

# Agenda

## Item #5



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

To: Commission Members  
From: Jonathan Wayne, Executive Director  
Date: March 19, 2009  
Re: Recommended Adoption of Rule Changes

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Thank you for your consideration of changes to the Commission rules proposed by the Commission staff. At your December 29, 2008 meeting, you agreed to accept public comments on amendments to the Commission's rules.

Technically, the changes to Chapter 1 and Chapter 3 of the Commission's rules are considered two separate rule-makings. The Chapter 1 rule changes are routine technical, so they would become final if you adopt them on March 26<sup>th</sup>. The Chapter 3 rule changes are considered major substantive. If you provisionally adopt the Chapter 3 changes on March 26<sup>th</sup>, the staff would immediately submit them to the Legislature for its consideration.

#### **Changes to Proposed Rules Since December 29, 2008**

Since the December 29, 2008 meeting, the staff has made some changes to the rule amendments originally proposed by the staff.

- The Commission's counsel pointed out correctly that two of the originally proposed changes to Chapter 1 were premature (the reference to ballot question committees in Ch.1, §6(3), and the deletion of Ch. 1, §11). That is because these two changes were predicated on changes to the campaign finance statutes that the staff was encouraging the Commission to propose for the 2009 legislative session. We are recommending not adopting those particular changes on March 26<sup>th</sup> and will bring them to you in a future rule-making if appropriate.
- In mid-January, the Commission staff revised some of wording in the original rule proposal. At the January 29, 2009 meeting, we provided the proposed changes with both the original language and the revised language (attached).
- After the January 29, 2009 public hearing, you directed the staff to change the proposal for Chapter 3, Section 7(2)(C) relating to the post-election sale of property and equipment purchased by Maine Clean Election Act candidates.

## **Attachments to this Memo**

- The changes to Chapters 1 and 3 now recommended by staff.
- Two proposed basis statements (required by the Maine Administrative Procedure Act) that would be submitted to the Secretary of State's Office if you adopt the proposed rule changes on March 26<sup>th</sup>. The statements contain explanations of the factual and policy basis for the proposed rules.
- The rule changes presented at the January 29, 2009 public hearing, which show the original language proposed on December 29, 2009 and the January revisions.

## **Rule Changes Recommended by Staff**

- Chapter 1, Section 6(2) – permitting the Commission to treat a loan to a candidate or political committee as a cash contribution if it remains unpaid for four years
- Chapter 1, Section 6(3) – clarifying that party committees are required to make a reasonable effort to obtain employment information from contributors, as required by statute
- Chapter 1, Section 6(6) – requiring the Commission to determine whether an unpaid debt owed by a candidate or political committee for more than four years should be deemed to be a contribution
- Chapter 3, Section 5(3)(F) – permitting the Commission to exercise its own judgment in deciding whether a reported independent expenditure was made to support or to oppose a candidate, if the expenditure was not accurately reported to the Commission
- Chapter 3, Section 7(2)(B)(2-A) – requiring a Maine Clean Election Act candidate who has received matching funds for a primary election and who has won the election to return any unspent matching funds after the primary election, so that they are not used in the general election race
- Chapter 3, Section 7(2)(C) – requiring campaigns who have purchased personal property or equipment with Maine Clean Election Act funds to sell the property or equipment for fair market value after the election and to return the proceeds to the Commission

## **Summary of Public Comments at the January 29, 2009 Public Hearing**

*Daniel I. Billings, Esq.*

Daniel I. Billings, Esq. commented as the former counsel for the 2006 Woodcock for Governor campaign regarding Chapter 3, Section 7(2)(C) on liquidation of property and equipment purchased by a Maine Clean Election Act candidate. He said the percentages in the rule as originally proposed were not workable for candidates, because the actual resale market value of computers, phones, and other office equipment is very small. He questioned what a campaign would do if it could not sell the items at the rates required by the proposed rule.

Mr. Billings said on-line markets such as e-bay are a good resource for establishing a fair market value and for disposing of property, and would show a good-faith effort and would open up a wider range of buyers. He said this seemed like a reasonable, fairly simple way to sell equipment.

*Joseph Greenier*

Joseph Greenier said that the State of Maine has a Surplus Property Division that campaigns could possibly use to purchase equipment. Also, he suggested that the costs charged by the division could be used to determine the fair market value of items sold after the election.

### **Written Comments**

The Commission has not received any written comments in connection with this rule-making.

