

# MAINE STATE LEGISLATURE

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ONE HUNDRED AND SEVENTH LEGISLATURE

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Legislative Document

No. 2340

H. P. 2281

House of Representatives, April 5, 1976

Reported by Mrs. Boudreau from Committee on Election Laws and printed under Joint Rules No. 18.

EDWIN H. PERT, Clerk

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STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
SEVENTY-SIX

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AN ACT Relating to Campaign Reports and Finances.

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Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the laws on election campaign reports and finances must be revised as a result of the U. S. Supreme Court's decision of January 30, 1976; and

Whereas, this revision must be completed as soon as possible in order that political campaigns in 1976 may be conducted under constitutional guidelines and without a change of the laws in the course of the campaign; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. 21 MRSA c. 35, as repealed and replaced by PL 1975, c. 621, § 9, is repealed and the following enacted in place thereof:

CHAPTER 35

CAMPAIGN REPORTS AND FINANCES

§ 1391. Application

This chapter applies to candidates for all state and county offices and to campaigns for their nomination and election.

**§ 1392. Definitions**

As used in this chapter, unless the context indicates otherwise, the following terms shall have the following meanings:

1. **Commission.** "Commission" means the Commission on Governmental Ethics and Election Practices established pursuant to Title 1, section 1002;

2. **Contribution.** "Contribution" includes:

A. A gift, subscription, loan, advance, or deposit of money or anything of value, except 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, made for the purpose of influencing the nomination or election of any person to state or county office;

B. A contract, promise or agreement, expressed or implied, whether or not legally enforceable, to make a contribution for such purposes;

C. Funds received by a candidate or a political committee which are transferred to such candidate or committee from another political committee or other source; and

D. The payment, by any person other than a candidate or a political committee, of compensation for the personal services of other persons which are rendered to such candidate or political committee without charge for any such purpose.

E. "Contribution" 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 such activities by such individual on behalf of any candidate does not exceed \$50 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 such charge for use in a candidate's campaign is at least equal to the cost of such food or beverages to the vendor and if the cumulative value of such food or beverage does not exceed \$50 with respect to any election;

(4) Any unreimbursed payment for travel expenses made by an individual who on his own behalf volunteers his personal services to a candidate, if the cumulative amount for such individual incurred with respect to such candidate does not exceed \$50 with respect to any election; or

(5) The payment by a state, district, county or local committee of a political party of the costs of preparation, display or mailing or other distribution incurred by such committee with respect to a printed slate card, sample ballot or other printed listing of 3 or more candidates for any political office.

3. Election. "Election" includes any primary, general or special election for state or county offices.

4. Expenditure. "Expenditure" includes :

A. A purchase, payment, distribution, loan, advance, deposit or gift of money or anything of value, except 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, made for the purpose of influencing the nomination or election of any person to political office ;

B. A contract, promise or agreement, expressed or implied, whether or not legally enforceable, to make any expenditure ;

C. The transfer of funds by a candidate or a political committee to another candidate or political committee ; but does not include :

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

(2) Nonpartisan activity designed to encourage individuals to register to vote or to vote ;

(3) Any communication by any membership organization or corporation to its members or stockholders, if such 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 such activities by such individual on behalf of any candidate does not exceed \$50 with respect to any election ;

(5) Any unreimbursed payment for travel expenses made by an individual who, on his own behalf, volunteers his personal services to a candidate, if the cumulative amount for such individual incurred with respect to such candidate does not exceed \$50 with respect to any election ;

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

(7) The payment by a state, district, county or local committee of a political party of the costs of preparation, display or mailing or other distribution incurred by such committee with respect to a printed slate card or sample ballot, or other printed listing, or 3 or more candidates for any political office for which an election is held ; or

(8) The use or distribution of any communication, as described in section 1394, prepared for a previous election and fully paid for during that

election campaign which was not used or distributed in that previous election.

5. Person. "Person" means an individual, committee, firm, partnership, corporation, association or any other group or organization of persons.

§ 1393. Treasurer; political committees

1. Candidates. A candidate may accept contributions personally or make or authorize expenditures personally. A candidate may appoint a treasurer to accept contributions or to make or authorize expenditures. A candidate who appoints a treasurer shall advise the commission of the name and address of such treasurer, of the name and address of the candidate making the appointment and of the treasurer's term of office, if any, within 7 days after such appointment.

