

MAINE STATE LEGISLATURE

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**REPORT OF THE COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
TO THE JOINT STANDING COMMITTEE
ON LEGAL AND VETERANS AFFAIRS**

FALL 1997

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I. INTRODUCTION

During the second regular session of the 116th Legislature, the Joint Standing Committee on Legal Affairs considered L.D. 1964, "An Act to Continue Election Reform Efforts." The bill assigned to the Commission on Governmental Ethics and Election Practices the responsibility for investigating complaints of ethical propriety of State Government officials.

The Legal Affairs Committee found that although the apparent purpose of L.D. 1964 was to broaden the Commission's jurisdiction, the bill failed in two respects: 1) it did not define the term "ethical propriety," and 2) it failed to specify what state officials could be investigated. Recognizing the bill's shortcomings, the Committee created a study order asking the Commission on Governmental Ethics and Election Practices to review its current duties, to identify issues that the Commission has been asked to investigate and has not had the authority to investigate, and to make recommendations, along with proposed legislation, to clarify and, if necessary, to expand the Commission's jurisdiction. The study order, contained in P.L. 1993, ch. 583, established January 30, 1995 as the due date of the report. Later, the due date was extended to January 30, 1996.

II. BACKGROUND

L. D. 1964 was introduced following a recommendation to the Legislature of former Commission Chair Robert McArthur on behalf of the Commission calling for expansion of the Commission's authority. The recommendation was made following receipt by the Commission of a series of complaints that were outside the scope of its jurisdiction.

III. STUDY PROCEDURE

To undertake the study, the Commission formed a subcommittee comprised of three of its members, a staff member, and a graduate student from the Muskie Institute for Public Affairs. The subcommittee adopted the following study procedure:

1. A review of the Commission's current duties
2. A review of complaints the Commission has been unable to accept due to lack of jurisdiction
3. A review of the laws governing executive employees
4. A review of the laws governing other jurisdictions

To obtain information on the jurisdiction of ethics agencies nationwide, the subcommittee consulted the COGEL BLUE BOOK, a publication of the Council on Governmental Ethics Laws; and conferred directly with agency officials.

IV. CURRENT DUTIES OF THE COMMISSION

The duties of the Commission, set forth in 1 M.R.S.A. Sections 1007 and 1008, are as follows:

1. To investigate and make advisory recommendations to members of the Legislature on questions dealing with potential conflicts of interest;
2. To receive sources of income statements filed by members of the Legislature;
3. To administer and investigate violations of the requirements for campaign spending, including the provisions of the Maine Clean Election Act and the Maine Clean Election Fund;
4. To conduct an ethics seminar for each newly convened Legislature;
5. To administer the lobbyist disclosure laws; and
6. To produce and submit to the Legislature and the public an annual report of the Commission's activities.

The Commission office is the repository for the following documents:

- Campaign finance reports of state, county, gubernatorial, Congressional, and U.S. Senatorial candidates; campaign finance reports of state and federal political action committees;
- Sources of income statements of State Legislators and candidates for the Legislature;
- Financial disclosure statements of U.S. Congressional and Senatorial candidates;
- Lobbyist disclosure reports.

V. COMPLAINTS CONCERNING EXECUTIVE BRANCH EMPLOYEES

Over time, the Commission has received a number of inquiries concerning the behavior of executive employees. Examples follow. In furnishing this information, the Commission does not intend to suggest that employee wrongdoing is commonplace. The allegations span a period of several years and do not necessarily involve current employees.

A few of the allegations the Commission has been asked to investigate, but due to the absence of jurisdiction has been unable to look into, are:

- officials accepting expense-paid trips by a corporation where the corporation had an interest in a bill pending before the Legislature
- a former state agency director accepting meals from representatives of a company profiting from its relationship with the state
- a former state agency director entering into an allegedly questionable contractual relationship with the State
- a state bureau administering competitive bidding in an unfair manner
- alleged violations of the rule-making process
- employee theft
- state post-office employees selling food stamps

CONCLUSIONS: At least two of the allegations cited were investigated by the Attorney General's office whose responsibility it is to investigate criminal violations. But the Commission has observed that, too often, allegations of ethical violations are not investigated because: 1) the alleged violation does not rise to the level of a criminal act, and 2) no enforcement agency has been assigned the task of investigating civil violations by executive employees.

Allegations such as these are often accompanied by a tide of publicity and widespread speculation as to the guilt of the accused. When the incidents are not investigated, reputations may be needlessly damaged and public confidence in government diminished. The Commission believes that allegations of misbehavior should be dealt with fairly and expeditiously; that the public has a right to know when an official has violated the law; and that the official has the right to an expeditious hearing. Unethical behavior in the executive branch, beyond the purview of the current law, fosters erosion of public trust in the government; and the marked lack of accurate information revealed to the public exacerbates perceived breaches of that trust.

VI. REVIEW OF EXISTING LAWS GOVERNING EXECUTIVE EMPLOYEES

Allegations of misconduct cannot be investigated where laws are weak or nonexistent. The original draft of L.D. 1964 proposed to extend the scope of the Commission's jurisdiction to cover complaints dealing with "ethical improprieties of State Government employees." The Commission has therefore seen fit to include in this study an examination of the scope and substance of existing ethics laws governing executive employees, and to identify the strengths and weaknesses in those laws.

1. Criminal laws governing public officials:

A. The bribery and corruption laws are set forth in 17-A MRSA Sections 601 through 609 (Chapter 25). Violations of these laws are criminal offenses. The law applies to all public officials. 5 M.R.S.A Section 200-A states that "the Attorney General has exclusive responsibility for the direction of any criminal investigation of an official holding a partisan public office when the alleged crime is a violation of Chapter 25." Summarized, the bribery and corruption laws dealing with pecuniary benefit are:

- Bribery in official and political matters (Section 602)
- Improper influence (Section 603)
- Improper compensation for past actions (Section 604)
- Improper gifts to public servants (Section 605)
- Improper compensation for services (Section 606)
- Purchase of public office (Section 607)
- Official oppression (Section 608)
- Misuse of information (609)

B. Title 17, Section 3104 prohibits a "trustee, superintendent, treasurer or other person holding a place of trust in any state office or public institution of the State to be pecuniarily interested directly or indirectly in any contracts made in behalf of the State or of the institution in which he holds such place of trust." The statute further states that "any contract made in violation of that law is void." The law does not apply to purchases of the State by the Governor under authority of Title 1, Section 814.

2. Conflict of interest laws governing executive employees:

A. Two conflict of interest statutes are contained in 5 M.R.S.A Section 18. The Attorney General renders opinions on questions relating to these laws. Violators may be assessed civil penalties. The statutes apply to executive employees only. "Executive employee" is defined as follows: "the constitutional officers, the State Auditor, members of state boards and commissions as defined in Chapter 379 and compensated members of the classified or unclassified service employed by the Executive Branch.

Review of existing laws governing executive employees (continued):

It does not include: the Governor, employees of and members of the National Guard, employees of the University of Maine System, the Maine Maritime Academy and state technical colleges; employees who are employees solely by their appointment to an advisory body; members of boards listed in chapter 379, who are required by law to represent a specific interest . . . , and members of advisory boards as listed in chapter 379."

Section 18, subsection 2, relates to the "appearance of impropriety" standard; that is, the question of whether a violation occurs turns solely on whether the potential exists for the employee to obtain financial gain, not on whether such gain has actually occurred. The law regulates the conduct of executive employees by prohibiting them from participating in their official capacity in a proceeding in which the following have a direct and financial interest:

- i. the executive employee;
- ii. member of his/her immediate family;
- iii. the partner(s) of the employee;
- iv. an organization with which an executive employee is negotiating or has agreed to prospective employment;
- v. an organization in which the executive employee has a direct and substantial financial interest; or
- vi. a professional service corporation in which the executive employee is a shareholder or has a partner.

