

Agenda

Item # 1 1



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

To: Commissioners

From: Benjamin Dyer, Political Committee and Lobbyist Registrar

Date: August 12, 2014

Re: Request for Waiver of Late-Filing Penalty by Maine Democratic Party

In the thirteen days before an election, all political action committees, ballot question committees and political parties must file a report within 24 hours of receiving any single contribution of \$5,000 or more or making any expenditure of \$1,000 or more.¹ The Maine Democratic Party (the Party) received a \$10,000 contribution during the 24-hour reporting period before the June 10, 2014 primary election, but was late in reporting this transaction.

LEGAL REQUIREMENTS

Party committees are required to report any single contribution of \$5,000 or more received or single expenditure of \$1,000 or more made during the 13 days before an election within 24 hours of that transaction. (21-A M.R.S.A. § 1017-A(4-A)(E)) If the party committee is late in filing the 24-hour report, the amount of the penalty is set by a formula which takes into consideration the amount of the transaction, 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))

¹ Candidates have a similar 24-hour reporting requirement, except with a lower reporting threshold (\$1,000) for contributions.

DISCUSSION

On June 3, 2014, the Party received a \$10,000 contribution from the International Association of Fire Fighters. On June 22, 2014, the Party recorded the receipt of the contribution in the Commission's campaign finance reporting system, triggering a reminder that the Party was required to file a 24-hour Report, which the Party filed that day.

Based on the statutory formula for calculating late-filed report penalties, the preliminary penalty amount is \$4,800, calculated as follows:

Transaction	Date	Financial Activity	Penalty Rate	Days Late	Preliminary Penalty
Contribution from International Association of Fire Fighters	6/3/2014	\$10,000	1%	48	\$4,800

In arguing for a waiver, the Party explains that the "MDP did not undertake any election activity in the June primary and as such, were not focused on the need to file 24-hour reports [T]he filing error was inadvertent and based on an oversight that the 24-hour filing rules still applied to those [committees] that were not participating in the primary." The Party argues that the preliminary penalty is disproportionate to the harm suffered by the public, because of the Party's lack of participation in the June primary election. The Party also highlights its history of timely reporting.

STAFF RECOMMENDATION

Violations of the 24-hour reporting requirements can be serious matters. 24-hour reports play an important role in informing the electorate about how money is changing hands in the critical days just before an election. In this situation \$10,000 changed hands without being disclosed in a timely manner. In fact, the Party only belatedly filed the 24-hour report at the prompting of the Commission's e-filing system. The Party is a sophisticated actor in the Maine political process and, despite the state and federal campaign finance reporting burdens placed upon it, should have the resources and expertise at its disposal to ensure compliance with reporting deadlines.

That said, there are mitigating factors which suggest that a reduction in the preliminary penalty would be appropriate. As confirmed in its 42-Day Post-Primary report, the Party made no expenditures to support or oppose candidates during the primary election 24-hour reporting period. In addition, the Party has not been subject to late campaign finance report penalties since 2009. Weighing these factors, the staff recommends that the Commission reduce the penalty to \$500.

Thank you for your consideration of this memo.

Benjamin K. Grant, Chairman

Pam Fenrich, Vice Chair

Heidi Brooks, Secretary

Betty Johnson, Treasurer

Roy Gedat, Assistant Treasurer



Maine Democratic Party

P.O. Box 5258

Augusta, ME 04332-5258

P 207.622.6233

www.mainedems.org

Dear Mr. Dyer,

The Maine Democratic Party (MDP) writes to request a waiver of preliminary penalties issued by Commission staff for our late filing of a 24-hour report. The 24-hour report was due on June 4th for a single contribution of \$10,000 from the International Association of Fire Firefighters. As you may be aware, MDP did not undertake any election activity in the June primary and as such, were not focused on the need to file 24-hour reports. Quite simply, we were not active in any primary election activities and were not trying to influence the outcome of any election. When filing our 42-Day Post Primary report, the system alerted us to the error and we immediately filed the required 24-hour report. As outlined above, the filing error was inadvertent and based on an oversight that the 24-hour filing rules still applied to those not participating in the primary. While the MDP takes full responsibility for the error, we also believe that our lack of primary participation makes the harm to the public minimal. We were not making expenditures to influence the primary election – and we did not spend any of the \$10,000 contribution on primary activities.

As a state party, we are keenly aware of our reporting obligations on both the state and federal level. We make our best efforts to comply with Maine Elections law and value the service the Ethics Commission provides. The MDP also complies with federal elections laws and reports to the Federal Election Commission (FEC) on a monthly basis. We make our best efforts to follow all the various rules and guidelines of political reporting and regret this inadvertent error.

