



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

MEMORANDUM

To: Interested Parties
From: Julie Aube, Commission Assistant
Date: November 1, 2022
Subject: Invitation to Comment on Proposed Rule Amendments

The Maine Ethics Commission is inviting comments on proposed amendments to the Commission's rules relating to the Commission's procedures for formal hearings and the administration of the Maine Clean Election Act (MCEA) program. If adopted, the amendments would be submitted to the Legislature in January 2023 for its approval. Longer explanations for the proposed amendments are posted to the Commission website in connection with the Commission's [October 26, 2022 meeting](#) (agenda item #5).

Summary

Commission hearings. The Commission holds formal hearings to consider complaints of legislative ethics and appeals of a candidate's eligibility to receive MCEA funding. The Commission proposes amending its hearing rules to be consistent with the Maine Administrative Procedure Act.

No returns of qualifying contributions. Candidates collect \$5 qualifying contributions (QCs) and submit them to the Commission in order to qualify for MCEA funding. A QC is a payment by a Maine voter to the Maine Clean Election Fund (the Fund) to demonstrate the voter's support for the candidate's qualification to receive MCEA funding. The QCs are deposited into the Fund to partially pay for the costs of the program.

Every election year, the Commission's two Candidate Registrars review around 35,000 QCs submitted by legislative candidates. Once a Candidate Registrar reviews a candidate's submission of QCs, they deliver the checks and money orders to the State's central accounting staff to be deposited into the Fund. Because the checks and money orders are promptly

deposited, the Commission's internal policy has been that it is unable to return the QCs made by check or money order to the candidates and rarely receives a request to do so. The Commission proposes a rule amendment to formalize this policy. Holding a subset of checks or money orders within the Commission's office would reduce the Commission's efficiency in making payments to candidates.

Qualifying period for replacement candidates. The Commission seeks more flexibility to establish a qualifying period for candidates replacing a withdrawn candidate. In particular, the Commission seeks the flexibility during July of an election year to explore permitting candidates to begin collecting QCs before they are nominated at a party caucus.

Post-election parties. The Commission proposes updating its rules to state that MCEA funds may not be spent on post-election parties, consistent with 21-A M.R.S. § 1125(6).

How to Comment

There are two ways to comment on this proposed rule-making – either by participating in the Commission's meeting on Wednesday, November 30, 2022 at 9:00 a.m. or by submitting written comments to the Commission. Persons wishing to comment may attend the meeting in person, or comment by zoom. Please email Julie.Aube@maine.gov by 12:00 p.m. on November 28, 2022 if you would like to participate by zoom.

Persons who wish to submit written comments only, are requested to submit them via email to Julie.Aube@maine.gov no later than Sunday, December 11, 2022.

The Commission will decide whether to adopt the amendments at its meeting on Wednesday, December 21, 2022. Thank you.

94-270 COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES

Chapter 2: HEARING PROCEDURES

SECTION 1. SCOPE

These procedures shall be applicable to hearings before the Maine Commission on Governmental Ethics and Election Practices which have been called to consider any matter within the Commission's statutory authority. They shall be construed to secure the just, speedy and inexpensive determination of such matters in the public interest.

SECTION 2. NOTICE

1. Due notice of public hearings shall be ~~given by publishing such notice in appropriate newspapers and notifying those whose conduct or report is the subject of the hearing at least 10 days prior to the hearing~~ provided as set forth in the Maine Administrative Procedure Act, 5 M.R.S. § 9052.
2. ~~The notice shall specify the time and place of the hearing and matters to be considered at the hearing.~~

...

SECTION 6. GENERAL EVIDENCE

1. ~~Evidence which is relevant and material to the subject matter of the hearing and is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs shall be admissible. However, the Maine Rules of Evidence shall apply to the introduction of verbal hearsay evidence in the same manner as at a civil trial. Evidence which is irrelevant, immaterial or unduly repetitious shall be excluded.~~ Evidence shall be admitted if it is the kind of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs. The Commission may exclude irrelevant or unduly repetitious evidence.
2. Commission Evidence. Any results of Commission investigations or data gathered during Commission investigations may be introduced into the record by the Commission. The Commission may also present such other evidence as it deems appropriate.
3. Official Notice. The Commission may, at any time, take official notice of relevant laws, official regulations and transcripts of other Commission hearings, judicially recognizable facts, generally recognized facts of common knowledge to the general public and physical, technical or scientific facts within its specialized knowledge. The Commission shall include in any final written decision those facts of which it took official notice unless those facts are included in the transcript of the record.

