

Agenda

Item #4

**Adoption of Proposed Changes to Commission
Rules**



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

To: Commissioners
From: Jonathan Wayne, Executive Director
Date: February 18, 2015
Re: Recommended Amendments to Commission Rules

At your meeting on December 22, 2014, you decided to accept public comment on proposed changes to the Commission Rules drafted by the Commission staff to address some issues that have arisen in the past two years. On December 29, 2014, the Commission staff invited comments from the public, including Legislative leaders, members of the Commission's oversight committee, and the political parties in Maine.

Comments at January 23, 2015 Public Hearing. The Commission held a public hearing on January 23, 2015 to receive comments from the public. The only comments received were from Robert Howe, on behalf of his client, the Maine Citizens for Clean Elections. Mr. Howe's comments concerned the proposed rule stating that if a candidate is a public official who is using a governmental vehicle for campaign purposes, the use of the vehicle for campaign purposes is a reportable contribution, unless the candidate reimburses the government. (Chapter 1, Section 6(4)) Mr. Howe commented that the Commission should first address whether the practice of governmental entities providing assistance to campaigns should be allowed before adopting a rule regarding how to report the donations of goods and services by governmental agencies. He said that the reporting of government expenditures as a contribution could convey tacit approval of the practice.

Written Comments Received. The deadline for written comments was February 2, 2015. The Commission received written comments only from the Maine Association of Broadcasters (MAB). The MAB commented on a proposed amendment that would allow candidates, PACs and others to report as a lump sum an amount paid to a media buyer,

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WEBSITE: WWW.MAINE.GOV/ETHICS

rather requiring the candidate or PAC to itemize separately purchases of advertising time made by the media buyer from different broadcast and cable stations. (Chapter 1, Section 7(1)(B)) The MAB suggested some wording changes intended to confirm that the proposed rule covered purchases of radio time, as well as television.

Commission Staff Response to Comments. The Commission staff appreciates the thought behind Mr. Howe's comments. As an independent agency administering Maine's campaign finance laws, however, the Commission has no authority to prevent public officials from using vehicles or other governmental property for campaign purposes. We recommend adopting the originally proposed amendment of Chapter 1, Section 6(4).

In response to the comments from the MAB, we have reworded the proposed amendment of Chapter 1, Section 7(1)(B)). For your consideration, the new language is shown in bold on page 6 of the attached insertions and deletions.

Recommended Adoption of Rule. The Commission staff recommends adopting the proposed rule amendments, with the revision to Chapter 1, Section 7(1)(B). These amendments would be routine technical and would go into effect without approval by the Legislature.

Attached Materials

- amendments to Chapter 1 recommended for adoption at your February 25, 2015 meeting (showing recommended insertions and deletions)
- written comments from the MAB
- a draft Basis Statement setting out the factual and policy basis for the proposed amendments
- the invitation to comment dated December 29, 2014

Thank you for your consideration of these proposed rule amendments.

94-270 **COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES**

Chapter 1: PROCEDURES

SUMMARY: This Chapter describes the nature and operation of the Commission, and establishes procedures by which the Commission's actions will be governed.

[NO PROPOSED CHANGES TO SECTIONS 1-3]

SECTION 4. INITIATION OF PROCEEDINGS

1. **Legislative Ethics.** The Commission is authorized to investigate and make advisory recommendations to either House of the Maine Legislature concerning legislative conflicts of interest or any breach of the legislative ethics set forth in 1 M.R.S.A. §§ 1001 - 1023. The Commission's opinion may be sought by three methods, or the Commission may act on its own motion.

A. Legislator's Own Conduct

- (1) A Legislator seeking an advisory opinion with respect to his or her own circumstances or conduct should make a written request for an opinion, setting forth the pertinent facts with respect to the legislative matter at issue and the circumstances of the Legislator giving rise to the inquiry.
- (2) The request will be officially filed only when received at the offices of the Commission. The Director will promptly send a copy of the request to the Chair, and the matter will be placed on the agenda for the next Commission meeting, or if necessary, at a special meeting.
- (3) An oral request by a Legislator for an opinion with respect to his or her own circumstances will not be considered an official request for an advisory opinion, and a Legislator making such a request will be so notified, by letter, and encouraged to file a written request.

