

Agenda

Item #7



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

To: Commissioners
From: Jonathan Wayne, Executive Director
Date: January 14, 2015
Re: Request for Waiver of Late-Filing Penalty by Owen Hill

Owen Hill was a 2014 candidate for Maine Senate, District 28 from Portland. He was not elected to the Senate. On October 24, 2014, he made an expenditure of \$1,273.36 for telephone communications to voters or a voter list with phone numbers (the reporting is unclear). He was required to report the payment in a 24-Hour Report, but did not. The preliminary penalty for the late report is \$662.14.

LEGAL REQUIREMENTS

Candidates are required to report any single contribution received or single expenditure made of \$1,000 or more during the 13 days before an election within 24 hours of that transaction. (21-A M.R.S.A. § 1017(3-A)(C)) If the candidate is late in filing a report, the amount of the penalty is set by a formula which takes into consideration a percentage of the total contributions or expenditures, whichever is greater, the number of prior violations within a two-year period, and the number of days the report is late. (21-A M.R.S.A. § 1020-A)(4-A))

DISCUSSION

Mr. Hill made the following expenditure in the last 13 days before the November 4, 2014 general election:

Date	Payee	Remark	Amount
10/24/2014	Relevate Group	Phone Number Append	\$1,273.36

He was required to report the expenditure prior to the November 4, 2014 general election in a 24-Hour Report, but did not. Based on the statutory formula, the preliminary penalty for the late-filed 24-Hour Report is \$662.14:

Report	Deadline	Financial Activity	Penalty Rate	Days Late	Preliminary Penalty
24-Hour Report	10/25/2014	\$1,273.36	1%	52	\$662.14

Mr. Hill requests a waiver because:

- The violation was an honest mistake, which occurred due to inexperience and poor communication with a campaign contractor.
- He notes that he was in full compliance in filing three other 24-Hour Reports on time. (Staff note: Mr. Hill did file three other 24-Hour Reports before the election, which appear to be on time.) This demonstrates his full intention to comply with the reporting requirements.
- He states that he commissioned a campaign contractor to purchase a phone-matched voter list on October 19th. He says that he expected the cost to be less than \$1,000. The lines of communication with the contractor were poor and there was confusion regarding the submission of the final invoice. Because he was not expecting a 24-Hour Report to be necessary, he did not address the confusion as quickly as he would have otherwise.
- Mr. Hill was a first-time candidate.
- He also requests leniency because of his personal finances. The fine of \$662.14 represents nearly half of his monthly income for his full time employment. The preliminary penalty would represent a barrier to other people like him running for office.
- The failure to file the 24-hour Report did not affect the outcome of his race. His opponent (Hon. Anne Haskell) won handily, as seemed likely from the start.

STAFF RECOMMENDATION

24-Hour Reports provide the public with important information concerning last-minute financial activity to influence an election. The information is also valuable to opposing candidates and political groups. Because the Maine Legislature has required the disclosure of this information, harm to the public should be presumed even if the harm is difficult to measure.

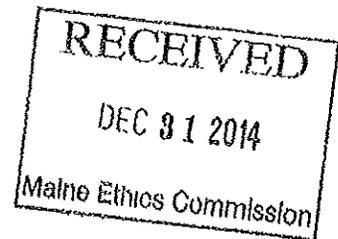
The Maine Legislature has authorized the Commission to waive a preliminary penalty, if it is disproportionate to the harm to the public from the late disclosure, the level of experience of the campaign, and the size of the candidate's campaign.

The Commission staff does find that the preliminary penalty of \$662.14 is disproportionate. The staff recommends granting a partial waiver of the penalty and reducing it to \$100. We distinguish this matter from the \$200 penalties recommended for late 24-Hour Reports penalties filed William DeSena (Jan. 23 agenda) and Donnie Smith (Dec. 22 agenda) because:

- Mr. Hill did file three other 24-Hour Reports on time prior to the November 4, 2014 general election, demonstrating an understanding of the requirement and intention to file on time (two filed on 10/24/2014, one filed on 11/3/2014).
- Mr. Hill has offered a plausible explanation that the late filing was due to poor communication and invoicing from his telephone contractor. While we cannot vouch for the accuracy of the explanation, we are aware of no information to the contrary concerning the cause of the late filing.

Thank you for your consideration of this memo.

State of Maine
Commission on Governmental Ethics and Election Practices
135 State House Station
Augusta, Maine, 04333



Re: Notice of Violation and Penalty for Late-Filed 24-Hour Report

To whom it may concern,

I am writing today to ask for a reduction or elimination of the fine leveled against me on December 22nd, 2014 for my failure to comply with a filing deadline during the 24-hour reporting period. I believe that this fine should be reduced or eliminated not because I am not in violation of this offense, which I am, but because this violation was an honest mistake based on inexperience and poor communication with a campaign contractor.

First, I would like to note my full compliance with all other necessary 24-report deadlines. I believe that this demonstrates my full intention to comply with the rules and regulations set forth by the Ethics Commission for a Clean Elections Candidate. This violation was an aberration, not in keeping with the spirit of my campaign.