Thank you for your consideration of the proposed rules.

94-270

COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES

Chapter 1: PROCEDURES

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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, and political action committees, and party committees must make a reasonable effort to obtain the employment information of the contributor. If a candidate or ~~political action~~ committee is unable to obtain the information from the contributor in response to a request, the candidate or committee shall indicate "information requested" in the occupation and employer sections of the campaign finance report.
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.
5. An employer that has authorized an employee to provide services without charge to a candidate or political committee during the employee's paid work-time has made an in-kind contribution to the candidate or political committee. No contribution has been made if the employee is providing services as a volunteer outside of the employee's paid work-time.

6. A commercial vendor that has extended credit to a candidate or political committee has not made a contribution if the credit is extended in the ordinary course of the vendor's business and the terms are substantially similar to extensions of credit made to nonpolitical customers that are of similar risk and size of obligation. The Commission shall presume any debt that remains unpaid more than six months after the election in which the debt was incurred to be a contribution to the candidate or political committee unless the candidate or committee provides clear and convincing evidence to the Commission that they intend to raise funds or take other measures to satisfy the debt. The Commission shall determine whether any debt that remains unpaid for more than four years after the election should be deemed a contribution to the candidate or committee. The Commission may take into consideration any evidence it believes is relevant, including evidence that the creditor did not intend to make a contribution to the candidate or committee or that the candidate or committee is unable to pay the debt.
  
7. For the purposes of the limitations imposed by 21-A M.R.S.A. §1015(1), 21-A M.R.S.A. §1015(2), 21-A M.R.S.A. §1015(3), and 21-A M.R.S.A. §1056, the following guidelines shall apply:
  - A. All contributions made to a candidate through the day of the primary election for which the candidate seeks office are deemed to be made in the primary election.
  - B. Notwithstanding division (c) below, if a candidate loses in the primary, all contributions made to that candidate for the purpose of liquidating debts and liabilities associated with the candidate's candidacy are deemed to be made in the primary election.
  - C. All contributions made to a candidate from the day after the primary election through the date of the general election for which the candidate seeks office are deemed to be made in the general election.
  - D. Notwithstanding division (e) below, all contributions made after the general election to a general election candidate for the purpose of reducing debts and liabilities associated with the candidate's candidacy are deemed to be made in the general election.
  - E. All contributions made after the day of the general election to a candidate who has liquidated all debts and liabilities associated with that election are deemed to be made in support of the candidate's candidacy for a subsequent election.
  - F. Subparagraphs A through E above shall apply to any write-in candidate who has qualified under 21-A M.R.S.A. §723, or who has received contributions or made expenditures with the intent of qualifying as a candidate.

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COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES

Chapter 3: MAINE CLEAN ELECTION ACT AND RELATED PROVISIONS

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SECTION 5. DISTRIBUTION OF FUNDS TO CERTIFIED CANDIDATES  
[SUBSECTIONS 1, 2, AND 4 OMITTED]

3. **Matching Fund Provision**

- A. **General.** The Commission will authorize immediately an allocation of matching funds to certified candidates in accordance with the Act when the Commission determines that the eligibility for receipt of matching funds has been triggered [§1125(9)].
- B. **Matching Fund Computation Involving Only Certified Candidates**
- (1) For each certified candidate, the Commission will:
    - (a) add to the initial distribution amount for that election:
      - (i) the sum of any matching funds previously provided for that election, and
      - (ii) the sum of independent expenditures made in support of each certified candidate; and
    - (b) subtract the sum of independent expenditures made in opposition to each certified candidate.
  - (2) The Commission will compare the final computed amounts and will immediately authorize a matching fund allocation equal to the difference to the certified candidate with the lesser amount.
  - (3) In computations involving only certified candidates, the Commission will not use seed money raised or unspent funds remaining after a primary election in computing the amount of matching funds.
- C. **Matching Fund Computation Based on Nonparticipating Candidates' Receipts or Expenditures.** In races in which there is at least one certified and one nonparticipating candidate, and the matching fund computation is triggered by the financial activity of nonparticipating candidate, including any independent expenditures in support of the nonparticipating candidate:
- (1) The Commission will first determine the applicable amount for the nonparticipating candidate

