

Agenda

Item #2



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: August 27, 2009
Re: Proposed Rule-Making to Amend Chapter 3, Section 4(4)

At the public hearing on July 30, 2009, the Commission received persuasive comments that the originally proposed Chapter 3, Section 4(4) should be revised to cover some additional issues. The Commission staff has drafted a revised rule that is more comprehensive. Unfortunately, under the Maine Administrative Procedure Act (5 M.R.S.A. § 8052(5)(B)), you cannot finally adopt the revised rule on September 8, because it is substantially different from the originally proposed rule. The staff therefore suggests initiating a new rule-making under which the Commission would invite comments on the revised Chapter 3, Section 4(4).

Revisions to the Rule

The revisions to the rule include the following changes:

- The revised rule follows the suggestion made by Dan Billings on July 30th that the Commission should reserve sufficient money in the Maine Clean Election Fund to pay matching funds to candidates during the final weeks before a general election. We believe candidates would widely agree that fundraising in the final weeks should be avoided.

- The revised rule incorporates another suggestion that if the Commission must reduce the amounts of MCEA payments to some candidates, the reductions should be made across the board to payments made to legislative and gubernatorial candidates for the general election in June of the election year. At the July 30th meeting, at least one Commissioner seemed to favor this suggestion. The Commission staff agrees with the logic that this plan is fairest to all MCEA candidates, and will minimize the private funds that each candidate must raise. The revised rule would give the Commission the flexibility to reduce the payments differently, if convincing policy reasons were present. At the October 1 meeting of the Commission, we will be presenting our estimations for the Maine Clean Election Fund in the 2010 elections.
- The rule addresses two issues raised by the Maine Citizens for Clean Elections. First, if the Commission permits MCEA candidates to accept contributions, each candidate could contribute no more than \$350 or \$750 of their own funds – the same limitation that applies to all other contributors. The staff believes this is required by 21-A M.R.S.A. § 1125(13). Secondly, the rule specifies that if the candidates collect campaign contributions that they do not spend on their campaign, they would dispose of them according to the restrictions in 21-A M.R.S.A. § 1017(8), which are the restrictions set by the Legislature for returning unspent campaign contributions.

Opportunity for Comment

We recommend that at the September 8 meeting, you initiate a new rule-making by agreeing to accept comment on the revised rule. We would suggest a deadline for written comments in mid-October. The Commission staff would make sure that currently registered 2010 candidates would be aware that the rule is being considered, along with the usual interested persons who receive notices of the Commission's rule-makings and individuals who would be potentially advising 2010 candidates (*e.g.*, the three political parties, and the legislative leadership offices).

In general, you are not required to hold a public hearing to receive oral comment on proposed rule amendments. If you wish to hold a public hearing for this rulemaking, the notice provision in the Administrative Procedure Act would require you to hold the hearing after October 3. So, unfortunately, you could not hold a public hearing as part of your October 1 meeting.

The Commission staff believes it would be helpful for candidates if the rule were adopted by your meeting on November 19, 2009, rather than in 2010.

Thank you for your consideration of the proposal.

Chapter 3, Section 4(4). Distributions Not to Exceed Amount in Fund Authorizing Contributions due to Shortfall in the Fund.

- A. Authorization by Commission to accept contributions.** If the Commission determines that the revenues in the Fund are ~~may be~~ insufficient to ~~meet distributions~~ ~~make payments~~ under this chapter section 1125 of the Act, the Commission ~~will~~ ~~may~~ reduce payments of public campaign funds to certified candidates and permit certified candidates ~~them~~ to accept and spend contributions in accordance with the Act [§1125(13)].
- B. Limitations on permitted contributions.** If permitted to accept contributions, a certified candidate may not accept a contribution in cash or in-kind from any contributor, including the candidate and the candidate's spouse or domestic partner, that exceeds \$750 per election for gubernatorial candidates and \$350 per election for State Senate and State House candidates. A candidate may not solicit or receive any funds in the form of a loan with a promise or expectation that the funds will be repaid to the contributor. If a contributor made a seed money contribution to a candidate, the amount of the seed money contribution shall count toward the contribution limit for the primary election. For a replacement candidate or candidate in a special election, a seed money contribution shall count toward the contribution limit for the election in which the candidate is running.
- C. Apportioning reductions in public funds payments.** When the Commission has determined the amount of the projected shortfall, it shall identify which payments of public campaign funds will be reduced due to the shortfall and the amounts of the reductions. If the initial payments for the general election will be reduced, the Commission shall reduce proportionally those payments to all certified candidates, unless convincing policy reasons are present to reduce the payments differently.
- D. Campaign contributions to replace matching funds.** In apportioning a payment reduction to certified candidates, the Commission shall seek to avoid allowing certified candidates to fundraise in the final six weeks before a general election or a contested primary election. The Commission shall, as much as possible, reserve revenues in the Fund to pay matching funds to candidates. The Commission may permit candidates to raise contributions in advance that the candidate could spend as matching funds if authorized by the Commission. If permitted to raise such contributions, the candidate shall deposit them in a separate account with a bank or other financial institution. The candidate may spend the contributions as matching funds only if authorized by the Commission staff. The unauthorized expenditure of contributions raised to replace matching funds is a substantial violation of the Act and this rule.

- E. **Written notice to candidates.** The Commission shall will notify participating and certified candidates in writing of any projected shortfall in the Fund and will-specify timelines and procedures for compliance with this chapter subsection in the event of any such a shortfall.
- F. **Procedures for candidates.** The candidate shall deposit any authorized contributions into the campaign account into which Maine Clean Election Act funds have been deposited, except that any contributions raised to replace matching funds permitted under paragraph D of this subsection must be deposited in a separate account. The candidate shall disclose all contributions received in regular campaign finance reports. The Commission's expenditure guidelines for Maine Clean Election Act funds apply to the spending of the contributions authorized under this subsection. After the election, the candidate may dispose of any contributions which the candidate has not spent according to the restrictions set forth in 21-A M.R.S.A. § 1017(8).
- G. **Effect of fundraising on matching funds calculation.** If the Commission authorizes a certified candidate to accept campaign contributions pursuant to section 1125(13) of the Act and this subsection, the amount of the contributions that the candidate has been authorized to spend shall be treated as fund revenues received by the candidate for the purpose of calculating matching funds. Any reduction in the amount of public campaign funds paid to a certified candidate under sections 1125(8) or (10) of the Act will not affect the fundraising or spending threshold that triggers accelerated reporting by an opponent of the certified candidate under 21-A M.R.S.A. § 1017(3-B).