



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: July 16, 2024
Re: Request to Investigate Anonymous Postcard in St. George Referendum

The Commission received a request for investigation concerning an anonymous postcard mailing to some residents of St. George, Maine urging a “no” vote on a May 2024 municipal referendum. The person making the request, State Rep. Ann Higgins Matlack, asks the Commission to investigate whether the card should have stated who paid for the mailing and whether the persons responsible for the mailing should have filed information with the Commission.

Relevant Law

Application of State Campaign Finance Law to Local Referenda

In 2023, Maine’s Counties and Municipalities Law was amended to provide for campaign finance reporting concerning referenda in towns and cities with a population of 15,000 or less. 30-A M.R.S. § 2052(2).

Disclosure Requirements in State Campaign Finance Law

Disclaimer statements in paid communications. When a person make expenditures exceeding \$500 for paid communications expressly advocating for or against a ballot question, the communication must state the name and address of the person who made or financed the expenditure for the communication. 21-A M.R.S. § 1055-A(1). This disclosure statement is sometimes referred to as a disclaimer because of the typically small format of the message.

Registration and financial reporting. A ballot question committee is defined as a person (either an individual or organization) that receives contributions or makes expenditures of more than \$5,000 for the purpose of initiating or influencing a ballot question campaign. 21-A M.R.S.

§ 1052(2-A). Once a ballot question committee raises or spends more than \$5,000 to influence a municipal referendum in a town with less than 15,000 people, the ballot question committee is required to register with the Commission. 21-A M.R.S. §§ 1052-A(1)(A-1) & 1053-A.

Standard for Initiating an Investigation

When the Commission has received a request for investigation from a source outside the department, campaign finance law states the Commission “shall make the investigation if the reasons stated for the request show sufficient grounds for believing that a violation may have occurred. 21-A M.R.S. § 1003(2).

Factual Background

May 13, 2024 Referendum in St. George, Maine

On May 13, 2024, the town of St. George held a referendum on whether the town should transfer land to a subsidiary of the St. George Community Development Corporation so that up to seven affordable homes could be built there. Two public hearings were held on April 3 and May 10, 2024. The referendum failed by a vote of 327-304.

Complaint by Rep. Matlack

Rep. Ann Higgins Matlack filed a complaint on May 31, 2024 requesting an investigation into whether the postcards should have contained contact information regarding who sent the mailing and whether the mailing organizers were required to file information with the Commission. She received the card on May 10, 2024, three days before the election. She writes that misleading information in the card could not be rebutted because of the timing of the mailing and because there was no way to contact the people responsible for the mailing.

Staff Analysis

In general, disclaimers in political communications can help members of the public give proper weight to the campaign messages they are receiving on their screens and in their mailboxes. The Commission has recently considered anonymous communications such as road signs and a newspaper-style mailing and taken enforcement action when sufficient evidence was

available to demonstrate that a disclosure law was broken. In a few cases, the Commission staff has been able to identify who paid for an anonymous communication because the person who filed the complaint provided productive tips as to who was responsible.

We recommend deliberately considering whether the complaint meets the legal standard of showing sufficient grounds for believing that a violation “may have occurred.” With respect to a potential disclaimer violation of 21-A M.R.S. 1055-A, two elements of a potential violation are present: (1) the card expressly advocates a vote against the referendum, and (2) the card does not state who made or financed the expenditure for the mailing. The remaining factual issue is whether someone made expenditures totaling more than \$500 for the mailing. In the staff’s opinion, the complaint probably reaches the “may have occurred” standard but that is a subjective judgement. The facts are not as clear here as in other cases.

- *Number of cards mailed.* We do not know how many cards were mailed. As of March 2024, St. George had 2,069 registered voters, but the mailing could have been sent to a smaller portion of the electorate. Also, sometimes multiple voters are registered at the same address, which can reduce the quantity mailed.
- *Postage.* Rep. Matlack reports that forever stamps were used for the postage. At the time of the mailing, a forever stamp cost \$0.68. Hypothetically, if 750 stamps were purchased for purposes of this mailing, the cost would be \$510, which would be over the \$500 threshold. It is not known, however, whether stamps were purchased for this particular purpose or were on hand for some other reason.
- *Printing and addressing.* It seems reasonable to infer that printing and addressing the cards required some cost. The overall look of the mailing, however, is not as professional as other political mail. The layout and language of the card has a homemade feel, and the address section does not contain the vertical bar code above the addressee’s name that often appears in commercial mail.

