



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

To: Commission
From: Commission Staff
Date: March 4, 2021
Re: Electronic Signs Promoting William Guerrette in Special Election

This memo is intended to provide you with preliminary information concerning a complaint filed against a candidate in a March 9, 2021 special election for State Senate alleging that four electronic roadside signs promoting the candidate lacked a required disclosure statement. This matter is being scheduled on an expedited basis in accordance with 21-A M.R.S. § 1002(1). The Commission staff expects the candidate to respond to the complaint by participating by videoconference at your March 8 meeting with legal counsel, but we are not expecting a written response in advance of the meeting.

Preliminary Factual Information

Initial compliance concerns from Senate Democratic caucus. A special election to fill a vacant position in the State Senate for District 14 is scheduled for March 9, 2021. The district includes Gardiner, Winthrop, and adjoining towns. The two candidates are Craig Hickman (Democratic nominee) and William Guerrette (Republican nominee).

Near the close of business on Monday, March 1, the Commission staff received an email from Julia Brown of the Senate Democratic caucus stating her intention to file a complaint concerning four electronic signs posted on the side of roadways in Senate District 14. The signs contained a message to vote for Mr. Guerrette. It appears the signs are designed for three rows of text, eight characters in each row, although this may be modified. This type of movable electronic sign is sometimes used in Maine by municipalities or highway departments to deliver temporary messages to motorists concerning traffic or road construction. Ms. Brown alleged that the signs lacked the required “paid for and authorized by” disclosure statement. The Commission’s Executive

Director advised her that if she wanted the issue to be considered by the members of the Commission, she would need to submit the complaint in the format of a signed letter. He also advised that some of the issues she raised were outside the Commission's jurisdiction (*e.g.*, compliance with highway laws administered by the state Department of Transportation concerning placement of signs in the right of way).

Remedial action by Senate Republican caucus. Candidate Registrar Erin Gordon forwarded the email to Mr. Guerrette. The following morning (March 2), she was called by Shawn Roderick of the Senate Republican caucus. He explained that the signs were owned by T Buck Construction, Inc. of Turner, Maine. The signs were sitting unused on a lot owned by the company, and T Buck had provided the signs understanding that they would be used to promote Mr. Guerrette. At the time of this first conversation, there was no indication that any payment of money had been involved in the posting of the signs. Following this conversation, Mr. Roderick posted a statement on each sign indicating that the signs were authorized by the candidate.

Later on March 2, Ms. Gordon received more information from Mr. Roderick and conferred with Assistant Director Paul Lavin and Executive Director Jonathan Wayne. After referring to the statutory definition of contribution and expenditure, the Commission staff concluded that the loan of the signs (a thing of value) by T Buck Construction to Mr. Guerrette would constitute an in-kind contribution to Mr. Guerrette, unless he were to pay a fee to the construction company for the use of the signs. As a Maine Clean Election Act candidate, Mr. Guerrette may not accept in-kind contributions. Ms. Gordon emailed Mr. Guerrette and Mr. Roderick:

- She advised Mr. Guerrette to pay for the use of the construction signs.
- She recommended the standard language for the disclosure statement: "Paid for and authorized by the candidate."

(Ms. Gordon's email is attached.) Based on this advice, Mr. Roderick went back to the four signs and hand-wrote the revised message onto tape and adhered the tape to the base of the signs. He later emailed Ms. Gordon four photographs of the disclosure statements he revised (attached).

Filing of signed complaint. On March 2, the Commission received a complaint from Ted and Diane Potter concerning the missing disclosure statements. Based on the Commission's rules, all signed complaints alleging a violation of campaign finance law are considered by the members of the Commission at a public meeting. Because the complaint was filed within the last 28 days before the special election, the Commission's Executive Director spoke with the Commission Chair, William A. Lee, concerning when to schedule the complaint. Under 21-A M.R.S. § 1002(1) (copied below), during the 28 days before an election the Commission is required to meet within two business days of the filing of a complaint.

The statute permits the Commission to defer until after the election complaints involving minor violations such as disclaimer statements omitted from campaign signs or small transactions omitted from campaign finance reports. Given the prominence and nature of the signs, Commissioner Lee was inclined to schedule the complaint before the election in accordance with the Legislature's intent in 21-A M.R.S. § 1002(1). The Commission's Executive Director agreed, because the type of signs could logically raise questions concerning who was financing the signs.