- (a) by adding:
    - (i) the sum of the nonparticipating candidate's expenditures, obligations and in-kind contributions, or the sum of the nonparticipating candidate's cash and in-kind contributions and loans, including surplus or unspent funds carried forward from a previous election to the current election, whichever is greater, and
    - (ii) the sum of independent expenditures made in support of the same nonparticipating candidate; and
  - (b) by subtracting the sum of independent expenditures made in opposition to the same nonparticipating.
- (2) The Commission then will determine the applicable amount for the certified candidate
- (a) by adding:
    - (i) the amount of the initial distribution for that election;
    - (ii) the sum of independent expenditures made in support of the certified candidate;
    - (iii) the sum of matching fund allocations already provided to the certified candidate; and
    - (iv) the amount of:
      - a) any seed money raised by an enrolled certified candidate in a primary or special election or by a replacement candidate in a general election; or
      - b) any unspent funds carried forward from the primary election to the subsequent general election by an enrolled certified candidate in a general election; or
      - c) any seed money raised and, if applicable, any other distribution received prior to the general election distribution by an unenrolled certified candidate in a general or special election; and
  - (b) by subtracting the sum of independent expenditures made in opposition to the same certified candidate.
- (3) The Commission will compare the final computed amounts and, if the amount for the certified candidate is less than the amount for the nonparticipating candidate, will immediately authorize a matching fund allocation equal to the difference to the certified candidate.

- D. **Matching Fund Computation Not Involving a Nonparticipating Candidate.** In races in which there are two or more certified candidates and at least one nonparticipating candidate,
- (1) if the matching fund computation is triggered by an independent expenditure in support of or opposition to a certified candidate, and
  - (2) the campaign totals, including independent expenditures, of any nonparticipating candidate in the race are equal to or less than the campaigns totals, including independent expenditures, of at least one certified candidate in the race; then
  - (3) the matching fund computation must be completed according to the procedure in paragraph B of this subsection.
- E. The Commission will make computations promptly upon the filing of campaign finance reports and independent expenditure reports.
- F. To prevent the abuse of the Matching Fund Provision, the Commission will not base any calculation on independent expenditures that, although containing words of ~~express~~ advocacy, also contain other words or phrases that have no other reasonable meaning than to contradict ~~that the express~~ advocacy. The Commission is not bound by a statement in an independent expenditure report that the disclosed payment was made in support or in opposition to a candidate. For example, expenses related to a communication saying, "Vote for John Doe -- he's incompetent and inexperienced," will not be considered a communication in support of John Doe in the calculation of matching funds.
- G. **Matching Fund Cap.** Matching funds are limited to 2 times the amount originally distributed to a certified candidate from the Fund for that election. Certified candidates are not entitled to cumulative matching funds for multiple opponents.
- H. **Other.** Any distribution based on reports and accurate calculations at the time of distribution is final, notwithstanding information contained in subsequent reports.
- I. **Coordination with Other State Agencies.** The Commission will coordinate with the Office of the Controller and other relevant State agencies to implement a mechanism for the distribution of Fund revenues to certified candidates that is expeditious, ensures public accountability, and safeguards the integrity of the Fund.
- J. **Disbursements with No Campaign Value.** If a privately financed candidate has received monetary contributions which are disbursed in ways that do not in any way influence the nomination or election of the candidate, those receipts will not be considered by the Commission in calculating matching funds for his or her opponent. Such disbursements may include repaying a loan received by the candidate, refunding a contribution to a contributor, or transferring funds to a party or political committee for purposes that do not relate to the candidate's race.

**SECTION 7. RECORD KEEPING AND REPORTING [SUBSECTION 1 OMITTED]****2. Reporting by Participating and Certified Candidates**