2. Authorized political committees. A candidate may authorize one or more political committees for the purpose of promoting such candidate. Each such political committee shall appoint a treasurer before accepting any contributions or making or authorizing any expenditures. Such political committee shall inform the commission of the name and address of such treasurer within 7 days after such appointment, the name or title of the committee making the appointment and the treasurer's term of office. In addition to the registration of its treasurer, a political committee authorized by a candidate shall submit to the commission the names and addresses of all of its officers, whether or not said committee accepts any contributions or makes or authorizes any expenditures.

3. Other political committees. A political committee which is not authorized by a candidate but which accepts any contributions or makes or authorizes any expenditures for the purpose of promoting or defeating a candidate or candidates shall appoint a treasurer before accepting any contributions or making or authorizing any expenditures. Such political committee shall inform the commission of the name and address of such treasurer within 7 days after such appointment, the name or title of the committee making the appointment, the name of the candidate or candidates it intends to promote or defeat and the treasurer's term of office. In addition to the registration of its treasurer, such a political committee shall submit to the commission the names and addresses of all of its officers.

§ 1394. Publication or distribution of political statements

Whenever any person makes an expenditure for the purpose of financing communications expressly advocating the election or defeat of a clearly identified candidate through broadcasting stations, newspapers, magazines, outdoor advertising facilities, direct mails and other similar types of general public political advertising and through flyers, handbills, bumper stickers and other nonperiodical publications, such communication, if authorized by a candidate, a candidate's authorized political committee or their agents, shall clearly and conspicuously state that the communication has been so authorized and shall clearly state the name and address of the person who made or financed the expenditure for the communication.

If such communication is not authorized by a candidate, a candidate's authorized political committee or their agents, the communication shall 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.

Any such communication expressly advocating the promotion or defeat of any principle, initiative or referendum question shall clearly and conspicuously state the name and address of the person, public utility or governmental agency that made or financed the expenditure for the communication.

No person operating a broadcasting station within this State shall broadcast any such communication without announcing the name of the person who made or financed the expenditure for the communication.

#### § 1395. Limitations on contributions and expenditures

1. **Individuals.** No individual, other than a candidate or a member of a candidate's immediate family, shall make contributions to a candidate, in support of the candidacy of one person, in an aggregate amount greater than \$1,000 in any election. For the purposes of this subsection, "immediate family" includes a candidate's spouse and any child, parent, grandparent, brother or sister of the candidate and the spouse of such persons.

2. **Committees; corporations; associations.** No political committee, other committee, corporation or association shall make contributions to a candidate, in support of the candidacy of one person, in an aggregate amount greater than \$5,000 in any election.

3. **Aggregate contributions.** No individual, other than a candidate or a member of a candidate's immediate family, shall make contributions to candidates aggregating more than \$25,000 in any calendar year.

4. **Political committees, intermediaries.** For the purpose of the limitations imposed by this section, contributions made to any political committee authorized by a candidate to accept contributions on the candidate's behalf shall be considered to be contributions made to such candidate.

For the purposes of the limitations imposed by this section all contributions made by a person, either directly or indirectly, on behalf of a particular candidate, including contributions which are in any way earmarked or otherwise directed through an intermediary or conduit to such candidate, shall be treated as contributions from such person to such candidate. The intermediary or conduit shall report the original source and the intended recipient of such contribution to the commission and to the intended recipient.

5. **Other contributions and expenditures.** Expenditures made by any person in cooperation, consultation or concert with, or at the request or suggestion of, a candidate, a candidate's political committee, or their agents shall be considered to be a contribution to such candidate.

The financing by any person of the dissemination, distribution or republication, in whole or in part, of any broadcast or any written or other campaign

materials prepared by the candidate, the candidate's campaign committee or their authorized agents shall be considered to be a contribution to such candidate.

6. Certain expenditures prohibited. The expenditure of money for alcoholic beverages to be distributed to or consumed by voters while the polls are open on election day is prohibited.