APPLICABLE LAW

Definition of "Contribution" and "Expenditure"

The term "contribution" (applied to political candidates) includes:

A gift ... loan, advance or deposit 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 or for the purpose of liquidating any campaign deficit of a candidate

21-A M.R.S. § 1012(2)(A)(1). We have attached a page from our 2020 Guidebook providing further guidance on what constitutes in-kind contributions. Maine Clean Election Act candidates may not accept in-kind contributions. 21-A M.R.S. § 1125(6).

The term “expenditure” includes

“[a] purchase, payment, ... loan, advance, deposit or 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 M.R.S. § 1012(3)(A)(1). The definitions for contribution and expenditure contain exceptions, including one for wood or other materials used for political signs if not originally purchased for political purposes. 21-A M.R.S. §§ 1012(2)(B)(8-B) & 1012(3)(B)(11-A). While this exception may not directly apply to the facts of this case, the exception may be relevant background for this agenda item because it relates to low-cost or free signs that do not represent a contribution or expenditure.

Required Disclosure for Express Advocacy Communications

The Election Law states that “[w]henever a person makes an expenditure to finance a communication” that expressly advocates for a candidate’s election and is authorized by the candidate, the communication “must clearly and conspicuously state” the name and address of the person who made or financed the expenditure and that the candidate authorized the communication. The statements are required to be clear and conspicuous:

Whenever a person makes an expenditure to finance a communication expressly advocating the election or defeat of a clearly identified candidate through broadcasting stations, cable television systems, 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, the communication, if authorized by a candidate, a candidate’s authorized political committee or their agents, must clearly and conspicuously state that the communication has been so authorized and must clearly state the name and address of the person who made or financed the expenditure for the communication. ...

21-A M.R.S. § 1014(1). The law states that if the candidate has financed the communication, the candidate’s address may be omitted.

Subsection 6 of 21-A M.R.S. § 1014 contains exclusions for certain communications that are not required to contain the disclosure statement, such as signs that are lettered or printed individually by hand, or that cost less than \$100 and are created independently of candidates, PACs, and party committees. These exceptions are not directly applicable here but may have some background relevance because they are situations in which express advocacy communications do not require a disclosure statement because they are arranged at little or no cost. 21-A M.R.S. § 1014(6).

Penalty

Under 21-A M.R.S. § 1014(4), a violation may result in a civil penalty of no more than 100% of the amount of the expenditure in violation, except that an expenditure for yard signs lacking the required disclosure may result in a maximum civil penalty of \$200. If the person who financed the communication corrects the violation within 10 days after receiving notice of the violation, the Commission “may” decide to assess no penalty.

Scheduling Commission’s Consideration of Complaints

During the 28 days before an election, the Commission is required to meet within two business days of the filing of a complaint:

The commission shall meet in Augusta for the purposes of this chapter at least once per month in any year in which primary and general elections are held. In the 28 days preceding an election, the commission shall meet in Augusta within 2 business days of the filing of any complaint with the commission, unless the complainant and respondent agree otherwise. Regardless of whether the complainant or respondent agree, the commission may defer until after the election considering complaints determined by the chair to involve allegations of minor violations of this chapter or chapter 14, such as disclaimer statements omitted from campaign signs or transactions of less than \$ 100 omitted from campaign finance reports.

21-A M.R.S. § 1002(1). The statute permits the Commission to defer until after the election complaints involving minor violations such as disclaimer statements omitted from campaign signs or small transactions omitted from campaign finance reports.

Preliminary Notes by Commission Staff

Remedying a missing disclaimer statement. Most candidates purchase campaign signs from commercial printers. The candidates know or are advised that the signs require a statement of who paid for them. Occasionally, signs are printed without the disclaimer information due to an oversight or lack of awareness of the requirement.

When a candidate's signs lack the required disclaimer, the Commission staff is sometimes contacted by the candidate's opponents. Most often this is by email or phone. Sometimes a photograph is included in the email. Our usual approach is to contact the candidate and request that they put an adhesive label containing the missing information on the sign or to hand-write the information with a permanent marker. This remedy is intended to provide members of the public with the missing information. It does not negate the fact that a violation occurred in the first place, because the signs were initially made available to the public without the required information.

Scheduling a complaint about a missing disclaimer statement. These situations typically arise in the last weeks before an election when everyone involved is very busy (the candidate, the candidate's political opponents, and the Commission staff). Because of these time constraints, the Commission staff's focus is on remedying or minimizing the violation, rather than encouraging the filing of complaints for formal determinations by the Commission. Scheduling a complaint before an election involves significant time for everyone involved, and distracts candidates and others from campaigning at a critical time before the election.

