

Annual List of Rule-Making Activity
Rules Adopted January 1, 2015 to December 31, 2015
Prepared by the Secretary of State, pursuant to 5 MRS §8053, sub-§5

Agency name: Commission on Governmental Ethics and Election Practices
Umbrella-Unit: 94-270
Statutory authority: 1 MRS §1003(1); 21-A MRS §1126
Chapter number/title: Ch. 1, Procedures
Filing number: 2015-097
Effective date: 5/25/2015
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:
(See Basis Statement/Summary)

Basis statement / summary:

Ch. 1 Section 4(2)(A) - Compliance Reviews of Campaign Finance Reports

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

Ch. 1 Section 5(3)(A) - Compliance Reviews of Lobbyist Reports

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

Ch. 1 Section 6(3) - Disclosure of Employers and Occupations of Contributors

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

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

Ch. 1 Section 6(4) - Vehicle Travel for Campaigning Provided by Public Entity

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

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

Federal election regulations covering candidates for congressional office state that travel expenses paid from a source other than the candidate's political committee must be reported by

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the candidate. Federal Election Commission 11 CFR 160.3(b)(I) Paragraph b(2) of the rule states that "Where a candidate's trip involves both campaign-related and non-campaign-related stops, the expenditures allocable for campaign purposes are reportable, and are calculated on the actual cost-per-mile of the means of transportation actually used, starting at the point of origin of the trip, via every campaign-related stop and ending at the point of origin."

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

If the use of a vehicle is deemed a contribution, the candidate receiving it must report it as an in-kind contribution, which is subject to the applicable \$375, \$750 or \$1,500 contribution limit. Candidates may reimburse the donor for the use of the vehicle to avoid the receipt of a contribution.

Ch. 1 Section 7(1) - How to Report Purchases made by Vendors on behalf of a Candidate or Political Committee

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

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

4. Itemized expenditures. An itemization of each expenditure made to initiate or influence any campaign, including the date, payee and purpose of the expenditure; the name of each candidate, campaign, political committee, political action committee or party committee supported or opposed; and each referendum or initiated petition supported or opposed by the expenditure. *If expenditures were made to a person described in section 1012, subsection 3, paragraph A, subparagraph (4), the report must contain the name of the person; the amount spent by that person on behalf of the candidate, campaign, political committee, political action committee, party committee, referendum or initiated petition, including, but not limited to, expenditures made during the signature gathering phase; the reason for the expenditure; and the date of the expenditure.* The commission may specify the categories of expenditures that are to be reported to enable the commission to closely monitor the activities of political action committees;

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

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

Chapter 1 Section 7(5) - Reimbursements by *Maine Clean Election Act* Candidates

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

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

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

Ch. 1 Section 10(3) - Time of Day for Reporting of Independent Expenditures

After the Legislature made the electronic filing of campaign finance reports mandatory for candidates and committees, it changed the deadline for filing regularly scheduled reports from 5:00 p.m. to 11:59 p.m. on the day that the reports are due.

The Commission's rules have retained a 5:00 p.m. deadline for independent expenditure reports, which are single reports of paid communications advocating for or against candidates. The 5:00 p.m. deadline for independent expenditures has caused some confusion for PACs and party committees, which are accustomed to the 11:59 p.m. deadline for their regular campaign finance reports. To eliminate the confusion and promote consistency, the Commission is amending the time from 5:00 p.m. to 11:59 p.m.

Fiscal impact of rule:

The Commission anticipates that the rule amendments will not have a fiscal impact on municipalities and counties, and will not impose an economic burden on small businesses.