Subsection 3, subparagraphs A and B contain "revolving door" provisions; that is, they prohibit certain executive employees from leaving their positions and returning immediately to lobby their former co-workers. The laws are designed to prohibit ex-employees from seeking favorable action on behalf of private interests from the very agency associates with whom they previously worked. The law prohibits former executive employees from representing a firm before the agency or board in a proceeding following termination of the employee's employment if: (1) the state is a party or has a direct substantial interest; and (2) the particular matter was pending before the agency prior to the departure of the employee from the agency, and the matter was within the scope of the employee's responsibilities.

Subparagraph A makes the "cooling off" period one year where the issue was pending before the employee's agency at least 12 months prior to his or her termination date; and subparagraph B makes the ban permanent if the issue was pending before the employee's agency during the 12-month period immediately preceding the employee's termination.

Review of existing laws governing executive employees (continued):

- B. Scattered throughout the statutes are other conflict of interest provisions that are specific to employees of various State agencies. For instance, 9-B M.R.S.A. Section 213 prohibits the superintendent of the Bureau of Banking and its employees from serving as an officer, director, incorporator, employee, attorney or stockholder in any financial institution regulated by the Bureau; 35-A M.R.S.A. Section 109 prohibits members and employees of the Public Utilities Commission from having any official or professional connection or relation with or from holding any stock or securities in any public utility operating within the State, or from rendering a professional service against or being a member of a firm which renders service against any such public utility.
- C. 5 M.R.S.A. Section 20-A prohibits state employees from taking state property off the premises of the State for personal use or for the use of others without prior written approval of the head of the department for which that employee works.
- D. An executive order issued in 1989 establishes standards of ethics for executive employees, but institutes no enforcement procedures or civil penalties for failure to comply.

VII. CONCLUSIONS/RECOMMENDATIONS RE: STATUTES GOVERNING EXECUTIVE EMPLOYEES

The Commission finds that there is no comprehensive, consolidated code of ethics with civil penalties governing executive employees; that there are no prohibitions on the use of position for personal benefit or prohibitions on the receipt of benefits to influence official action -- core provisions in at least 28 states. The Commission believes that civil laws are far more effective in regulating the behavior of public officials than are criminal laws because of the lesser standard of proof involved in establishing guilt with respect to civil laws.

The Commission therefore recommends that strong civil statutes be enacted to supplement the criminal code. The Commission further recommends that the application of the laws be limited to members of the classified and unclassified civil service employed by the Executive Branch who are gubernatorial appointments confirmed by the Legislature; and employees listed in Title 5, Chapter 71, who serve in major policy-influencing positions, including the Governor, Assistant Attorneys General, State Auditor, and the other constitutional officers.

Conclusions/recommendations re: statutes governing executive employees (continued):

The issue of who should administer executive ethics has been a topic for review by at least two legislatively mandated study committees. In 1979, it was considered by a Joint Select Committee on Governmental Ethics and, in 1989, by a Blue Ribbon Commission established to examine ethics in State Government. The 1979 study group contemplated granting the Commission on Governmental Ethics and Election Practices authority to issue advisory opinions on questions relating to administrative ethics. But the group ultimately rejected the idea on the basis that the Commission was a "creature" of the Legislature by virtue of the Legislative appointment process; and that consequently, a separation of powers issue could arise if the Commission were assigned duties or granted powers that were executive in nature. The 1989 Blue Ribbon study group re-examined the issue and arrived at a similar conclusion.

Now, however, the appointment process has been amended under the provisions of Public Law 1997, Ch. 1, such that appointments are made by the Governor and approved by the Legislature. Thus, the Constitutional bar that once existed has effectively been removed.

In at least thirty-one states, executive branch ethics is administered by an enforcement agency such as the Commission. **It is therefore recommended that the laws governing executive employees be administered by the Commission on Governmental Ethics and Election Practices; that the Commission work closely with the Attorney General in enforcing those laws; and that the Commission be authorized to hold hearings and issue opinions on misconduct of executive branch employees to the same extent that it is authorized to do so with respect to others under its jurisdiction.**

VIII. LEGISLATIVE STAFF MISCONDUCT

The Commission finds that two claims that have gone uninvestigated by the Commission for lack of jurisdiction relate to the conduct of legislative staff. The complaints dealt with the alleged use of state equipment by legislative staff for political purposes and alleged partisan campaign activity by legislative staff during working hours.

Legislative staff are appointed and hired to positions involving a great deal of public trust. However, their actions are beyond the purview of the Commission. The Commission was formed to preserve and promote public trust in the Maine Legislature. To that end, it has jurisdiction over conflicts of interest involving members of the Legislature. Public trust in the Legislature as an institution, however, is no less damaged by legislative staff misconduct. **The Commission therefore recommends that its jurisdiction be extended to include misconduct involving legislative staff.**

IX. LEGISLATOR MISCONDUCT

On occasion, the Commission has been asked to determine whether a legislator has behaved in a manner that is violative of the public trust but is not a conflict of interest. Two of the most visible complaints received by the Commission included allegations that a member of the Legislature withheld information in connection with ballot tampering and that a legislative candidate tampered with ballots. The statutes grant the Commission jurisdiction only over conflicts of interest (1 M.R.S.A. Section 1013(1)). Consequently, even conduct grossly unbecoming a legislator is beyond the review power of the Commission. 1 M.R.S.A. Section 1008(1) states that the general duties of the Commission include: "to investigate and make advisory recommendations to the appropriate body of any apparent violations of ethical standards set by the Legislature." 1 M.R.S.A. Section 1023 requires that the Legislature adopt and publish a code of ethics for legislators and legislative employees. But, to date, the Legislature has not set ethical standards except for the conflict of interest laws.

The Commission believes that the narrow focus of its jurisdiction precludes its review of some of the most serious and damaging charges levied against the Legislature and its membership. **The Commission therefore recommends that its jurisdiction be extended to include ethical violations beyond those involving conflicts of interest.**

X. LEGISLATIVE STANDARDS OF CONDUCT

The Commission finds that, while standards of conduct are dealt with in some fashion as conflicts of interest under Title 1, Section 1014, the statute does not adequately express the importance of a legislator refraining from realizing personal financial gain through public office. **The Commission recommends that a set of enumerated rules of conduct be developed and applied to those over whom the Commission has jurisdiction. These standards, annotated with the Commission's opinions, would provide for easier, more efficient disposition of claims by the Commission and easier interpretation by those to whom the standards would apply. The standards and civil penalties for violating them could be published and known throughout state government.**

XI. CONSOLIDATION OF STATUTORY AUTHORITY

The Commission finds that it is unnecessarily confusing for the statutes administered by the Commission to be scattered throughout the Maine Statutes. The results are discrepancies in definitions; potential for misleading those attempting to comply with election, lobbyist, and ethics laws; and general untidiness. **The Commission recommends that the entire body of law concerning governmental ethics, campaign financing, and lobbying be consolidated under one title in successive sections.**

XII. RESOLVING INCONSISTENCIES

The Commission finds that certain inconsistencies in the ethics law create conflicting impressions about what is and is not acceptable. The laws regarding the gifts to public servants present a good example. The contradictory sections involving gifts are:

- Under 1 M.R.S.A. Section 1012(4) and 5 M.R.S.A. Section 19(1)(E): gifts worth \$300 or less are not gifts as a matter of law and need not be reported as such by public officials.
- Under 3 M.R.S.A. Section 317(1)(F)(G) and Section 317(G-1): lobbyists must report 1) the total amount of money spent on officials and their families during a calendar month; 2) the name(s) of officials and families on whom \$25 or more was spent in a calendar month and the amount and purpose of the expenditure; and 3) the date and a description of any event staged by the lobbyist for officials of the legislative or executive branches where the cost of the event was \$250 or more.
- Under 17-A M.R.S.A. Section 605: a public servant is guilty of a Class E crime if the public servant solicits, accepts, or agrees to accept any pecuniary benefit from a person who he or she knows is or is likely to become subject to or interested in any matter or action pending before or contemplated by himself or the governmental body with which he is affiliated. "Pecuniary benefit" does not include a meal provided by industry or special interest organizations as part of an informational program presented to a group of public servants, or a subscription to a newspaper, news magazine or other news publication.