The Commission staff is not ready to recommend an investigation, however, because the circumstances of this complaint do not suggest realistic paths to identify who organized and paid for the mailing. Rep. Matlack understandably does not know who is responsible. Her letter identified a few people who posted photographs of the postcard to their Facebook pages, but they may have merely received the card in the U.S. mail. There is no indication they paid for or mailed the cards.

A couple of avenues could be pursued to try to identify the organizer(s) of the mailing but they are problematic. One option would be to try to contact people who opposed the referendum on social media (*e.g.*, those in Rep. Matlack's letter) or at public hearings and ask them if they know who was responsible. Under the circumstances of this particular complaint, the staff has doubts whether this would be appropriate. In our experience, when the Ethics Commission contacts a regular person who has taken an incidental action in an election, they are surprised. Frequently, they have a defensive reaction that they are under investigation. This comes up often when we contact people listed as contributors in Maine Clean Election Act qualifying forms. Even when we try to reassure them we are contacting them as witnesses who may have relevant knowledge, it is a negative experience for them.

In this case, we question whether we should be contacting people who expressed a viewpoint against the referendum on social media or at a public hearing unless there is some reason to believe they are connected to the mailing. Promoting an informed electorate through disclaimer statements is one of the roles of our office but, when possible, the Commission should avoid actions that discourage First Amendment activity like speaking out on an issue of local concern. We are mindful of the mandatory language in 21-A M.R.S. § 1003(2), but we believe the Commission should apply the statute pragmatically and with attention to First Amendment constraints.

Another action would be to contact people who supported the referendum, such as people in the municipal government who favored the affordable housing project. This could place the officials in a difficult position and could lead to responses that are speculative.

The Commission staff appreciates why Rep. Matlack filed the request for investigation. Disclosure statements in paid political communications play an important informational function. The Commission believes in energetic enforcement to reinforce this legal requirement. In our view, however, this case poses some considerations that were not present in our previous investigations of anonymous paid communications.

Received

MAY 31 2024

Maine Ethics Commission

Ann Higgins Matlack
130 Scraggle Point
Spruce Head, Maine 04859
(207) 594-4831 • ahmatlack@gmail.com

May 31, 2024

Ms Martha Currier
Maine Ethics Commission
45 Memorial Circle, 2nd Floor
Augusta, Maine 04330

Dear Ms Currier,

I write regarding an anonymous postcard sent to residents of St George, just prior to a referendum vote. I attach the postcard I received Friday, May 10. The referendum vote was Monday, May 13, though absentee ballots were available prior to that date.

This postcard contained erroneous, inflammatory and misleading information that could not be rebutted due to the mailing being so close to the election and there being no way to contact the person or persons responsible for the postcard.


I do not know who initiated these postcards, but I have attached screenshots from Facebook posts of two people displaying the postcard and asking that residents vote on this issue. Mr Montgomery posted this message to nearly a dozen individuals on Facebook.

Nor do I know who paid for this mailing. The postcard itself was professionally printed on card stock and mailed from South Portland. Forever Stamps were used in the mailing.

But I do know that, per legislation, those who mail out flyers, postcards, etc or post signs, must include contact information regarding who or what organization is providing these messages and must file with the Ethics Commission regarding expenditures on local issues.

Please investigate these postcards to ensure that this does not happen again in St George or any other small community.

