

Agenda

Item #3



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: September 13, 2011

Re: Statute Changes Proposed by Staff for the 2012 Session

In the Legislative Ethics law,¹ the Ethics Commission is invited to propose legislation within 90 days of the general election based on suggestions from the Commissioners, the staff, or from sources outside the Commission. In addition, pursuant to the joint rules of the Legislature administrative agencies may submit legislation for the Second Regular Session. The deadline for submission to the Legislature is September 30, 2011.

The Commission staff would like to propose for your consideration some changes to the Maine Clean Election Act and the campaign finance reporting law. These changes are related to issues that arose during 2011. If you approve of these changes, the Commission would submit them for consideration by the Legislature in the Second Regular Session.

Refunds Received by Candidates

Candidates sometimes receive refunds from vendors or contractors. In particular, when candidates buy advertising time on television or radio stations, it is frequent for candidates to become entitled to refunds, because television and radio stations are unable to run all of the ads that are purchased. The Commission's audits of 2010 gubernatorial and legislative candidates in the Maine Clean Election Act (MCEA) program determined that if campaign staff did not pursue the refund issue with their contractors, the contractors did not return the refunds to the candidate and the money was not returned to the Maine Clean Election Fund. For example, one gubernatorial campaign recovered over \$7,300 from their media buyers after the Commission initiated an audit of campaign expenses. Similarly, another media buyer refunded almost \$3,400 related to expenditures by four MCEA-funded Senate candidates. The refunds were made after the Commission staff contacted the vendor concerning a review of candidate campaign expenditures.

¹ Title 1, Section 1009 states "Following a general election, the commission may solicit suggestions for improving campaign financing and reporting and the administration of the other areas within the commission's jurisdiction. The commission shall review the suggestions and may submit legislation within 90 days of the general election based on those suggestions or on proposals by individual members of the commission or its staff."

The Commission staff proposes that:

- All candidates (both MCEA and traditionally financed) would be required to disclose refunds in campaign finance reports. This would be done on Schedule B for expenditures.
- MCEA candidates would be explicitly required to return refunds to the Maine Clean Election Fund.
- Media buyers and other contractors who receive a refund on behalf of a candidate would be required to return the refund to the candidate to facilitate the return of those funds to the Maine Clean Election Fund.

Independent Expenditures in a Special Election

During the last 35 days before a general election, paid communications to voters are presumed to be an independent expenditure if a candidate is clearly identified in the communication. The Commission staff proposes a clarification that the same presumption period would apply during the 35 days before a special election. Under current statute, the presumption period is “during a special election until and on election day.” The Commission staff is unsure what period of time was intended by “during a special election,” and prefers a defined period of 35 days.

Access to the Campaign’s Account Statements

Under current law, candidates are required to deposit all seed money and Maine Clean Election Act funds into a campaign account with a bank or other financial institution. The campaign account may not include any other funds. (21-A M.R.S.A. § 1125(7-A))

The candidate is required to obtain and to keep certain financial records, including:

- account statements for the campaign account, and
- some document from the financial institution that verifies that the reported vendor received payment. (This could be an account statement that shows detailed debit card payments, or cancelled checks.)

(21-A M.R.S.A. § 1125(12-A)) If a candidate is selected for an audit, these records are requested by the Commission’s auditor.

During the 2010 audits, the Commission auditor found that some legislative candidates with significant violations did not provide these documents promptly after the auditor requested the documents. This delayed the audit, and increased the cost of the audit program.

The Commission staff proposes that, beginning in the 2014 elections, candidates would be required to sign a release as a condition of participating in the program. The release would be an authorization by the candidate to the campaign's bank or credit union to release to the Commission account statements and other documents pertaining to the campaign bank account. The proposal would not give the Commission access to any information concerning the candidate's personal bank accounts.