Nevertheless, if someone wants a finding by the Commission that a candidate or other person was in violation because a sign lacked the required disclosure, they may request the finding through a signed, written complaint. We receive relatively few signed

complaints about a missing disclosure statement – typically, no more than one or two per election year. If the complaint is filed in the last 28 days before an election, the Commission staff will confer with the Chair concerning how best to schedule the matter in light of the two-business-day requirement. If the sign that is missing the statement is an ordinary printed campaign sign purchased by a candidate and the violation appears due to a good-faith error, the Commission staff is likely to recommend waiting on the complaint until after the election as contemplated in the statute.

Clear and conspicuous. In this case, Mr. Potter commented to the Commission staff by email that the “Paid for” message that was inserted by Shawn Roderick should be more prominent. As you consider how to apply the “clear and conspicuous” requirement fairly to this unusual case, it may be relevant to consider as context that the disclaimer statements on printed signs are often fairly small. For most printed campaign signs, a passing motorist may not be able to read the disclosure statement without stopping to examine the sign more closely. Most disclosure statements are not visible after dark.

The Commission staff does not know all of the facts leading up to the provision of the construction signs to Mr. Guerrette or whether the people involved recognized this as the type of economic activity that would need to be disclosed. We are also unsure whether you will view this situation as meriting a finding of violation, or not. For future reference of all concerned, the Commission staff is always available to provide advice, in advance, concerning whether a communication to voters promoting a candidate constitutes an in-kind contribution or would require a disclosure statement in the communication.

Thank you for your consideration of this memo.

1. Farmingdale, Route 1



2. Randolph, corner of Windsor St. and Water St.



3. Pittston, corner of Wiscasset Rd. and Route 126



4) Across the street from Manchester town office (picture taken 2/28)







We, the undersigned, would like to file an ethics complaint against SD 14 candidate William Guerrette, or whichever political group is connected with the below campaign signs which appear to be placed in public right of ways.

Four illegal campaign billboards that support SD 14 Republican candidate William Guerrette have been spotted by SD 14 residents. The four locations are 1) in Farmingdale on Route 201, 2) in Randolph at the corner of Windsor St. and Water St., 3) In Pittston at the corner of Wiscasset Rd. and Rt. 126 4) Across the street from the Manchester Town Office (pictures below).

These campaign billboards need to be reviewed for:

1. Failure to add political disclaimer for campaign sign

Ted (Edward) Potter

Diane Potter

Ted & Diane Potter

Gardiner, Maine

Received

MAR 02 2021

Maine Ethics Commission

1) Farmingdale Route 201



1900 11 11 AM

2) In Randolph at the corner of Windsor St. and Water St.



3) In Pittston at the corner of Wiscasset Rd. and Route 126.



4) Across the street from Manchester town office (picture taken 2/28)



Gordon, Erin

From: Gordon, Erin
Sent: Tuesday, March 2, 2021 11:37 AM
To: wguerrette; Shawn Roderick
Cc: Lavin, Paul; Wayne, Jonathan
Subject: Signs and Disclosure Statements

Good morning,

I am following up on conversations I had with Shawn this morning on the matter of the four lighted signs and the disclosure statements. After further staff discussion and examination of statute, we determined that the signs constitute an expenditure (“a purchase, payment, distribution, loan, advance or deposit or gift of money or anything of value made for the purpose of influencing the nomination or election of any person to political office...”) by T Buck Construction and therefore a contribution to the Guerrette campaign.

Certified MCEA candidates are prohibited from accepting any contributions; in order to avoid violating MCEA statute, we recommend that you make a reasonable payment to T Buck Construction for the use of these signs. It is our understanding that T Buck does not rent out this equipment in the normal course of business, and so does not have a regular rental rate you can use; you may determine instead, in conversation with them, a nominal fee that acknowledges the use of costly equipment that would not otherwise see use right now. Once you have decided on an appropriate amount, you will need to get a written invoice from them for your records, e.g. “Loan of 4 lighted message boards for x days.”

Previously I had recommended to Shawn that you would only need “Authorized by the candidate” on the disclosure statements, however, because these are items of value with an associated cost, you will need the full disclosure statement on all four signs: “Paid for and authorized by the candidate.”

