

Oversight and Enforcement of Public Integrity

A state-by-state study



Maine

SYNOPSIS

Maine's unusual oversight system includes an ethics commission with limited jurisdiction and few teeth but a strong grassroots-driven system of public campaign finance. Ethics reform remains a hot issue in the state, with new measures enacted in 2013 and 2015 to tighten campaign finance regulations and require greater transparency and more public disclosures by public officials.

BACKGROUND

Maine has an idiosyncratic system of anti-corruption oversight—in some ways pioneering, in other ways lagging behind other states. Like many sparsely populated states, Maine has relatively weak ethics enforcement but also few reported corruption issues. A 2015 Monmouth University poll found Maine to be the seventh-most named state when respondents were asked which U.S. state was the least corrupt.¹

Maine has had few recent corruption scandals. In 1992, aides to the state house speaker were convicted of ballot-tampering.² In 2008 Maine's chief utilities regulator came under fire for negotiating for (and ultimately accepting) a job offer from a prominent wind power developer while still head of his agency, which was involved in regulating the business.³ In recent years, several municipal officers in small towns have been found guilty of embezzlement of public funds.⁴ In 2015, the state legislature and ethics commission opened investigations into Governor Paul LePage for threatening to withdraw funding from a local school if it did not rescind an offer of employment to the state house speaker, whom LePage considered a political opponent.⁵ A federal court dismissed the speaker's suit against the governor for retaliation, on the grounds of political immunity.⁶

Maine is a leader in public financing of electoral campaigns. In 1996, Maine voters passed a referendum that established the [Maine Clean Election Act](#), a voluntary program of full public financing of political campaigns for gubernatorial or legislative candidates. In 2015 Maine passed [another referendum](#) to expand the law by increasing funding, toughening penalties, and closing loopholes. Maine is one of only three states, along with Arizona and Connecticut, to offer full public funding to legislative candidates.

In 2013, the legislature passed "An Act to Increase Ethics and Transparency in Government Service" to amend the current laws on lobbying.⁷ The Act, in addition to expanding the definition of lobbying, prohibits employment in a position for which the salary is subject to adjustment by the Governor or a major policy-influencing position within one year of lobbying. It also included a "revolving door" rule to bar former legislators and top officials from lobbying their former colleagues for one year after they leave office.⁸ The legislature also tightened transparency and disclosure rules.⁹

A 2015 survey of state oversight and accountability by the State Integrity Investigation gave Maine a failing grade of "F" on its corruption report card and ranked it 43rd among the 50 states.¹⁰ Maine received low marks due to the weakness of its ethics enforcement offices and the lack of transparency in its budgetary

At a Glance

Population, 2017: 1,335,907

Capital: Augusta

Largest City: Portland

State Integrity Index Grade, 2015: F

State Integrity Index Ranking, 2015: 43rd best

BGA-ALPER Integrity Index Ranking, 2013: 39th best

Per Capita Ranking of Federal Public Corruption Convictions, 2003-2013: 30th highest

process and procurement decisions, among other issues. On the other hand, the state received commendation for its public campaign finance system and strong law on lobbyist disclosures.

Transparency and Civil Society

Maine's primary transparency laws are the Open Meetings Law ([M.R.S.A. Sec. 403 et seq.](#)) and Open Records Law ([M.R.S.A. Sec. 402 et seq.](#))

In 2013, the Office of Governor LePage launched [Maine Open Checkbook](#), an online database of state budget expenditures and public employee compensation. The [Maine Open Data Portal](#), launched in 2015, contains datasets related to state finances, public safety, and other issues. In its [2016 "Following the Money" report](#), the U.S. Public Interest Research Group gave Maine a "C+" grade for the state's online spending transparency. The National Institute on Money in State Politics awarded Maine a perfect score on its [2016 Contributions Disclosure Scorecard](#), favorably evaluating the state's requirements pertaining to campaign contributor information and campaign finance reports. The Sunlight Foundation's [2015 report card](#) of legislative data transparency graded the state legislature's [online portal](#) a "D," finding the interface difficult to use.