- A. **General.** Participating and certified candidates must comply with applicable reporting requirements set forth in Title 21-A, chapter 13, subchapter II [§1017].
- B. **Return of Matching Fund Advances and Unspent Fund Revenues.** Matching fund advance revenues that have not been authorized for spending and unspent Fund revenues shall be returned to the Fund as follows:
- (1) **Unauthorized Matching Funds.** Candidates must return all matching fund advance revenues for which no spending authorization was issued prior to an election to the Commission by check or money order payable to the Fund within 2 weeks following the date of the election.
  - (2) **Unspent Fund Revenues for Unsuccessful Primary Election Candidates.** Upon the filing of the 42-day post-primary election report for a primary election in which a certified candidate was defeated, that candidate must return all unspent Fund revenues to the Commission by check or money order payable to the Fund, except that a gubernatorial candidate may be allowed to reserve up to \$2,000 in order to defray expenses associated with an audit by the Commission.
- (2-A) Unspent Matching Funds for Successful Primary Election Candidates.** Upon the filing of the 42-day post-primary election report for a primary election in which a certified candidate was successful, that candidate must return any unspent matching funds received for the primary election. Matching funds received for the primary election may not be used for campaign expenditures for the general election.
- (3) **Unspent Fund Revenues for All General and Special Election Candidates.** Upon the filing of the 42-day post-election report for a general or special election, all candidates must return all unspent Fund revenues to the Commission by check or money order payable to the Fund, except that a gubernatorial candidate may be allowed to reserve up to \$3,500 in order to defray expenses associated with an audit by the Commission.
- C. **Liquidation of Property and Equipment.** Property and equipment that is not exclusive to use in a campaign (e.g., computers and associated equipment, etc.) that has been purchased with Maine Clean Election Act funds loses its campaign-related purpose following the election. Such property and equipment purchased for \$50 or more must be liquidated at its fair market value and the proceeds thereof reimbursed to the Maine Clean Election Fund as unspent fund revenues in accordance with the schedule in paragraph B above. Candidates may not return unsold property or equipment to the Commission.
- (1) The liquidation of campaign property and equipment may be done by sale to another person or purchase by the candidate.

- (2) Liquidation must be at the fair market value of the property or equipment at the time of disposition. Fair market value is determined by what is fair, economic, just, equitable, and reasonable under normal market conditions based upon the value of items of similar description, age, and condition as determined by acceptable evidence of value. A campaign's sale of property or equipment through an on-line commercial auction shall be considered by the Commission as a factor in favor of determining that the campaign has recovered the fair market value of the property or equipment.
- (3) If the campaign sells the property or equipment to the candidate or a member of the candidate's immediate family or campaign staff, the campaign must receive at least 75% of the original purchase price.

**DRAFT  
BASIS  
STATEMENT**

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

From: Jonathan Wayne, Executive Director

Date: March 26, 2008

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

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**STATEMENT OF FACTUAL AND POLICY BASIS FOR AMENDMENTS  
AND SUMMARY OF AND RESPONSE TO COMMENTS**

**Chapter 1, Section 6(2) – Loans**

*Factual and Policy Basis:* Under the statutory definition of the term 'contribution' (21-A M.R.S.A. § 1012(2)(A)(1)), a loan to a candidate or political committee is a form of contribution. In the Commission reporting forms, loans are disclosed in a schedule that is separate from cash contributions. Under 21-A M.R.S.A. § 1017(3-A)(E), candidates must file semi-annual campaign finance reports indefinitely after an election if they have unpaid loans or debts over \$100. Some candidates continue to file reports for several years after an election because of loans they have made to their campaigns. The Commission staff has amended Section 6(2) to allow the Commission to consider a reported loan to be a cash contribution if it remains unpaid for four years after the election in which the loan was incurred.

*Comments:* The Commission received no comments on the proposed rule.

**Chapter 1, Section 6(3) – Reporting Contributors' Occupation and Place of Business**

*Factual and Policy Basis:* Similar to the disclosure responsibilities of candidates and political action committees (PACs), the committees of political parties are required to report a contributor's occupation and place of business under 21-A M.R.S.A. § 1017-A(1). The staff proposes an amendment to clarify that party committees must make a reasonable effort to obtain a contributor's occupation and place of business.

*Comments:* The Commission received no comments on the proposed rule.

**Chapter 1, Section 6(6) – Unpaid Debts and Obligations**

*Factual and Policy Basis:* Candidates, PACs, party committees, and ballot question committees are required to disclose unpaid debts and obligations in their campaign finance reporting forms. Some PACs have reported debts that are quite old. The staff proposes including time periods in Section 6(6) which would require the Commission to determine whether a candidate or political committee has received a contribution if they continue to have a debt to a vendor that remains unpaid four years after the election in which the debt was incurred. All contributions to candidates are subject to a limit of \$250 or \$500, but there is no contribution limit for PACs, party committees, and ballot question committees.

*Comments:* The Commission received no comments on the proposed rule.