The Commission recommends that inconsistencies in the gift laws be resolved so that there will be less confusion about what is or is not lawful conduct.

XIII. CLOSING LOOPHOLES

The Commission finds that under 1 M.R.S.A. Section 1013(2)(B), the Commission may consider only those conflict of interest complaints which relate to a current Legislature. The statute thus precludes the Commission from investigating legitimate complaints made near the end of a legislative session. The Commission finds that this loophole provides a general amnesty which effectively undermines the purpose of the Commission and the State's interest in ethical conduct by its elected officials. **The Commission recommends that its authority to consider complaints be extended to include not only the current Legislature, but the immediate previous Legislature as well.**

The Commission also finds that weaknesses in the record-keeping and reporting requirements of the campaign finance laws allow many contributions by and to political action committees to go unreported. For instance, during at least one major investigation, incomplete or inaccurate PAC records impeded the Commission's ability to ensure that contributions and expenditures were not in violation of the law. **The Commission recommends that PAC record-keeping and reporting requirements be strengthened so that the Commission will be able to discharge its duties to oversee PACs more effectively.**

XIV. MISCELLANEOUS RECOMMENDATIONS

The Commission finds that the provisions of 21-A M.R.S.A. Section 1017(5) are being interpreted in dissimilar ways. The statute requires that candidates report the occupation and "principal place of business" of any contributor of more than \$50. Some candidates construe "place of business" to mean the name of the donor's business and others interpret it as meaning the city in which the donor is employed. **The Commission recommends that the language be clarified to require that the name of the donor's employer and the employer's business address be disclosed.**

Maine law contains no prohibition against candidates using campaign funds for personal purposes. The Commission has found that such usage is prohibited at the Federal level and in all states but three. **The Commission therefore recommends that candidates and officials of political action committees be prohibited from converting campaign funds to personal use.**

Miscellaneous recommendations (continued):

The Commission finds that a number of candidates have reported the receipt of anonymous campaign contributions. The reporting laws require that candidates record the name and address of all contributors of more than \$10 and that they report the name, address, and principal place of business of any contributor of more than \$50. Thus while the law tacitly prohibits the receipt of anonymous contributions, it does not say how such funds should be disposed of once received. **The Commission therefore recommends that candidates be required to turn over anonymous contributions to the general fund of the State.**

21-A M.R.S.A. Section 1015 sets forth campaign contribution limits; however, it imposes no civil penalties on violators. **It is therefore recommended that the Commission be authorized to issue an order penalizing a person found to have violated the campaign contributions limit law; and that the penalty be equivalent to three times the amount of the unlawful contribution.**

The Commission has found that candidates and committees often under-report expenditures made by consultants on behalf of a candidate or committee. **The Commission therefore recommends that the reporting laws be clarified to require the itemization of payments made to third party vendors by consultants or other agents hired by a candidate or committee to conduct campaign business.**

1 M.R.S.A. Section 1016-A and 5 M.R.S.A. Section 19(2)(B) require that legislators and executive employees disclose on personal income statements the source of any income of \$1,000 or more derived from self-employment. The official must also name each source of income derived from self-employment that represents 10 percent of his/her income or \$1,000, whichever is greater. The purpose of the statute is to ensure disclosure of those accounts that are sufficiently lucrative to constitute a potential conflict of interest. However, because of a loophole, only those officials with businesses too small to incorporate are covered by the law. Forty states require public officials to disclose ownership in business. **It is therefore recommended that for purposes of the sources of income law, self-employment be defined as an entity in which the individual or a member of his or her immediate family, severally or in the aggregate, has a 10 percent or greater interest.**

1 M.R.S.A. Section 1016-A and 5 M.R.S.A. Section 19(2) fail in one other respect. They do not require public officials to disclose real property interests, a requirement in 37 states. **The Commission therefore recommends that officials be required to disclose real property holdings, other than the official's personal residence, located in this state in which the official or the official's immediate family holds an interest, if the individual's proportional share of the property is 10 percent or more of the outstanding shares or the property has an equity value of \$5,000 or more.**

APPENDIX



GOVERNMENTAL ETHICS
Chapter 25

1 M.S.R.A Section 1001 is amended to read:

Section 1001. State of purpose

1 1001. Statement of purpose

It is essential under the American system of representative government that the people have faith and confidence in the integrity of the election process and ~~the members of the Legislature in their public officials~~. In order to strengthen this faith and confidence ~~that the election process reflects the will of the people and that each Legislator considers and casts his vote on the enactment of laws according to the best interests of the public and his constituents~~, there is created an independent commission on governmental ethics and election practices to guard against corruption or undue influencing of the election process and against acts or the appearance of misconduct by ~~Legislators~~ public officials.

1 M.S.R.A Section 1002(2) is amended to read:

1 Section 1002(2). Qualifications

2. Qualifications. The members of the commission must be persons of recognized judgment, probity and objectivity. A person may not be appointed to this commission who is a member of the Legislature or who was a member of the previous Legislature, or who was a declared candidate for an elective county, state or federal office within 2 years prior to the appointment, or who now holds an elective county, state or federal office, or who is an officer of a political committee, party committee or political action committee.

1 M.S.R.A Section 1005 is amended to read:

1 1005. Open meetings

Notwithstanding any other provision of law, all meetings, hearings or sessions of the commission shall be open to the general public unless, by an affirmative vote of at least 3 ~~6~~ members, the commission requires the exclusion of the public.

1 M.S.R.A Section 1008 is amended to read:

1 1008. General duties

The general duties of the commission shall be:

1. ~~Legislative~~ **Governmental ethics.** To investigate and make advisory recommendations to the appropriate body of any apparent violations of the ethical standards set forth in by the Legislature the laws on governmental ethics;

2. **Election practices.** To administer and investigate any violations of the requirements for campaign reports and campaign financing, including the provisions of the Maine Clean Election Act and the Maine Clean Election Fund, and to investigate and make findings of fact and opinion on the final determination of the results, within the limits of the Constitution of Maine and the Constitution of the United States, of any contested county, state or federal election within this State;

3. **Ethics seminar.** To conduct, in conjunction with the Attorney General and the Chair of the Legislative Council or their designees, an ethics seminar for ~~Legislators~~ public officials after the general election and before the convening of the Legislature, in every even-numbered year in each calendar year. The Attorney General shall provide each ~~Legislator~~ public official with a bound compilation of the laws of this State pertaining to ~~Legislative~~ governmental ethics and conduct;

4. **Lobbyist activities.** To administer the lobbyist disclosure laws, Title 3, chapter 15;

5. **Maine Clean Election Act and Maine Clean Election Fund.** To administer and ensure the effective implementation of the Maine Clean Election Act and the Maine Clean Election Fund according to Title 21-A, chapter 14; and

6. **Enhanced monitoring; source of revenue.** To provide for enhanced monitoring and enforcement of election practices and to institute electronic submission of reports and computerized tracking of campaign, election and lobbying information under the commission's jurisdiction. Funds to support enhanced monitoring and computerized data collection must come from the commission's share of lobbyist registration fees, penalties and other revenues pursuant to Title 3, section 320 as well as other revenue sources.

