



## REPORTING REQUIREMENTS FOR INDEPENDENT EXPENDITURES – 2009

### WHAT IS AN INDEPENDENT EXPENDITURE?

First, for an expenditure to be considered an independent expenditure, it must be made for a communication that expressly advocates the election or defeat of a clearly identified candidate. *(See the section below on special requirements during the final weeks before an election if a Maine Clean Election Act candidate is involved in a race.)*

Second, the expenditure must total more than \$100 per candidate per election in the aggregate whether it is a single expenditure or multiple expenditures for a candidate that total more than \$100 when added together.

It is important to note that it is the total or aggregate amount spent per candidate for the election that matters in determining whether an independent expenditure has been made and when it has to be reported, not simply the amount of an individual expenditure.

Third, the expenditure must be made completely independently of the candidate, the candidate's committee, and any agents of the candidate. Any expenditure made in cooperation or consultation with a candidate or his or her campaign is considered a contribution to the candidate and is not an independent expenditure. Expenditures coordinated with a candidate must be reported by the candidate as a contribution.

### WHAT DO "EXPRESS ADVOCACY" AND "CLEARLY IDENTIFIED" MEAN?

*Express advocacy* is the use, in a communication, of such phrases as "vote for the Governor," "reelect your Representative," "support the Democratic nominee," "cast your ballot for the Republican challenger for Senate District 1," "Jones for House of Representatives," "Jean Smith in 2002," "vote Pro-Life" or "vote Pro-Choice" accompanied by a list of pro-life or pro-choice candidates, "vote against Old Woody," "defeat" accompanied by a picture of one or more candidates, "reject the incumbent," or the use of campaign slogans or individual words, which in context can have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidates, such as posters, bumper stickers, advertisements, etc. which say "Pick Berry," "Harris in 2000," "Murphy/Stevens" or "Canavan!"

*"Clearly identified"* means that the candidate's name or a photograph or drawing of the candidate appears in the communication; or that the candidate's identity is apparent by unambiguous reference.

### WHAT ARE THE SPECIAL REQUIREMENTS IN RACES INVOLVING A MAINE CLEAN ELECTION ACT CANDIDATE?

If you disseminate a communication to support or oppose a candidate during the final weeks before an election and there is a Maine Clean Election Act candidate in the race, any expenditure made for the design, production, or dissemination of a communication that names or depicts a clearly identified candidate will be presumed to be an independent expenditure. This presumption applies even if the communication contains no express advocacy.

### WHAT ARE THE TIME PERIODS DURING WHICH THE PRESUMPTION APPLIES?

The "presumption period" is different for the primary election and the general election. An expenditure for a communication that names or depicts a clearly identified candidate will be presumed to be an independent expenditure if the communication is disseminated within:

- ♦ the 35 days before the special election, including election day – December 31, 2008 to February 3, 2009.

**DOES THE PRESUMPTION EVER APPLY TO EXPENDITURES THAT ARE MADE BEFORE THE PRESUMPTION PERIOD BEGINS?**

Yes. If the expenditure to design, produce or disseminate the communication is made before the presumption period and the communication itself is disseminated or is intended to be disseminated within the presumption period, the expenditure is presumed to be an independent expenditure and must be reported.

**CAN THE PRESUMPTION BE REBUTTED IF THE COMMUNICATION IS NOT CAMPAIGN-RELATED?**

Yes. The person making the expenditure may rebut the presumption by filing a signed written statement with the Commission that the cost was not incurred with the intent to influence the election. The statement must be filed within 48 hours of making the expenditure. After the rebuttal statement is filed, the Ethics Commission will determine whether the cost was incurred with the intent to influence the election. A form is available on the Commission's website for this purpose.

**WHEN DO INDEPENDENT EXPENDITURES HAVE TO BE REPORTED?**

Independent expenditures of more than \$250 in the aggregate per candidate per election must be reported to the Commission within 24 hours of making those expenditures. Once the total spent per candidate exceeds \$250, each subsequent expenditure related to that candidate, regardless of the amount, must be reported within 24 hours.

Independent expenditures aggregating in excess of \$100 per candidate but not in excess of \$250 must be reported to the Commission according to the schedule on the cover page of the report.

During the 13-day period before an election, all independent expenditures must be reported within 24 hours of making the expenditures.

An independent expenditure report filed in the last 7 days before an election is required to include additional information on Schedule B-IE-3 of the report.

**IMPORTANT INFORMATION ABOUT EXPENDITURES**

**What is an expenditure?**

- any obligation to pay for a good or service
- the placement of an order for goods and services
- a promise or agreement (even an implied one) that payment will be made
- the signing of a contract for a good or service
- the delivery of a good or service even if payment has not been made
- the payment for a good or service

**When is an expenditure made?**

The earliest of the following events:

- the placement of an order for a good or service
- a promise or an agreement to pay
- the signing of a contract for a good or service
- the delivery of a good or service
- the making of a payment for a good or service

These instructions are intended to provide general information about independent expenditures and reporting requirements. For more detailed information on independent expenditures, please refer to the Commission staff's memo, *Advice Regarding Independent Expenditures for the 2008 Elections* or contact the staff at 287-4179. The statute and rules governing independent expenditures are 21-A M.R.S.A. § 1019-B and Commission Rules, Chapter 1, Section 10 (94-270 CMR Chapter 1, Section 10).



