



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

To: Joint Standing Committee on Veterans and Legal Affairs
From: Jonathan Wayne, Executive Director
Date: February 24, 2021
Re: LD 413 – Testimony by Ethics Commission Staff

Thank you for the opportunity to testify on behalf of the Ethics Commission staff concerning LD 413, which would require the Commission to audit a portion of traditionally financed candidates for state office and political action committees (PACs). Currently, the Commission audits Maine Clean Election Act candidates through an outside accounting firm. We do not regularly audit traditionally financed candidates and PACs because of two factors:

- The Commission is limited by staffing and cost constraints described below.
- Relatively few requirements apply to traditionally financed candidates and PACs. Primarily, they need to file campaign finance reports of all contributions received and expenditures made. The Commission staff has not been convinced that there is evidence of widespread non-compliance by traditionally financed candidates and PACs that would justify the intrusiveness of auditing them.¹

Current Enforcement Programs

The term “auditing” has a specialized meaning— usually an official examination of financial records to determine if they comply with accepted accounting standards, regulations and laws. The Commission has a staff of six permanent employees. Our current job classifications do not include positions with an accounting or auditing background sufficient to conduct an actual audit.

Compliance reviews of campaign finance reports. Throughout the election cycle, the employees of the Commission conduct compliance reviews of campaign finance reports filed by all candidates and all PACs. We are looking at whether each campaign finance report appears to be complete on its face. These compliance reviews are not audits,

¹ Additionally, candidates must avoid accepting contributions from a source that exceed the applicable limit. In the course of conducting investigations, we have received very little evidence indicating that traditionally financed candidates are violating the contribution limits.

however. The staff occasionally requests documentation to support a reported contribution or expenditure, but we don't request underlying documents regularly.

Investigations. We conduct investigations when our Commissioners have found that sufficient evidence of a legal violation has been brought forward by a complaint. Complaints can occur, for example, when a candidate or a party committee suspects that another candidate has not disclosed all financial activity in campaign finance reports.

One-time compliance review of leadership PACs. A couple of years ago, the Commission members directed the staff to conduct a one-time, post-election enhanced compliance review of leadership PACs. We are conducting that review now. Our Political Committee and Lobbyist Registrar has obtained bank documentation from the 2020 leadership PACs, and he will be comparing those financial records to the contributions and expenditures disclosed by the PACs in campaign finance reports.

Program of Auditing Maine Clean Election Act candidates. The Ethics Commission currently audits all candidates for Governor participating in the Maine Clean Election Act (MCEA) program and 20% of legislative candidates in the program (randomly selected by our auditors). The audits are conducted by an outside accounting firm.

The Commission pays the outside auditors from the Maine Clean Election Fund, which is a special revenue account established to make payments to MCEA candidates and to pay for the administrative and enforcement costs of the MCEA program. The cost of auditing the legislative candidates is around \$40,000 (every two years), which is a little more than 1% of the total payments to legislative candidates in an election year. We believe this expense is justified because the audit:

- reassures the Legislature and taxpayers that MCEA candidates are spending money on campaign-related goods and services in conformance with our agency guidelines, and
- underscores for candidates the importance of complete and accurate financial reporting of expenditures and keeping records.

Long-Term Budget Problem

The Commission has a long-term budget problem that prevents us from hiring an outside audit firm to audit traditionally financed candidates and PACs. Non-personnel costs are paid from the All Other part of an agency's budget. The All Other part of our General Fund budget is only \$8,897. This amount is quickly used up by paying the state Office of Information Technology for telephone and computer services, our IT company for our e-

filing and public access software, our landlord for rent, and DAFS for assistance with accounting, human resources and financial management. Because our overall General Fund appropriation is low, we have been charging the Maine Clean Election Fund for staffing and administrative costs that should be paid for from the General Fund. This is depleting the MCEA funds available to pay to candidates and limiting our ability to improve our e-filing system, which we would like to be more user-friendly for filers and the public. We are intending to propose a legislative solution in the next two years, but for the present time our General Fund appropriation will not allow us to hire an outside audit firm.

Expanding Enforcement by Commission Employees

If there *is* sufficient support in the Legislature for the Ethics Commission to audit traditionally financed candidates and PACs, we can explore the feasibility of using our current staff members to conduct a more in-depth review of traditionally financed candidates and PACs by asking them for their monthly bank statements and comparing the transactions in those statements to reported contributions and expenditures. This would be a new program for us. There would be some downsides, however:

- We could not hope to conduct these reviews during the election year and would need to schedule them after the general election. This would significantly reduce staff time available for other projects that we would normally conduct in the months after a general election, such as improving our IT systems, written guidance, and laws and rules.
- We would not have the staff time available to conduct these reviews of gubernatorial candidates, due to the size of their campaigns.
- The lack of clear justification for the audits could complicate relations between the Commission and members of the Maine Legislature. Most people do not expect their political campaigns to be subjected to an audit or investigation without a clear reason.

Thank you for your consideration of this memo.