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PROPOSED LEGISLATION RE: PUBLIC OFFICIALS

(The legislation covers members of the executive department as well as
Legislators and legislative staff members)

1 M.R.S.A. Sections 1011-1026, as amended, are repealed.

5 M.R.S.A. Sections 18-19, as amended, are repealed.

The following is enacted in their place.

1 Section 1031. Declaration of policy

It is declared that high moral and ethical standards among public officials are essential to the conduct of free government; that the legislature believes that a code of ethics for the guidance of public officials and state employees will help them avoid conflicts between their personal interests and their public responsibilities, will improve standards of public service and will promote and strengthen the faith and confidence of the people of this State in their government.

It is the intent of the legislature that in its operations the commission shall protect to the fullest extent possible the rights of the individuals affected.

1 Section 1032. Definitions

As used in this section, unless the context indicates otherwise, the following terms have the following meanings.

1. Anything of value. "Anything of value" means any money or property, favor, service, payment, advance, forbearance, loan, or promise of future employment. It does not include compensation and expenses paid by the state, political contributions which are reported under 21-A M.R.S.A. Ch. 13, payment for an appearance or speech that is unrelated to the person's duties as a public official, or hospitality extended for a purpose unrelated to state business by a person other than an organization.

2. Associated. "Associated," when used with reference to an organization, includes any organization in which an individual or a member of his or her immediate family is a director, officer or trustee, or owns or controls, directly or indirectly, and severally or in the aggregate, at least 10% of the outstanding equity.

3. Commission. "Commission" means the Commission on Governmental Ethics and Election Practices.

4. Constitutional officer. "Constitutional officer" means the Governor, Attorney General, Secretary of State and Treasurer of State.

5. Department. "Department" means the legislature, the University of Maine system, any authority or public corporation created and regulated by an act of the legislature, including any vocational, technical and adult education district or any constitutional office other than a judicial office.

6. Employee of another. "Employee of another" means a person in any employment position, including public or private employment, employment with a nonprofit, religious, charitable or educational organization, or any other compensated service under an expressed, implied, oral or written contract for hire, but does not include a self-employed person.

7. Gift. "Gift" means the payment or receipt of anything of value, including forgiveness of an obligation or debt, given to a person without that person providing equal or greater consideration to the giver. Gift does not include:

A. A bequest or other form of inheritance;

B. A meal if the meal is provided by industry or special interest organizations as part of an informational program presented to a group of public servants; and

C. Informational material, publications or subscriptions related to the recipient's performance of official duties.

8. Honorarium. "Honorarium" means a payment of money or anything with a monetary resale value to a public official for an appearance or a speech by the public official. Honorarium does not include reimbursement for actual and necessary travel expenses for an appearance or speech or payment for an appearance or a speech that is unrelated to the person's official capacity or duties as a public official.

9. Immediate family. "Immediate family" means:

A. An individual's spouse; and

B. An individual's relative by marriage, lineal descent or adoption who receives, directly or indirectly, more than one-half of his or her support from the individual or from whom the individual receives, directly or indirectly, more than one-half of his or her support.

10. Income. "Income" means economic gain to a person from any source, including, but not limited to, compensation for services, including fees, commissions and payments in kind; income derived from business; gains derived from dealings in property, rents and royalties; income from investments including interest, capital gains and dividends; annuities; income from life insurance and endowment contracts; pensions; income from discharge of indebtedness; distributive share of partnership income; income from an interest in an estate or trust; prizes; and grants, but does not include gifts. Income received in kind includes, but is not limited to, the transfer of property and options to buy or lease, and stock certificates. Income does not include alimony and separate maintenance payments and campaign contributions duly recorded and reported as required by 21-A M.R.S.A. Chapter 13.

11. Informational program. "Informational program" means a program offered for the sole purpose of educating public officials on a matter relating to the duties of the official.

12. Organization. "Organization" means any corporation, partnership, proprietorship, firm, enterprise, franchise, association, trust or other legal entity other than an individual or body politic.

13. Public official. "Public official" means the Governor, a member of the Legislature, an employee of the Legislature, the Clerk and Assistant Clerk of the House, the Secretary and Assistant Secretary of the Senate, a compensated member of the classified or unclassified service employed by the Executive Branch, who is appointed by the Governor and confirmed by the Legislature, or who serves in a major policy-influencing position as set forth in Ch. 71, including Assistant Attorneys General, the State Auditor, and the constitutional officers.

14. Self-employed. "Self-employed" means any person who qualifies as an independent contractor under Title 39-A, section 102, subsection 13.

1 Section 1033. Financial disclosure by public officials

1. Statement of sources of income. Each public official shall annually file with the commission a statement of specific sources of income received in the preceding calendar year. No later than one month before the statement is due, the commission shall mail or deliver forms to each public official required to file a statement of income under this subchapter, except that in the case of gubernatorial appointees, the forms must be mailed or delivered as soon as possible after the name of the nominee is made public. Forms must be prescribed and prepared by the commission. Completed statements must be sworn and notarized. The statement is a public record.

2. Time for filing. Statements shall be filed as follows:

A. Each member and each employee of the Legislature, the Clerk and Assistant Clerk of the House, and the Secretary and Assistant Secretary of the Senate shall file the statement with the commission no later than 5:00 p.m. on February 15 of each year.

B. All other public officials shall file the statement prior to the close of the 2nd week in April unless the official has filed an initial or updating report during the preceding 30 days.

C. In addition to the statement required under Paragraph B of this section, each gubernatorial appointee shall file an initial statement prior to confirmation by the Legislature.

3. Updating statement. Each public official whose income substantially changes shall file a report of that change with the commission. Such statement shall be filed within 30 days of addition, deletion or change to the information relating to the preceding year supplied under this subchapter.

4. Disclosure of public official's income. The public official filing the statement shall name and give the address of each specific source of income received as follows.

A. A public official who is an employee of another shall name each employer from whom the official derived \$1,000 or more and shall name the principal type of economic activity of the employer.

B. A public official who is employed by an organization in which the official or a member of his or her immediate family, severally or in the aggregate, has a 10 percent interest shall state the name and address of that organization, the principal type of economic activity from which the official's income is derived as a result of employment by the organization, and the principal type of economic activity of the organization. The official shall also identify each payer from which the organization received \$2,000 or more of its income for the preceding taxable year, except that if this form of disclosure is prohibited by law, rule or an established code of professional ethics the official shall only specify the principal type of economic activity from which the income is derived.

C. A public official who is an attorney-at-law shall give the name and address of his or her firm, the major areas of practice of the firm, and the major areas of practice of the official. If the public official is self-employed, he or she shall so state.

D. A public official shall list each other source of income from which the official derived \$1,000 or more, and shall name the type of income derived from each source.

5. Organizational affiliations. The public official shall disclose the identity of every organization with which the official is associated and the nature of his or her association with the organization, except that no identification need be made of:

A. Any organization which is organized and operated primarily to influence voting at an election including support for or opposition to an individual's present or future candidacy or to a present or future referendum campaign.

B. Any nonprofit organization which is formed exclusively for social purposes and any nonprofit community service organization.

C. Any organization listed under subsection 4(B).

6. Disclosure of real property. The public official shall disclose the real property located in this state in which the official or the official's immediate family holds an interest, other than the principal residence of the official or his or her immediate family, and the nature of the interest held. An official's interests in real property do not include a proportional share of interests in real property if the individual's proportional share is less than 10 percent of the outstanding shares or is less than an equity value of \$5,000.