B. Complaints. Any written complaint will be included in the agenda of the next Commission meeting.

- (1) **Complaint by a Legislator.** Copies of any sworn complaint filed by a Legislator will promptly be sent to the Legislator against whom the complaint has been lodged and to the Commission Chair, in each case identifying the Legislator making the complaint. A complaint invokes the Commission's authority only if made under oath and only if it addresses an alleged conflict of interest relating to circumstances arising during the term of the legislature then in office.

(2) **Other Complaints**

- (a) The Director will review each complaint to determine whether the matter relates to the Commission's statutory mandate. When a complaint is filed, the Director, in consultation with Commission Counsel, will review the matter to determine whether the complaint has sufficient merit to warrant recommending the calling of a meeting. When a meeting is called, the Commission will determine in executive session whether to hear the complaint. If the nature of the complaint clearly does not fall within the scope of the Commission's jurisdiction, the Director will so notify the complainant by letter within 14 days of receiving the complaint. In such cases, the respondent need not be notified. The Commission may reverse any administrative decision.
- (b) An oral complaint by any person alleging a conflict of interest concerning any legislator does not constitute a complaint under 1 M.R.S.A. §1013(2)(B), and a person registering such a complaint will be so notified, by letter.

- C. **Referral by Presiding Officer.** When a Legislator has requested an advisory opinion from the Presiding Officer of the House of which he/she is a member, and the Presiding Officer has referred the inquiry directly to the Commission, the Director will arrange a meeting of the Commission as soon as possible to consider the question.

2. **Election Campaign Reporting and Maine Clean Election Act Violations**

- A. **Report Compliance Review.** The Commission staff will review all campaign finance reports filed by candidates pursuant to 21-A M.R.S.A., chapters 13 and 14 to verify compliance with the reporting financial disclosure and documentation requirements set by statute or rule. The staff will review a selection of other campaign finance reports filed by non-candidate committees with the Commission for compliance with legal requirements. Notice of any omission, error, or violation will be given by mail to the filer by electronic mail or U.S. Mail and a copy of the notice and any other communication made to or from the filer relating to the problem(s) will be placed in the filer's record. The Commission staff will establish a reasonable time period for the filer to remedy any omission or error. If the filer fails to respond within that time frame, the Commission staff may extend the time period within which the filer must comply or place the matter on the agenda of the next Commission meeting, along with all documents relating to the case. Additionally, any apparent violations or occurrences of substantial nonconformance with the requirements of the law will be placed on the agenda of the next meeting. The Commission staff shall schedule any substantial violations for possible action by the Commissioners at a public meeting. If the filer fails to remedy minor violations, the Commission staff will use its discretion whether to take any further action. Minor violations include, but are not limited to, failing to report the employment information for a contributor or misusing an expenditure code to describe the purpose of an expenditure.