#### § 1396. Records

Each treasurer or each candidate shall keep detailed records of all contributions received and of each expenditure which such treasurer or candidate makes or authorizes, as provided in this section.

1. Account of contributions; segregated funds. Every person who receives a contribution in excess of \$10 for a candidate or a political committee shall, on demand of the treasurer or candidate, and in any event within 5 days after receipt of such contribution, render to the treasurer or candidate a detailed account thereof, including the amount of the contribution and the identification of the person making such contribution, and the date on which received. All funds of a political committee shall be segregated from, and may not be commingled with, any personal funds of officers, members or associates of such committee.

2. Recordkeeping. It shall be the duty of a treasurer or of a candidate to keep a detailed and exact account of:

- A. All contributions made to or for such candidate or committee;
- B. The identification of every person making a contribution in excess of \$10, and the date and amount thereof and, if a person's contributions in any election aggregate more than \$50, the account shall include occupation and the principal place of business, if any, and, if such person is a member of a candidate's immediate family as defined in section 1395, subsection 1, the account shall state such relationship;
- C. All expenditures made by or on behalf of such committee or candidate; and
- D. The identification of every person to whom any expenditure is made and the date and amount thereof.

3. Receipts preservation. It shall be the duty of a treasurer or of a candidate to obtain and keep a receipted bill, stating the particulars, for every expenditure made by or on behalf of a political committee or a candidate in excess of \$50 in amount, and for any such expenditure in a lesser amount if the aggregate amount of any such expenditures to the same person in any election exceeds \$50. The treasurer or candidate shall preserve all receipted bills and accounts required to be kept by this section for periods of time to be determined by the commission.

#### § 1397. Reports

1. State and county candidates. Campaign reports shall be filed with the commission by each candidate for state and county office and by the treasurer

of each political committee and by the treasurer of each county committee. However, the treasurer of a municipal committee shall not file campaign reports with the commission, but the amounts of money received and spent and the liabilities incurred by his committee shall be filed with the treasurer of the county committee, who shall forward such reports with the county committee report to the commission.

2. Federal and gubernatorial candidates; parties. The state committees of the political parties and the candidates for federal office and the treasurers of the political committees of such candidates shall file one copy of the completed report required of them by federal law with the commission on the same day as required by federal law. Candidates for Governor and the treasurers of their authorized political committees shall file a report of the same form and on the same dates as required of federal candidates by the federal law, except for the first campaign report, which shall be filed on or before April 10th of the election year and except for the final campaign report, which shall be filed not later than 45 days after the election. Such report shall contain the same information required by this chapter.

3. Reports on certain other campaigns. Any person, public utility or governmental agency which accepts contributions in an aggregate amount in excess of \$50 or makes or authorizes expenditures in an aggregate amount in excess of \$50 to initiate, promote or defeat a referendum pursuant to the Constitution, Article IV, Part 3, Section 17, or an initiative pursuant to the Constitution, Article IV, Part 3, Section 18, or to promote or defeat an amendment to the Constitution, pursuant to the Constitution, Article X, Section 4, legislation expressly conditioned upon ratification by a referendum vote, or the ratification of the issue of bonds by the State or any agency thereof shall file with the commission a report of the source, amount and date of all such contributions and expenditures at the end of every month during which such contributions are accepted or such expenditures are made or authorized for such purpose. In addition, a report shall be filed with the commission within 45 days after the date of filing of any initiative petitions or the date of any election, referred to in this subsection showing the totals of contributions and expenditures to such date. In addition, a report must be filed with the commission within 45 days after the date of any such election showing the totals of contributions and expenditures.

4. Reports by other persons. Every person, other than a candidate or a candidate's authorized political committee, who makes contributions or expenditures expressly advocating the election or defeat of a clearly identified candidate, other than by contribution to a candidate or a candidate's authorized political committee, in an aggregate amount in excess of \$50 within a calendar year shall file a report with the commission.

