

§1013. Authority; procedures**1. Authority.** The commission has authority:

A. To issue, on request of any Legislator on an issue involving that Legislator, or on its own motion, written advisory opinions and guidance on problems or questions involving possible violations of legislative ethics; [PL 2007, c. 642, §6 (AMD).]

B. To investigate complaints alleging a violation of legislative ethics against any Legislator, to investigate a possible violation of legislative ethics upon the commission's own motion, to hold hearings on an alleged or possible violation if the commission determines it is appropriate and to issue findings of fact together with its opinion; and [PL 2011, c. 471, §1 (AMD).]

C. To administer the disclosure of sources of income by Legislators as required by this subchapter. [PL 1975, c. 621, §1 (NEW).]

[PL 2011, c. 471, §1 (AMD).]

2. Procedure. The following procedures apply.

A. Requests for advisory opinions by members of the Legislature must be filed with the commission in writing and signed by the Legislator requesting the opinion and must contain such supporting data as the commission requires. Commission staff shall inform a Legislator upon that Legislator's request for an advisory opinion that written opinions issued by the commission are public and are submitted to the Clerk of the House and the Secretary of the Senate and entered into the legislative record. When preparing an advisory opinion on its own motion, the commission shall notify the Legislator concerned and allow the Legislator to provide additional information to the commission. In preparing an advisory opinion, either upon request or on its own motion, the commission may make such an investigation as it determines necessary. A copy of the commission's advisory opinion must be sent to the Legislator concerned and to the presiding officer of the legislative body of which the Legislator is a member. [PL 2007, c. 642, §6 (AMD).]

B. [PL 2007, c. 642, §6 (RP).]

B-1. Any person may file a complaint against a Legislator alleging a violation of legislative ethics only as described in sections 1014 and 1015-A. The complaint must be filed in writing and signed under oath and must specify the facts of the alleged violation citing the specific provisions of sections 1014 and 1015-A that are alleged to have been violated, the approximate date of the alleged violation and such other information as the commission requires. A complainant shall agree in writing not to disclose any information about the complaint during the time the commission is determining whether or not to pursue the complaint or during the investigation of a complaint. A complaint that does not meet the criteria of this paragraph is considered incomplete and will not be forwarded to the commission.

(1) The Legislator against whom a complaint is filed must immediately be given a copy of the complaint and the name of the complainant. Before deciding whether to conduct an investigation or to hold any hearings, the commission shall afford the Legislator an opportunity to answer the complaint in writing and in person to the commission. The commission staff may gather preliminary factual information that will assist the commission in deciding whether to conduct a full investigation or to hold hearings.

(2) The commission shall consider only complaints against Legislators in office at the time of the filing of the complaint and only complaints relating to activity that occurred or was ongoing within 2 years of the complaint. Upon a majority vote of the commission, the commission shall conduct an investigation and hold hearings as it determines necessary.

(3) The commission shall issue its findings of fact together with its opinion regarding the alleged violation of legislative ethics to the legislative body of which the Legislator concerned

is a member. That legislative body may take whatever action it determines appropriate, in accordance with the Constitution of Maine.

(4) If the commission determines that a Legislator has potentially violated professional standards set by a licensing board, its opinion and such other information as may be appropriate must be referred to the licensing board that oversees the Legislator's professional conduct. [PL 2019, c. 534, §2 (AMD).]

B-2. If the commission receives information other than through a complaint suggesting that a Legislator may have committed a violation of legislative ethics, the commission may commence an investigation or conduct hearings when there is probable cause to believe that a violation has occurred. The commission may consider only activities by a Legislator in office at the time of the investigation that occurred or were ongoing within 2 years of the investigation. The commission shall provide the Legislator with written notice of the possible violation and an opportunity to be heard in accordance with the requirements of paragraph B-1. The commission's consideration of the possible violation is subject to the confidentiality provisions of subsection 3-A. [PL 2011, c. 471, §3 (NEW).]

C. When the conduct of a particular Legislator is under inquiry and a hearing is to be held, the Legislator must be given written notification of the time and place at which the hearing is to be held. Such notification must be given not less than 10 days prior to the date set for the hearing. [PL 2007, c. 642, §6 (AMD).]

D. The commission has authority, through its chair or any member designated by the chair, to administer oaths, subpoena witnesses and compel the production of books, records, papers, documents, correspondence and other material and records the commission determines relevant. The State, its agencies and instrumentalities shall furnish to the commission any information, records or documents 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, has 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 contempt thereof. [PL 2007, c. 642, §6 (AMD).]

E. The commission shall adopt rules consistent with due process for the conduct of investigations and hearings under this subchapter. Rules adopted pursuant to this paragraph are major substantive rules pursuant to Title 5, chapter 375, subchapter 2-A.

The commission is not bound by the strict rules of evidence, but its findings and opinions must be based upon competent and substantial evidence. [PL 2007, c. 642, §6 (AMD).]

E-1. The commission may permit the complainant to make a presentation to the commission as part of its consideration whether to conduct an investigation or public hearing. [PL 2007, c. 642, §6 (NEW).]

F. If the commission concludes that it appears that a Legislator has violated a criminal law, a copy of its findings of fact, its opinion and such other information as may be appropriate must be referred to the Attorney General. Any determination by the commission or by a legislative body that a violation of legislative ethics has occurred does not preclude any criminal action relating to the violation that may be brought against the Legislator. [PL 2007, c. 642, §6 (AMD).]