Thank you for your patience this morning as we tackled this new idea for the first time! Please let me know if you have any questions.

Best,

Erin Gordon

Candidate Registrar

Maine Ethics Commission

(207) 287-3651 | www.maine.gov/ethics

135 State House Station, Augusta, ME 04333-0135

45 Memorial Circle, Augusta, ME

Title 21-A Maine Revised Statutes

Current with the Second Regular Session of the 129th Maine Legislature.

§ 1002. Meetings of commission

- 1. Meeting schedule.** The commission shall meet in Augusta for the purposes of this chapter at least once per month in any year in which primary and general elections are held. In the 28 days preceding an election, the commission shall meet in Augusta within 2 business days of the filing of any complaint with the commission, unless the complainant and respondent agree otherwise. Regardless of whether the complainant or respondent agree, the commission may defer until after the election considering complaints determined by the chair to involve allegations of minor violations of this chapter or chapter 14, such as disclaimer statements omitted from campaign signs or transactions of less than \$ 100 omitted from campaign finance reports.
- 2. Telephone meetings.** The commission may hold meetings over the telephone if necessary, as long as the commission provides notice to all affected parties in accordance with the rules of the commission and the commission's office remains open for attendance by complainants, witnesses, the press and other members of the public. Notwithstanding Title 1, chapter 13, telephone meetings of the commission are permitted:

 - A.** During the 28 days prior to an election when the commission is required to meet within 2 business days of the filing of any complaint with the commission; or
 - B.** To address procedural or logistical issues before a monthly meeting, such as the scheduling of meetings, deadlines for parties' submission of written materials, setting of meeting agenda, requests to postpone or reschedule agenda items, issuing subpoenas for documents or witnesses and recusal of commission members.
- 3. Other meetings.** The commission shall meet at other times on the call of the Secretary of State, the President of the Senate, the Speaker of the House or the chair or a majority of the members of the commission, as long as all members are notified of the time, place and purpose of the meeting at least 24 hours in advance.
- 4. Office hours before election.** The commission office must be open with adequate staff resources available to respond to inquiries and receive complaints from 8 a.m. until at least 5:30 p.m. on the Saturday, Sunday and Monday immediately preceding an election.

§ 1012. Definitions

...

2. Contribution. The term “contribution:”

A. Includes:

- (1) A gift, subscription, loan, advance or deposit 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 or for the purpose of liquidating any campaign deficit of a candidate, except that a loan of money to a candidate by a financial institution in this State made in accordance with applicable banking laws and regulations and in the ordinary course of business is not included;
- (2) A contract, promise or agreement, express or implied, whether or not legally enforceable, to make a contribution for such purposes;
- (3) Funds received by a candidate or a political committee that are transferred to the candidate or committee from another political committee or other source; and
- (4) The payment, by any person other than a candidate or a political committee, of compensation for the personal services of other persons that are provided to the candidate or political committee without charge for any such purpose; and

B. Does not include:

- (1) The value of services provided without compensation by individuals who volunteer a portion or all of their time on behalf of a candidate or political committee;
- (2) The use of real or personal property and the cost of invitations, food and beverages, voluntarily provided by an individual to a candidate in rendering voluntary personal services for candidate-related activities, if the cumulative value of these activities by the individual on behalf of any candidate does not exceed \$ 250 with respect to any election;
- (3) The sale of any food or beverage by a vendor for use in a candidate’s campaign at a charge less than the normal comparable charge, if the charge to the candidate is at least equal to the cost of the food or beverages to the vendor and if the cumulative value of the food or beverages does not exceed \$ 100 with respect to any election;
- (4) Any unreimbursed travel expenses incurred by an individual in the course of providing voluntary personal services to a candidate and paid for by that individual, if the cumulative amount of these expenses does not exceed \$ 350 with respect to any election;
- (4-A) Any unreimbursed campaign-related travel expenses incurred and paid for by the candidate or the candidate’s spouse or domestic partner;
- (5) The payment by a party’s state, district, county or municipal committee of the costs of preparation, display or mailing or other distribution of a party candidate listing;