Second, I would like to review the poor communication that led to the missed deadline. I commissioned a campaign contractor to purchase a phone-matched voter list on October 19th. In doing so I approved a budget of anything under \$1000 for the expense, though I expected the final cost to be less. Moreover, my lines of communication with my contractor were poor and there was confusion regarding the submission of the final invoice. Because I was not expecting a 24-report to be necessary I did not address this confusion as immediately as I would have otherwise.

Third, I want to ask for leniency based on two factors: my inexperience and my own personal finances. I ran my campaign as a first-time candidate and a working-class candidate. I ran on working-class issues not only because they are popular issues but because they affect me personally. A fine of \$662.14 would represent nearly half of my monthly income even as a full-time worker. Moreover, it would represent a barrier to other people like myself—first-time candidates from working-class backgrounds—from fully participating in our democracy. Indeed, those like myself are the ones most in need of support from Maine's Clean Election Fund *and* the ones most prone to making honest mistakes like I have.

Finally, I hope it is worth consideration that this mistake in no way affected the outcome of my race. My opponent won handily as seemed likely from the start.

Sincerely

A handwritten signature in black ink, appearing to be "Owen Hill", written in a cursive style.

Owen Hill

BH



Commission on Governmental Ethics and Election Practices
Mail: 135 State House Station, Augusta, Maine 04333
Office: 45 Memorial Circle, Augusta, Maine
Website: www.maine.gov/ethics
Phone: 207-287-4179
Fax: 207-287-6775

24-HOUR REPORT OF CONTRIBUTIONS AND EXPENDITURES

2014 CAMPAIGN YEAR

COMMITTEE		TREASURER	
OWEN T HILL 29 EAST LAWN ROAD PORTLAND, ME 04103 PHONE: (207) 756-4345 EMAIL: ELECTOWENFORME@GMAIL.COM		ANTHONY M ZELI 795 CONGRESS ST PORTLAND, ME 04102 PHONE: (207) 347-0081 EMAIL: ZELICONSULTING@GMAIL.COM	
REPORT	DUE DATE	REPORTING PERIOD	
24 Hour Report of Major Contributions and Expenditures	10/25/2014	10/24/2014 - 10/24/2014	

FINANCIAL ACTIVITY SUMMARY

CONTRIBUTIONS AND EXPENDITURES	
1. TOTAL CONTRIBUTIONS / LOANS	\$0.00
2. TOTAL EXPENDITURES	\$1,273.36
3. TOTAL DEBTS	\$0.00

I, ANTHONY ZELI, CERTIFY THAT THE INFORMATION CONTAINED IN THIS REPORT IS TRUE, ACCURATE, AND COMPLETE TO THE BEST OF MY KNOWLEDGE.

REPORT FILED BY: ANTHONY ZELI
REPORT FILED ON: 12/16/2014
LAST MODIFIED: 12/16/2014
PRINTED: 01/09/2015
COMMITTEE ID: 7978

24-HOUR EXPENDITURE AND PAYEE INFORMATION

EXPENDITURE TYPES				
CNS	Campaign consultants	POL	Polling and survey research	
CON	Contribution to other candidate, party, committee	POS	Postage for U.S. Mail and mail box fees	
EQP	Equipment (office machines, furniture, cell phones, etc.)	PRO	Other professional services	
FND	Fundraising events	PRT	Print media ads only (newspapers, magazines, etc.)	
FOD	Food for campaign events, volunteers	RAD	Radio ads, production costs	
LIT	Print and graphics (flyers, signs, palmcards, t-shirts, etc.)	SAL	Campaign workers' salaries and personnel costs	
MHS	Mail house (all services purchased)	TRV	Travel (fuel, mileage, lodging, etc.)	
OFF	Office rent, utilities, phone and internet services, supplies	TVN	TV or cable ads, production costs	
OTH	Other	WEB	Website design, registration, hosting, maintenance, etc.	
PHO	Phone banks, automated telephone calls			
DATE OF EXPENDITURE	PAYEE	REMARK	TYPE	AMOUNT
10/24/2014	RELEVATE GROUP 6883 COMMERCIAL DRIVE SPRINGFIELD, VA 22159	PHONE NUMBER APPEND	PHO	\$1,273.36
TOTAL EXPENDITURES FOR CANDIDATE:				\$1,273.36

21-A MRS § 1020-A. FAILURE TO FILE ON TIME

1. Registration. A candidate that fails to register the name of a candidate, treasurer or political committee with the commission within the time allowed by section 1013-A, subsection 1 may be assessed a forfeiture of \$10. The commission shall determine whether a registration satisfies the requirements for timely filing under section 1013-A, subsection 1.