Such report shall contain an itemized account of each expenditure in any election of an aggregate amount of \$50 or more, the purpose of each and the name of each payee or creditor. Such report shall contain an itemized account of each contribution in any election of an aggregate amount of \$50 or more received, the name and address of each such contributor and the occupation and principal place of business, if any, of such contributor. Such report shall state



whether the contribution or expenditure is in support of or in opposition to the candidate and shall include, under penalty of perjury, a certification whether such expenditure is made in cooperation, consultation or concert with, or at the request or suggestion of, any candidate or any authorized committee or agent of such candidate.

Reports required by this subsection shall be filed on the dates on which reports by candidates are to be filed under subsection 5.

Any contribution or expenditure of \$1,000 or more, made after the 11th day and more than 48 hours before any election, shall be reported within 48 hours of such contribution or expenditure.

5. When filed. A report for a candidate for state or county office, other than that of Governor, shall be filed with the commission not later than 5 p.m. on the 7th day before the date on which an election is held and shall be complete as of the 11th day before the date of such election. Such report shall set forth the required accounts of contributions and expenditures made within 6 months immediately preceding the date of the 11th day before the date of the election. If a report has been filed for the same candidacy for a primary election in the same calendar year, such report shall set forth the required accounts of contributions and expenditures made since the date of last report on the primary election. Any contribution or expenditure of \$1,000 or more, made after the 11th day and more than 48 hours before any election, shall be reported within 48 hours of such contribution or expenditure.

In addition, a report shall be filed with the commission within 45 days after any election, showing the totals of the entire election campaign. After filing such final report, the disposition of any surplus or deficit shown on this report shall be reported to the commission every 3 months until such time as such surplus shall have been disposed of or such deficit shall have been liquidated.

6. Content. The report shall contain the itemized accounts of contributions received and the name and address of each person who has made a contribution of an aggregate amount of \$50 or more for that election. It shall contain the itemized accounts of expenditures made or authorized, the purpose of each and the name of each payee and creditor. Total contributions of less than \$500, except when contributions in any election by one person in an aggregate amount of \$50 or more are included, and total expenditures of less than \$500 need not be itemized.

7. The Secretary of State shall prepare forms for the reports required by this chapter. A person preparing such reports may use additional pages if necessary, but such pages shall be of the same size as the pages of the form.

#### § 1398. Failure to file report on time

The failure of any person required to file a report under this chapter within the time required by this chapter is a civil violation. There shall be a penalty of \$10 for each day that the report is late. The commission shall report any such failure to the Attorney General, who may enforce such violation in a civil action to collect the amount of the penalty. Such action shall be brought in

the Superior Court for the County of Kennebec or in the District Court, 7th District, Division of Southern Kennebec.

#### § 1399. Meetings

The commission shall meet in Augusta and review the reports required under this chapter within 7 days after each filing date provided in this chapter.

#### § 1400. Investigations

1. Investigations. The commission may investigate to determine the facts concerning contributions by or to and expenditures by any person or candidate. For this purpose, the commission may subpoena witnesses and records and take evidence under oath. A person who fails to obey the lawful subpoena of the commission or to testify before it under oath shall be punished by the Superior Court for contempt on application by the Attorney General on behalf of the commission.

2. Investigation requested. Any person may make written application to the commission requesting an investigation and stating the reasons for the request. The commission shall review the application and shall make the investigation if the reasons stated show sufficient grounds for believing that a violation may have occurred.

3. State Auditor; Secretary of State. The State Auditor and the Secretary of State shall assist the commission in making investigations and in other phases of the commission's duties under this chapter, as requested by the commission, and shall have all necessary powers to carry out such responsibilities.

4. Attorney General. The Attorney General shall be the counsel for the commission and may examine any witnesses before the commission. The commission shall refer any apparent violations of this chapter to the Attorney General for prosecution.

#### § 1401. Violations

No candidate or person shall knowingly accept any contribution or make any expenditure in violation of the provisions of this chapter. No officer or employee of a political committee shall knowingly accept a contribution made for the benefit or use of a candidate, or knowingly make any expenditure on behalf of a candidate, in violation of any limitation imposed on contributions and expenditures under this chapter.

No person shall make a contribution in the name of another person or knowingly permit his name to be used to effect such a contribution, and no person shall knowingly accept a contribution made by one person in the name of another person.

No candidate or person shall make a false statement in any report required by this chapter.