7. Disclosure of gifts. The public official shall name the specific source of each gift that the public official receives, except that the source of a gift need not be identified if the donor is the donee's parent, grandparent, spouse, child, grandchild, brother, sister, parent-in-law, grandparent-in-law, brother-in-law, sister-in-law, uncle, aunt, great aunt, great uncle, first cousin, nephew, niece, daughter-in-law, son-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother or half sister, fiance or fiancée.

8. Disclosure of income of immediate family. The public official shall disclose the type of economic activity representing each source of income of \$1,000 or more that any member of the immediate family of the public official received.

9. Representation before state agencies. The public official shall identify each executive branch agency before which the public official has represented or assisted others for compensation.

10. Business with state agencies. The public official shall identify each executive branch agency to which the public official or the official's immediate family has sold goods or services with a value in excess of \$1,000.

1 Section 1034. Disclosure of loans

Each public official shall list on the statement of income the source of any loan of \$5,000 or more owed by the official or the official's immediate family, severally or in the aggregate and shall list the major areas of economic activity of the person who is the source.

1. Definition. For purposes of this section, "loan" does not include:

A. A credit card obligation; or

B. An educational loan made or guaranteed by a governmental entity, educational institution or nonprofit organization.

2. Supplemental reports. A public official shall make a supplementary statement to the commission of any loan received within 30 days after it is secured. The report shall identify the creditor in the manner of Section 1033(4)(A).

1 Section 1035. Reports by legislative and gubernatorial candidates

A candidate, as defined in Title 21-A, section 1, subsection 5, for the Legislature or for the office of Governor who is not required to file a report under Section 1033(2)(A) or Section 1033(2)(B) shall file a statement containing the same information required of public officials under Sections 1033 and 1034. The statement must be filed no later than 5 p.m. on the first Monday in August preceding the general election unless the candidate withdraws from the election in accordance with Title 21-A, Section 374-A, by that date.

1 Section 1036. Civil penalties; late and incomplete statements; failure to file

A public official who fails to file a statement in accordance with this subchapter may be assessed a forfeiture of \$10 for each business day the statement is filed late. A statement is not timely filed unless it substantially conforms to the requirements of this subchapter and is properly signed. The commission shall determine whether a statement substantially conforms to the requirements of this subchapter.

1 Section 1037. Preservation of sources of income statements

The commission shall preserve the sources of income statements filed with it for a period of 10 years from the date of receipt in such form as will facilitate document retention.

1 Section 1038. False statements; willful failure to file

A public official who willfully files a false statement or who willfully fails to file a statement is guilty of a Class E crime. If the commission determines that a public official has willfully filed a false statement or has willfully failed to file a statement required by this subchapter, the commission shall refer its findings of fact to the Attorney General.

1 Section 1039. Rules. The commission may adopt or amend rules to specify the reportable categories and the procedures and forms for reporting and to administer Sections 1033 through 1038 of this subchapter.

1 Section 1040. Standards of conduct

The Legislature hereby reaffirms that a public official holds a position of public trust, and any effort to realize substantial personal gain through official conduct is a violation of that trust. This section does not prevent any public official from accepting other employment or following any pursuit which in no way interferes with the full and faithful discharge of his or her duties to this State.

The Legislature further recognizes that in a representative democracy, the representatives are drawn from society and, therefore, cannot and should not be without all personal and economic interest in the decisions and policies of government; that citizens who serve as public officials retain their rights as citizens to interests of a personal or economic nature; that standards of ethical conduct for public officials need to distinguish between those minor and inconsequential conflicts that are unavoidable in a free society, and those conflicts which are substantial and material; and that public officials may need to engage in employment, professional or business activities, other than official duties, in order to support themselves or their families and to maintain a continuity of professional or business activity, or may need to maintain investments, which activities or investments do not conflict with the specific provisions of this subchapter.

1. Use of position. No public official may use his or her public position or office to obtain financial gain or anything of substantial value for the private benefit of him or herself or his or her immediate family, or for an organization with which he or she is associated.

2. Offer or receipt of anything of value prohibited. No person may offer or give to a public official, directly or indirectly, and no public official may solicit or accept from any person, directly or indirectly, anything of value if it could reasonably be expected to influence the official's vote, official actions or judgment, or could reasonably be considered as a reward for any official action or inaction on the part of the public official. This subsection does not prohibit a public official from engaging in outside employment.

3. Misuse of information. No public official may intentionally use or disclose information gained in the course of or by reason of his or her official position or activities in any way that could result in the receipt of anything of value for himself or herself, for his or her immediate family, or for any other person, if the information has not been communicated to the public or is not public information.

4. Abuse of office. No public official may use or attempt to use his or her public position to influence or gain unlawful benefits, advantages or privileges for himself, herself or others.

5. Representation before state agency or state employee. No public official may represent a person for compensation before a department or any employee thereof, except:

A. In a contested case which involves a party other than the state with interests adverse to those represented by the public official; or

B. At an open hearing; or

C. In a matter before the department of internal revenue that involves the representation of a client in connection with a tax matter.

This subsection does not apply to representation by a public official acting in his or her official capacity.

6. Contract with a governmental agency or department. No public official and no business with which a public official is associated shall enter into any contract with a state governmental agency which is to be paid in whole or in part out of governmental funds, where such a contract is normally awarded through a process of public notice and competitive bidding, unless the contract has been awarded through a process of public notice and competitive bidding.

7. Unlawful compensation. No public official may, directly or indirectly, ask for or give or receive or agree to receive any compensation, gift, reward, or gratuity from a source except the State of Maine for performing or omitting or deferring the performance of any official duty, unless otherwise authorized by law.

8. Prohibitions, former public officials.

A. No former public official, for 12 months following the date on which he or she ceases to be a public official, may, for compensation, on behalf of any person other than a governmental entity, make any formal or informal appearance before, or negotiate with, any officer, member, or employee of the state agency or quasi-state agency with which he or she was associated as a public official within 12 months prior to the date on which he or she ceased to be a public official.

B. No former public official other than a former member of the Legislature may, for 12 months following the date on which he or she ceases to be a public official, for compensation, on behalf of any person other than a governmental entity, make any formal or informal appearance before, or negotiate with, any officer or employee of a state agency or quasi-state agency in connection with any judicial or quasi-judicial proceeding, application, contract, claim, or charge which might give rise to a judicial or quasi-judicial proceeding which was under the former official's responsibility within 12 months prior to the date on which he or she ceased to be a public official.

C. No former public official other than a former member of the Legislature may, for compensation, act on behalf of any party other than the state in connection with any judicial or quasi-judicial proceeding, application, contract, claim, or charge which might give rise to a judicial or quasi-judicial proceeding in which the former official participated personally and substantially as a public official.

This section may not be construed to prohibit former public officials who are not subject to the provisions of this chapter from doing personal business with the State.

9. Code of ethics for State employees. The Legislature recognizes that all state employees should be guided by a code of ethics and thus, the Executive Director of the Department of Human Resources shall, with the commission's advice, adopt rules to implement a code of ethics for classified and unclassified state employees except public officials subject to this subchapter.

1 Section 1041. Conflict of interest prohibited

1. Conflict of interest prohibited. Except in accordance with the commission's advice under subsection 4 and except as otherwise provided in Subsections 2 and 3 of this Section, a public official may not:

A. Take any official action substantially affecting a matter in which the official, a member of his or her immediate family, or an organization with which the official is associated has a substantial financial interest.