- B. **Late Reports and Registrations.** Where required by statute, notice of failure to file a required report will be timely sent by Commission staff. When a report or registration is filed late, the Director's recommendations will be based on the following considerations:
- (1) Lateness of report or registration,
 - (2) Reason for lateness,
 - (3) Kind of report (more stringent application for pre-election reports),
 - (4) Amount of campaign funds not properly reported,
 - (5) Previous record of the filer; and
 - (6) Good faith effort of the filer to remedy the matter.
- C. Any person (as defined in 21-A M.R.S.A. §1001) may make an official complaint or request for a Commission investigation by filing a signed written request at the Commission's office, setting forth such facts with sufficient details as are necessary to specify the alleged violation. A copy of the signed request may be filed by facsimile or by electronic mail, provided that the original signed request is submitted to the Commission. Statements should be made upon personal knowledge. Statements which are not based upon personal knowledge must identify the source of the information which is the basis for the request, so that respondents and Commission staff may adequately respond to the request. A copy of any such written request will be promptly mailed to the candidate or organization alleged to have violated the statutory requirements. The Director may conduct preliminary fact finding to prepare a matter for presentation to the Commission. The Director, in consultation with Counsel, will prepare a summary of staff findings and recommendations for inclusion on the agenda.
- D. An oral report of a violation, or a written request containing insufficient detail to specify the violation charged, does not constitute an official request for a Commission determination, and a person registering such a complaint will be so notified.
- E. The signature of a person authorized to sign a report or form constitutes certification by that person of the completeness and accuracy of the information reported. The use of a password in filing an electronic report constitutes certification of the completeness and accuracy of the report.

3. Lobbyist Disclosure Procedures

- A. **Report Compliance Review.** The Commission staff will review lobbyist registrations and monthly reports for compliance with disclosure requirements. The Commission staff will establish a reasonable deadline time period by which a lobbyist must remedy any apparent omission or error. ~~If the lobbyist fails to respond by the deadline, the Commission staff may extend the deadline by which the lobbyist must comply or may place the matter on the agenda of a Commission meeting. Additionally, the~~ The Commission staff may shall place on the agenda of a Commission meeting any substantial violation of the disclosure requirements, regardless of whether the lobbyist has remedied the violation.

- B. **Late Registrations and Reports.** Notice will be given by mail to any lobbyist whose registration or monthly disclosure report is late. The Commission and its staff shall follow the notice and penalty procedures set out in 3 M.R.S.A. § 319(1). For purposes of 3 M.R.S.A. §319(1), the month will end on the 15th day of the month following the month in which a report was due. Any failure to submit a required report, registration, or penalty fee will be noted on the Commission agenda.
- C. **Suspensions.** The Commission may suspend any person from lobbying who fails to file a required report or pay an assessed fee. A notice of the suspension must be mailed to the lobbyist by U.S. Certified Mail within three days following the suspension. Reinstatement will occur on the date the required report or payment is received in the Commission office. A notice of the reinstatement must be mailed to the lobbyist by U.S. Certified Mail or given directly to the lobbyist within three days following receipt of the required report or payment.
- D. **Request for Penalty Waiver.** A lobbyist may request a waiver of any late penalty the lobbyist incurs. The request must be made in writing to the Commission and must state the reason for the delinquency. Any such request must be noted on the agenda of the next Commission meeting. Only the Commission may grant penalty waivers.
- E. **Request for Waiver of Nonsession Reporting Requirement.** A lobbyist may request a waiver of the monthly nonsession reporting requirement set forth in 3 M.R.S.A. §317(4) if the lobbyist does not expect to be engaged in lobbying when the Legislature is not in session. The Director is authorized to provisionally grant such waivers pending approval by the Commission. Provisional waivers may be granted only where a request is properly filed, the statement properly completed, and where there is no apparent reason to doubt the statement is true. During the period in which the waiver is effective, reports will not be required. If lobbying is resumed during the period for which the waiver was granted, the lobbyist must file a monthly disclosure report for the month or months lobbying was conducted.
- F. **Faxing Duly Executed Lobbyist Registration, Reports.** Any registration or report required by 3 M.R.S.A. chapter 15 may be provisionally filed by transmission of a facsimile copy of the duly executed report to the Commission, provided that the original of the same report is received by the Commission within 5 calendar days thereafter.
4. **Matters Outside the Commission's Jurisdiction.** If the Director and Counsel are in agreement that the subject matter of a request for an investigation is clearly outside the jurisdiction of the Commission, the staff may forward the request to the appropriate authority or return it to the person who made the request, provided that the staff notifies the Commission members of the action at the next Commission meeting.

