

**Annual List of Rulemaking Activity**  
**Rules Adopted January 1, 2017 to December 31, 2017**  
*Prepared by the Secretary of State pursuant to 5 MRS §8053-A, 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. 3, Maine Clean Election Act and Related Provisions  
**Filing number:** 2017-112  
**Effective date:** 8/20/2017  
**Type of rule:** Major Substantive  
**Emergency rule:** No

**Principal reason or purpose for rule:**

The amendments are necessary to conform the Commission Rules to the citizen initiative approved by Maine voters on November 3, 2015 and to reflect current administrative procedures of the Commission.

**Basis statement / summary:**

**Chapter 3, Section 2(3) – Seed Money Restrictions**

*Factual and Policy Basis:* The Commission adopted changes to its Rule relating to seed money contributions in order to conform the rules to the amendments to the MCEA that were enacted by citizen initiative on November 3, 2015. Seed money contributions are contributions of up to \$100 from individuals that candidates may solicit and spend to start their campaigns while they are qualifying for MCEA funds. The citizen initiative doubled the total amount of seed money that legislative candidates may collect. The initiative made no changes to the amount of seed money that gubernatorial candidates may accept (\$200,000), but it eliminated the requirement for gubernatorial candidates to collect \$40,000 in seed money. The adopted changes also fix the headings for paragraphs 2(3)(G) & (H) to clarify the subject matter of those paragraphs.

The Commission adopted a new paragraph 2(3)(I) to formalize a longstanding policy of the Commission that MCEA candidates have relied upon for the past several elections. To facilitate opening a campaign bank account and to avoid minimum balance fees, the Commission staff has permitted candidates to deposit a limited amount of personal funds in their campaign account, provided that they do not spend these funds for campaign purposes.

**Chapter 3, Sections 2(4)(A) - (C), (F) & (G) – Extending the Period of Time for Collecting Qualifying Contributions**

*Factual and Policy Basis:* Under the citizen initiative, after qualifying for MCEA funding ("certification"), candidates may continue to collect additional qualifying contributions in order to receive up to eight supplemental payments of MCEA funds for the general election, and gubernatorial candidates may receive supplemental payments for the primary election. Candidates may collect these additional contributions until three weeks before the general election. The Commission adopted a Rule amendment in Section 2(4) to reflect that candidates may collect qualifying contributions *after certification*. These amendments include changing the phrase "participating candidate" to "candidate," because the term "participating candidate" refers to a candidate who is seeking to qualify for MCEA funding (*i.e.*, prior to certification).

**Chapter 3, Section 2(4)(E) - Signatures by Family Members on Commission Forms**

*Factual and Policy Basis:* This section of the Commission's Rules sets out conditions under which family members and others living in a single household may make qualifying contributions in the form of a single check or money order. The Commission adopted an amendment clarifying that each individual must affirm on the Commission's Receipt & Acknowledgment form that they have made a qualifying contribution from their personal funds in support of the candidate. The Commission seeks to formalize existing policy that a qualifying contribution is not valid if the person purportedly making the contribution has not made this written acknowledgement.

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**Chapter 3, Section 2(4)(H) - Online Qualifying Contribution Service**

*Factual and Policy Basis:* The Commission has established an online qualifying contribution service for members of the public to use a credit or debit card to make qualifying contributions ([www.maine.gov/cleanelections](http://www.maine.gov/cleanelections)). This service reduces the paperwork burden for candidates. (The service attempts to verify through data from the Central Voter Registry that the donor is registered to vote in the legislative district of the candidate.) The Commission adopted section 2(4)(H) to acknowledge this service, which has been in operation since 2008.

The website requires the donor to enter information and make selections through a series of online steps:

1. select the donor's municipality and enter the donor's street address and name,
2. select the candidate(s) to be supported by clicking on checkboxes,
3. type the amount(s) of the qualifying contribution(s) (\$5 is the default),
4. affirm by typing the donor's name that the donor made a contribution from their personal funds in support of the candidate and did not receive anything in exchange for the contribution,
5. enter the donor's credit card number, name of account holder, and billing address, and
6. submit the payment.

If the website cannot verify the donor's registration status on the first try, the website offers the donor a second opportunity to type his or her name.

The website is designed for *use by the donor* who is making the contribution. The Commission adopted a Rule amendment which specifies that the donor may receive assistance in entering information in the online forms, but the donor must personally make the affirmation and submit the payment (steps 4 and 6 above). This Rule is intended to strengthen confidence that the donor personally supports the candidate and is using personal funds to make a qualifying contribution. The Rule prohibits collecting the information by phone and entering the contribution on behalf of the donor.

**Chapter 3, Section 2(4)(I) & (J)- Preventing Fraudulent Qualifying Contributions**

*Factual and Policy Basis:* The overwhelming majority of candidates follow the correct procedures in collecting qualifying contributions. In the experience of the Commission, it is very rare that candidates submit forms falsely claiming the collection of qualifying contributions. Most contributions are made by check or by credit card, which confirms that the donor has made the contribution from his or her personal funds.

