
Executive Summary

After being in operation for four election years (2000 – 2006), the Maine Clean Election Act (MCEA) appears to be settling itself into the political landscape of Maine state elections. Particularly for legislative candidates, it has proven itself to be a viable option for candidates who would prefer not to finance their campaigns through private contributions or believe that the MCEA offers other advantages. Given the large changes involved in introducing a system of full public financing, surprisingly few serious administrative problems have developed since its introduction in 2000. Nevertheless, some important policy issues and unintended consequences need to be addressed, and the Commission believes additional statutory changes are necessary to safeguard the public funds spent by candidates.

Effects of Public Financing on Maine Elections

This report to the Joint Standing Committee on Legal and Veterans Affairs describes some of the effects of the Maine Clean Election Act on state elections in Maine. It also notes some positive trends even though it may be difficult to attribute these trends entirely to public financing. Overall, there are several areas in which the MCEA is proving to have a positive influence:

- encouraging first-time candidates to run for political office, including more women candidates;
- allowing more challengers to compete against incumbents in general elections;
- providing more choices to voters because of first-time candidates and a moderate increase in the number of general election candidates;
- providing a more even playing field in legislative races between incumbents and challengers and between winning and losing candidates;
- controlling the growth in spending by legislative candidates;
- sharply reducing total private contributions to legislative candidates; and
- allowing participating candidates to spend more time communicating with voters by eliminating private fundraising.

At the same time, some of the presumed goals of the MCEA have not come to pass. While the MCEA has limited the growth in spending by legislative candidates, overall spending by all sources (including political action committees and political parties) has increased. Candidates are quite critical of the growth in independent expenditures made by political action committees (PACs) and political parties. Also, it is important to remember that public financing cannot be a panacea for all ills of the electoral system. Changing the source of funding for candidates' campaigns will not, by itself, control spending by PACs and political parties, encourage more substantive discussion of issues, or increase voter interest in elections.

Issues of Administration

Independent Expenditures and Matching Funds

Under the MCEA, participating candidates receive an initial payment for each election and may qualify to receive additional matching funds depending on their opponent's fundraising and spending, and the expenditures of independent groups such as PACs and political parties. The payment of matching funds reduces the overall cost of the program by targeting public funds into those legislative districts that are most competitive.

The matching funds portion of the MCEA has presented some administrative challenges for the Commission. One ongoing issue is that the statutory definition of independent expenditure relies on the narrow standard of "express advocacy" for communications distributed to voters more than 21 days before an election. Until the final three-week period, a communication only involves an independent expenditure if it explicitly advocates a vote for or against a candidate (for example, "Vote for Jones" or "Defeat Smith"). Under this definition, a good deal of advertising and literature that obviously is intended to influence an election will not be disclosed in independent expenditure reports. This causes the public to lose out on prompt, detailed reporting of spending by PACs and political parties, and it undermines the MCEA's system of matching funds.

Candidates often raise two other critiques of independent expenditures and matching funds. The first issue is the timing of when independent expenditures are reported. PACs and political parties tend to file independent expenditure reports very close to the general election (often in the last week) with the result that candidates receive matching funds too late to spend them effectively. Also, many legislative candidates have expressed sharp disapproval with the increasing number of campaign mailings paid for by PACs and political parties. In general, the candidates dislike that they have no control over the timing or

content of these mailings. Some express that the mail sent by independent groups is crowding out the literature that the candidates have designed to communicate with voters.

Non-Compliance and Auditing

After four election cycles in which MCEA funding has been available, the Commission has found relatively few instances of wrongdoing in qualifying for public funding or in misuse of public funds. Nevertheless, these are areas that require ongoing review and improvement to protect the public's funds and confidence in the MCEA.

In 2005, the Commission made changes to its official guidelines in a number of areas after asking for public comment: car travel, food, accommodations, equipment, and post-election activities. The Commission has improved its educational efforts by publishing better guidebooks and brochures, and by reorganizing its staff so that during election years three candidate registrars are available to train candidates, answer their questions, and assist the Commission auditor in reviewing campaign finance reports. For the 2006 and 2008 elections, the Legislature approved the use of MCEA funds for two limited-time employees during the election year. These two positions have greatly assisted the Commission in providing services to the 500+ candidates in state and county elections, and have helped avoid problems and improve oversight of public funds spent.

In 2006, the Legislature clarified the records that MCEA candidates must obtain for every expenditure of \$50 or more:

- a vendor invoice or receipt stating the particular goods and services purchased, and
- a record proving that the vendor received payment, such as a canceled check or bank or credit card statement.

In 2006, the Commission embarked on a new program of auditing all gubernatorial candidates who received MCEA funds and 20% of legislative candidates who were publicly funded. For legislative candidates, this primarily involved a request by the Commission auditor for vendor invoices and bank documents. The Commission believes these audits have value in educating candidates on their record-keeping responsibilities and in deterring misuse of funds. In 2006, some of the audits were initiated too close to the general election. In future years, the Commission will time the audits differently to avoid burdening candidates during the last six weeks before the general election.

Following the 2004 elections, the Commission determined that two candidates for the Legislature who were recruited by a pair of self-described political consultants had used MCEA funds for purposes that were not related to their campaigns. These two cases were highly publicized and resulted in the assess-

ment of large penalties and orders to return public funds.

