

May 23, 2025

Maine Ethics Commission & Staff

45 Memorial Cir
Augusta, ME 04333

Re: Municipal Education Efforts and Ballot Question Committee (BQC) Requirements

Dear Members of the Ethics Commission and Mr. Wayne

In regards to the complaint filed by Mary Ann Lynch and Larry Benoit against the Cape Elizabeth School District and its Superintendent, I wanted write to urge the Commission to refrain from finding that a public entity such as a school district or municipality must register as a Ballot Question Committee (BQC) especially when its role has been clearly to attempt educating the public about the factual background, identified municipal needs, proposed solutions, and financial implications of a project placed before local voters.

The laws which require registration and reporting for BQCs were written for the specific state ballot referendum process but more recently imposed on towns under 15,000 residents without regard to the nuance of what that might mean both for individuals engaging in actual advocacy, nor municipalities.

It is governance not advocacy - to inform the public of public projects

Municipalities have a legal and civic obligation to communicate factual information to their residents, especially when those residents are asked to vote on significant public matters such as school construction bonds or other capital improvements. Without this communication, how else can taxpayers reasonably know:

- The amount of the proposed bond;
- What specific problems or deficiencies the proposal addresses;
- Why this solution was chosen over other alternatives;
- The projected tax impact on households;
- And the full scope and timeline of the proposed project?

Providing this information is not advocacy—it is governance.

If municipalities are required to register as BQCs simply for fulfilling their duty to inform the public, it imposes an unnecessary burden and fundamentally alters the nature of local democratic accountability. Such a requirement would:

1. **Strip discretion from locally elected leaders**, placing judgment about what communication is "educational" vs. "advocacy" in the hands of a state-level commission, made up of non-local, unelected officials.
2. **Disincentivize transparent communication**, as school boards and town councils may become wary of potential penalties or bureaucratic hurdles, leading to an under-informed public. As the the Executive Director's own recommendation to the Commission (dated May 22, 2025) points out it, a Commission decision at this moment, just weeks before a vote, very likely could influence the election if there is a find by an Ethics Commission

that the School Board acting "inappropriately" which sounds to a layperson like "unethical" conduct - or would read that way in a news headline.

Beyond the erosion of local control, **the practical implications are unworkable**. Taken to its logical conclusion, this interpretation would suggest that *every* school district or municipality that brings a measure to a local vote must register as a BQC if it spends over \$5,000 educating the public. This would make routine, good-faith communication efforts subject to burdensome state filing and reporting requirements designed for statewide political campaigns, not local governance.

Moreover, the statute itself appears misaligned with such an application. The law defines a Ballot Question Committee as one that "*receives contributions or makes expenditures aggregating in excess of \$5,000 for the purpose of **initiating** or influencing a campaign.*" (emphasis added). The statute is plainly written with the state ballot initiative process in mind, not local school board or municipality communication.

An interpretation that a municipality can have BQC status due to educational outreach for a current ballot issue, by the language of the law, would also mean municipalities might have BQC status for any municipal efforts to communicate factual, pre-ballot information about community needs, and even long-term projects — such as those costs and activities Cape Elizabeth's School Board has engaged in since 2017 regarding deteriorating school infrastructure. Since any expenditure over \$1 million must go to the voters in Cape Elizabeth, **any public-facing expenditure regarding any future capital needs could be seen activities undertake to "initiate" a ballot campaign**. This would create a highly problematic and unsustainable standard for BQC filing and reporting rendering many municipalities in Maine subject to the BQC laws.

Further, it is a far stretch to think the legislature intended such laws to apply to municipalities even if they engaged in political advocacy for a referendum or ballot measure. For example:

- The rules require a BQC to have its own treasurer and separate bank accounts. 21-A MRSA 1054-A(1) and (2). Such a requirement can be waived by special approval from the Ethics Commission. 21-A MRSA 1054-A(3). It seems unlikely the State was intending to require municipalities to register with the State, and then open up separate bank accounts for public funds OR seek an exception through the commission.
- The "dissolution" rules of the BQC state that "[w]henever any committee determines that it will not longer accept any contributions or many any expenditures, the committee shall file a termination report that includes all the financial activity from the end date of the previous reporting period through the date of termination with the commission." 21-A MRSA 1061. Further, "the committee shall dispose of any surplus prior to termination. In the termination report, the commission shall report any outstanding loan, debt or obligation in the manner prescribed by the commission." *Id.* This makes little sense when applied to a municipality. A municipal entity never "accepts contributions" and how would it know what it was done with "expenditures" because the municipality will forever be in a position of placing issues on the ballot in the public interest. Further, what assets should it "dispose of", what debts or obligations should it be reporting?
- Any fines imposed on a BQC are required to be joint and several together with the principal officer and treasurer of the BQC. 21-A MRSA 1054-A(4). It seems unlikely that the legislature intended to, in this unique instance and so casually, to allow the State

to impose liability on government employees when they are acting within their role and discretion of their official job duties. *See e.g.* 14 MRSA 8111.

Intent of the Complainants

Finally, I would like to emphasize that I believe the ambiguity in the application of a series of laws designed to facilitate transparency in the state referendum process is being intentionally exploited for politically motivated reasons by the complainants. One complainant, Larry Benoit, was on the the committee charged with outreach communications that he has now turned around and claims are "advocacy". If he felt it was undue advocacy, he had an opportunity to say something as a stakeholder and participant in the SBAC. The other complainant is a former lobbyist who has been vocally advocating in town since at least 2017 against any School Board proposal that involves new construction.

The timing of the complaint, is explicitly meant to influence voters to vote against this bond by generating headlines that the Cape Elizabeth School Department had an "ethics complaint" filed against for its "activities" related to the bond. Further, it was meant to silence any further education of the School Department. This isn't just idle speculation but rather, the complainants clearly took their their complaint to the Portland Press Herald and other news outlets the same day they filed in order to generate and immediately share in local facebook groups salacious headlines like "School Board referred to ethics commission over referendum ads" and "Cape Elizabeth residents file ethics complaint over School District's ads on bond referendum".

The timing and nature of the complaint clearly isn't meant to address the intent behind the law, transparency, it is about using whatever clever plausible argument may exist to undermine our local public officials. Building on their prior efforts to silence the School Department from making factual communications about the conditions of the schools, the complainants are attempting now turn state officials into one more of their tools to silence factual communications from the local government.

Conclusion

The intent of the BQC statute is to ensure transparency in political campaigning—not to hamstring municipalities from conducting their ordinary, expected, and necessary communications with the people they serve. I urge the Commission to issue guidance or make clear that providing factual, neutral information about a municipal bond or initiative does not in itself require a municipality to register as a BQC, and that such communication remains within the legitimate and protected scope of local governance.

Thank you for your careful consideration of this important issue and for your continued service to the people of Maine.

Sincerely,



Elizabeth Biermann
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Cape Elizabeth ME