- (6) Documents, in printed or electronic form, including party platforms, single copies of issue papers, information pertaining to the requirements of this Title, lists of registered voters and voter identification information, created, obtained or maintained by a political party for the general purpose of party building and provided to a candidate who is a member of that party;
- (7) Compensation paid by a state party committee to its employees for the following purposes:
 - (a) Providing no more than a total of 40 hours of assistance from its employees to a candidate in any election;
 - (b) Recruiting and overseeing volunteers for campaign activities involving 3 or more candidates; or
 - (c) Coordinating campaign events involving 3 or more candidates;
- (8) Campaign training sessions provided to 3 or more candidates;
- (8-A) Costs paid for by a party committee in connection with a campaign event at which 3 or more candidates are present;
- (8-B) Wood or other materials used for political signs that are found or contributed if not originally obtained by the candidate or contributor for campaign purposes;
- (8-C) The use or distribution of any communication, as described in section 1014, obtained by the candidate for a previous election and fully paid for during that election;
- (9) The use of offices, telephones, computers and similar equipment when that use does not result in additional cost to the provider;
- (10) Activity or communication designed to encourage individuals to register to vote or to vote if that activity or communication does not mention a clearly identified candidate; or
- (11) A purchase of apparel from a commercial vendor with a total cost of \$ 25 or less by an individual when the vendor has received a graphic or design from the candidate or the candidate's authorized committee.

3. Expenditure. The term "expenditure:"

A. Includes:

- (1) A purchase, payment, distribution, loan, advance, deposit or 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, except that a loan of money to a candidate by a financial institution in this State made in accordance with applicable banking laws and regulations and in the ordinary course of business is not included;
- (2) A contract, promise or agreement, expressed or implied, whether or not legally enforceable, to make any expenditure;
- (3) The transfer of funds by a candidate or a political committee to another candidate or political committee; and

(4) A payment or promise of payment to a person contracted with for the purpose of influencing any campaign as defined in section 1052, subsection 1; and

B. Does not include:

(1) Any news story, commentary or editorial distributed through the facilities of any broadcasting station, cable television system, newspaper, magazine or other periodical publication, unless the facilities are owned or controlled by any political party, political committee, candidate or spouse or domestic partner of a candidate;

(1-A) Any communication distributed through a public access television channel on a cable television system if the communication complies with the laws and rules governing the channel and all candidates in the race have an equal opportunity to promote their candidacies through the channel;

(2) Activity or communication designed to encourage individuals to register to vote or to vote if that activity or communication does not mention a clearly identified candidate;

(3) Any communication by any membership organization or corporation to its members or stockholders, if that membership organization or corporation is not organized primarily for the purpose of influencing the nomination or election of any person to state or county office;

(4) The use of real or personal property and the cost of invitations, food and beverages, voluntarily provided by an individual to a candidate in rendering voluntary personal services for candidate-related activities, if the cumulative value of these activities does not exceed \$ 250 with respect to any election;

(5) Any unreimbursed travel expenses incurred by an individual in the course of providing voluntary personal services to a candidate and paid for by that individual, if the cumulative amount of these expenses does not exceed \$ 350 with respect to any election;

(5-A) Any unreimbursed campaign-related travel expenses incurred and paid for by the candidate or the candidate's spouse or domestic partner;

(6) Any communication by any person that is not made for the purpose of influencing the nomination for election, or election, of any person to state, county or municipal office;

(7) The payment by a party's state, district, county or municipal committee of the costs of preparation, display or mailing or other distribution of a party candidate listing;

(8) The use or distribution of any communication, as described in section 1014, obtained by the candidate for a previous election and fully paid for during that election campaign;

(9) Documents, in printed or electronic form, including party platforms, single copies of issue papers, information pertaining to the requirements of this Title, lists of registered voters and voter identification information, created or maintained by a political party for the general purpose of party building and provided to a candidate who is a member of that party;

(10) Compensation paid by a state party committee to its employees or the following purposes:

(a) Providing no more than a total of 40 hours of assistance from its employees to a candidate in any election;

(b) Recruiting and overseeing volunteers for campaign activities involving 3 or more candidates; or

(c) Coordinating campaign events involving 3 or more candidates;

(10-A) Costs paid for by a party committee in connection with a campaign event at which 3 or more candidates are present;

(11) Campaign training sessions provided to 3 or more candidates;

(11-A) Wood or other materials used for political signs that are found or contributed if not originally obtained by the candidate or contributor for campaign purposes;

(12) The use of offices, telephones, computers and similar equipment when that use does not result in additional cost to the provider; or

(13) A purchase of apparel from a commercial vendor with a total cost of \$ 25 or less by an individual when the vendor has received a graphic or design from the candidate or the candidate's authorized committee.