The Commission's review of 2006 candidates has not found any serious misuse of public funds to date. During its routine reviews of campaign finance reports, the Commission requested that a small number of candidates use their personal funds to reimburse their campaigns for purchases that seemed primarily personal in nature rather than campaign-related (*e.g.*, shoes, car maintenance, medical treatment for a dog bite). The candidates who made these expenditures were acting in good faith, and did not realize that the purchases were prohibited by the Commission's expenditure guidelines. They promptly reimbursed their campaigns when requested. The Commission staff also discovered two 2006 legislative candidates who apparently used larger amounts of MCEA payments as short-term loans to cover personal expenses. Even though the candidates have returned these funds to the state, the Commission staff will recommend civil penalties against the candidates because they should not have used MCEA funds for personal expenses.

In 2006, the Commission staff found two examples of campaigns that submitted false information regarding \$5 qualifying contributions. Neither of these candidates received public funds. One case involved a candidate for Governor whose application for MCEA funding included other problems. The second case involved a Senate candidate who apparently faked all of his \$5 qualifying contributions. The Office of the Maine Attorney General initiated criminal prosecution against this candidate.

While any misuse of public funds or fraud is troubling, overall it should be noted that these cases represent just a few of the more than 300 candidates who qualify for MCEA funding each election year. Almost all candidates who participate in the MCEA are conscientious in spending public funds. The Commission believes that with better education of candidates, clearer standards, and the continued cooperation of the legislative caucuses that recruit candidates, the Commission can adequately monitor and prevent problems with its current level of staffing.

Recommendations to the Legislature

In Chapter 11 of this report, the Commission makes a number of recommendations to the Legislature based on the Commission's experience in administering the MCEA program. Most of these recommendations were included in the Commission's bill, L.D. 1854, or in a rule-making conducted in January – April 2007:

- The current definition of "independent expenditure" does not cover communications to voters unless they expressly advocate the election or defeat of a candidate (*e.g.*, "Vote for Jones" or "Defeat Smith"). In 2003, the Legislature expanded the definition of independent expenditure

during the last 21 days before an election. The Commission recommends that this expanded definition should apply in the 60 days before a general election.

- In order to qualify for MCEA funding, candidates for Governor should be required to collect \$15,000 in seed money contributions (small donations of up to \$100 from individuals). The Commission believes this would increase the public's confidence that MCEA funding will only be received by gubernatorial candidates who have demonstrated significant statewide support through the qualification process.
- The Commission recommends that seed money should be permitted only from Maine residents. This is important for gubernatorial candidates as a way to demonstrate support within the state of Maine during the qualification process.
- In the 2006 elections, MCEA candidates for Governor received most of their funds for the general election in the last 25 days before the election. Candidates for Governor should receive a greater initial payment in June of the election year and less in matching funds.
- In order to decrease the potential for fraud or error in the qualification process, individuals making a \$5 qualifying contribution in cash should be required to sign the \$5 money order purchased by the candidate and submitted to the Commission. In 2008, the Commission would like to experiment with accepting \$5 qualifying contributions electronically on the Commission's website.
- The Commission recommends eliminating accelerated reports for privately financed candidates who have not raised or spent more than the initial MCEA payment received by their opponent.
- A MCEA candidate should be prohibited from paying public funds to a family member for campaign services. All services provided to a campaign by the candidate's relatives should be on a volunteer basis.
- The Commission recommends that beginning in the 2010 fiscal year, the annual transfer of \$2 million from the General Fund to the Maine Clean Election Fund should be scheduled for September 1st rather than January 1st. In election years, this would increase the amount of funds available to pay candidates in the two months before a general election.
- The MCEA requires participating candidates to keep receipts from vendors and bank records for all expenditures of \$50 or more. Candidates who wish to be reimbursed with MCEA funds

for car travel are required to keep a mileage log. In its rule-making, the Commission proposes that it be authorized to “disallow” undocumented expenditures. This could require the candidate to repay the amount of the expenditure to the state. Alternatively, the rule change would allow the Commission to assess a penalty for failing to keep required documentation.

- In 2002 and 2003, the Legislature transferred \$6,725,000 from the Maine Clean Election Fund to be used for other purposes with the understanding that it would be returned if needed. For the 2006 elections, the Legislature returned \$3,600,000. To fund the MCEA in the 2010 elections, it is likely that the Commission will need to ask for the remaining \$3,125,000 to be restored.

In addition, the Commission wishes to note three other issues for the Legislature’s consideration. The Commission has not made any recommendations in these areas:

- The Commission has received conflicting arguments about how to regard voter guides and scorecards that rate or score Legislators based on their voting records. Some groups distributing these publications regard them as purely informational and educational. In contrast, some candidates believe that these publications are intended to influence elections and that their costs should be publicly disclosed in PAC and independent expenditure reports. In its early 2007 rule-making, the Commission decided not to adopt a rule regarding this issue. It would welcome clarification by the Legislature on how these publications should be treated.
- In the 2007 session, two Legislators have submitted bills to limit the size of contributions to PACs. Limits on contributions to PACs have been adopted in other states because of a concern about undue influence by campaign contributors.
- In 2006, the Commission was asked for advice about whether assistance provided by employees of political parties and PACs to candidates constitutes a contribution to the candidates assisted. Under current law, if a PAC organized by a legislative caucus pays its employees to provide assistance to legislative candidates, those candidates have received an in-kind contribution from the PAC.

The Commission is grateful to the Legislature for its consideration of these recommendations.