[NO PROPOSED CHANGES TO SECTION 5]

SECTION 6. CONTRIBUTIONS AND OTHER RECEIPTS

1. The date of a contribution is the date it is received by a candidate, an agent of the candidate, a candidate's committee, a party committee and its agents, or a political action committee and its agents.
2. A loan is a contribution at the time it is made unless the loan was made by a financial institution in the State of Maine in the ordinary course of business. Loans continue to be contributions until they are repaid. Loans are subject to the candidate contribution limitations, except for loans made by the candidate, the candidate's spouse, or a financial institution in the State of Maine in the ordinary course of business. The Commission may consider any reported loan to be a cash contribution if it remains unpaid four years after the election in which it was incurred.
3. Candidates and political action committees must report the name, address, occupation and employer of each individual contributor who gives, in the aggregate, more than \$50 for the reporting period. The reporting is required for private contributions raised by privately financed candidates and for seed money contributions to candidates participating in the Maine Clean Election Act. Candidates, political action committees, ballot question committees, and party committees must make a reasonable effort to obtain the employment information of the contributor when required by statute. The reasonable effort must include requesting the employment information and providing a convenient means for the donor to provide the information, such as a paper form to be submitted with a contribution or text fields to enter the information on an online fundraising screen. If a candidate or committee is unable to obtain the information from the contributor in response to a candidate's or committee's request, the candidate or committee shall indicate "information requested" in the occupation and employer sections of the campaign finance report. If the Commission staff believes that due to the amount of missing information further inquiry is warranted, the Commission staff shall verify whether the candidate or committee has made a reasonable effort to obtain the information.
4. Unless specifically exempted under Title 21-A M.R.S.A. §§ 1012 and 1052 or this section, 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 is an in-kind contribution. Examples of such goods and services include, but are not limited to: equipment, facilities, supplies, personnel, advertising, and campaign literature. If goods or services are provided at less than the usual and customary charge, the amount of the in-kind contribution is the difference between the usual and customary charge and the amount charged the candidate or political committee.
 - A. A commercial vendor that has provided a discount to a candidate or political committee because of a defect in performance or other business reason has not made a contribution if the vendor grants substantially similar discounts to other customers in the ordinary course of the vendor's business.
 - B. If a candidate is a public official who is provided vehicle transportation by a public entity for the purpose of conducting official duties, the use of such vehicle for campaign purposes is considered to be an in-kind contribution to the candidate from the public entity unless the candidate reimburses the public entity for the use of the vehicle.

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SECTION 7. EXPENDITURES

1. **Expenditures by Consultants, Employees, and Other Agents of a Political Campaign.**
 - A. Each expenditure made on behalf of a candidate, political committee, or political action committee by any person, agency, firm, organization, etc., employed or retained for the purpose of organizing, directing, managing or assisting the candidate, the candidate's committee, or the political action committee must be reported separately by the candidate or committee as if made or incurred by the candidate or committee directly. The report must include the name of the third party vendor or payee to whom the expenditure was made, the date of the expenditure, and the purpose and amount of the expenditure. It is not sufficient to report only the total retainer or fee paid to the person, agency, firm, organization, etc., if that retainer or fee was used to pay third party vendors or payees for campaign-related goods and services.
 - B. If a candidate or committee has paid a media buyer, advertising consultant or similar contractor to purchase advertising time or for the production of television or radio advertising, the candidate or committee may disclose the advertising time and production costs in the aggregate, rather than itemizing each payment made by the contractor to a third party vendor or payee. Maine Clean Election Act candidates must obtain from their contractor(s) documentation of every payment of \$50 or more made on their behalf by a contractor or subcontractor related to television or radio advertising.
2. **Expenditures by Political Action Committees.** In addition to the requirements set forth in 21-A M.R.S.A. §1060(4), the reports must contain the purpose of each expenditure and the name of each payee and creditor.
3. **Timing of Reporting Expenditures**
 - A. Placing an order with a vendor for a good or service; signing a contract for a good or service; the delivery of a good or the performance of a service by a vendor; or a promise or an agreement (including an implied one) that a payment will be made constitutes an expenditure, regardless whether any payment has been made for the good or service.
 - B. Expenditures must be reported at the earliest of the following events:
 - (1) The placement of an order for a good or service;
 - (2) The signing of a contract for a good or service;
 - (3) The delivery of a good or the performance of a service by a vendor;
 - (4) A promise or an agreement (including an implied one) that a payment will be made; or
 - (5) The making of a payment for a good or service.