Sincerely,



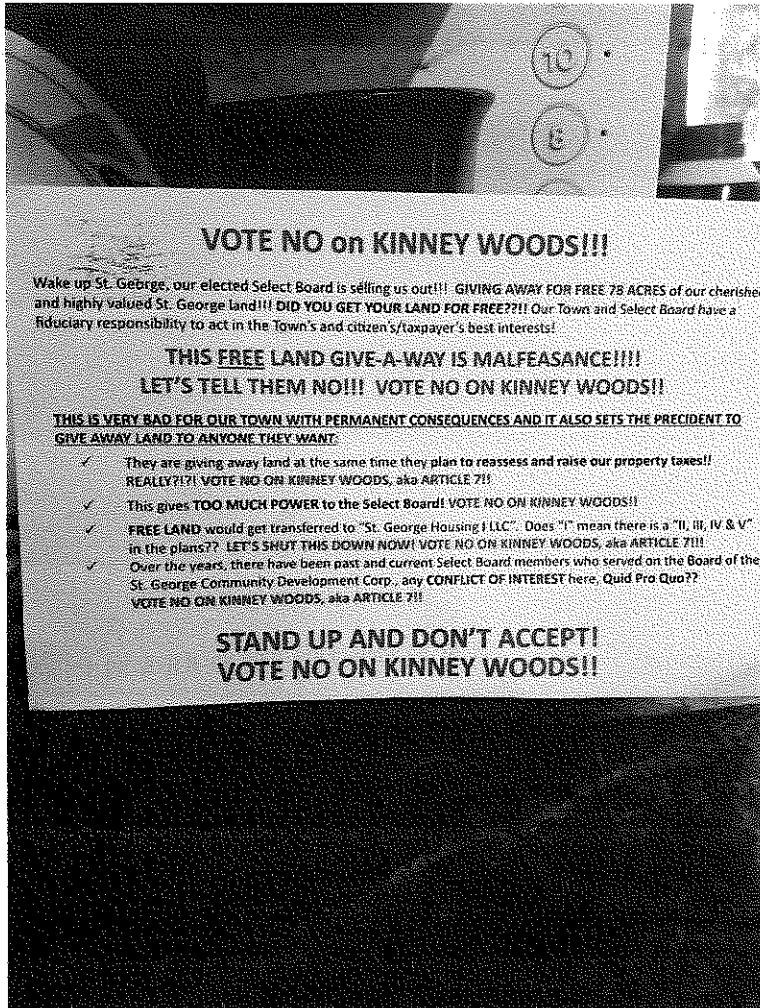
Ann Higgins Matlack



Russell Hoggy Montgomery

May 10 · 🌐

I still haven't gotten over the town giving four hundred thousand dollars to the Mussel Farm. Giving other peoples stuff away is getting very common at the St. George Town Office.



