



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

Commission Meeting 07/20/2016
Additional Material - Agenda Item #2

To: Commissioners
From: Jonathan Wayne, Executive Director
Date: July 19, 2016
Re: Possible Finding of Violation or Financial Penalty – Diane Russell’s Email List

This memo is intended to convey some options for you, if you conclude that the State Senate campaign of Diane Russell should have reported its receipt of an email list from the candidate as an in-kind contribution and that a civil penalty would be appropriate for purposes of consistency or to deter similar omissions in the future. At this time, it is difficult to offer a recommendation when we do not know the value of the in-kind contribution. Also, the staff does not know what degree of negligence (if any) you feel was involved in the failure to include the email list in the 1/15/2016 report.

Potential finding of violation. You could find that the failure to report the email list as an in-kind contribution was a violation of 21-A M.R.S.A. § 1017(5), which requires that campaign finance reports contain all contributions received by a candidate during the time period covered by the report:

Content. A report required under this section must contain the itemized accounts of contributions received during that report filing period, including the date a contribution was received, and the name, address, occupation, principal place of business, if any, and the amount of the contribution of each person who has made a contribution or contributions aggregating in excess of \$50. . . .

Discretion to assess a monetary penalty. If you would like to consider whether to assess a penalty, you probably would have the discretion to do this (depending on the magnitude of the under-reporting).

The Election Law does not contain a penalty that specifically applies when a candidate omits a contribution or expenditure from a campaign finance report. Nevertheless, the Commission may consider a report to be late when it is not substantially complete. (“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.”) (21-A M.R.S.A. § 1020-A(2))

The report filed by Rep. Russell on January 15, 2016 contained the following total activity:

	January 2016 Semiannual
Date Range	07/01/2015 – 12/31/2015
Cash Contributions	\$2,536.75
Other Cash Receipts	\$0.00
In-Kind Contributions	\$0.00
Expenditures	\$383.48
Debts	\$0.00

In this context, a report that omitted an in-kind contribution worth at least \$1,000 could be viewed as substantially non-confirming.

During 2014 to the present, the Commission staff has been more active than in previous years in viewing campaign finance reports to be late because they were not substantially complete when originally filed. This has been facilitated by our move to a new e-filing system that has helped us identify significant amendments of reports. Attached to this memo are a number of decisions by the Commission on requests for waivers of late-filing penalties, when incomplete reports were filed.

It is not required that you assess a civil penalty. It is a matter for your discretion, if you view the 1/15/2016 report as not substantially compliant. You may feel that a penalty is unnecessary because it was an easy mistake for the candidate not to recognize that contact information for like-minded political activists that she has personally cultivated through a free service (MoveOn.org) was an in-kind contribution, as she has argued.¹

Thank you for your consideration of this memo.

¹ She characterizes this as an “inadvertent oversight [that] stemmed from the fact that most candidates aren’t used to considering something that they themselves own as an asset to be disclosed – even when they are careful about and aware of in-kind gifts from others.” (July 8 Response, at 5)

Late Filing-Penalties for Incomplete Campaign Finance Reports (2014-16)

(The originally filed reports were viewed as late due to incomplete financial reporting. The filer requested a waiver of the preliminary penalty for the late filing.)

Candidates

Late Filer	Financial Activity Missing in Original Report(s)	Preliminary Penalty	Final Penalty (after waiver)
Dillon Bates	\$873.42	\$5,119.70	\$150.00
John Cleveland	\$8,787.01	\$5,000.00	\$250.00
James Gillway	\$3,177.40	\$1,777.85	\$100.00
Roger Hicks	\$369.25	\$44.28	\$44.28
John Michael	\$1,000.00	\$1,911.00	\$150.00
Amy Volk	\$3,270.00	\$3,413.89	\$100.00
Michael Phillips*	\$700.00	\$1,771.92	\$500.00
Lisa Willey*	\$3,588.53	\$16,587.33	\$600.00

*The amount of the penalty for Lisa Willey is higher because of her gross dereliction in reporting her expenditures of Maine Clean Election Act funds. (She failed to report any of her actual expenditures prior to the election. At most, one was reported correctly.) Michael Phillips' penalty is higher because of his non-responsiveness in seeking a reduction of the \$1,771.92 penalty.

BQC/PAC/Party Committee

Late Filer	Financial Activity Missing in Original Report(s)	Preliminary Penalty	Final Penalty (after waiver)
ABC & D PAC	\$12,500.00	\$21,764.42	\$750.00
ABC & D PAC	\$18,468.75	\$10,000.00	\$750.00
Senate Democratic Campaign Committee PAC	\$21,610.00	\$14,347.40	\$500.00
The Committee to Rebuild Maine's Middle Class PAC	\$10,256.31	\$5,435.68	\$500.00
AFL-CIO Political Education PAC	\$40,000.00	\$10,000.00	\$1,000.00
Maine Truck PAC	\$15,520.00	\$30,000.00	\$1,500.00
Campaign for Maine PAC	\$25,000.00	\$10,000.00	\$1,900.00
Working Families PAC	\$1,235.00	\$10,000.00	\$2,000.00