- C. At the time the duty to report an expenditure arises, the person submitting the report is required to determine the value of goods and services to be rendered (preferably through a written statement from the vendor) and to report that value as the amount of the expenditure. If the expenditure involves more than one candidate election, the report must include an allocation of the value to each of those candidate elections.
4. **Advance Purchases of Goods and Services for the General Election** *[Repealed]*
5. All campaign-related payments made with the personal funds or credit card of the candidate or an individual authorized by the candidate must be reported as expenditures in the reporting period during which the payment to the vendor or payee is made. The candidate must report the name of the vendor or payee to whom the payment was made, the date of the expenditure, and the purpose and amount of the expenditure. When the expenditure is reported, the candidate should indicate the person who made the payment by entering "Paid by [name of candidate or supporter]" in the remarks section of the expenditure schedule. It is not sufficient to report only the name of the candidate or authorized individual to whom reimbursement was made and the total amount of the reimbursement. ~~If a Maine Clean Election Act candidate or an individual authorized by the candidate uses personal funds to make an expenditure on behalf of the candidate, the candidate or individual must be reimbursed within the same reporting period.~~

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[NO CHANGES PROPOSED TO SECTIONS 8-9]

SECTION 10. REPORTS OF INDEPENDENT EXPENDITURES

1. **General.** Any person, party committee, political committee or political action committee that makes an independent expenditure aggregating in excess of \$100 per candidate in an election must file a report with the Commission according to this section.
2. **Definitions.** For purposes of this section, the following phrases are defined as follows:
- A. "Clearly identified," with respect to a candidate, has the same meaning as in Title 21-A, chapter 13, subchapter II.
- B. "Expressly advocate" means any communication that
- (1) uses phrases such 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 listing of clearly identified candidates described as Pro-Life or Pro-Choice, "vote against Old Woody," "defeat" accompanied by a picture of one or more candidate(s), "reject the incumbent," or communications of campaign slogan(s) or individual word(s), which in context can have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidate(s),

such as posters, bumper stickers, advertisements, etc. which say "Pick Berry," "Harris in 2000," "Murphy/Stevens" or "Canavan!"; or

- (2) is susceptible of no reasonable interpretation other than as an appeal to vote for or against a clearly identified candidate.

C. "Independent expenditure" has the same meaning as in Title 21-A §1019-B. Any expenditure made by any person in cooperation, consultation or concert with, or at the request or suggestion of, a candidate, a candidate's political committee or their agents is considered to be a contribution to that candidate and is not an independent expenditure.

3. **Reporting Schedules.** Independent expenditures must be reported to the Commission in accordance with the following provisions:

A. Independent expenditures aggregating in excess of \$100 per candidate per election made by any person, party committee, political committee or political action committee must be reported to the Commission in accordance with the following reporting schedule, unless required to be reported according to the schedule in paragraph B.

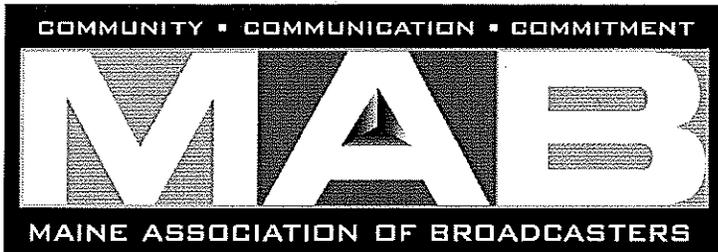
(1) **Quarterly Reports.** *[Repealed]*

(1-A) **60-Day Pre-Election Report.** A report must be filed by 5:00 11:59 p.m. on the 60th day before the election is held and be complete as of the 61st day before the election.