While we take full responsibility for the error, based on our history of accurate and timely reporting, we argue that the preliminary penalty is vastly disproportionate to the mistake made. In this instance, we believe the harm to the public was minimal and ask for a substantial waiver of the preliminary penalty.

Thank you for considering this request.

Best,

A handwritten signature in black ink that reads "M.E. Casale". The signature is written in a cursive, flowing style.

Mary Erin Casale

Executive Director



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

July 28, 2014

Betty Johnson, Treasurer
Maine Democratic State Committee
320 Water St, 3RD FLR
PO Box 5258
Augusta, ME 04332

Re: Late Filing of 24-Hour Report

Dear Ms. Johnson,

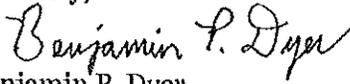
The Commission staff has made a preliminary determination that the Maine State Democratic Committee (the Party) was late in filing the 24-Hour Report required for a \$10,000 contribution it received from the International Association of Fire Fighters Party reported receiving on June 3, 2014. The report was due by 11:59 p.m. on June 4, 2014, but was not filed until July 22, 2014. Under the Commission's statutes, the late filing of a report triggers an enforcement process. (21-A M.R.S.A. § 1020-A(4-A)). Based on the amount of financial activity in the report, the number of calendar days the report was late, and the Party's history of violations, the commission staff has determined that a penalty of \$4,800.00 is owed. (Please see attached penalty matrix for the calculation).

The Party may make a written request that the Commission waive the violation or penalty in whole or in part. Any request for a waiver 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 Party filed late. Upon receiving your request, the Commission staff will schedule your appeal for an upcoming Commission meeting.

The Commission may waive the penalty 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 the Party made a bona fide effort to file the report on time. Also, the Commission may waive the penalty if it is disproportionate to the level of experience of the person filing the report or the harm suffered by the public from the late disclosure.

Please call me at (207) 287-6221 or send me an email at benjamin.p.dyer@maine.gov if you have questions.

Sincerely,


Benjamin P. Dyer
Political Committee and Lobbyist Registrar

Enclosure: payment receipt & penalty matrix

Payment Receipt

Mail payment to:

The Maine Ethics Commission
135 State House Station
Augusta, ME 04333

Make checks payable to: "Treasurer, State of Maine."

Betty Johnson, Treasurer
Maine Democratic State Committee
320 Water St, 3RD FLR
PO Box 5258
Augusta, ME 04332

Violation: Late 24-hour Report
Amount Due: \$4,800.00

Committee Name: Maine Democratic State Committee

Report Title: 24-Hour Report

Due Date: June 4, 2014

Previous Violation(s): N/A

Filed Date: July 22, 2014

The penalty for late filing of a required report is a percentage of the total contributions or expenditures for the filing period, whichever is greater, multiplied by the number of calendar days the report is filed late, as follows:

For the first violation, 1%

For the second violation, 3%

For the third and each subsequent violation, 5%

A penalty begins to accrue at 11:59 p.m. on the day the report is due.

Penalty Example:		Your Penalty is calculated as follows:	
The treasurer files the Party's report two (2) days late. The Party has not had any previous late violations this biennium. The Party reports a total of \$2,500 in contributions and \$1,500 in expenditures for the filing period. The penalty is		Contributions / Expenditures:	<u>\$10,000.00</u>
\$2,500	Greater amount of the total contributions received or expenditures made during the filing period	X	
		Percent Prescribed:	<u>1%</u>
X .01	Percent prescribed for first violation		<u>\$100.00</u>
		X	
\$25.00	One percent of total contributions	Number of days late:	<u>48</u>
X 2	Number of calendar days late		
		Total penalty accrued:	<u>\$4,800.00</u>
\$50.00	Total Penalty		

Any penalty of less than \$10 is waived.

Violations accumulate on reports with filing deadlines in a 2-year period that begins on January 1st of each even-numbered year. Waiver of a penalty does not nullify the finding of a violation.

A required report that is sent by certified or registered United States mail and postmarked at least 2 days before the deadline is not subject to penalty.

MAXIMUM PENALTIES

21-A M.R.S.A. Section 1020-A(5)

\$5,000 for Pre- and Post-Election Reports, Quarterly Reports and 24-Hour Reports, except that if the financial activity reported late exceeds \$50,000, the maximum penalty is one-fifth of the amount reported late.

§1017-A. REPORTS OF CONTRIBUTIONS AND EXPENDITURES BY PARTY COMMITTEES

1. Contributions. A party committee shall report all contributions in cash or in kind from a single contributor that in the aggregate total more than \$200. The party committee shall report the name, mailing address, occupation and place of business of each contributor. Contributions of \$200 or less must be reported, and these contributions may be reported as a lump sum.

[2009, c. 190, Pt. A, §8 (AMD) .]