👍👎🗨️ 10

1 comment • 3 shares

👍 Like 🗨️ Comment 📧 Send ➦ Share



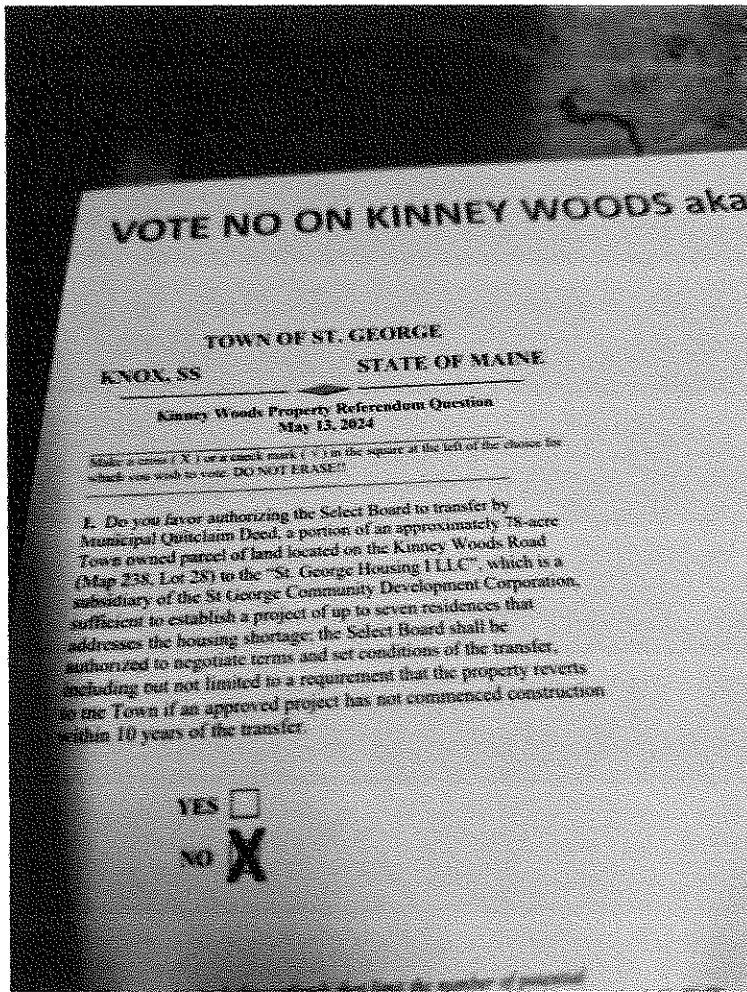
Posts Photos Reels



Russell Hoggy Montgo... > Philip Reinhardt

May 11

The Town of St George is giving away free land to someone that isn't you. Maybe you can vote to give it to yourself Monday night at 8 PM.

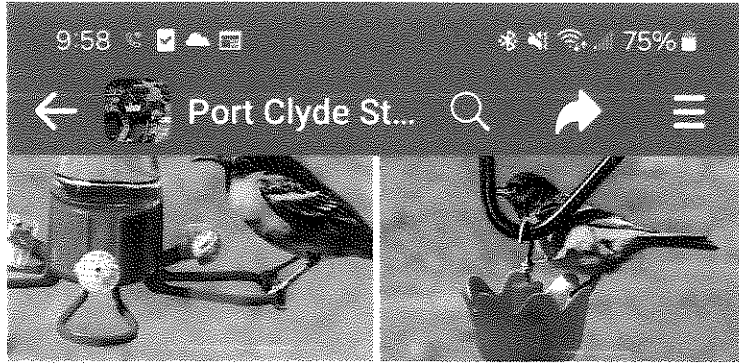


Send

Share



Philip Reinhardt - at Mechanical Arts



9

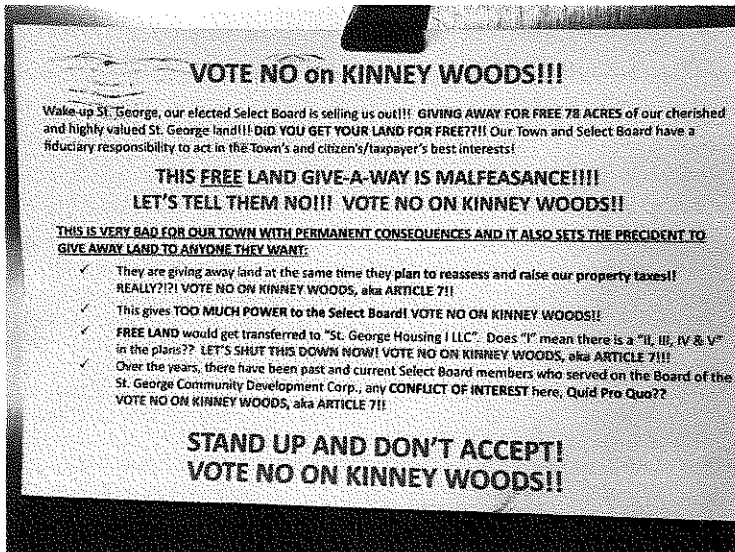
Like Comment Send



Nancy Port-Clyde

6d · 🌐

Tomorrow is voting day, May 13



2

Like Comment Send



Donald Frederick

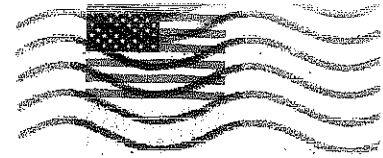
Judy Ryan Finney and Donald Frederick commented on this photo. · 6d · 🌐

Top contributor



VOTE NO ON KINNEY WOODS aka ARTICLE 7

6 MAY 2024 PM 3 L



KNOX, SS

STATE OF MAINE

Kinney Woods Property Referendum Question May 13, 2024

Make a cross (X) for a check mark (✓) in the square at the left of the choice for which you wish to vote. **DO NOT FRASE!**

1. Do you favor authorizing the Select Board to transfer by Municipal Quitclaim Deed, a portion of an approximately 78-acre Town owned parcel of land located on the Kinney Woods Road (Map 238, Lot 28) to the "St. George Housing LLC", which is a subsidiary of the St. George Community Development Corporation, sufficient to establish a project of up to seven residences that addresses the housing shortage; the Select Board shall be authorized to negotiate terms and set conditions of the transfer.

to the Town if an approved project has not commenced construction within 10 years of the transfer.