(1-B) **11-Day Pre-Election Report.** A report must be filed by 5:00 11:59 p.m. on the 11th day before the election is held and be complete as of the 14th day before the election.

If the total of independent expenditures made to support or oppose a candidate exceeds \$100, each subsequent amount spent to support or oppose the candidate must be reported as an independent expenditure according to the schedule in this paragraph or paragraph B.

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January 28, 2015

Jonathan Wayne
Executive Director
Maine Commission on Governmental Ethics and Election Practices

Delivered via email

Dear Director Wayne:

I am pleased to offer the following comment in response to the proposed rule changes outlined in your memo of December 29, 2014.

Under "Expenditures" on page 6, there is a proposal to allow candidates and committees to report their broadcast or cable television advertising in the aggregate, rather than itemizing payments. We suggest that radio be included in this proposed rule, since the mechanics of buying radio and television time are identical. This can be accomplished simply by adding "or radio" after "television" in the two places where it appears.

Thank you for your consideration.

Best regards,

A handwritten signature in black ink, appearing to read "Suzanne D. Goucher".

Suzanne D. Goucher
President & CEO

To: Administrative Procedure Officer
Office of the Secretary of State of Maine

From: Jonathan Wayne, Executive Director

Date: February 23, 2015

Re: Routine Technical Amendments to Chapter 1 of the Commission's Rules
(94-270 C.M.R. Chapter 1)

STATEMENT OF FACTUAL AND POLICY BASIS FOR AMENDMENTS

Chapter 1, Section 4(2)(A) – Compliance Reviews of Campaign Finance Reports

Factual and Policy Basis: In Section 4(2)(A), the Commission's Rules set out how the Commission staff reviews campaign finance reports filed by candidates and political committees (*i.e.*, political action committees, ballot question committees and political party committees) for compliance with legal requirements and the Commission's procedures. The Commission proposes some changes to the rule in order to reflect current practices.

Comments: The Commission did not receive comments concerning this proposed amendment.

Chapter 1, Section 5(3)(A) – Compliance Reviews of Lobbyist Reports

Factual and Policy Basis: The Commission receives registrations and monthly reports from lobbyists. The Commission proposes similar changes to its rules concerning its compliance reviews of lobbyist reports.

Comments: The Commission did not receive comments concerning this proposed amendment.

Chapter 1, Section 6(3) – Disclosure of Employers and Occupations of Contributors

Factual and Policy Basis: Candidates and political committees are required by statute to disclose the employers and occupations of contributors who have given more than certain threshold amounts. For example, for candidates and political action committees, the information is required for donors who have given more than \$50. (21-A M.R.S.A. §§ 1017(5) & 1060(6)) The Commission has adopted a rule requiring candidates and committees to use “reasonable efforts” to obtain the information. The rule reflects the reality that some donors would rather not disclose their employment information for public reporting purposes.

The Commission proposes defining “reasonable efforts” to mean that the candidate or committee must make an actual request to the donor for the employment information and must provide convenient means for the donor to provide the information, such as a paper form to be submitted with the contribution, or text fields to enter the information into a fundraising screen on the internet.

Comments: The Commission did not receive comments concerning this proposed amendment.