4. Repealed. Laws 1991, c. 839, § 3, eff. January 1, 1993.

4-A. Influence. "Influence" means to promote, support, oppose or defeat.

...

§ 1014. Publication or distribution of political communications

1. Authorized by candidate. Whenever a person makes an expenditure to finance a communication expressly advocating the election or defeat of a clearly identified candidate through broadcasting stations, cable television systems, 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, the communication, if authorized by a candidate, a candidate's authorized political committee or their agents, must clearly and conspicuously state that the communication has been so authorized and must clearly state the name and address of the person who made or financed the expenditure for the communication. A communication financed by a candidate or the candidate's committee is not required to state the address of the candidate or committee that financed the communication. If a communication that is financed by someone other than the candidate or the candidate's authorized committee is broadcast by radio, only the city and state of the address of the person who financed the communication must be stated.

2. Not authorized by candidate. If the communication described in subsection 1 is not authorized by a candidate, a candidate's authorized political committee or their agents, the communication must clearly and conspicuously state that the communication is not authorized by any candidate and state the name and address of the person who made or financed the expenditure for the communication, except that a communication broadcast by radio is only required to state the city and state of the address of the person that financed the communication. If the communication is in written form, the communication must contain at the bottom of the communication in print that is no smaller in size than 12-point bold print, Times New Roman font, the words "NOT PAID FOR OR AUTHORIZED BY ANY CANDIDATE."

2-A. Other communications. Whenever a person makes an expenditure to finance a communication that names or depicts a clearly identified candidate and that is disseminated during the 28 days, including election day, before a primary election, during the 35 days, including election day, before a special election or during the period of time from Labor Day to the election day for a general election through the media described in subsection 1, the communication must state the name and address of the person who made or financed the communication and a statement that the communication was or was not authorized by the candidate, except that a communication broadcast by radio is only required to state the city and state of the address of the person that financed the communication. The disclosure is not required if the communication was not made for the purpose of influencing the candidate's nomination for election or election.

2-B. Top 3 funders; independent expenditures. A communication that is funded by an entity making an independent expenditure as defined in section 1019-B, subsection 1 must conspicuously include the following statement:

"The top 3 funders of (name of entity that made the independent expenditure) are (names of top 3 funders)."

The information required by this subsection may appear simultaneously with any statement required by subsection 2 or 2-A. A communication that contains a visual aspect must include the statement in written text. A communication that does not contain a visual aspect must include an audible statement. This statement is required only for communications made

through broadcast or cable television, broadcast radio, Internet audio programming, direct mail or newspaper or other periodical publications.

A cable television or broadcast television communication must include both an audible and a written statement. For a cable television or broadcast television communication 30 seconds or less in duration, the audible statement may be modified to include only the single top funder.

The top funders named in the required statement consist of the funders providing the highest dollar amount of funding to the entity making the independent expenditure since the day following the most recent general election day.

A. For purposes of this subsection, “funder” includes:

(1). Any entity that has made a contribution as defined in section 1052, subsection 3 to the entity making the independent expenditure since the day following the most recent general election day; and

(2) Any entity that has given a gift, subscription, loan, advance or deposit of money or anything of value, including a promise or agreement to provide money or anything of value whether or not legally enforceable, except for transactions in which a fair value is given in return, since the day following the most recent general election day.

B. If funders have given equal amounts, creating a tie in the ranking of the top 3 funders, the tie must be broken by naming the tying funders in chronological order of the receipt of funding until 3 funders are included in the statement. If the chronological order cannot be discerned, the entity making the independent expenditure may choose which of the tying funders to include in the statement. In no case may a communication be required to include the names of more than 3 funders.

C. The statement required under this subsection is not required to include the name of any funder who has provided less than \$1,000 to the entity making the independent expenditure since the day following the most recent general election day.

D. If only one or 2 funders must be included pursuant to this subsection, the communication must identify the number of funders as "top funder" or "top 2 funders" as appropriate. If there are no funders required to be included under this subsection, no statement is required.

E. When compiling the list of top funders, an entity making an independent expenditure may disregard any funds that the entity can show were used for purposes unrelated to the candidate mentioned in the communication on the basis that funds were either spent in the order received or were strictly segregated in other accounts.

F. In any communication consisting of an audio broadcast of 30 seconds or less or a print communication of 20 square inches or less, the requirements of this subsection are satisfied by including the name of the single highest funder only.