EDWARD T MATLACK
ANN H MATLACK
130 Scraagle Point Rd
Spruce Head, ME 04859

YES
NO

resolutions and will affect the names on parcels recorded to be transferred.

04859-422730



VOTE NO on KINNEY WOODS!!!

Wake up St. George, our elected Select Board is selling us out!!! GIVING AWAY FOR FREE 78 ACRES of our cherished and highly valued St. George land!!! DID YOU GET YOUR LAND FOR FREE??!! Our Town and Select Board have a fiduciary responsibility to act in the Town's and citizen's/taxpayer's best interest!

**THIS FREE LAND GIVE-A-WAY IS MALFEASANCE!!!!
LET'S TELL THEM NO!!! VOTE NO ON KINNEY WOODS!!**

THIS IS VERY BAD FOR OUR TOWN WITH PERMANENT CONSEQUENCES AND IT ALSO SETS THE PRECEDENT TO GIVE AWAY LAND TO ANYONE THEY WANT:

- ✓ They are giving away land at the same time they plan to reassess and raise our property taxes!! REALLY?!?! VOTE NO ON KINNEY WOODS, aka ARTICLE 7!!
- ✓ This gives **TOO MUCH POWER** to the Select Board! VOTE NO ON KINNEY WOODS!!
- ✓ **FREE LAND** would get transferred to St. George housing LLC. Does it mean there is a II, III, IV & V in the plans?? LET'S SHUT THIS DOWN NOW! VOTE NO ON KINNEY WOODS, aka ARTICLE 7!!!
- ✓ Over the years, there have been past and current Select Board members who served on the Board of the St. George Community Development Corp., any **CONFLICT OF INTEREST** here, **Quid Pro Quo??** VOTE NO ON KINNEY WOODS, aka ARTICLE 7!!

**STAND UP AND DON'T ACCEPT!
VOTE NO ON KINNEY WOODS!!**

30-A M.R.S. § 2502. Campaign reports in municipal elections

1. Reports by candidates. A candidate for municipal office of a town or city with a population of 15,000 or more is governed by Title 21-A, sections 1001 to 1020-A, except that registrations and campaign finance reports must be filed with the municipal clerk instead of the Commission on Governmental Ethics and Election Practices. A town or city with a population of less than 15,000 may choose to be governed by Title 21-A, sections 1001 to 1020-A by vote of its legislative body at least 90 days before an election for office. A town or city that votes to adopt those provisions may revoke that decision, but it must do so at least 90 days before an election subject to those sections.

A. [2009, ch. 366, § 10 (RP).]

2. Municipal referenda campaigns. Municipal referenda campaign finance reporting is governed by Title 21-A, chapter 13, subchapter 4.

3. Public access to records. A town or city that receives registrations or reports pursuant to this section must keep them for 8 years.

21-A M.R.S. § 1003. Investigations by commission

1. Investigations. The commission may undertake audits and investigations to determine whether a person has violated this chapter, chapter 14 or the rules of the commission. For this purpose, the commission may subpoena witnesses and records whether located within or without the State and take evidence under oath. A person or entity that fails to obey the lawful subpoena of the commission or to testify before it under oath must be punished by the Superior Court for contempt upon application by the Attorney General on behalf of the commission. The Attorney General may apply on behalf of the commission to the Superior Court or to a court of another state to enforce compliance with a subpoena issued to a nonresident person. Service of any subpoena issued by the commission may be accomplished by:

- A.** Delivering a duly executed copy of the notice to the person to be served or to a partner or to any officer or agent authorized by appointment or by law to receive service of process on behalf of that person;
- B.** Delivering a duly executed copy of the notice to the principal place of business in this State of the person to be served; or
- C.** Mailing by registered or certified mail a duly executed copy of the notice, addressed to the person to be served, to the person's principal place of business.

2. Investigations requested. A person may apply in writing to the commission requesting an investigation as described in subsection 1. The commission shall review the application and shall make the investigation if the reasons stated for the request show sufficient grounds for believing that a violation may have occurred.

