- (2) Activity designed to encourage individuals to register to vote or to vote, if that activity or communication does not mention a clearly identified candidate;
- (3) Any communication by any membership organization or corporation to its members or stockholders, if that membership organization or corporation is not organized primarily for the purpose of influencing the nomination or election of any person to state or county office;
- (4) The use of real or personal property and the cost of invitations, food and beverages, voluntarily provided by a political action committee in rendering voluntary personal services for candidate-related activities, if the cumulative value of these activities by the political action committee on behalf of any candidate does not exceed \$250 with respect to any election;
- (5) Any unreimbursed travel expenses incurred and paid for by a political action committee that volunteers personal services to a candidate, if the cumulative amount of these expenses does not exceed \$100 with respect to any election;
- (6) Any communication by a committee that is not made for the purpose of influencing the nomination or election of any person to state or county office; and
- (7) Any payments to initiate a people's veto referendum or the direct initiative of legislation made prior to the submission of an application to the Department of the Secretary of State as provided in section 901.

...

## **21-A M.R.S. § 1055-A. Political communications to influence a ballot question**

**1. Communications to influence ballot question elections.** Whenever a person makes an expenditure exceeding \$500 expressly advocating through broadcasting stations, cable television systems, prerecorded automated telephone calls or scripted live telephone calls, 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, for or against an initiative or referendum that is on the ballot, the communication must clearly and conspicuously state the name and address of the person who made or financed the expenditure for the communication, except that telephone calls must clearly state only the name of the person who made or financed the expenditure for the communication. A digital communication costing more than \$500 that includes a link to a publicly accessible website expressly advocating for or against an initiative or referendum that is on the ballot must clearly and conspicuously state the name of the person who made or financed the expenditure, unless the digital communication is excluded under subsection 2. 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.

**2. Exceptions.** The following forms of political communication do not require the name and address of the person who made or financed the expenditure for the communication because the name or address would be so small as to be illegible or infeasible: clothing, envelopes and stationery, small promotional items, tickets to fundraisers and electronic media advertisements where compliance with this section would be impracticable due to size or character limitations and similar items determined by the commission to be too small and unnecessary for the disclosures required by this section. "Small promotional items" includes but is not limited to ashtrays, badges and badge holders, balloons, campaign buttons, coasters, combs, emery boards, erasers, glasses, key rings, letter openers, matchbooks, nail files, noisemakers, paper and plastic cups, pencils, pens, plastic tableware, 12-inch or shorter rulers and swizzle sticks.

**3. Enforcement.** A violation of this section may result in a penalty of no more than \$5,000. In assessing a 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.