



TO: Commission on Governmental Ethics and Election Practices

FROM: Tim Moore

RE: Additional comments/questions

DATE: 2/29/24

Thank you for the opportunity yesterday to testify with regard to the Commission's Rules should the court decide to implement 21-A.M.R.S. 1064.

In the brief Q&A following my testimony, I was asked to comment on behalf of the so-called "safe harbor" definition in the amended rules. I declined to comment on behalf of the MAB and its members pending full review of those changes by our Board and our attorneys.

The Chairman suggested on more than one occasion his conclusion that I had not read the Rules, a declarative statement that was both false and inappropriate given that I stated otherwise.

I would like to pose a few questions regarding a station's liability in some real-world situations. I understand that the Commission may not be obligated to answer these questions in this forum, but they will nonetheless be posed by broadcasters should this law be implemented.

- 1) According to 8(C), stations may adopt "due diligence policies, procedures and controls" as required "other than" those in Subsection 8(B)---does this mean they are not required to check some state website for a list of prohibited providers?
- 2) If a foreign-influenced entity falsely "checks the box" on a form and proceeds to purchase advertising, is the station liable for broadcasting those advertisements?
- 3) Is a station liable if a non-foreign-influenced entity places advertising after receiving funding from a foreign-influenced entity? In this case, the "box" is checked—and the legitimate entity has not falsely misrepresented their ownership (even if they have received funding illegally) Language in 8(B)(2) addresses this with respect to "or acting on behalf of a foreign-influenced entity", but the entity placing the advertising will not be on any State-produced list of prohibited entities.
- 4) Advertising for political campaigns/referendum are most often placed by advertising agencies—and the turnaround time from order to broadcast can be literally a matter of hours. Does the advertising agency bear any burden regarding checking a State website or providing the documentation or is the station the sole source of liability?

- 5) Does the documentation and inquiry into a website for a “list” need to occur with every purchase of advertising? Typically, there are multiple orders made for each station/company for each campaign.
- 6) Is the station liable if a foreign-influenced entity fails to appear on the State website “list”?
- 7) For internet platforms, does this law pertain to Facebook, Google and all websites that would be available in Maine and are able to geo-target Maine residents for advertising or would this law merely target Maine media businesses for fines and penalties?
- 8) Many websites have agreements with third party providers—who sell ads. The local stations see some percentage of the revenue, but do not sell or directly control what appears in the display. This makes pre-certification impossible before a violation has occurred. Is a station liable if that out-of-state third party provider sells advertising to a foreign-influenced entity that appears on the website of a Maine radio or TV station? Is the third party provider also liable?
- 9) If a station finds that it has aired advertising for a foreign-influenced entity or one appears on the website, 8(F) stipulates a takedown requirement. In such a case, may the Commission impose a fine? What is the criteria for issuing a fine or penalty? What is the procedure and due process for deciding whether a station should be fined? Is there an appeal process?

That’s certainly enough for now. As Ross Perot once said, “the devil is in the details”. Many details left unanswered.

Thank you for your consideration of the above.