21-A M.R.S § 1052-A. Registration

A committee shall register with the commission and amend its registration as required by this section. A registration is not timely filed unless it contains all the information required in this section.

1. Deadlines to file and amend registrations. A committee shall register and file amendments with the commission according to the following schedule.

A. A political action committee as defined under section 1052, subsection 5, paragraph A, subparagraph (1) or (5) shall register with the commission within 7 days of receiving contributions or making expenditures in the aggregate in excess of \$2,500.

A-1. A ballot question committee shall register with the commission within 7 days of receiving contributions or making expenditures in the aggregate in excess of \$5,000.

A-2. A registered committee that does not qualify for an exception to registration pursuant to subsection 1-A shall register as a political action committee or ballot question committee, as applicable, within 7 days of exceeding the \$10,000 threshold specified in subsection 1-A.

B. A committee shall amend the registration within 10 days of a change in the information that committees are required to disclose under this section.

C. A committee shall file an updated registration form between January 1st and March 1st of each year in which a general election is held. The commission may waive the updated registration requirement for a newly registered political action committee or other registered committee if the commission determines that the requirement would cause an administrative burden disproportionate to the public benefit of the updated information.

1-A. The following exceptions to the registration requirements in subsection 1 apply to registered committees.

A. A registered political action committee that receives contributions or makes expenditures of \$10,000 or less in the aggregate for the purpose of influencing one or more ballot question campaigns in a calendar year is not required to register as a ballot question committee. If a registered political action committee's only expenditures to influence ballot question campaigns in an election year are monetary contributions to registered ballot question committees, the political action committee is not required to register as a ballot question committee regardless of the aggregated amount of such contributions.

B. A registered ballot question committee that receives contributions or makes expenditures of \$10,000 or less in the aggregate for the purpose of influencing the nomination or election of one or more candidates in a calendar year is not required to register as a political action committee. If a registered ballot question committee's only expenditures to influence candidate elections in an election year are monetary contributions to registered political action committees, party committees or candidates, the ballot question committee is not required to register as a political action committee regardless of the aggregated amount of such contributions.

2. Disclosure of treasurer and officers. A committee must have a treasurer and a principal officer. The same individual may not serve in both positions, unless the committee is an individual registering as a ballot question committee. The committee's registration must contain the names and addresses of the following individuals:

A. The treasurer of the committee;

B. A principal officer of the committee;

C. Any other individuals who are primarily responsible for making decisions for the committee;

- D. The individuals who are primarily responsible for raising contributions for the committee; and
- E. The names of any other candidates or Legislators who have a significant role in fund-raising or decision-making for the committee.

3. Other disclosure requirements. A committee's registration must also include the following information:

- A. A statement indicating the specific candidates, categories of candidates or campaigns or ballot questions that the committee expects to support or oppose;
- B. If the committee is formed to influence the election of a single candidate, the name of that candidate;
- C. The form or structure of the organization, such as a voluntary association, membership organization, corporation or any other structure by which the committee functions, and the date of origin or incorporation of the organization;
- D. If the committee has been formed by one or more for-profit or nonprofit corporations or other organizations for the purpose of initiating or influencing a campaign, the names and addresses of the corporations or organizations;
- E. The name of the account that the committee will use to deposit contributions and make expenditures pursuant to section 1054, and the name and address of the financial institution at which the account is established; and
- E-1. [2023, ch. 244, § 14 (RP).]
- F. Any additional information reasonably required by the commission to monitor the activities of committees in this State under this subchapter.

4. Acknowledgment of responsibilities. The treasurer, principal officer and any other individuals who are primarily responsible for making decisions for the committee shall submit a signed statement acknowledging their responsibilities on a form prescribed by the commission within 10 days of registering the committee. The signed acknowledgment statement serves as notification of the responsibilities of the committee to comply with the financial reporting, record-keeping and other requirements of this chapter and the potential personal liability of the treasurer and principal officer for civil penalties assessed against the committee. The commission shall notify the committee of any individual who has failed to submit the acknowledgment statement. Failure to return the acknowledgment statement is a violation of this subchapter for which a fine of \$100 may be assessed against the committee. This section also applies to individuals named in an updated or amended registration required by this subsection who have not previously submitted an acknowledgment statement for the committee with the commission.