Chapter 1, Section 6(4) – Vehicle Travel for Campaigning Provided by Public Entity

Factual and Policy Basis: The term “contribution” is defined in Maine campaign finance law as a “gift ... of money or *anything of value* made for the purpose of influencing the nomination or election of any person to state, county or municipal office” (21-A M.R.S.A. § 1012(2)(A)(1)) (emphasis added) Thus, a good or service that is donated to a campaign generally constitutes a contribution, unless it falls within an exemption established by the Legislature. The Commission’s Rules define an in-kind contribution to mean “the provision of goods or services without charge or at a charge that is less than the usual and customary charge.” (Chapter 1, Section 6(4))

Based on the statutory definition, the Commission staff has advised that travel expenses donated to a campaign to promote a candidate's election generally constitute a contribution. This view is supported by exceptions in the Election Law for certain travel expenses paid by a volunteer or candidate. (21-A M.R.S.A. §§ 1012(2)(B)(4) & (4-A))

Federal election regulations covering candidates for congressional office state that travel expenses paid from a source *other than the candidate's political committee* must be reported by the candidate. (11 CFR 160.3(b)(1)) Paragraph b(2) of the rule states that "Where a candidate's trip involves both campaign-related and non-campaign-related stops, the expenditures allocable for campaign purposes are reportable, and are calculated on the actual cost-per-mile of the means of transportation actually used, starting at the point of origin of the trip, via every campaign-related stop and ending at the point of origin."

In the fall of 2014, the Commission received a request to consider whether vehicle transportation provided to an official by the Maine state government, which was used occasionally for campaign purposes, was a contribution. The request brought attention to a lack of policy or rule addressing this question directly.

If the use of a vehicle is deemed a contribution, the candidate receiving it must report it as an in-kind contribution, which is subject to the applicable \$375, \$775 or \$1,575 contribution limit. Candidates may reimburse the donor for the use of the vehicle to avoid the receipt of a contribution.

Comments: Robert Howe appearing at a December 22, 2014 public hearing on behalf of his client, the Maine Citizens for Clean Elections, said the Commission should first address whether the practice of governmental entities providing assistance to campaigns should be allowed before adopting a rule regarding how to report the donations of goods and services by governmental agencies. He said that the reporting of government expenditures as a contribution could convey tacit approval of the practice.

Response to Comments: The Commission does not have jurisdiction over the issue of whether public resources, such as vehicles, may be used by officials for campaign purposes. The Commission is addressing only whether the use of an official vehicle constitutes a contribution that must be reported.

Chapter 1, Section 7(1) – How to Report Purchases made by Vendors on behalf of a Candidate or Political Committee

Factual and Policy Basis: In political campaigns (particularly ballot question elections and more expensive candidate races), sometimes a candidate or political committee makes a payment to a vendor (such as a campaign consultant or communications consultant) and the vendor uses those funds to purchase goods or services from a subvendor on behalf of the candidate or committee. Under current Chapter 1, Section 7(1) of the Commission Rules, the candidate or committee is required to itemize each purchase made by the vendor from the subvendor. This rule is intended to avoid situations in which the public knows only that large amounts are paid to a vendor with no information concerning how the funds are ultimately used.

This reporting of purchases *by a vendor* is specifically required by 21-A M.R.S.A. § 1060(4), which sets out the content of what must be included in campaign finance reports. This subsection is within the subchapter of law governing PACs, but the language in the subsection suggests that it was intended to cover candidates, party committees, and committees spending money for or against ballot questions:

4. Itemized expenditures. An itemization of each expenditure made to initiate or influence any campaign, including the date, payee and purpose of the expenditure; the name of each candidate, campaign, political committee, political action committee or party committee supported or opposed; and each referendum or initiated petition supported or opposed by the expenditure. *If expenditures were made to a person described in section 1012, subsection 3, paragraph A, subparagraph (4), the report must contain the name of the person; the amount*

spent by that person on behalf of the candidate, campaign, political committee, political action committee, party committee, referendum or initiated petition, including, but not limited to, expenditures made during the signature gathering phase; the reason for the expenditure; and the date of the expenditure. The commission may specify the categories of expenditures that are to be reported to enable the commission to closely monitor the activities of political action committees;

21-A M.R.S.A. § 1060(4) (italics added). The italicized language was proposed in L.D. 1339 in 2003 (P.L. 2003, c. 615). The summary section of the bill also suggests that the reporting of purchases made by vendors was to be made by candidates, party committees, and ballot question committees – not just PACs.