**DRAFT  
BASIS  
STATEMENT**

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

From: Jonathan Wayne, Executive Director

Date: March 26, 2009

Re: Amendments to Major Substantive Rules in Chapter 3 of the Commission's Rules  
(94-270 C.M.R. Chapter 3)

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**STATEMENT OF FACTUAL AND POLICY BASIS FOR AMENDMENTS  
AND SUMMARY OF AND RESPONSE TO COMMENTS**

**Chapter 3, Section 5(3)(F) – Misleading Independent Expenditure Reports**

*Factual and Policy Basis:* The Commission has adopted a clarification to the Commission's existing matching funds rule stating that the Commission is not bound by a statement in an independent expenditure report that a payment was made in support or in opposition to a candidate. Under the rule, in an exceptional circumstance in which an independent expenditure was not accurately reported, the Commission could exercise its own judgment in deciding whether a reported expenditure was made to support or to oppose a candidate.

*Comments:* The Commission received no comments on the proposed rule.

**Chapter 3, Section 7(2)(B)(2-A) – Primary Election Matching Funds**

*Factual and Policy Basis:* Under the Maine Clean Election Act (MCEA), candidates may receive matching funds for the primary and/or general election to keep them on an even playing field with an opponent in that election. The Commission staff proposes that if a candidate receives matching funds for a primary election and wins that election, the candidate must return any unspent matching funds to the Commission. This will improve the operation of matching funds in the general election. Based on prior experience, the staff expects the proposed rule to affect very few candidates.

*Comments:* The Commission received no comments on the proposed rule.

### **Chapter 3, Section 7(2)(C) – Property and Equipment Purchased with MCEA Funds**

*Factual and Policy Basis:* Under the current rule, if a campaign uses MCEA funds to purchase property and equipment that could be converted to the candidate's personal use after an election (e.g., a computer or cell phone), the campaign must sell the property or equipment for fair market value and return the proceeds to the Commission. Most often, that sale is made to the candidate or someone that the candidate knows. Most candidates are very sensitive to this issue and handle such purchases appropriately.

The Commission has adopted an amendment stating that if the campaign sells property or equipment to the candidate, or a member of the candidate's immediate family or campaign staff, the campaign must recover at least 75% of the original purchase price. This will help avoid any appearance that a candidate purchased property or equipment with MCEA funds in order to sell it to themselves or an associate at a reduced price.

*Comments:* Daniel I. Billings, Esq. commented as the former counsel for the 2006 Woodcock for Governor campaign regarding Chapter 3, Section 7(2)(C) on liquidation of property and equipment purchased by a Maine Clean Election Act candidate. He said the percentages in the rule as originally proposed were not workable for candidates, because the actual resale market value of computers, phones, and other office equipment is very small. He questioned what a campaign would do if it could not sell the items at the rates required by the proposed rule. Mr. Billings said on-line markets such as e-bay are a good resource for establishing a fair market value and for disposing of property, and would show a good-faith effort and would open up a wider range of buyers. He said this seemed like a reasonable, fairly simple way to sell equipment.

Joseph Greenier said that the State of Maine has a Surplus Property Division that campaigns could possibly use to purchase equipment. Also, he suggested that the costs charged by the division could be used to determine the fair market value of items sold after the election.

*Response to comments:* The Commission has deleted the resale percentages in the originally proposed rule. The rule has also been amended to state that a campaign's sale of property or equipment through an on-line commercial auction would be considered as a factor in favor of the Commission determining that the campaign has received fair market value for the property or equipment.

94-270

COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES

Chapter 1: PROCEDURES

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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.

Insertion to  
§ 6(2) accepted  
for public  
comment on  
12/29/08

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 convert any reported loan to a cash contribution if it remains unpaid four years after the election in which it was incurred.

Alternative  
§ 6(2) preferred  
by Commission  
staff

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.*

Commission staff  
proposes withdraw-  
ing the reference to  
ballot question  
committees, because  
it is predicated on a  
2009 statutory  
change to  
21-A M.R.S.A.  
§ 1056-B(2).

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, ~~and~~ political action committees, party committees, and ballot question committees must make a reasonable effort to obtain the employment information of the contributor. If a candidate or ~~political action~~ committee is unable to obtain the information from the contributor in response to a request, the candidate or committee shall indicate "information requested" in the occupation and employer sections of the campaign finance report.

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.