G. If the commission determines that a complaint filed under oath is frivolous or was filed in bad faith or if the complainant fails to appear at the hearing without being excused by the commission, the commission may order the complainant to pay to the Legislator against whom the complaint has been filed that Legislator's costs of investigation and defense, including any reasonable attorney's fees. This order is considered a final agency action, and the complainant may appeal the order pursuant to the Maine Administrative Procedure Act. If the commission determines that the

complaint was filed in bad faith, the commission shall refer the case to the Attorney General for investigation.

Such an order does not preclude any other remedy available to the Legislator against whom the complaint has been filed, including, but not limited to, an action brought in Superior Court against the complainant for damages to the Legislator's reputation. [PL 2007, c. 642, §6 (AMD).]

H. The commission shall file with the Clerk of the House and the Secretary of the Senate a copy of written advisory opinions and guidance issued by the commission that were formally requested by a Legislator and that were considered by the commission at a public meeting, with such deletions and changes as the commission considers necessary to protect the identity of the person seeking the opinions or others. The Clerk of the House shall keep a copy of such opinions and guidance in a special binder and shall finally publish them in the Legislative Record. The commission may exempt an opinion or a part of an opinion from release, publication or inspection if it considers such action appropriate for the protection of 3rd parties and makes available to the public an explanatory statement to that effect. [PL 2007, c. 642, §6 (AMD).]

I. A copy of the commission's findings of fact and opinions regarding complaints against Legislators must also be filed with the Clerk of the House and the Secretary of the Senate. The Clerk of the House shall keep them in a special binder and shall finally publish them in the Legislative Record. [PL 2007, c. 642, §6 (AMD).]

J. [PL 2007, c. 642, §6 (RP).]

K. When a Legislator has a question or problem of an emergency nature about a possible violation of legislative ethics or an issue involving that Legislator that arises during the course of legislative action, the Legislator may request an advisory opinion from the presiding officer of the legislative body of which the Legislator is a member. The presiding officer may issue an advisory opinion. An advisory opinion issued by the presiding officer must be in accordance with the principles of this subchapter, be in writing and be reported to the commission. The commission may then issue a further opinion on the matter. The presiding officer may refer such a question or problem directly to the commission, which shall meet as soon as possible to consider the question or problem. [PL 2007, c. 642, §6 (AMD).]

L. The commission shall make reasonable efforts to resolve a complaint within 90 days of its filing. [PL 2007, c. 642, §6 (NEW).]
[PL 2019, c. 534, §2 (AMD).]

3. Confidentiality.

[PL 2007, c. 642, §6 (RP).]

3-A. Confidentiality of records and proceedings relating to screening complaints alleging a violation of legislative ethics. Notwithstanding chapter 13, a complaint alleging a violation of legislative ethics is confidential and is not a public record until after the commission has voted pursuant to subsection 2, paragraph B-1 to pursue the complaint, and a commission proceeding to determine whether to pursue a complaint must be conducted in executive session. If the commission does not vote to pursue the complaint, the complaint and records relating to the investigation of that complaint remain confidential and are not public records unless the Legislator against whom the complaint is made submits a written request that the complaint and all accompanying materials be made public. This subsection does not prohibit a complainant from disclosing information that the complainant provided to the commission as part of the complaint or investigation once the commission has determined not to pursue the complaint or the investigation of a complaint is complete. This subsection does not prevent the commission from including general information about complaints in any report to the Legislature. Any person who knowingly breaches the confidentiality of a complaint investigation commits a Class D crime. This subsection does not prevent commission staff from disclosing information to a person from whom the commission is seeking information or evidence relevant to the

complaint that is necessary to investigate the complaint or prevent the complainant or the Legislator against whom the complaint is made from discussing the complaint with an attorney or other person assisting them with the complaint. The commission or commission staff shall inform any person with whom they communicate of the requirement to keep any information regarding the complaint investigation confidential.

[PL 2007, c. 642, §6 (NEW).]

4. Confidentiality of records other than complaints. Commission records other than complaints are governed by this subsection.

A. Investigative records relating to complaints that the commission has voted to pursue are confidential unless they are provided to commission members or otherwise distributed at a public hearing of the commission. [PL 2007, c. 642, §6 (NEW).]

B. Legislators' statements of sources of income are public records. [PL 2007, c. 642, §6 (NEW).]

C. Findings of fact and recommendations of the commission on complaints alleging violation of legislative ethics are public records. [PL 2007, c. 642, §6 (NEW).]

D. Advisory opinions of the commission and requests for advisory opinions from the commission are public records, except as provided in subsection 2, paragraph H. [PL 2007, c. 642, §6 (NEW).]

[PL 2007, c. 642, §6 (NEW).]

5. Prohibited communications. Communications concerning a complaint filed under this section between commission members and a complainant or between commission members and the subject of a complaint are prohibited until after the commission has voted not to pursue a complaint or the commission has taken final action on the complaint.

[PL 2007, c. 642, §6 (NEW).]

SECTION HISTORY

PL 1975, c. 621, §1 (NEW). PL 1977, c. 252, §2 (AMD). PL 1989, c. 561, §§5,6 (AMD). PL 2007, c. 642, §6 (AMD). PL 2011, c. 471, §§1-3 (AMD). PL 2019, c. 534, §2 (AMD).

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