4. Documentary and Real Evidence. All documents, materials and objects offered in evidence as exhibits shall be numbered or otherwise identified. Documentary evidence may be received in the form of copies or excerpts if the original is not readily available.
5. Objections. All objections to rulings of the presiding officer regarding evidence or procedure and the grounds therefor shall be timely stated during the course of the hearing. If during the course of or after the close of the hearing and during its deliberations the Commission determines that the ruling of the presiding officer was in error, it may reopen the hearing or take such other action as it deems appropriate to correct such error.
6. Offer of Proof. An offer of proof may be made in connection with an objection to a ruling of the presiding officer excluding or rejecting any testimony or question on cross-examination. Such offer of proof shall consist of a statement of the substance of the proffered evidence or that which is expected to be shown by the answer of the witness.

...

SECTION 2. PROCEDURES FOR PARTICIPATION

...

4. **Qualifying Contributions**

...

N. Returns of qualifying contributions. Qualifying contributions submitted to the Commission in the form of check or money order are not returnable nor refundable. If the Commission receives a request from a contributor for the return of an online qualifying contribution because the contributor made a duplicate contribution or some other error, the Commission may, in its sole discretion, forward the request to the contractor that supports the online service if the return would be feasible within the timing and other constraints of the contractor.

SECTION 7. LIMITATIONS ON CAMPAIGN EXPENSES

A certified candidate shall:

1. limit the candidate's campaign expenditures and obligations to the applicable Clean Election Act Fund distribution amounts;
2. not accept any contributions unless specifically authorized in writing to do so by the Commission in accordance with the Act [§1125(2) and §1125(13)];
3. use revenues distributed from the Fund only for campaign-related purposes as outlined in guidelines published by the Commission, and not for personal or any other use;
4. not use revenues distributed from the Fund to purchase goods to sell for profit;
5. not spend more than the following amounts of Fund revenues on ~~post-election parties,~~ thank you notes, or advertising to thank supporters or voters:
 - A. \$250 for a candidate for the State House of Representatives;
 - B. \$750 for a candidate for the State Senate; and
 - C. \$2,500 by a gubernatorial candidate.

The candidate may also use his or her personal funds for these purposes;

6. not use revenues distributed from the Fund for the payment of fines, forfeitures, or civil penalties, or for the defense of any enforcement action of the Commission; and
7. not make any payment of more than \$50 in cash. Payments of more than \$50 in *Maine Clean Election Act* funds must be made by check, debit or credit card or wire transfer.

SECTION 9. RECOUNTS, VACANCIES, WRITE-IN CANDIDATES, SPECIAL ELECTIONS

2. **Death, Withdrawal, or Disqualification of a Candidate During Campaign**
 - A. **Death, Withdrawal, or Disqualification Before Primary Election. Qualifying Periods for Replacement Candidates.** If a candidate dies, withdraws, or is disqualified before the primary an election, the Commission will establish a qualifying period during which any replacement candidate may become a participating candidate, collect qualifying contributions, and apply to become a certified candidate.
 - ~~B. **Death, Withdrawal, or Disqualification after the Primary Election and before 5:00 p.m. on the 2nd Monday in July Preceding the General Election.** If a candidate dies, withdraws, or is disqualified before 5:00 p.m. on the 2nd Monday in July preceding the general election, any replacement candidate will have a qualifying period from the time of the candidate's nomination until 30 days after the 4th Monday in July as a participating candidate to collect qualifying contributions and request certification.~~
 - ~~C. **Death, Withdrawal, or Disqualification after 5:00 p.m. on the 2nd Monday in July Preceding the General Election.** If a candidate dies, withdraws, or is disqualified after 5:00 p.m. on the 2nd Monday in July preceding the general election, the Commission will establish a qualifying period during which any replacement candidate may become a participating candidate, collect qualifying contributions, and apply to become a certified candidate.~~
 - D. **Replacement Candidates Who Are Participating Candidates.** Any replacement candidate choosing to become a participating candidate must otherwise comply with the requirements of this chapter and the Act including, but not limited to, seed money limits and qualifying contribution requirements. The Commission will notify any replacement candidates of the opportunity to participate in the Act and the procedures for compliance with this chapter during a special election.