Maine has a few civil society organizations promoting transparency and accountability in government. [Maine Citizens for Clean Elections \(MCCE\)](#) continues to lead the way in promoting clean elections and demonstrating the effectiveness of its public funding system for state election candidates. In addition to working with MCCE and [Mainers for Accountable Elections](#) to successfully push for the passage of the Clean Elections Initiative in 2015, the [League of Women Voters of Maine](#) offered testimony to the state legislature in support of a law aimed at developing a consolidated code of conduct for state employees.

There are also a number of civil society groups in Maine which promote public integrity, including [Maine People's Alliance](#), [Maine Freedom of Information Coalition](#), and Common Cause Maine.

OVERSIGHT STRUCTURE

Ethics Commission

The Maine [Commission on Governmental Ethics & Election Practices](#) is the state's independent ethics agency. The Commission was created in 1976 to administer the state's campaign finance laws, the Maine Clean Election Act, and the lobbyist disclosure laws. The Commission conducts investigations, issues advisory opinions, and publishes guides for political candidates, lobbyists, and legislators. The Commission has jurisdiction over the legislature, lobbyists, and political candidates, but does not oversee the executive branch or local governments.¹¹ While several states have legislative ethics commissions, Maine is currently the only state with a legislative ethics commission but no executive ethics commission.

The bipartisan Commission consists of five members, each of whom is appointed by the Governor from shortlists prepared by the state legislative leaders, and serves up to two, three-year terms. Commissioners may not be current or former legislators or recent candidates.

The Commission is responsible for reviewing campaign filings and initiating investigations should ethics or compliance issues arise, which it may do at its own initiative.¹² The Commission is also responsible for reviewing any inquiries, requests, or complaints. Complaints may be initiated by any citizen, but may be

made only against sitting legislators and only regarding conduct that occurred less than two years prior to the time of complaint.

The Chair of the Commission is authorized to issue subpoenas in the name of the Commission and to compel the attendance of witnesses or the production of evidence. The Commission can also hold a hearing to receive testimony under oath.¹³ The Commission may not issue penalties or sanctions for ethics violations but may refer its findings to the legislative ethics committee of the chamber in question. The Commission is charged with reporting certain violations of the Governmental Ethics Law to the Attorney General or other authorities, such as the intentional filing of a false statement.¹⁴

The Commission is legally required to provide legislative ethics training in conjunction with the Attorney General and the Chair of the Legislative Council every other year.¹⁵ The Commission currently has an annual budget of roughly \$400,000 and a staff of six.

Other Oversight Institutions

Unique among the states, Maine's [Attorney General](#) is appointed by the state legislature. The duties of the office are set out in the Administrative Procedures and Services statute.¹⁶ The Attorney General has exclusive responsibility for the direction of any criminal investigation of an official holding a partisan office when the alleged crime is a violation of the bribery and corruption practices laws or may affect the official's performance in office.¹⁷ In practice, the office's [Investigation Division](#) is the primary investigative agency for public corruption cases in the state. The [Litigation Division](#) is charged with providing legal advice and representation for the state ethics commission. The [Financial Crimes and Civil Rights Division](#) (under the Criminal Division) prosecutes frauds against the state, including Election Law violations. Maine has eight elected [district attorneys](#), but unlike in most other states, they are not responsible for handling corruption offenses.

Federal corruption cases are prosecuted by the Office of the [United States Attorney for the District of Maine](#).

Maine's [Office of the State Controller](#) manages state records, monitors state accounting policies and procedures, and audits internal controls of state agencies.¹⁸ The [Office of the State Auditor](#) audits the financial statements of the state and federal programs. It also runs a fraud hotline for the reporting of suspected fraud, waste, inefficiency or abuse.¹⁹

Maine's [Judicial Responsibility and Disability Committee](#) receives and investigates complaints about members of the state judiciary. The committee operates under the [Rules of the Committee on Judicial Responsibility and Disability](#). Judicial conduct is governed by the [Maine Code of Judicial Conduct](#).