2. Campaign finance reports. A campaign finance report is not timely filed unless a properly signed or electronically submitted copy of the report, substantially conforming to the disclosure requirements of this subchapter, is received by the commission by 11:59 p.m. on the date it is due. Except as provided in subsection 7, the commission shall determine whether a report satisfies the requirements for timely filing. The commission may waive a penalty in whole or in part if the commission determines that the penalty is disproportionate to the size of the candidate's campaign, the level of experience of the candidate, treasurer or campaign staff or the harm suffered by the public from the late disclosure. The commission may waive the penalty in whole or in part if the commission determines the failure to file a timely report was due to mitigating circumstances. For purposes of this section, "mitigating circumstances" means:

- A. A valid emergency determined by the commission, in the interest of the sound administration of justice, to warrant the waiver of the penalty in whole or in part; [1999, c. 729, §5 (AMD).]
- B. An error by the commission staff; [1999, c. 729, §5 (AMD).]
- C. Failure to receive notice of the filing deadline; or [1999, c. 729, §5 (AMD).]
- D. Other circumstances determined by the commission that warrant mitigation of the penalty, based upon relevant evidence presented that a bona fide effort was made to file the report in accordance with the statutory requirements, including, but not limited to, unexplained delays in postal service or interruptions in Internet service. [2009, c. 190, Pt. A, §13 (AMD).]

3. Municipal campaign finance reports. Municipal campaign finance reports must be filed, subject to all the provisions of this subchapter, with the municipal clerk on forms prescribed by the Commission on Governmental Ethics and Election Practices. The municipal clerk shall send any notice of lateness required by subsection 6 and shall notify the commission of any late reports subject to a penalty.

4. Basis for penalties.

[2001, c. 470, §7 (AMD); T. 21-A, §1020-A, sub-§4 (RP) .]

4-A. Basis for penalties. The penalty for late filing of a report required under this subchapter is a percentage of the total contributions or expenditures for the filing



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

COPY

December 22, 2014

Mr. Owen Hill
29 East Lawn Road
Portland, Maine 04103

Re: Notice of Violation and Penalty for Late-Filed 24-Hour Report

Dear Mr. Hill:

You were required to file a 24-Hour Report on 10/25/2014 by 11:59 p.m., but the report was not filed until 12/16/2014. Under the Commission's statutes (21-A M.R.S.A. § 1020-A(4-A)) the late filing of a report triggers an enforcement process. The Commission staff has made a preliminary finding of violation and determined that the preliminary penalty for filing the report late is \$662.14. Please see the next page for the penalty calculation.

You may request that the Commission waive the penalty in whole or in part or find that there was no violation. The request must be made within 14 calendar days of your receipt of this notice. The request must be in writing and contain a full explanation of the reasons the report was filed late. Upon receiving your request, the Commission staff will schedule your request to be heard at an upcoming Commission meeting. You or your designee will have an opportunity to be heard at the meeting or you may submit a sworn statement to the Commission explaining the mitigating circumstances for its consideration.

The Commission may waive or reduce the penalty or find that there was no violation if it determines that the report was late due to mitigating circumstances, which are defined as (1) a valid emergency; (2) an error made by the Commission staff; or (3) relevant evidence that a bona fide effort was made to file the report on time. The Commission may also consider whether the penalty is disproportionate to the level of experience of the person filing the report or the harm to the public caused by the late disclosure.

The staff requests that you pay the preliminary penalty within 14 days of the date of your receipt of this notice if you do not intend to request a waiver. Please use the payment statement on the next page when paying by mail. You may also make a payment online at www.maine.gov/ethics by clicking the "Penalty Payment" link. Please contact the Commission staff at (207) 287-4179 or ethics@maine.gov if you have any questions.

Sincerely,

Emma Burke
Candidate Registrar

cc: Mr. Anthony Zeli

OFFICE LOCATED AT: 45 MEMORIAL CIRCLE, AUGUSTA, MAINE
WEBSITE: WWW.MAINE.GOV/ETHICS

PHONE: (207) 287-4179

FAX: (207) 287-6775

PENALTY CALCULATION

The penalty for filing a campaign finance report late is based on a percentage of the total contributions or expenditures for the reporting period, whichever is greater, multiplied by the number of days late. The percentage is based on your history of past violations: 1% for the first violation, 3% for the second violation, and 5% for the third and each subsequent violation. Violations for late-filed reports accumulate in the two-year period beginning on January 1st of each even-numbered year. A penalty accrues daily beginning on the day following the filing due date. Any penalty of less than \$10 is automatically waived.

HOW YOUR PENALTY WAS CALCULATED

Filer: Owen Hill			
Late-Filed Report: 24-Hour Report			
Contributions	\$0	Penalty Base Amount	\$1,273.36
Expenditures	\$1,273.36	Percentage	1%
Due Date	10/25/2014	Daily Accrual Rate	\$12.73
Date Filed	12/16/2014	Days Late	52
Previous Violations	0	Your Total Penalty	\$662.14

PAYMENT STATEMENT AND PAYMENT OPTIONS

From: Owen Hill

Penalty Amount: \$662.14

Penalty ID: N/A

Amount Enclosed: _____

Check/M.O. #: _____

BY MAIL: Enclose this payment statement with your payment so that it will be properly accounted for.

Please make check or money order payable to: Treasurer, State of Maine

Mail to: Maine Ethics Commission
135 State House Station
Augusta, Maine 04333-0135

ONLINE: Go to www.maine.gov/online/ethics/penalties. Please include the penalty ID so that your payment will be properly accounted for.