



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

Commission Meeting: March 6, 2019
Agenda Item # 2

MEMORANDUM

To: Interested Parties
From: Jonathan Wayne, Executive Director
Date: February 14, 2019
Subject: Invitation to Comment on Proposed Rule Changes

The Ethics Commission is inviting comments on proposed amendments to the Commission's Rules, on two topics.

Reporting debts. In 2005, the Commission adopted a rule specifying that ordering or receiving campaign goods and services with a promise to pay for them constitutes an expenditure that must be disclosed in campaign finance reports. The Commission is considering changes to clarify the rule:

- specifying that if a candidate or committee incurs a debt and pays off the debt during the *same* report period, the filer would report only the payment – not the debt;
- stating that if a candidate or committee reports a debt in a campaign finance report due 11 days before an election and pays the debt in the 13 days before the election, the candidate or committee is *not* required to report the payment in a 24-Hour Report; and
- eliminating repetitive and potentially confusing language.

Disclosing travel expenses or gifts received by officials. Constitutional officers, the Governor, Legislators and other state officials file annual statements of the sources of their personal income. In the statements, the officials are required to disclose the sources of any gifts received. (1 M.R.S.A. § 1016-G(1)(F); 5 M.R.S.A. § 19(2)(K)) Gifts are defined as anything of value, with some exceptions such as gifts from relatives or gifts from a single source during a calendar year with a total value of \$300 or less. If the official has received travel expenses (such as

accommodations or reimbursement for conference fees) worth more than \$300, the official must disclose those as gifts in the annual statement.

Pursuant to the Commission's statutory authority to establish procedures and forms for personal income disclosure,¹ the Commission is considering a rule amendment that would require officials to specify a category for gifts or travel costs received (*e.g.*, "conference fees" or "accommodations") or to provide a short description of the gift or travel cost. Currently, the form requires only the disclosure of the donor's name.

How to comment. The Commission will hold a hearing to receive comments on Wednesday, March 6 at 9:00 a.m. at the Commission's office at 45 Memorial Circle (second floor), in Augusta. Or, please email written comments to me at Jonathan.Wayne@maine.gov no later than 5:00 p.m. on Monday, March 18, 2019.

If you have any questions, please telephone me at 287-4179. Thank you for your consideration of the proposed amendments.

¹ The Commission is authorized to "adopt or amend rules to specify the reportable categories or types and the procedures and forms for reporting and to administer this section." (1 M.R.S.A. § 1016-G(4); 5 M.R.S.A. §19(5))

CHAPTER 1, SECTION 7. EXPENDITURES

1. **Expenditures by Consultants, Employees, and Other Agents of a Political Campaign**
 - A. Each expenditure made on behalf of a candidate, political committee, or political action committee by any person, agency, firm, organization, etc., employed or retained for the purpose of organizing, directing, managing or assisting the candidate, the candidate's committee, or the political action committee must be reported separately by the candidate or committee as if made or incurred by the candidate or committee directly. The report must include the name of the third party vendor or payee to whom the expenditure was made, the date of the expenditure, and the purpose and amount of the expenditure. It is not sufficient to report only the total retainer or fee paid to the person, agency, firm, organization, etc., if that retainer or fee was used to pay third party vendors or payees for campaign-related goods and services.
 - B. If a candidate or committee has paid a media buyer, advertising consultant or similar contractor to purchase advertising time or for the production of television or radio advertising, the candidate or committee may disclose the advertising time and production costs in the aggregate, rather than itemizing each payment made by the contractor to a third party vendor or payee. *Maine Clean Election Act* candidates must obtain from their contractor(s) documentation of every payment of \$50 or more made on their behalf by a contractor or subcontractor related to television or radio advertising.
2. **Expenditures by Political Action Committees.** In addition to the requirements set forth in 21-A M.R.S.A. §1060(4), the reports must contain the purpose of each expenditure and the name of each payee and creditor.
3. ~~Timing of Reporting Expenditures~~ **Reporting Debts and Unpaid Obligations**
 - A. ~~Placing an order with a vendor for a good or service; signing a contract for a good or service; the delivery of a good or the performance of a service by a vendor; or a promise or an agreement (including an implied one) that a payment will be made constitutes an expenditure, regardless whether any payment has been made for the good or service.~~

- ~~B.A.~~ Expenditures must be reported at the earliest of ~~†~~The following events constitute expenditures, even if the payment for a good or service has not been made at the time of the event:
- (1) The placement of an order for a good or service;
 - (2) The signing of a contract for a good or service;
 - (3) The acceptance of the delivery of a good or the performance of a service by a vendor; or
 - (4) A promise or an agreement (including an implied one) that a payment will be made in exchange for a good or service. ~~;~~ ~~or~~
 - ~~(5) The making of a payment for a good or service.~~
- ~~B.~~ For reporting purposes, the expenditures listed in paragraph A are designated as debts or obligations prior to payment for the goods or services being made.
- ~~C.~~ If a person required to file a campaign finance report has a debt or obligation which remains unpaid at the end of the report period, the person shall report the date, amount, vendor, and purpose of the debt or obligation. If the exact amount is not known, the person filing the report shall report an estimate of the amount (preferably obtained in a written statement from the vendor).
- ~~C.~~ At the time the duty to report an expenditure arises, the person submitting the report is required to determine the value of goods and services to be rendered (preferably through a written statement from the vendor) and to report that value as the amount of the expenditure. If the expenditure involves more than one candidate election, the report must include an allocation of the value to each of those candidate elections.
- ~~D.~~ If a debt or obligation occurs in the same report period as a payment for that debt or obligation, the person filing the report will report only the payment, not the debt or obligation.
- ~~E.~~ A candidate or committee is not required to report a payment for a good or service in a 24-Hour Report, if the candidate or committee reported a debt for that good or service in the last regularly scheduled campaign finance report.

SECTION 14. STATEMENT OF SOURCES OF INCOME

Legislators and executive employees are required to file with the Commission annual statements identifying the sources of income received, positions held, and certain liabilities under Title 1, section 1016-G and Title 5, section 19, respectively. The Commission staff shall prepare written and online forms for purposes of reporting. For the disclosure of gifts received by officials, the Commission may require an official to enter a category for the gift, such as transportation or conference fees, or a description of the gift. The Commission may require officials to enter a type of organization in which the official holds a position, such as non-profit, corporation or partnership. For purposes of this reporting, if a Legislator or executive employee is estranged from a spouse or domestic partner, the definition of “immediate family” does not include the estranged spouse or domestic partner.