The committee is composed of seven members who serve nonrenewable six-year terms. Two are judges, two are lawyers, and three are members of the public. The committee has the authority to review complaints and then dismiss or report complaints to the [Supreme Judicial Court](#) for further action. After an initial investigation, the committee may hold closed hearings, at which witnesses may be compelled to testify and the judge under investigation is entitled to counsel. In the past, the court has issued public reprimands to or censured judges, ordered judges to forfeit money, and suspended judges for a period of time with or without pay. The committee publishes its [judicial advisory opinions](#) online.

LAWS OF PUBLIC INTEGRITY

Maine's primary public integrity laws include the Governmental Ethics Law and various provisions of the Criminal Code. Employees, including state employees, are protected from retaliation when reporting illegal acts or refusing to commit illegal acts in the course of their employment under the Maine Whistleblower Protection Act.²⁰

Governmental Ethics Law:

The Governmental Ethics Law ([Me. Rev. Stat. tit. 1, ch. 25](#)), originally enacted in 1975 and amended several times since, is divided into two subchapters. Subchapter I governs the practices and procedures of the Commission on Governmental Ethics & Election Practices. Subchapter II addresses legislative ethics, especially issues of earned income and conflicts of interest. Subchapter II provides for the Commission to receive complaints, investigate violations, and issue opinions and regulations. It also describes procedures for the Commission to set legislative disclosure requirements with respect to campaign contributions and income. The law was amended in 2013 to include new disclosure requirements.²¹

The Governmental Ethics Law acknowledges that legislators rely on income from private sources rather than their public salaries and that conflicts of interests are inevitable. Consequently, the Law requires public officers to both avoid misconduct and the appearance of misconduct.²²

Legislators may not vote on a question or attempt to influence the outcome of a question if it involves a conflict of interest, broadly defined in [section 1014\(1\)](#) to include interests both of the legislator and his or her immediate family. Conflicts fall into six main categories: direct substantial personal financial interests, receipt of gifts from interested third parties, receipt of unauthorized compensation, compensated appearance or advocacy on behalf of a third party, employment that impairs the legislator's judgment, and a unique or distinct interest in a trade or business.²³

Legislators are also prohibited from engaging in conduct that exerts undue influence and may not abuse their position or contract with a state governmental agency.²⁴ Some conduct, like receiving compensation for appearing on behalf of or advocating for a third party, falls both under the prohibitions on voting while having a conflict of interest and on undue influence.

[Section 1015](#) describes the prohibited campaign contributions and solicitations. Legislators may not intentionally solicit or accept contributions from lobbyists while the legislature is convened, with certain defined exceptions. The section carries with it a maximum \$1,000 civil penalty for intentional violations.²⁵ Legislators are required to disclose annually specific sources of income, interests, and reportable liabilities. For example, legislators must publicly identify sources of income over \$2,000, explain the nature of their employment where applicable, and report sources of income over \$2000 of any immediate family members.²⁶ Failure to file after 15 days' notice by the Commission is a civil violation penalized by a fine of \$100, or \$1,000 for a willful violation. Intentional false filing is a felony.

[Maine Rev. Stat. 1 25 §1001](#)

[Maine Rev. Stat. 1 25 §§1002-07](#)

[Maine Rev. Stat. 1 25 §§1008-09](#)

Statement of purpose

Procedures, rules, regulations for Commission on Governmental Ethics and Election Practices; meeting and reporting rules

General duties of Commission, including conducting ethics seminar for legislators; recommendations to legislature

[Maine Rev. Stat. 1 25 §§1011-21](#)

Violations of legislative ethics; prohibitions; disclosure requirements; civil penalties for failure to file or false statements

[Maine Rev. Stat. 1 25 §1022](#)

Provision for legislature to adopt disciplinary guidelines for legislators

[Maine Rev. Stat. 1 25 §1023](#)

Requirement that legislature adopt and publish a code of ethics for legislators and legislative employees

[Maine Rev. Stat. 1 25 §1024](#)

Cooling-off period after legislative term before lobbying activities

Criminal Code:

The Criminal Code ([Me. Rev. Stat. tit.17-A, ch. 25](#)) contains offenses related to bribery and corrupt practices. The law criminalizes the solicitation or acceptance of any pecuniary benefits, including gifts, in exchange for influence by public servants, officials, candidates, and voters and requires such persons to report offers to law enforcement.²⁷ Relatedly, public servants may not solicit or accept pecuniary benefits as compensation for past actions.²⁸ Public servants or party officials must report any attempts at improper influence.²⁹

The Criminal Code also includes a broad offense, official oppression, which criminalizes unauthorized actions by public servants that purport to be official acts and knowingly refraining from performing an official duty where the actor's intent is personal benefit or harm to a third party.³⁰ Finally, the Code prohibits the misuse of information by public servants.³¹ All violations are misdemeanors except for bribery, which is a felony.