5. An employer that has authorized an employee to provide services without charge to a candidate or political committee during the employee's paid work-time has made an in-kind contribution to the candidate or political committee. No contribution has been made if the employee is providing services as a volunteer outside of the employee's paid work-time.
6. A commercial vendor that has extended credit to a candidate or political committee has not made a contribution if the credit is extended in the ordinary course of the vendor's business and the terms are substantially similar to extensions of credit made to nonpolitical customers that are of similar risk and size of obligation. The Commission shall presume any debt that remains unpaid more than six months after the election in which the debt was incurred to be a contribution to the candidate or political committee unless the candidate or committee provides clear and convincing evidence to the Commission that they intend to raise funds or take other measures to satisfy the debt. Any debt that remains unpaid for more than four years after the election shall be deemed a contribution to the candidate or committee, unless the candidate or committee provides clear and convincing evidence to the Commission that the creditor has not intended to make a contribution to the candidate or committee and that the candidate or committee is unable to pay the debt.
6. *A commercial vendor that has extended credit to a candidate or political committee has not made a contribution if the credit is extended in the ordinary course of the vendor's business and the terms are substantially similar to extensions of credit made to nonpolitical customers that are of similar risk and size of obligation. The Commission shall presume any debt that remains unpaid more than six months after the election in which the debt was incurred to be a contribution to the candidate or political committee unless the candidate or committee provides clear and convincing evidence to the Commission that they intend to raise funds or take other measures to satisfy the debt. The Commission shall determine whether any debt that remains unpaid for more than four years after the election should be deemed a contribution to the candidate or committee. The Commission may take into consideration any evidence it believes is relevant, including evidence that the creditor did not intend to make a contribution to the candidate or committee or that the candidate or committee is unable to pay the debt.*
7. For the purposes of the limitations imposed by 21-A M.R.S.A. §1015(1), 21-A M.R.S.A. §1015(2), 21-A M.R.S.A. §1015(3), and 21-A M.R.S.A. §1056, the following guidelines shall apply:
- A. All contributions made to a candidate through the day of the primary election for which the candidate seeks office are deemed to be made in the primary election.
  - B. Notwithstanding division (c) below, if a candidate loses in the primary, all contributions made to that candidate for the purpose of liquidating debts and liabilities associated with the candidate's candidacy are deemed to be made in the primary election.
  - C. All contributions made to a candidate from the day after the primary election through the date of the general election for which the candidate seeks office are deemed to be made in the general election.

Insertion to  
§ 6(6) accepted  
for public  
comment on  
12.29.08

Alternative  
§ 6(6) preferred  
by Commission  
staff

- D. Notwithstanding division (e) below, all contributions made after the general election to a general election candidate for the purpose of reducing debts and liabilities associated with the candidate's candidacy are deemed to be made in the general election.
- E. All contributions made after the day of the general election to a candidate who has liquidated all debts and liabilities associated with that election are deemed to be made in support of the candidate's candidacy for a subsequent election.
- F. Subparagraphs A through E above shall apply to any write-in candidate who has qualified under 21-A M.R.S.A. §723, or who has received contributions or made expenditures with the intent of qualifying as a candidate.

**~~SECTION 11. REPORTS OF BALLOT QUESTION CAMPAIGN ACTIVITY BY PERSONS AND ORGANIZATIONS OTHER THAN POLITICAL ACTION COMMITTEES~~**

~~When a person or organization is required under 21-A M.R.S.A. §1056-B to file reports because of contributions or expenditures of more than \$1,500 made in support of or in opposition to a ballot question, the reports must be filed according to the following schedule:~~

- ~~1. **Quarterly Reports.** Reports must be filed by 11:59 p.m. on the following deadlines until the date of the election on which the question is on the ballot:
 
  - A. A report must be filed on January 15th and be complete as of January ~~5th~~ December 31st;
  - B. A report must be filed on April 10th and be complete as of March 31st;
  - C. A report must be filed on July 15th and be complete as of ~~June 30th~~ July 5th; and
  - D. A report must be filed on October 10th and be complete as of September 30th.~~
- ~~2. **Pre and Post Election Reports.** The person or organization must also file the following reports by 11:59 p.m. on the following deadlines:
 
  - A. A report must be filed on the 11th day before the election is held and be complete as of the 14th day before the election.
  - B. A report must be filed on the 42nd day after the election is held and be complete as of the 35th day after the election.~~
- ~~3. **24-Hour Reports.** Any contribution or expenditure in excess of \$500 made after the 14th day before the election and more than 24 hours before the election must be reported within 24 hours of that contribution or expenditure or by noon of the first business day after the contribution or expenditure, whichever is later.~~

Commission staff proposes withdrawing this change, because it is predicated on a 2009 statutory change to 21-A M.R.S.A. § 1056-B(1).