5. Resignation and removal. An individual who resigns as the treasurer, principal officer or primary decision maker of a committee shall submit a written resignation statement to the commission. An individual's resignation is not effective until the commission receives the written resignation statement from the individual. If an individual is involuntarily removed from the position of treasurer, principal officer or primary decision maker by the committee, the committee shall notify the commission in writing that the individual has been removed from the position. The commission may prescribe forms for these purposes.

6. Modified registration. The commission may adopt simplified registration procedures and forms for an individual registering as a ballot question committee to initiate or influence a ballot question.

21-A M.R.S. § 1055-A. Political communications to influence a ballot question

1. Communications to influence ballot question elections. Whenever a person makes an expenditure exceeding \$500 expressly advocating through broadcasting stations, cable television systems, prerecorded automated telephone calls or scripted live telephone calls, newspapers, magazines, campaign signs or other outdoor advertising facilities, publicly accessible sites on the Internet, direct mails or other similar types of general public political advertising or through flyers, handbills, bumper stickers and other nonperiodical publications, for or against an initiative or referendum that is on the ballot, the communication must clearly and conspicuously state the name and address of the person who made or financed the expenditure for the communication, except that telephone calls must clearly state only the name of the person who made or financed the expenditure for the communication. A digital communication costing more than \$500 that includes a link to a publicly accessible website expressly advocating for or against an initiative or referendum that is on the ballot must clearly and conspicuously state the name of the person who made or financed the expenditure, unless the digital communication is excluded under subsection 2. Telephone surveys that meet generally accepted standards for polling research and that are not conducted for the purpose of influencing the voting position of call recipients are not required to include the disclosure.

2. Exceptions. The following forms of political communication do not require the name and address of the person who made or financed the expenditure for the communication because the name or address would be so small as to be illegible or infeasible: clothing, envelopes and stationery, small promotional items, tickets to fundraisers and electronic media advertisements where compliance with this section would be impracticable due to size or character limitations and similar items determined by the commission to be too small and unnecessary for the disclosures required by this section. "Small promotional items" includes but is not limited to ashtrays, badges and badge holders, balloons, campaign buttons, coasters, combs, emery boards, erasers, glasses, key rings, letter openers, matchbooks, nail files, noisemakers, paper and plastic cups, pencils, pens, plastic tableware, 12-inch or shorter rulers and swizzle sticks.

3. Enforcement. A violation of this section may result in a penalty of no more than \$5,000. In assessing a penalty, the commission shall consider, among other things, how widely the communication was disseminated, whether the violation was intentional, whether the violation occurred as the result of an error by a printer or other paid vendor and whether the communication conceals or misrepresents the identity of the person who financed it.

21-A M.R.S. § 1053-A. Municipal elections

If an organization qualifies as a committee under section 1052, subsection 2 and that organization receives contributions or makes expenditures to influence a municipal campaign in towns or cities with a population of 15,000 or more, that organization must register and file reports with the municipal clerk as required by Title 30-A, section 2502. If an organization qualifies as a ballot question committee under section 1052, subsection 2-A and that organization makes expenditures exceeding \$5,000 to influence a municipal referendum campaign in a town or city with a population of less than 15,000, that organization must register and file reports with the commission using the electronic filing system pursuant to section 1059, subsection 5. The reports must be filed in accordance with the reporting schedule in section 1059 and must contain the information listed in section 1060. A committee registered with the commission and that receives contributions or makes expenditures relating to a municipal election shall file a copy of the report containing such contributions or expenditures with the clerk in the subject municipality. The commission retains the sole authority to prescribe the content of all reporting forms. The commission does not have responsibility to oversee the filing of registrations or campaign finance reports relating to municipal campaigns in towns or cities with a population of 15,000 or more. If a municipal clerk becomes aware of a potential violation of this subchapter that the clerk considers to be substantial, the clerk may refer the matter to the commission for enforcement. The commission may conduct an investigation if the information referred by the municipal clerk shows sufficient grounds for believing that a violation may have occurred. After conducting the investigation, if the commission determines that a violation of this subchapter has occurred, the commission may assess penalties provided in this subchapter.