B. Use his or her office or position in a way that produces or assists in the production of a substantial benefit, direct or indirect, for the public official, one or more members of the official's immediate family either separately or together, or an organization with which the official is associated.

2. Exceptions. When a public official is called upon to propose or to act on legislation, to promulgate a rule, or to issue a general policy, the official may, consistent with the provisions of this subchapter, participate in that action, even though the action will affect the official or one or more members of the official's immediate family or an organization with which the official is associated, as long as:

A. The official's action affects a whole class of similarly situated interests,

B. Neither the official's interest nor the interest of a business or organization with which the official is associated is significant when compared to all affected interests in the class, and

C. The action's affect on the interests of the official or of the related business or organization is neither significantly greater nor less than upon other members of the class.

3. Memberships on boards, authorities or commissions. It shall not be a conflict of interest for a Legislator to serve on a public board, authority or commission created by the Legislature so long as there is no consideration paid to the Legislator other than his actual expenses.

4. Official acts excepted. This section does not prohibit a public official from taking any action concerning the lawful payment of salaries or employee benefits or reimbursement of actual and necessary expenses, or prohibit a public official from taking official action with respect to any proposal to modify state law or the state administrative code.

5. Advisory opinions. Any public official may request of the commission an advisory opinion regarding the propriety of any matter to which the person is or may become a party; and any appointing officer, with the consent of a prospective appointee, may request of the commission an advisory opinion regarding the propriety of any matter to which the prospective appointee is or may become a party. The commission shall review a request for an advisory opinion and may advise the person making the request. Advisory opinions and requests shall be in writing. The commission's deliberations and actions upon such requests shall be in meetings not open to the public. It is prima facie evidence of intent to comply with this subchapter when a person refers a matter to the commission and abides by the commission's advisory opinion. The commission may authorize the executive director, in consultation with the Attorney General, to act in its stead in instances where delay is of substantial inconvenience or detriment to the requesting party. No member or employee of the commission may make public the identity of the individual requesting an advisory opinion or of individuals or organizations mentioned in the opinion.

A copy of the advisory opinion shall be sent to the official concerned. If the official is a Legislator, a copy of the opinion shall be sent to the presiding officer of the body of which the Legislator is a member. If the official is a legislative employee, a copy of the opinion shall be sent to the Legislative Director. Advisory opinions of other officials shall be sent to the head of the department of which the official is a member.

1 Section 1042. Campaign contributions and solicitations prohibited

Campaign contributions and solicitations prohibited. The following provisions prohibit certain campaign contributions and solicitation of campaign contributions during a legislative session. As used in this subsection, the terms "employer," "lobbyist" and "lobbyist associate" have the same meanings as in Title 3, section 312-A and the term "contribution" has the same meaning as in Title 21-A, section 1012.

1. When prohibited. The Governor, a member of the Legislature or any constitutional officer or the staff or agent of the Governor, a member of the Legislature or any constitutional officer may not intentionally solicit or accept a contribution from a lobbyist, lobbyist associate or employer during any period of time in which the Legislature is convened before final adjournment. A lobbyist, lobbyist associate or employer may not intentionally give, offer or promise a contribution to the Governor, a member of the Legislature or any constitutional officer or the staff or agent of the Governor, a member of the Legislature or any constitutional officer during any time in which the Legislature is convened before final adjournment. These prohibitions apply to direct and indirect solicitation, acceptance, giving, offering and promising, whether through a political action committee, political committee, political party or otherwise.

2. Exceptions. This subsection does not apply to:

- A. Solicitations or contributions for bona fide social events hosted for nonpartisan, charitable purposes;
- B. Solicitations or contributions relating to a special election to fill a vacancy from the time of announcement of the election until the election; and
- C. Solicitations or contributions after the deadline for filing as a candidate as provided in Title 21-A, section 335.

3. Penalty. A person who intentionally violates this subsection is subject to a civil penalty not to exceed \$1,000, payable to the State and recoverable in a civil action.

1 Section 1043. Complaints

1. Request for investigation by individuals and others. The commission shall accept from any individual, either personally or on behalf of an organization or governmental body, a sworn complaint in writing which states the name of any person alleged to have committed a violation of this subchapter and which sets forth the particulars thereof. The commission shall forward to the accused within 10 days a copy of the complaint and a general statement of the applicable statutes with respect to such sworn complaint. If the commission determines that the sworn complaint does not allege facts sufficient to constitute a violation of this subchapter, it shall dismiss the complaint and notify the complainant and the accused. If the commission determines that the sworn complaint alleges facts sufficient to constitute a violation of this chapter, it may make an investigation with respect to any alleged violation. If the commission determines that the sworn complaint was brought for harassment purposes, the commission shall so state.

2. Request for investigation by a public official. Any public official may request the commission to make an investigation of his or her own conduct or of allegations made by other persons as to his or her conduct. Such a request shall be made in writing and shall set forth in detail the reasons therefor.

3. Preliminary investigation. Following the receipt of a sworn complaint or upon the receipt of other information, whether or not under oath, that provides a reasonable basis for the belief that a violation of this subchapter has been committed or that an investigation of a possible violation is warranted, the commission may investigate the circumstances concerning the possible violation upon a majority vote of the commission. Such investigation shall be initiated by a resolution of the commission and shall state the nature and purpose of the investigation and the actions or activities to be investigated. No investigation of any person may be commenced until it has been authorized by the commission and until the person who is the subject of the investigation has been notified of the investigation pursuant to paragraph A. If the commission, during the course of an investigation, finds probable cause to believe that a violation of this subchapter has occurred, it may:

A. If no sworn complaint has been filed, make upon its own motion a sworn complaint, which shall be in writing, shall state the name of the person who is alleged to have committed a violation of this subchapter and shall set forth the particulars thereof. The commission shall forward to the accused within 10 days a copy of the complaint, a general statement of the applicable statutes with respect to such verified complaint and a specific statement enumerating the source or sources of information upon which the complaint is based.

B. If a sworn complaint has been filed and the commission finds probable cause to believe that a violation of this subchapter, other than one contained in the complaint, has occurred, it may amend the complaint, upon its own motion, to include such violations. If the complaint is so amended by the commission, a copy of the amendment shall be sent to the person complained against within 48 hours.

4. Authorization of investigation; notice. As soon as it becomes apparent to the executive director that there exists probable cause for the belief that a particular person has committed a violation of this subchapter, the executive director shall apply to the commission for a resolution authorizing the investigation and, if secured, shall mail a copy of the resolution to the alleged violator together with a notice informing the alleged violator that such person is the subject of the investigation authorized by such resolution and a general statement of the applicable statutes with respect to such investigation. Service of the notice is complete upon mailing.

5. Limitations. No action may be taken on any complaint which is filed later than 4 years after a violation of this chapter is alleged to have occurred.

6. Investigations. The commission shall have the authority, through its chairman or any member designated by him, to administer oaths, subpoena witnesses and compel the production of books, records, papers, documents, correspondence and other material and records which the commission deems relevant. The commission shall subpoena such witnesses as the complainant and the accused may request to be subpoenaed. The commission shall have the authority to order testimony to be taken by deposition before any individual who is designated by the commission and has the power to administer oaths, and, in such instances, to compel testimony and the production of evidence in the same manner as authorized by this subchapter. The State, its agencies and instrumentalities shall furnish to the commission any information, records or documents which the commission designates as being necessary for the exercise of its functions and duties. In the case of refusal of any person to obey an order or subpoena of the commission, the Superior Court, upon application of the commission, shall have jurisdiction and authority to require compliance with the order or subpoena. Any failure of any person to obey an order of the Superior Court may be punished by that court as a contempt thereof.