94-270

COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES

Chapter 3: MAINE CLEAN ELECTION ACT AND RELATED PROVISIONS

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SECTION 5. DISTRIBUTION OF FUNDS TO CERTIFIED CANDIDATES  
[SUBSECTIONS 1, 2, AND 4 OMITTED]

3. Matching Fund Provision

- A. **General.** The Commission will authorize immediately an allocation of matching funds to certified candidates in accordance with the Act when the Commission determines that the eligibility for receipt of matching funds has been triggered [§1125(9)].
- B. **Matching Fund Computation Involving Only Certified Candidates**
- (1) For each certified candidate, the Commission will:
    - (a) add to the initial distribution amount for that election:
      - (i) the sum of any matching funds previously provided for that election, and
      - (ii) the sum of independent expenditures made in support of each certified candidate; and
    - (b) subtract the sum of independent expenditures made in opposition to each certified candidate.
  - (2) The Commission will compare the final computed amounts and will immediately authorize a matching fund allocation equal to the difference to the certified candidate with the lesser amount.
  - (3) In computations involving only certified candidates, the Commission will not use seed money raised or unspent funds remaining after a primary election in computing the amount of matching funds.
- C. **Matching Fund Computation Based on Nonparticipating Candidates' Receipts or Expenditures.** In races in which there is at least one certified and one nonparticipating candidate, and the matching fund computation is triggered by the financial activity of nonparticipating candidate, including any independent expenditures in support of the nonparticipating candidate:
- (1) The Commission will first determine the applicable amount for the nonparticipating candidate

- (a) by adding:
    - (i) the sum of the nonparticipating candidate's expenditures, obligations and in-kind contributions, or the sum of the nonparticipating candidate's cash and in-kind contributions and loans, including surplus or unspent funds carried forward from a previous election to the current election, whichever is greater, and
    - (ii) the sum of independent expenditures made in support of the same nonparticipating candidate; and
  - (b) by subtracting the sum of independent expenditures made in opposition to the same nonparticipating.
- (2) The Commission then will determine the applicable amount for the certified candidate
- (a) by adding:
    - (i) the amount of the initial distribution for that election;
    - (ii) the sum of independent expenditures made in support of the certified candidate;
    - (iii) the sum of matching fund allocations already provided to the certified candidate; and
    - (iv) the amount of:
      - a) any seed money raised by an enrolled certified candidate in a primary or special election or by a replacement candidate in a general election; or
      - b) any unspent funds carried forward from the primary election to the subsequent general election by an enrolled certified candidate in a general election; or
      - c) any seed money raised and, if applicable, any other distribution received prior to the general election distribution by an unenrolled certified candidate in a general or special election; and
  - (b) by subtracting the sum of independent expenditures made in opposition to the same certified candidate.
- (3) The Commission will compare the final computed amounts and, if the amount for the certified candidate is less than the amount for the nonparticipating candidate, will immediately authorize a matching fund allocation equal to the difference to the certified candidate.

- D. **Matching Fund Computation Not Involving a Nonparticipating Candidate.** In races in which there are two or more certified candidates and at least one nonparticipating candidate,
- (1) if the matching fund computation is triggered by an independent expenditure in support of or opposition to a certified candidate, and
  - (2) the campaign totals, including independent expenditures, of any nonparticipating candidate in the race are equal to or less than the campaigns totals, including independent expenditures, of at least one certified candidate in the race; then
  - (3) the matching fund computation must be completed according to the procedure in paragraph B of this subsection.
- E. The Commission will make computations promptly upon the filing of campaign finance reports and independent expenditure reports.
- F. To prevent the abuse of the Matching Fund Provision, the Commission will not base any calculation on independent expenditures that, although containing words of express-advocacy, also contain other words or phrases that have no other reasonable meaning than to contradict that the express-advocacy. The Commission is not bound by a statement in an independent expenditure report that the disclosed payment was made in support or in opposition to a candidate. For example, expenses related to a communication saying, "Vote for John Doe -- he's incompetent and inexperienced," will not be considered a communication in support of John Doe in the calculation of matching funds.
- G. **Matching Fund Cap.** Matching funds are limited to 2 times the amount originally distributed to a certified candidate from the Fund for that election. Certified candidates are not entitled to cumulative matching funds for multiple opponents.
- H. **Other.** Any distribution based on reports and accurate calculations at the time of distribution is final, notwithstanding information contained in subsequent reports.
- I. **Coordination with Other State Agencies.** The Commission will coordinate with the Office of the Controller and other relevant State agencies to implement a mechanism for the distribution of Fund revenues to certified candidates that is expeditious, ensures public accountability, and safeguards the integrity of the Fund.
- J. **Disbursements with No Campaign Value.** If a privately financed candidate has received monetary contributions which are disbursed in ways that do not in any way influence the nomination or election of the candidate, those receipts will not be considered by the Commission in calculating matching funds for his or her opponent. Such disbursements may include repaying a loan received by the candidate, refunding a contribution to a contributor, or transferring funds to a party or political committee for purposes that do not relate to the candidate's race.