This would allow the Commission staff to request the account statements and other records of the campaign account directly from the bank or credit union in unusual circumstances. The Commission staff would expect to make these requests only in two circumstances:

- as part of a post-election audit in which the candidate was slow to provide the documents, or
- as part of an investigation which was initiated because sufficient evidence was present to indicate that a violation had occurred.

The bank account statements would be confidential under 21-A M.R.S.A. § 1003(3-A)), because they would be requested pursuant to an audit or investigation and because they contain financial information not normally available to the public.

The staff believes having the candidates' written authorizations will facilitate effective audits and investigations, when there is genuine cause for concern. (In most audits, candidates are very responsive in providing bank account statements to the Commission's auditor, and there would be no need to use the candidates' authorizations.) There could be a secondary compliance effect on the small minority of program participants who are capable of carelessness in their use of public campaign funds. They might show greater level of compliance if they were aware that the administrative agency running the program had access to their actual spending of public campaign funds.

The Commission staff believes that it could use this authority with discretion and without any disclosure of confidential campaign activities. If, however, the Commissioners believe this statutory proposal should include any particular conditions, procedures, or safeguards, the staff would be pleased to draft them.

Purchases by a Contractor on Behalf of a Maine Clean Election Act Candidate

Candidates sometimes use contractors who make purchases on behalf of the candidate. This happens in some of the campaigns for Senate and Governor when candidates use contractors and subcontractors for television and radio advertising. In 2010, MCEA-funded gubernatorial candidates purchased more than \$1.864 million of media services through third parties. In almost all cases, the campaigns made lump sum payments to media buyers and relied on those individuals to make payments to "end" vendors, i.e.,

television and radio stations. In addition, 2010 legislative candidates funded under the MCEA paid more than \$236,000 to media buyers for television and radio advertising.

In measuring compliance with the current law, the Commission staff determined that virtually none of the gubernatorial or legislative campaigns required their media buyers to account for advertising placements and payments to media outlets, or to provide documentary evidence of compliance, as required by law.

The Commission staff proposes that if a contractor uses MCEA funds to make a purchase on behalf of the candidate, the contractor must provide to the candidate an accounting of the purchases. The candidate will then have the information necessary to disclose the detailed payments in campaign finance reports. Also, the vendor would be required by statute to obtain and provide to the candidate the same documents that the candidate would be required to keep if the candidate had made the purchase directly from the campaign bank account.

Thank you very much for your consideration of these proposals.

PROPOSED 2012 LEGISLATION

21-A M.R.S.A. 1017. Reports by candidates. [applies to traditionally financed and Maine Clean Election Act candidates]

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5. Content. A report required under this section must contain the itemized accounts of contributions received during that report filing period, including the date a contribution was received, and the name, address, occupation, principal place of business, if any, and the amount of the contribution of each person who has made a contribution or contributions aggregating in excess of \$50. The report must contain the itemized expenditures made or authorized during the report filing period, the date and purpose of each expenditure, and the name of each payee and creditor, and any refund that a payee has made to the campaign or an agent of the campaign. If the payee is a member of the candidate's household or immediate family, the candidate must disclose the candidate's relationship to the payee in a manner prescribed by the commission. The report must contain a statement of any loan to a candidate by a financial institution in connection with that candidate's candidacy that is made during the period covered by the report, whether or not the loan is defined as a contribution under section 1012, subsection 2, paragraph A. The candidate and the treasurer are jointly and severally responsible for the timely and accurate filing of each required report.