G. If the list of funders changes during the period in which a recurring communication is aired or published, the statement appearing in the communication must be updated at the time that any additional payments are made for that communication.

H. The commission may establish by routine technical rule, adopted in accordance with Title 5, chapter 375, subchapter 2-A, forms and procedures for ensuring compliance with this subsection. Rules adopted pursuant to this paragraph must ensure that the information required

by this subsection is effectively conveyed for a sufficient duration and in a sufficient font size or screen size where applicable without undue burden on the ability of the entity to make the communication. The rules must also provide an exemption for types of communications for which the required statement would be impossible or impose an unusual hardship due to the unique format or medium of the communication.

3. Broadcasting prohibited without disclosure. No person operating a broadcasting station or cable television system within this State may broadcast any communication, as described in subsections 1 to 2-A, without an oral or written visual announcement of the disclosure required by this section.

3-A. In-kind contributions of printed materials. A candidate, political committee or political action committee shall report on the campaign finance report as a contribution to the candidate, political committee or political action committee any contributions of in-kind printed materials to be used in the support of a candidate or in the support or defeat of a ballot question. Any in-kind contributions of printed materials used or distributed by a candidate, political committee or political action committee must include the name or title of that candidate, political committee or political action committee as the authorizing agent for the printing and distribution of the in-kind contribution.

3-B. Newspapers. A newspaper may not publish a communication described in subsections 1 to 2-A without including the disclosure required by this section. For purposes of this subsection, “newspaper” includes any printed material intended for general circulation or to be read by the general public, including a version of the newspaper displayed on a website owned or operated by the newspaper. When necessary, a newspaper may seek the advice of the commission regarding whether or not the communication requires the disclosure.

4. Enforcement. A violation of this section may result in a civil penalty of no more than 100% of the amount of the expenditure in violation, except that an expenditure for yard signs lacking the required information may result in a maximum civil penalty of \$ 200. In assessing a civil 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. If the person who financed the communication or who committed the violation corrects the violation within 10 days after receiving notification of the violation from the commission by adding the missing information to the communication, the commission may decide to assess no civil penalty.

5. Telephone calls. Prerecorded automated telephone calls and scripted live telephone communications that name a clearly identified candidate during the 28 days, including election day, before a primary election, during the 35 days, including election day, before a special election or during the period of time from Labor Day to the general election day for a general election must clearly state the name of the person who made or financed the expenditure for the communication and whether the communication was authorized by a candidate, except for prerecorded automated telephone calls paid for by the candidate that use the candidate’s voice in the telephone call and that are made in support of that candidate. 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.

6. Exclusions. The requirements of this section do not apply to:

A. Handbills or other literature produced and distributed at a cost not exceeding \$ 100 and prepared by one or more individuals who are not required to register or file campaign finance reports with the commission and who are acting independently of and without authorization by a candidate, candidate's authorized campaign committee, party committee, political action committee or ballot question committee or an agent of a candidate, candidate's authorized campaign committee, party committee, political action committee or ballot question committee;

B. Campaign signs produced and distributed at a cost not exceeding \$ 100, paid for by one or more individuals who are not required to register or file campaign finance reports with the commission and who are acting independently of and without authorization by a candidate, candidate's authorized campaign committee, party committee, political action committee or ballot question committee or an agent of a candidate, candidate's authorized campaign committee, party committee, political action committee or ballot question committee;

C. Internet and e-mail activities costing less than \$ 100, as excluded by rule of the commission, paid for by one or more individuals who are not required to register or file campaign finance reports with the commission and who are acting independently of and without authorization by a candidate, candidate's authorized campaign committee, party committee, political action committee or ballot question committee or an agent of a candidate, candidate's authorized campaign committee, party committee, political action committee or ballot question committee;

D. Communications in which the name or address of the person who made or authorized the expenditure for the communication would be so small as to be illegible or infeasible, including communications on items such as ashtrays, badges and badge holders, balloons, campaign buttons, clothing, coasters, combs, emery boards, envelopes, erasers, glasses, key rings, letter openers, matchbooks, nail files, noisemakers, paper and plastic cups, pencils, pens, plastic tableware, 12-inch or shorter rulers, swizzle sticks, tickets to fund-raisers and similar items determined by the commission to be too small and unnecessary for the disclosures required by this section and in electronic media advertisements where compliance with this section would be impractical due to size or character limitations; and

E. Campaign signs that are financed by the candidate or candidate's authorized committee and that clearly identify the name of the candidate and are lettered or printed individually by hand.