7. Probable cause of violation.

A. At the conclusion of its investigation, the commission shall, in preliminary written findings of fact and conclusions based thereon, make a determination of whether or not probable cause exists to believe that a violation of this subchapter has occurred. If the commission determines that no probable cause exists, it shall immediately send written notice of such determination to the accused and to the party who made the complaint. If the commission determines that there is probable cause for believing that a violation of this subchapter has been committed, its preliminary findings of fact and conclusions may contain:

(1) A recommendation for criminal prosecution which shall be referred to the Attorney General;
or

(2) An order setting a date for hearing before the commission to determine whether a violation of this chapter has occurred. Such order shall be served upon the accused. A hearing ordered under this paragraph shall be commenced within 30 days of the date it is ordered unless the accused petitions for and the commission consents to a later date. Prior to any hearing ordered under this paragraph, the accused is entitled to full discovery rights, including adverse examination of witnesses who will testify at the hearing at a reasonable time before the date of the hearing.

B. The commission shall inform the accused or his or her counsel of exculpatory evidence in its possession.

8. Hearings.

A. Any person whose conduct is under inquiry shall be accorded due process and, if requested, the right to a hearing. All witnesses shall be subject to cross-examination. Any person whose name is mentioned in an investigation or hearing and who believes that testimony has been given which adversely affects him shall have the right to testify, or at the discretion of the commission and under such circumstances as the commission shall determine to protect the rights of the public official under inquiry, to file a statement of fact under oath relating solely to the material relevant to the testimony of which he complains. Any witness at an investigation or hearing, subject to rules and regulations promulgated by the commission, shall be entitled to a copy of such testimony when the same becomes relevant to a criminal proceeding or subsequent investigation or hearings.

B. All witnesses shall be sworn. The commission may sequester witnesses as it deems necessary. The commission shall not be bound by the strict rules of evidence, but its findings and opinions must be based upon clear and convincing evidence.

C. Time periods and notices may be waived by agreement of the commission and the person whose conduct is under inquiry.

D. After the conclusion of its hearing, the commission shall as soon as practicable begin deliberations on the evidence presented at such hearing and shall then proceed to determine whether the accused has violated this chapter.

9. Findings of fact and conclusions; orders and recommendations.

If the commission determines that no violation of this subchapter has occurred, it shall immediately send written notice of such determination to the accused and to the party who made the complaint. If the commission determines that a violation of this subchapter has occurred, its findings of fact and conclusions may contain one or more of the following recommendations:

A. A recommendation may be made to the appropriate appointing authority who may censure the public official. In the case of a public official in the unclassified service other than a Legislator, the recommendation may be made to the appointing authority. In the case of a Legislator, the recommendation shall be made to the presiding officer of the body of which the Legislator is a member. That body may take whatever action it deems appropriate in accordance with the Constitution of Maine.

B. An order requiring the accused to conform his or her conduct to this subchapter.

C. An order requiring the accused to forfeit not more than \$1,000 for each violation of this chapter.

10. Confidentiality. Notwithstanding chapter 13, all complaints filed under this subchapter, including the fact that a complaint has been filed, shall be confidential until the investigation is completed and a hearing ordered. Any person, except the subject of the investigation, who knowingly breaches the confidentiality of the investigation is guilty of a Class D crime.

The records of the commission and all information received by the commission acting under this section in the course of its investigation and conduct of its affairs shall be confidential, except that evidence of information disclosed at public hearings, the commission's findings of fact and its opinions and guidelines are public records.

11. Penalties. A violation of this subchapter for which no other penalty has been prescribed is a civil violation for which a forfeiture of not more than \$1,000 may be adjudged.

This section shall not limit the application of any provisions of Title 17-A, chapter 25.

If other statutory conflict of interest provisions pertaining to any state agency, quasi-state agency or state board are more stringent than the provisions of this subchapter, the more stringent provisions shall apply.

Amendment to Title 3, Section 311 et seq.: Lobbyist Disclosure Procedures

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

3 M.R.S.A. Section 312-A, subsection 11-B is added:

Section 312-B, subsection 11-B. Pecuniary benefit

Pecuniary benefit. Pecuniary benefit means any advantage in the form of money, property, commercial interest or anything else, the primary significance of which is economic gain. It does not include

- A. Economic advantage applicable to the public generally or;
- B. A meal if the meal if provided by industry or special interest organizations as part of an informational program presented to a group of public servants if the information relates to a matter that is within the recipient's official duties; and
- C. Informational material, publications or subscriptions related to the official duties of the recipient.

3 M.R.S.A. Section 318-A is enacted to read:

Section 318-A. Prohibitions

No lobbyist or lobbyist associate and no employer of a lobbyist or lobbyist associate may furnish to any public official any pecuniary benefit except as otherwise authorized by law.

A violation of this section may result in a penalty not to exceed \$200 for each violation by the lobbyist or lobbyist associate.

Amendment to Title 21-A, Section 1001 et seq.: Campaign Reports and Finances Law

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

21-A MRSA Section 1015-B is enacted to read:

Section 1015-B. Anonymous contributions

A person shall not make to a candidate or committee and a candidate or committee shall not accept an anonymous contribution exceeding \$10. The recipient of an anonymous contribution of more than \$10 shall not keep the contribution, but shall within two days remit the contribution to the General Fund of the State, and report the action to the commission.

21-A M.R.S.A. Section 1015-C is enacted to read:

Section 1015-C. Use of campaign contributions for personal expenses

A candidate, political committee, political party, or political action committee may not use campaign funds to defray personal expenses which are unrelated to the campaign or to the office if the candidate is an office holder nor may these funds be converted to personal use. For purposes of this section, "personal expenses" means expenses that exist irrespective of the political campaign or the duties of a public servant. "Personal expenses" includes, but is not limited to:

1. Day-to-day household food items and supplies;
2. Mortgage, rent, a utility payment for the candidate's personal residence, even if part of the residence is being used by the campaign;
3. Clothing, including specialized attire for political functions, but allowing clothing of de minimis value such as T-shirts or caps imprinted with a campaign slogan;
4. Tuition payments, other than training of campaign staff to perform campaign tasks; and
5. Salary payments to the candidate's family, unless they reflect the fair market value of bona fide services rendered to the campaign.

The prohibition does not extend to the incidental personal use of campaign materials or equipment nor to an expenditure used to defray any ordinary expenses incurred in connection with an individual's duties as a holder of public office.

By rule, the commission shall determine the permissibility of other expenses on a case by case basis, including legal, meal, travel, and vehicle expenses, using the general definition of personal expenses.

Amendment to Title 21-A, Section 1001 et seq. (continued):

21-A MRSA Section 1017(5) is amended to read:

Section 1017(5). Content

5. Content. A report required under this section must contain the itemized accounts of contributions received during that report filing period, including the date a contribution was received, and the name, address, occupation, ~~principal place of business,~~ employer, business address, if any, and the amount of the contribution of each person who has made a contribution or contributions aggregating in excess of \$50. The report must contain the itemized expenditures made or authorized during the report filing period, the date and purpose of each expenditure and the name of each payee and creditor. Expenditures made on behalf of a candidate, the candidate's committee, or a party committee by any person, agency, firm, organization, or other entity employed or retained for the purposes of organizing, directing, managing or assisting the candidate, the candidate's committee, or a political party are deemed to be expenditures by the candidate or committee as if made or incurred by the candidate or committee directly. Total contributions with respect to an election of less than \$500 and total expenditures of less than \$500 need not be itemized. The report must contain a statement of any loan to a candidate by a financial institution in connection with that candidate's candidacy that is made during the period covered by the report, whether or not the loan is defined as a contribution under section 1012, subsection 2, paragraph A. Until December 31, 1992, the candidate is responsible for the timely and accurate filing of each required report. Beginning January 1, 1993, the candidate and the treasurer are jointly responsible for the timely and accurate filing of each required report.