**INDEPENDENT EXPENDITURE REPORT – 2009 SPECIAL ELECTION**

Name of Person/Committee Making Expenditure(s) \_\_\_\_\_

Mailing Address \_\_\_\_\_

City, Zip Code \_\_\_\_\_ Telephone \_\_\_\_\_

*Please check the appropriate box for the report you are filing and complete the notarized affidavit and attached schedules. Reports must be filed on Saturday or Sunday if that is when they are due by faxing the report to the Commission (287-6775). The Commission must receive the signed original report within 5 days after the fax was received.*

**INDEPENDENT EXPENDITURES OF MORE THAN \$250 PER CANDIDATE**

- Independent expenditures of more than \$250 per candidate per election must be reported to the Commission within 24 hours of making the expenditure.
- Once the aggregate amount per candidate exceeds \$250, any additional expenditures, regardless of amount, must be reported within 24 hours.

**Report of Independent Expenditure over \$250 per Candidate**

**INDEPENDENT EXPENDITURES OF MORE THAN \$100 AND UP TO \$250 PER CANDIDATE (SELECT ONE REPORT)**

- If the total of expenditures per candidate exceeds \$100 but is not more than \$250, the expenditures must be reported according to the schedule below.
- Once the amount per candidate exceeds \$100, all subsequent expenditures must be reported, regardless of amount, up to \$250 per candidate. Once the amount spent per candidate exceeds \$250 in the aggregate, independent expenditures must be reported within 24 hours.
- Do not include expenditures that you listed in previously filed reports.
- During the 13-day period before an election, all independent expenditures must be reported within 24 hours.

**SPECIAL ELECTION ELECTION REPORTS**

- | Reporting Period                                  | Filing Deadline  |
|---|------------------|
| <input type="checkbox"/> Through January 23, 2009 | January 23, 2009 |
| <input type="checkbox"/> After January 23, 2009   | Within 24 Hours  |

**OTHER**

- Amendment to report dated: \_\_\_\_\_
- Other (specify): \_\_\_\_\_

**I CERTIFY THAT THE INFORMATION IN THIS REPORT IS TRUE, CORRECT AND COMPLETE.**

\_\_\_\_\_  
 Signature of PAC or Party Committee Treasurer, or  
 Other Authorized Person Making Expenditure(s)

\_\_\_\_\_  
 Date



## INDEPENDENT EXPENDITURE REPORT – 2009 SPECIAL ELECTION

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### AFFIDAVIT

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

\_\_\_\_\_, being duly sworn, attests that he/she made each of the expenditures listed in the attached report independently, and not in cooperation, consultation, or concert with, or at the request or suggestion of, the candidates named in the report or the authorized committees or agents of the candidates.

\_\_\_\_\_

(Signature of Affiant)

Sworn to before me, this \_\_\_\_\_ day of \_\_\_\_\_ 2009

\_\_\_\_\_  
(Notary Public/Attorney at Law)



Schedule B-IE-2

PAYMENTS AND OBLIGATIONS

- Please indicate the date, payee, expenditure type, and amount of each expenditure.
- If you are reporting an agreement or obligation to make a future payment, please check (✓) the box next to the expenditure type.

Expenditure Types			
LIT	Printing and graphics (flyers, signs, palmcards, etc.)	PRT	Print media ads only (newspapers, magazines)
MHS	Mail house (all services purchased)	RAD	Radio ads, production costs
PHO	Phone banks, automated telephone calls	TVN	TV or cable ads, production costs
POL	Polling and research survey	WEB	Website design, registration, hosting, maintenance, etc.
POS	Postage for U.S. Mail and mail box fees	OTH	Other (include description)

Date of expenditure	Payee, address, zip code	Expenditure type	✓	Amount
<b>A. Expenditures for this page ⇒</b>				
<b>B. Total for all other Schedule B-IE-2 pages (if any) ⇒</b>				
<b>C. Total independent expenditures for this reporting period (A+B). This amount should equal the total amount for all candidates listed on Schedule B-IE-1. ⇒</b>				

Schedule B-IE-3

EXPENDITURE DETAILS

- If you file an independent expenditure report after January 26, 2008 for the special election, you must provide the following information.

<p>1. The date on which the person making the expenditure placed the order with the vendor for the goods or services</p>	
<p>2. The approximate date when the vendor began providing design or any other services in connection with the expenditure</p>	
<p>3. The date on which the person making the expenditure first learned of the total amount of the expenditure</p>	
<p>4. A statement why the expenditure could not be reported by the eighth day before the election</p>	