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CHAPTER 7

Contributions: Prohibition & Exemptions

DEFINITION OF CONTRIBUTION

The term "contribution" is defined in the Election Law to include:

"A gift, subscription, loan, advance or deposit 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 or for the purpose of liquidating any campaign deficit of a candidate . . ." (21-A M.R.S.A. § 1012(2))

For further explanation of what is a contribution, refer to 21-A M.R.S.A. § 1012(2) (see the Appendix *ii*) and Chapter 1, Section 6 of the Commission's Rules.

PROHIBITION ON ACCEPTING CASH CONTRIBUTIONS AND LOANS

Once a candidate has been certified as an MCEA candidate, the campaign may not accept contributions from any source. The candidate is not permitted to contribute cash or to make a loan to their campaign.

If a campaign accepts a contribution, it must be returned. If a contribution was inadvertently deposited into a campaign's bank account, the funds must be withdrawn and returned to the contributor and the candidate should notify the Commission staff.

PROHIBITION ON ACCEPTING IN-KIND CONTRIBUTIONS

"In-kind contributions" are goods and services provided to a campaign at no cost, or at a cost that is less than the usual and customary charge. MCEA candidates who receive an in-kind contribution should contact the Commission staff promptly for advice on how to correct the situation. The staff will likely advise the campaign to reimburse the provider of the in-kind contribution immediately with MCEA funds.

The following activities are examples of in-kind contributions:

- the candidate purchases campaign signs with personal funds and is not reimbursed by the campaign;
- a supporter of a candidate pays for some of the candidate's advertising in a newspaper and is not reimbursed by the campaign;
- a friend of a candidate who owns a copy shop provides the campaign with a special discount on printing services;
- a volunteer who is making signs to give to the candidate buys plywood and paint and is not reimbursed by the campaign;
- the owner of a local business provides the campaign, free of charge, some of their paid staff members to work for the campaign on company time; or



- a commercial vendor extends credit to the campaign under terms that are not substantially similar to the terms extended in the ordinary course of business to nonpolitical customers.

GOODS AND SERVICES NOT CONSIDERED CONTRIBUTIONS

Certain goods and services are excluded from the legal definition of “contribution,” and a campaign’s acceptance of these items is not an in-kind contribution. Candidates and treasurers are encouraged to familiarize themselves with these exempt goods and services. The full list of exempted goods and services is in the Appendix *ii* of this Guidebook. Some examples of exempt goods and services are described in the following subsections.

Donated Office Space and Use of Equipment. A trade association, commercial business, labor union, business owner, etc., may donate office space or office equipment to a campaign, provided there are no additional costs (e.g., telephone and utility services). If there are additional costs, the campaign is required to pay for those costs.

House Parties & Candidate Events. An individual who actively volunteers for or hosts a house party or candidate-related event may spend up to \$250 toward the use of real or personal property, food, beverages, and/or invitations for the party or event. These expenses will not be considered contributions. Only one host (a person providing or paying for the event facility) may purchase invitations; the cost of invitations may not be shared among multiple hosts. Those who pay for food and beverages for the event must also provide volunteer services for the event (e.g., stuffing invitation envelopes, or setting up for the event). The

\$250 limit is per election per candidate, not per event.

Assistance from State Party Committees.

Candidates may receive some assistance from paid employees of a state party committee without that help constituting an in-kind contribution. State party committees may:

- provide up to 40 hours of assistance by paid employees to a candidate in each election (primary or general);
- recruit and oversee volunteers for campaign activities involving 3 or more candidates; and
- coordinate campaign events involving 3 or more candidates.

This exception applies only to state party committees (Democratic, Green-Independent, and Republican), and does not apply to local and county party committees, caucus committees, or PACs.

Party Committee Slate Cards. State, county, and local party committees may spend money to produce and distribute a slate card (“party candidate listing”) to promote 3 or more candidates without that publication constituting an in-kind contribution. This exception is not available to PACs or other organizations.

Volunteer Services vs. Paid Assistance. Individuals are permitted to provide their services — including professional services such as legal advice, assistance with databases, and web and graphic design — for free to a campaign as volunteers. A candidate may provide compensation to a volunteer for a portion of the volunteer’s time spent on campaign activities. However, if an individual provides their services to a campaign at the direction of their employer during the individual’s paid work-time, then the employer has