On occasions when the Commission staff has detected that a candidate or volunteer has falsely claimed to have collected qualifying contributions *by cash* from donors, the Commission staff has invalidated the contributions attributed to that candidate or volunteer. This has generally resulted in the denial of MCEA funds to the candidate by the Commission staff. In the past several elections, the Commission staff has denied MCEA funding to five legislative candidates who falsely claimed the collection of qualifying contributions. Also, the Commission staff has denied MCEA funding to two candidates for Governor because some of their volunteers falsely claimed qualifying contributions.

As a result of the 2015 citizen initiative, there could be an increased risk of fraud because of the greater amount of campaign funds available to candidates and because candidates can receive supplemental campaign funds in proportion to the number of qualifying contributions collected.

The MCEA provides that in order to be certified to receive public funding, the Commission must find that the candidate has "not submitted any fraudulent qualifying contributions or any falsified acknowledgment forms for qualifying contributions." 21-A M.R.S.A. §1125(5)(D-5).

The Commission adopted a provision (Section 2(4)(I)) setting out procedures to be used in the future when fraudulent qualifying contributions are detected. Section 2(4)(I) defines

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“fraudulent qualifying contributions” and directs the Commission staff to investigate further when the staff reasonably believes fraud may be present. The Rule authorizes the staff to call upon the Attorney General’s office for investigative assistance or to refer matters to that office for possible criminal investigation.

Due to the very large amount of funds potentially available to gubernatorial candidates under the MCEA, as amended by the citizen initiative, in Section 2(4)(J) the Commission staff adopted additional procedures for candidates for governor seeking MCEA funding. Within three weeks of declaring an intention to qualify, a candidate for Governor would need to appoint a compliance officer and submit a compliance plan addressing topics set out in the Rule. These procedures would not apply to legislative candidates.

**Chapter 3, Sections 2(4)(K) - Prohibition against Receiving Services Paid by Others**

*Factual and Policy Basis:* The Commission adopted a new section 2(4)(K) to clarify that under the current definition of “contribution” in Election Law, organizations may not compensate people to collect qualifying contributions for MCEA candidates – except that the state political parties may pay their employees to provide up to 40 hours of paid assistance to a candidate in any election.

**Chapter 3, Sections 2(4)(L) – Candidates Compensating People to Collect Qualifying Contributions**

*Factual and Policy Basis:* The Commission adopted a new section 2(4)(L), which permits MCEA candidates to use their campaign funds to compensate individuals to collect qualifying contributions, but with two restrictions:

- 1) Candidates must make the payments from currently available campaign funds, and may not promise to compensate individuals from future MCEA funding yet to be received.
- 2) Candidates may not compensate individuals for collecting qualifying contributions based on the number of qualifying contributions collected by that individual.

**Chapter 3, Section 3(1)(C) - Requirement for Gubernatorial Candidates to Obtain Special Documentation of Required Seed Money Contributions**

*Factual and Policy Basis:* As a result of the citizen initiated amendments to the MCEA, candidates for Governor are no longer required to collect \$40,000 in seed money to qualify for public campaign funds. The Commission adopted an amendment deleting this section of the Rule to make it conform to the statute.

**Chapter 3, Section 4(2) & (3) - Financial Projections, Adjusting Payment Amounts for Inflation**

*Factual and Policy Basis:* The Commission adopted a Rule change reflecting the new statutory requirements adopted by citizen initiative to provide four-year financial projections to the Legislature and Governor and to adjust the payment amounts to candidates every two years based on inflation.

**Chapter 3, Section 4(4)(B) & (F) - Authorizing Contributions Due to Shortfall in the Fund**

*Factual and Policy Basis:* This subsection authorizes candidates to collect traditional campaign contributions if there is insufficient money in the Maine Clean Election Fund to make payments of public funds to candidates. These contributions would be capped by the same maximum that applies to traditionally financed candidates. Since these maximums are re-adjusted every two years for inflation, the Commission adopted an amendment deleting the specific dollar amounts in the Rule. The amendment also deletes a clause from paragraph F which refers to the deposit of matching funds in a separate bank account, since matching funds are no longer a component of the program.

**Chapter 3, Section 6 – Distribution of Supplemental Funds**

*Factual and Policy Basis:* The Commission adopted a Rule amendment setting out the procedures for candidates submitting additional qualifying contributions to receive

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supplemental payments of MCEA funds. These procedures are generally similar to the existing procedures for legislative candidates to submit qualifying contributions by April 20 of the election year to qualify for MCEA funding. Because the amount of public campaign funding available to candidates is directly proportional to the number of valid qualifying contributions, the Rule requires candidates to submit a list of qualifying contributions in an electronic format such as Microsoft Excel or online software developed by the Commission. This will greatly facilitate the staff's timely evaluation of the qualifying contributions and ensure payment of public funds in the correct amount.

In order to position this new provision in the most appropriate location within Chapter 3, it has been inserted as a new Section 6, and the existing Sections 6, 7, and 8 have been renumbered to 7, 8, and 9.

**Chapter 3, Section 7 - Prohibiting Large Payments of Maine Clean Election Act funds in Cash [renumbered from Section 6]**

*Factual and Policy Basis:* The Commission adopted a Rule amendment prohibiting candidates from spending more than \$50 of Maine Clean Election Act funds in cash. Under this proposal, expenditures of more than \$50 would be paid by check, debit or credit card, or wire transfer only. This would create a more reliable audit trail, in order to ensure the accountability of MCEA funds.

**Fiscal impact of rule:**

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