The Commission has considered the public purposes of Section 7(1) and proposes that candidates and committees should be permitted to report purchases of media time and productions costs in the aggregate. Under the proposed rule, it would not be necessary for a candidate, PAC, or other committee to itemize specific amounts paid by a media buyer to specific TV or radio stations. The candidate, PAC or other committee could report these amounts as a lump sum paid to the media buyer.

Comments: The Commission received written comments from the Maine Association of Broadcasters dated January 28, 2015 suggesting that the amendment clarify that it covers radio advertising, as well as television advertising.

Response to Comments: The Commission adopted a modified version of the amendment (using the phrase “television or radio advertising”) to clarify that radio advertising is covered.

Chapter 1, Section 7(5) – Reimbursements by Maine Clean Election Act Candidates

Factual and Policy Basis: Sometimes a candidate or individual authorized by a candidate will purchase a good or service with personal funds or with a personal credit card, and subsequently receive a reimbursement from the candidate's campaign. This subsection sets out procedures for how candidates should report those financial activities.

Earlier in the administration of the Maine Clean Election Act (MCEA), the Commission adopted a rule requiring the campaigns of MCEA candidates to make the reimbursements by the end of the report period in which the original purchase was made. This was to encourage the reporting of the transactions as expenditures, rather than as in-kind contributions or debts.

After administering this provision through a number of election cycles, it no longer seems necessary to restrict the timing of when the reimbursements are made. Candidates may report purchases that have not been reimbursed by the end of a report period as debts.

Comments: The Commission did not receive comments concerning this proposed amendment.

Chapter 1, Section 10(3) – Time of Day for Reporting of Independent Expenditures

Factual and Policy Basis: After the Legislature made the electronic filing of campaign finance reports mandatory for candidates and committees, it changed the deadline for filing regularly scheduled reports from 5:00 p.m. to 11:59 p.m. on the day that the reports are due. The Commission's Rules have retained a 5:00 p.m. deadline for independent expenditure reports, which are single reports of paid communications advocating for or against candidates. The 5:00 p.m. deadline for independent expenditures has caused some confusion for PACs and party committees. To eliminate the confusion and promote consistency, the Commission proposes amending the time from 5:00 p.m. to 11:59 p.m.

Comments: The Commission did not receive comments concerning this proposed amendment.



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

MEMORANDUM

To: Interested Parties

From: Jonathan Wayne, Executive Director

Date: December 29, 2014

Subject: Invitation to Comment on Proposed Rule Amendments

The Ethics Commission is inviting comments on proposed amendments to the Commission Rules. The topics include

- Reasonable efforts that must be made by candidates, PACs, and other committees to obtain the employment information of contributors (when required by statute)
- Whether candidates, PACs, party committees, and ballot question committees must itemize in campaign finance reports the payments made by their media buyers to purchase advertising time from broadcast and cable stations
- If an official is provided vehicle transportation by a governmental office to conduct official duties and uses the vehicle for campaigning, is the use of the vehicle a contribution that is subject to campaign finance reporting requirements and the limits on contributions? (The proposed rule applies to an official vehicle, but the rule could be expanded to cover a "company car" provided by a private employer.)
- The procedures used by the Commission staff in reviewing campaign finance and lobbyist reports for compliance with legal requirements and Commission procedures

For your reference, I have enclosed the proposed insertions and deletions, followed by a summary of the changes.

To receive comments from the public, the Commission will hold a hearing on Friday, January 23, 2015 at 9:00 a.m. at the Commission's office at 45 Memorial Circle (second floor), in Augusta. Written and e-mailed comments are also welcome. My e-mail address is Jonathan.Wayne@maine.gov. The deadline for written and e-mailed comments is 5:00 p.m. on Monday, February 2, 2015.

If you have any questions, please telephone me at 287-4179. Thank you for your consideration of the proposed amendments.

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