#### § 1402. Penalty

Any violation of any provision of this chapter for which a penalty is not otherwise provided shall be a Class E crime. The Attorney General shall prosecute any such violation.

**Sec. 2.** 21 MRSA § 1421, as enacted by PL 1975, c. 621, § 10, is repealed and the following enacted in place thereof:

**§ 1421. Jurisdiction**

The Commission on Governmental Ethics and Election Practices, established pursuant to Title 1, section 1002 and hereafter in this chapter referred to as the "commission," shall have full and final jurisdiction for the final determination of election results in primary elections for county, state or federal offices that are contested. The commission shall make findings of fact and opinion on the final determination of election results in general or special elections for county, state or federal offices that are contested.

**Sec. 3.** 21 MRSA § 1423, sub-§ 3, as enacted by PL 1975, c. 621, § 10, is repealed and the following enacted in place thereof:

**3. Reports.**

**A. Primary elections.** In cases involving primary elections, the commission shall issue a final ruling on the determination of the nomination of a candidate, certify this ruling to the Secretary of State for preparation and delivery to the Governor, and to each candidate, and shall make available to the public its findings of fact and opinion.

**B. Elections for Governor, Legislature, federal office.** In cases involving general or special elections, where the Constitution of this State or the United States Constitution provides for final determination of the election of a candidate, the commission shall transmit to the body vested with final determination powers a copy of the findings of fact and opinion.

**C. County office.** In cases involving general or special elections for county office, the commission shall transmit a copy of the findings of fact and opinion to the Secretary of State for preparation and delivery to the Governor, and to each candidate, and shall make available to the public its findings of fact and opinion. The Governor shall make the final determination in such cases, subject to the right of appeal provided in section 1212.

**D. Other offices.** In all other cases involving general or special elections, the commission shall transmit a copy of the findings of fact and opinion to the Secretary of State for preparation and delivery to the Governor, and to each candidate, and shall make available to the public its findings of fact and opinion. The Governor shall make the final determination in such other cases.

**Sec. 4.** 21 MRSA § 1575, as amended by PL 1969, c. 215, § 2, is repealed.

**Sec. 5.** 21 MRSA § 1579, sub-§§ 9, 10, 11, 12, 16, 25 and 27 are repealed.

**Emergency clause.** In view of the emergency cited in the preamble, this Act shall take effect when approved.

**STATEMENT OF FACT**

As stated in the Emergency Preamble, this new draft is necessary to bring the statutes on election finances into conformity with the U.S. Constitution,

as interpreted by the U.S. Supreme Court, in the opinion dated January 30, and by the Attorney General in ruling on the application of that opinion to Maine law.

Those rulings declared that the present overall spending limitations, the limitations on spending from personal and family funds, and the strict requirement of a candidate's written approval for any expenditure in his behalf are all violations of the First Amendment's guarantee of free speech. The new draft, therefore, removes all such provisions from the law.

The Supreme Court did allow strict reporting and disclosure requirements. The new draft strengthens the Maine law in this area, but also simplifies it for low-spending candidates. Under the bill, a candidate with expenditures of less than \$500 need not itemize on his report, unless there are individual contributions of \$50 or more within that total. Other campaigns must report in greater detail.

The preelection reporting date is changed from 45 days before the election to 7 days before the election, so that the report will be more meaningful. Other reporting dates are substantially the same.

The Supreme Court did allow limitations on contributions made to a candidate or his authorized political committee. The present Maine law contains no such limitations. The new draft establishes limitations on contributions of \$1,000 for an individual, \$5,000 for a committee, union, corporation or association and \$25,000 in total contributions to candidates in any one year.

The Supreme Court did leave a possibly huge loophole on this type of control, in that it does not allow limitations on spending on behalf of a candidate that is done without authorization. The new draft attempts to close the loophole by requiring reporting of any such spending and by clarifying what is truly independent spending.

In the new draft, as in L. D. 2183, the definitions of contributions and expenditures are clarified and expanded. A number of specific items which either are or are not included in these definitions are spelled out for greater clarification.

The new draft also limits the powers of the Commission on Governmental Ethics and Election Practices in relation to recounts, in accordance with the Attorney General's ruling on the constitutionality of the commission's powers.