



July 6, 2012

Jonathan Wayne  
Executive Director  
Commission on Governmental Ethics and Election Practices  
135 State House Station  
Augusta, ME 04333-0135

Re: Proposed Rule 2012-P10 and 2012-P11

Dear Director Wayne:

I am pleased to submit some additional comments on behalf of Maine Citizens for Clean Elections ("MCCE") regarding the "press exemption" draft approved at the May 30, 2012 meeting of the Commission.

MCCE is a nonpartisan organization that has been advocating for the full and effective implementation of the Maine Clean Election Act since it was passed in 1996. MCCE also supports effective disclosure and transparency in campaign funding as vital to our democratic process.

We continue to support the Commission's effort to codify the press exemption in its regulations. Without repeating our previous comments, we offer only a few suggestions where we have questions or concerns.

1. We do not understand the necessity of 10(b) of the draft, and we find it potentially confusing. This subparagraph relates to circumstances in which a media entity has published an item in exchange for compensation or reimbursement. Under such circumstances, there can be no doubt that an expenditure has occurred under current rules as widely understood. The expenditure consists of the money paid to reimburse the media entity. The person making the reimbursement is the person who should be expected to report the expenditure under Maine law.

We are concerned that bringing this type of transaction under the "press exemption" provision is potentially confusing and unnecessary. For a hypothetical comparison, a printing company that prints up lawn signs for a candidate does not need an exemption from the definition of "expenditure." We doubt anyone would suggest that the printing company has made an "expenditure" when the printing was merely the fulfillment of a contract for a customer. The expenditure consists of the candidate's payment for the lawn signs, and it is the candidate who must report the expenditure. The same transaction

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should be reported only once. Much the same analysis should apply to a media entity that publishes an item in exchange for compensation or reimbursement. The media entity has not made an expenditure, although it is possible that the entity that provides the reimbursement has made one, depending on other factors.

We believe this interpretation should be applied regardless of whether the media entity is paid to publish a specific item, or is more generally the recipient of financial support such as a general purpose grant. Either way, the expenditure is properly attributed to the candidate rather than the media entity.

2. We also believe that subparagraph 10(c)(ii) may be unnecessary and potentially confusing. The initial paragraph – 10(c) – already limits the criterion to cases where the candidate is the “subject of the news story, commentary, or editorial.” Thus, it seems redundant to add 10(c)(ii) to carve out the situation where the commentary or editorial is “about other candidates . . . .”

If additional clarification is needed, we would recommend amending the phrase in 10(c) to read “. . . owned or controlled by any candidate, or authorized campaign committee of the candidate, ~~who~~ whose election campaign or opponent is a subject of the news story, commentary, or editorial . . . .” This would make it quite clear that news stories, commentaries or editorials about subjects other than the race involving the owner-candidate are entitled to the press exemption. If this clarification is included in 10(c) subparagraph 10(c)(ii) should be deleted.

3. We support the interpretation of the statutory phrase “broadcast station” to apply equally to cable television operators, programmers and producers consistent with the FEC’s regulations (although it was not immediately clear how this is actually accomplished in the Draft Rule language dated May 30, 2012).

In all other respect we support the draft.

Thank you very much, and we look forward to continuing to work with you and the Commission.

Sincerely yours,



John Brautigam