[Maine Rev. Stat. 17-A 25 §602](#)

Bribery

[Maine Rev. Stat. 17-A 25 §603](#)

Improper Influence

[Maine Rev. Stat. 17-A 25 §604](#)

Improper Compensation for Past Action

[Maine Rev. Stat. 17-A 25 §605](#)

Improper Gifts

[Maine Rev. Stat. 17-A 25 §606](#)

Improper assistance with a public bid or contract

[Maine Rev. Stat. 17-A 25 §608](#)

Official Oppression

[Maine Rev. Stat. 17-A 25 §609](#)

Misuse of Information

Lobbying Regulation:

In Title 3, Chapter 15 the state of Maine sets out its lobbying regulations.

[Maine Rev. Stat. 3 §312-A](#)

Definitions of Lobbying, Indirect Lobbying, and Lobbyist

[Maine Rev. Stat. 3 §317](#)

Lobbyist Reporting Requirements

[Maine Rev. Stat. 3 §319](#)

Penalties for Failure to Report

ILLUSTRATIVE CASES

Official Oppression

State v. Allison, 1997 ME 79 (Me. 1997) [Maine Rev. Stat. 17-A 25 §608](#): The defendant was a town clerk whose duties included registering vehicles and collecting sales taxes. Her husband bought a car and

submitted the registration paperwork to his wife, who then collected taxes based on a false bill of sale that misrepresented the actual purchase price. The appellate court held that the defendant was criminally liable for knowingly registering a vehicle using information that she knew was fraudulent. Maine's highest court affirmed the decision, finding that she acted as an agent of the state and performed an inherently unauthorized act.

ANALYSIS AND CONCLUSIONS

Maine has both highs and lows when it comes to its anti-corruption systems. On the plus side is its public financing of campaigns and strong lobbyist disclosure requirements. Moreover, Maine has state laws imposing an affirmative duty to report any attempts to improperly influence, as well as a broad official oppression statute, although both statutes are misdemeanors. In the negative column is that Maine's ethics commission has a relatively narrow mandate that excludes the executive branch of state government, in addition to local government, leaving an oversight gap over these crucial levels of government. In addition, the commission lacks its own enforcement powers, and with the exception of certain delineated violations that are to be referred to the Attorney General, the commission's findings are to be referred to the legislature's own ethics body for enforcement. Self-policing bodies are not the most effective of oversight models.

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ENDNOTES:

- ¹ *National: Most Corrupt State*, New York, Monmouth University Poll Reports, April 16, 2015, https://www.monmouth.edu/polling-institute/reports/monmouthpoll_us_041615/ (last accessed March 27, 2018).
- ² Julia Bayly, *John Martin ready to resume 50-year career as force in Maine Legislature*, Bangor Daily News, January 2, 2015, <http://bangordailynews.com/2015/01/02/politics/john-martin-ready-to-resume-50-year-career-as-force-in-maine-legislature/> (last accessed March 27, 2018).
- ³ John Christie, Naomi Schalit, Lance Tapley, *Maine Falls Short on Accountability, Transparency*, Portland Press Herald, March 19, 2012, <http://www.pressherald.com/2012/03/19/maine-falls-short-on-accountability-transparency/> (last accessed March 27, 2018).
- ⁴ See, e.g.: *Bucksport clerk pleads not guilty to embezzling*, Bangor Daily News, March 22, 2008, <http://archive.bangordailynews.com/2008/03/22/bucksport-clerk-pleads-not-guilty-to-embezzling/> (last accessed November 11, 2016); Kate McCormick, *Raiding the Town Till*, Pine Tree Watchdog, December 14, 2011, available at <http://pinetreewatchdog.org/raiding-the-town-till/> (last accessed March 27, 2018).
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- ⁷ An Act to Increase Ethics and Transparency in Government Service, LD 859, HP 610 (2013).
- ⁸ See Naomi Schalit & John Christie, *LePage, lawmakers push for a passing grade in Maine*, State Integrity Blog, <https://www.publicintegrity.org/2013/07/09/12940/impact-lepage-lawmakers-push-passing-grade-maine> (last accessed March 27, 2018).
- ⁹ An Act To Improve Laws Governing Financial Disclosure by Legislators and Certain Public Employees and Public Access to Information Disclosed. LD 1001 SP 346 codified in Me. Rev. Stat. tit. 1, ch. 25 § 1016-G (2013).
- ¹⁰ Dave Sherwood, *Maine gets F grade in 2015 State Integrity Investigation*, St. Integrity Investigation, November 21, 2015, <https://www.publicintegrity.org/2015/11/09/18412/maine-gets-f-grade-2015-state-integrity-investigation> (last accessed March 27, 2018).
- ¹¹ Governmental Ethics Law, Me. Rev. Stat. tit. 1, ch. 25 §§1002–1009 (2013).
- ¹² *Id.* at §1013.
- ¹³ *Id.*
- ¹⁴ Me. Rev. Stat. tit. 1, ch. 25 § 1016-G(3)(B) (2013).
- ¹⁵ Me. Rev. Stat. tit. 1, ch. 25, § 1008(3) (2013).
- ¹⁶ Me. Rev. Stat. tit. 5, ch. 9 (2013).
- ¹⁷ *Id.* at §200-A.
- ¹⁸ See *About Us*, Office of the State Controller, <http://www.maine.gov/osc/aboutus.shtml> (last accessed March 27, 2018).
- ¹⁹ See *About Us*, Office of the State Auditor, <http://www.maine.gov/audit/> (last accessed March 27, 2018).
- ²⁰ Me. Rev. Stat. tit. 26, ch. 7 §833 (2013).
- ²¹ An Act To Improve Laws Governing Financial Disclosure by Legislators and Certain Public Employees and Public Access to Information Disclosed. LD 1001, SP 346, codified in Me. Rev. Stat. tit. 1, ch. 25 § 1016-G (2013).
- ²² ME. REV. STAT. tit. 1, ch. 25 § 1001.
- ²³ *Id.* at § 1014(1)(A)-(F).
- ²⁴ *Id.* at § 1014(2)-(4).
- ²⁵ *Id.* at § 1015.
- ²⁶ *Id.* at § 1016-G(1)(A)-(G).
- ²⁷ Me. Rev. Stat. tit. 17-A, ch. 25, §§ 602(1)(B), 605–606 (2013).
- ²⁸ *Id.* at § 604.
- ²⁹ *Id.* at § 603.
- ³⁰ *Id.* at § 608.
- ³¹ *Id.* at § 609.

CENTER FOR THE ADVANCEMENT OF PUBLIC INTEGRITY

The Center for the Advancement of Public Integrity (CAPI) is an anti-corruption resource center, the first and only of its kind to specialize in city and municipal governance.

Who Are We?

As the world continues its rapid pace of urbanization, cities are fast becoming the front line in policy innovation and development. Growing urban communities worldwide have increasingly demanded higher standards of integrity from their government officials and representatives. Rising to this mounting demand, leaders at the New York City Department of Investigation partnered with Columbia Law School in 2013 to create the center.

CAPI is an independent, non-profit resource center dedicated to bolstering municipal anti-corruption research, promoting essential tools and best practices, and cultivating a professional network to share new developments and lessons learned, both online and through regular conferences.

Our Mission:

CAPI aims to improve the capacity of public offices and practitioners to deter, identify, and combat corruption.

We work to:

- Build and support a vibrant community of leaders in the public integrity field.
- Develop tools and resources to help governments and practitioners fight corruption.
- Promote research and scholarship on important public integrity issues

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