21-A MRSA Section 1021 is enacted to read:

21-A MRSA Section 1021. Civil Offenses.

The commission may issue an order against a person found to have committed a violation of this subchapter for which no other penalty has been prescribed to pay a civil penalty:

1. Not to exceed one thousand dollars (\$1,000), except as provided in Paragraph B.
2. An amount equivalent to three (3) times the amount of an unlawful contribution or expenditure.

21-A M.R.S.A. Section 1053 is amended to read:

21-A M.R.S.A. Section 1053, subsection 8 is added:

8. Changes in registration information. Every change in the information required by this section to be reported to the commission shall be reported in the form of an amended registration within 10 days of the change.

21-A M.R.S.A. Section 1054 is repealed.

21-A M.R.S.A. Section 1056-A is repealed.

21-A M.R.S.A. Section 1057 is repealed and Section 1057-A is enacted in its place:

21-A M.R.S.A. Section 1057-A: Appointment of treasurer; record-keeping requirements

Any political action committee required to register under Section 1053 must appoint a treasurer before accepting any contributions or making any expenditures, as defined in this subchapter. The treasurer shall file all reports required under this subchapter and under 21-A M.R.S.A. Section 1019; and shall retain, for a minimum of 4 years, all records of the political action committee required to be obtained and kept under this section.

- 1. Appointment of deputy treasurer.** A political action committee may appoint a deputy treasurer to act in the absence of the treasurer. The deputy treasurer, when acting in the absence of the treasurer, has the same powers and responsibilities as the treasurer. The political action committee shall report the name and address of the deputy treasurer to the commission no later than 10 days after the appointment of the deputy treasurer.
- 2. Committee expenditures.** Only the treasurer or the deputy treasurer may make expenditures on behalf of the political action committee.
- 3. Segregated funds.** All funds of a political action committee must be segregated from, and may not be commingled with, any personal funds of the treasurer or other officer or member of the committee. Personal funds of the treasurer or other officer or member used to support the committee must be recorded and reported to the treasurer as contributions to the political action committee.
- 4. Report of contributions and expenditures.** A person who receives a contribution for the political action committee shall report the contribution to the treasurer within 5 days of the receipt of the contribution. A person who receives a contribution in excess of \$10 for the political action committee shall report to the treasurer the amount of the contribution, the name and mailing address of the person making the contribution, the date on which the contribution was received, and, if the contribution is more than \$50, the account must include the occupation, employer, and business address, if any, of the donor.
- 5. Record keeping.** The treasurer of a political action committee must keep detailed records of all contributions received and of each expenditure that the treasurer makes, as provided in this section. The treasurer shall keep a detailed and exact account of:
 - A. All contributions cash or in-kind made to the political action committee including any contributions by the treasurer, officers, agents, and members of the committee; the date and amount of each; and the name and address of each contributor of more than \$10. The account must include the aggregate amount of all contributions from each contributor for the calendar year;
 - B. The name, mailing address, occupation and business address of each person contributing more than \$50 to the committee;
 - C. All expenditures made to or on behalf of a candidate, campaign or committee;
 - D. The identity and address of each candidate, campaign or committee to whom or on whose behalf a contribution was made, and the date and amount of each such contribution.

- E. The office sought by each candidate and the district the candidate seeks to represent, for candidates which the political action committee has made an expenditure to or on behalf of; and
 - F. All expenditures made or authorized by the political action committee, the date and purpose of each expenditure, and the name of each payee and creditor.
6. **Other records to be kept.** The treasurer shall obtain and keep:
- A. A receipted bill, stating the particulars, for every expenditure made by or on behalf of the political action committee;
 - B. All cancelled checks and checks rendered in payment of obligations incurred by the committee; and
 - C. Bank statements containing a record of the committee's deposits and expenditures.

21-A M.R.S.A. Section 1060 is amended to read:

The reports must contain the following information and any additional information required by the commission to monitor the activities of political action committees. When reporting contributions and expenditures to the commission, the treasurer shall certify the completeness and accuracy of the information reported by that treasurer.

1. **Identification of candidates.** The names and mailing addresses of any candidate whom the committee supports, intends to support or seeks to defeat. The report must indicate the office that the candidate is seeking, the political party represented by the candidate, if any, the date of the contest and whether the contest is an election or a primary;

2. **Identification of committees; parties.** The names and mailing addresses of any political committee or political party supported in any way by the registrant;

3. **Identification of referendum or initiated petition.** The referendum or initiated petition which the committee supports or opposes and the names and mailing addresses of the organizations to which expenditures were made;

4. **Itemized expenditures.** The treasurer shall itemize all expenditures in cash or in-kind made by the committee ~~an itemization of expenditures~~ and the date of each expenditure made to support or oppose any candidate, campaign, political committee, political action committee, political party, referendum or initiated petition. The commission may specify the categories of expenditures and any additional information required to closely monitor the activities of political action committees;

5. **Aggregate expenditures.** An aggregation of expenditures and cumulative aggregation of expenditures to a candidate, campaign, political committee, political action committee, referendum or initiated petition;

6. Identification of contributions. The names and mailing addresses of contributors who have given more than \$50 to the political action committee after the committee has registered under section 1053, the occupation, employer, and business address, if any, of each donor, the amount contributed by each, and the date of the contribution. The information already reported as required by section 1053, subsection 7 ~~should not be duplicated;~~ must be included in the committee's first report; and

7. Other expenditures. Operational expenses and other expenditures in cash or in-kind that are not made on behalf of a candidate, committee or campaign.

21-A M.R.S.A. Section 1061 is repealed and 21-A M.R.S.A. 1061-A is enacted in its place.

21-A M.R.S.A. Section 1061-A. Dissolution of committees

1. Termination report. Whenever any political action committee determines that contributions will no longer be accepted, obligations will no longer be incurred, and no further expenditures will be made to any candidate, political committee or political party, or to initiate, support, defeat or influence in any way the outcome of a referendum, initiated petition, election or primary, and the committee has no outstanding obligations and its assets do not exceed \$50, the committee shall file a termination report with the Commission on Governmental Ethics and Election Practices. The termination report must show any contributions or expenditures made by the committee from the completion date of the previous report to the date of termination. If a termination report is not filed, the committee shall continue to file periodic reports as required in this chapter.

2. Post-campaign reports. A political action committee with a surplus or deficit in excess of \$50 shall continue to file reports, as required in this subchapter, until the surplus or deficit is eliminated.

3. Disposition of surplus. A political action committee may dispose of a surplus exceeding \$50 solely by:

- A. Pro rata distribution to the political action committee's contributors;
- B. A gift to a qualified political party within the State, including any county or municipal subdivision of such party;
- C. An unrestricted gift to the State;
- D. Contributing to one or more candidates registered under section 1013-A or qualified under sections 335 and 336 or sections 354 and 355, or to political committees established to promote the election of those candidates, provided that the amount contributed does not exceed the contribution limits established by section 1015;
- E. Repaying any loans or retiring any debts incurred to defray campaign expenses; and
- F. Making a gift to a charitable or educational organization that is not prohibited, for tax reasons, from receiving such a gift.

21-A MRSA Section 1064 is enacted to read:

21-A MRSA Section 1064. Civil Offenses.

The commission may issue an order against a person found to have committed a violation of this subchapter for which no other penalty has been prescribed to pay a civil penalty:

1. Not to exceed one thousand dollars (\$1,000), except as provided in Paragraph B.
2. An amount equivalent to three (3) times the amount of an unlawful contribution or expenditure.