**SECTION 7. RECORD KEEPING AND REPORTING [SUBSECTION 1 OMITTED]****2. Reporting by Participating and Certified Candidates**

- A. **General.** Participating and certified candidates must comply with applicable reporting requirements set forth in Title 21-A, chapter 13, subchapter II [§1017].
- B. **Return of Matching Fund Advances and Unspent Fund Revenues.** Matching fund advance revenues that have not been authorized for spending and unspent Fund revenues shall be returned to the Fund as follows:
- (1) **Unauthorized Matching Funds.** Candidates must return all matching fund advance revenues for which no spending authorization was issued prior to an election to the Commission by check or money order payable to the Fund within 2 weeks following the date of the election.
  - (2) **Unspent Fund Revenues for Unsuccessful Primary Election Candidates.** Upon the filing of the 42-day post-primary election report for a primary election in which a certified candidate was defeated, that candidate must return all unspent Fund revenues to the Commission by check or money order payable to the Fund, except that a gubernatorial candidate may be allowed to reserve up to \$2,000 in order to defray expenses associated with an audit by the Commission.
- (2-A) Unspent Matching Funds for Successful Primary Election Candidates. Upon the filing of the 42-day post-primary election report for a primary election in which a certified candidate was successful, that candidate must return any unspent matching funds received for the primary election. Matching funds received for the primary election may not be used for campaign expenditures for the general election.
- (3) **Unspent Fund Revenues for All General and Special Election Candidates.** Upon the filing of the 42-day post-election report for a general or special election, all candidates must return all unspent Fund revenues to the Commission by check or money order payable to the Fund, except that a gubernatorial candidate may be allowed to reserve up to \$3,500 in order to defray expenses associated with an audit by the Commission.
- C. **Liquidation of Property and Equipment.** Property and equipment that is not exclusive to use in a campaign (e.g., computers and associated equipment, etc.) that has been purchased with Maine Clean Election Act funds loses its campaign-related purpose following the election. Such property and equipment purchased for \$25 or more must be liquidated as specified below at its fair market value and the proceeds thereof reimbursed to the Maine Clean Election Fund as unspent fund revenues in accordance with the schedule in paragraph B above. Candidates may not return the property or equipment to the Commission.
- (1) The liquidation of campaign property and equipment may be done by sale to another person or purchase by the candidate.

Staff proposes additional insertion to address issue raised by member Edward Youngblood

- (2) Liquidation must be at the fair market value of the property or equipment at the time of disposition. Fair market value is determined by what is fair, economic, just, equitable, and reasonable under normal market conditions based upon the value of items of similar description, age, and condition as determined by acceptable evidence of value. Property and equipment purchased for \$25 or more and less than \$100 must be liquidated for no less than 50% of the original purchase price.
- (3) Property and equipment purchased for \$100 or more and less than \$1000 must be liquidated for no less than 75% of the original purchase price.
- (4) Property and equipment purchased for \$1,000 or more shall be presumed to have a useful life of five years and to reduce in value according to straight-line depreciation. Accordingly, when the campaign liquidates the property or equipment, the campaign shall obtain at least the value of the property on the day of the candidate's final election. [FOR EXAMPLE, IF A CANDIDATE PURCHASED A PERSONAL COMPUTER FOR \$2,000 SIX MONTHS BEFORE THE CANDIDATE'S FINAL ELECTION, THE CANDIDATE SHALL LIQUIDATE THE COMPUTER FOR NO LESS THAN \$1,800 (\$2,000 REDUCED BY 6/60 MONTHS).]
- (5) In addition to the minimum amounts set forth in subparagraphs (2), (3), and (4), any property or equipment purchased in the final three weeks before the candidate's election or after the election shall be liquidated for no less than 95% of the original purchase price.