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21A §1019-B. Reports of independent expenditures

1. Independent expenditures; definition. For the purposes of this section, an "independent expenditure":

A. Is any expenditure made by a person, party committee, political committee or political action committee, other than by contribution to a candidate or a candidate's authorized political committee, for any communication that expressly advocates the election or defeat of a clearly identified candidate; and

B. Is presumed in races involving a candidate who is certified as a Maine Clean Election Act candidate under section 1125, subsection 5 to be any expenditure made to design, produce or disseminate a communication that names or depicts a clearly identified candidate and is disseminated during the 21 days, including election day, before a primary election; or the 35 days, including election day, before a general or special election; ~~or during a special election until and on election day.~~

21-A M.R.S.A. 1125. Terms of Participation [in the Maine Clean Election Act]

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7-A. Deposit into account. The candidate or committee authorized pursuant to section 1013-A, subsection 1, shall deposit all revenues from the fund and all seed money contributions in a campaign account with a bank or other financial institution. The campaign funds must be segregated from, and may not be commingled with, any other funds. A participating candidate shall submit to the Commission a signed written authorization that the institution may release to the Commission all records of the institution pertaining to the campaign account, including but not limited to account statements, records of payments or transfers from the account, and deposits of funds to the account.

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12. Reporting; unspent revenue. Notwithstanding any other provision of law, participating and certified candidates shall report any money collected, all campaign expenditures, obligations, refunds received by the campaign or its agents and related activities to the commission according to procedures developed by the commission. If a certified candidate pays fund revenues to a member of the candidate's immediate family or household or a business or nonprofit entity affiliated with a member of the candidate's immediate family or household, the candidate must disclose the candidate's relationship to the payee in a manner prescribed by the commission. ~~Upon the filing of a final report for any primary election in which the candidate was defeated and for all general elections that candidate shall return all unspent fund revenues to the commission.~~ In developing these procedures, the commission shall utilize existing campaign reporting procedures whenever practicable. The commission shall ensure timely public access to campaign finance data and may utilize electronic means of reporting and storing information. Upon the filing of a final report for any primary election in which the candidate was defeated and for all general elections that candidate shall return all unspent fund revenues to the commission. If the campaign or its agents receives any refunds from contractors or subcontractors after filing the final report, the campaign shall return those funds to the Maine Clean Election Fund within 14 days of receiving the refund.

12-A. Required records. [INCLUDED FOR REFERENCE. NO CHANGES PROPOSED.] The treasurer shall obtain and keep;

- A. Bank or other account statements for the campaign account covering the duration of the campaign;
- B. A vendor invoice stating the particular goods or services purchased for every expenditure of \$50 or more;
- C. A record proving that a vendor received payment for every expenditure of \$50 or more in the form of a cancelled check, receipt from the vendor or bank or credit card statement identifying the vendor as the payee; and
- D. (REPEALED)
- E. A contemporaneous document such as an invoice, contract or timesheet that specifies in detail the services provided by a vendor who was paid \$500 or more for the election cycle for providing campaign staff or consulting services to a candidate.

The treasurer shall preserve the records for 3 years following the candidate's final campaign finance report for the election cycle. The candidate and treasurer shall submit photocopies of the records to the Commission upon its request.

12-B. Audit requirements for candidates for Governor. [INCLUDED FOR REFERENCE. NO CHANGES PROPOSED.] The commission shall audit the campaigns of candidates for Governor who receive funds under this chapter to verify compliance with election and campaign laws and rules. Within one month of declaring an intention to qualify for public financing, a candidate for Governor, the campaign's treasurer and any other relevant campaign staff shall meet with the staff of the commission to discuss audit standards, expenditure guidelines and record-keeping requirements.

12-C. Purchases by contractors on behalf of a certified candidate. Any contractor which uses Maine Clean Election Act funds to make a purchase from a subcontractor on behalf of a certified candidate is required to provide to the candidate an accounting of all purchases made, including the date and amount of the purchase, the goods or services purchased, and the name of the subcontractor. The candidate shall itemize these purchases in the candidate's campaign finance reports, according to procedures established by the Commission. For all purchases of \$50 or more, the contractor must obtain and provide to the candidate an invoice from the subcontractor stating the particular goods or services purchased and a record proving that the subcontractor received payment. The contractor is required to return to the candidate all refunds received from subcontractors.

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Sec. xxx. Effective date. The section of this Act that amends Title 21-A, section 1125, subsection 7-A takes effect January 1, 2013.