2. Expenditures to influence a campaign. A party committee shall report all expenditures made to influence a campaign, as defined in section 1052, subsection 1. The party committee shall report:

A. The name of each candidate, political committee, political action committee or party committee; [2007, c. 443, Pt. A, §17 (AMD).]

B. The office sought by a candidate and the district that the candidate seeks to represent; and [1991, c. 839, §23 (NEW); 1991, c. 839, §33 (AFF).]

C. The date, amount and purpose of each expenditure. [2007, c. 443, Pt. A, §17 (AMD).]

[2011, c. 389, §16 (AMD) .]

3. Other expenditures. Operational expenses and other expenditures that are not made to influence a campaign, as defined in section 1052, subsection 1 must be reported separately. The party committee shall report:

A. The name and address of each payee; [2009, c. 190, Pt. A, §10 (AMD).]

B. The purpose for the expenditure; and [2007, c. 443, Pt. A, §17 (AMD).]

C. The date and amount of each expenditure. [1993, c. 715, §2 (NEW).]

[2011, c. 389, §17 (AMD) .]

4. Filing schedule.

[2003, c. 302, §2 (RP) .]

4-A. Filing schedule. A state party committee shall file its reports according to the following schedule.

A. Quarterly reports must be filed by 11:59 p.m.:

(1) On January 15th and must be complete up to December 31st;

(2) On April 10th and must be complete up to March 31st;

(3) On July 15th and must be complete up to June 30th; and

(4) On October 5th and must be complete up to September 30th. [2011, c. 367, §1 (AMD).]

B. General and primary election reports must be filed by 11:59 p.m.:

(1) On the 11th day before the date on which the election is held and must be complete up to the 14th day before that date; and

(2) On the 42nd day after the date on which the election is held and must be complete up to the 35th day after that date. [2007, c. 443, Pt. A, §17 (AMD).]

C. Preelection and post-election reports for special elections, referenda, initiatives, bond issues or constitutional amendments must be filed by 11:59 p.m.:

(1) On the 11th day before the date on which the election is held and must be complete up to the 14th day before that date; and

(2) On the 42nd day after the date on which the election is held and must be complete up to the 35th day after that date. [2011, c. 389, §18 (AMD).]

D. A state party committee that files an election report under paragraph B or C is not required to file a quarterly report under paragraph A when the deadline for that quarterly report falls within 10 days of the filing deadline established in paragraph B or C. [2003, c. 302, §3 (NEW).]

→ E. A state party committee shall report any single contribution of \$5,000 or more received or any single expenditure of \$1,000 or more made after the 14th day before the election and more than 24 hours before 5:00 p.m. on the day of the election within 24 hours of that contribution or expenditure. The committee is not required to include in this report expenditures for overhead expenses or compensation paid to an employee or other member of the campaign staff who has received payments at regular intervals that have been disclosed in previously filed campaign finance reports. As used in this paragraph, "overhead expenses" includes, but is not limited to, rent, utility payments, taxes, insurance premiums or similar administrative expenses. [2013, c. 334, §12 (AMD).]

[2013, c. 334, §12 (AMD) .]

4-B. Filing schedule for municipal, district and county party committees. Municipal, district and county party committees shall file reports according to the following schedule.

A. Reports filed during an election year must be filed with the commission by 11:59 p.m. on:

(1) July 15th and be complete as of June 30th;

(2) The 11th day before the date on which the general election is held and must be complete up to the 14th day before that date; and

(3) January 15th and be complete as of December 31st. [2009, c. 190, Pt. A, §12 (AMD).]

B. Reports filed during a nonelection year must be filed by 11:59 p.m. on:

(1) July 15th and be complete as of June 30th; and

(2) January 15th and be complete as of December 31st. [2007, c. 443, Pt. A, §17 (AMD).]

C. A committee shall report any single contribution of \$5,000 or more received or any expenditure of \$1,000 or more made after the 14th day before any election and more than 24 hours before 11:59 p.m. on the day of the election within 24 hours of that contribution or expenditure. The committee is not required to include in this report expenditures for overhead expenses or compensation paid to an employee or other member of the campaign staff who has received payments at regular intervals that have been disclosed in previously filed campaign finance reports. As used in this paragraph, "overhead expenses" includes, but is not limited to, rent, utility payments, taxes, insurance premiums or similar administrative expenses. [2013, c. 334, §13 (AMD).]

[2013, c. 334, §13 (AMD) .]

4-C. Electronic filing. State party committees shall file each report required by this section through an electronic filing system developed by the commission. The commission may make an exception to this electronic filing requirement if a party committee submits a written request that states that the party committee lacks access to the technology or the technological ability to file reports electronically. The request for an exception must be submitted by March 1st of the election year. The commission shall grant all reasonable requests for exceptions.

[2007, c. 443, Pt. A, §17 (AMD) .]

5. Penalties. A party committee is subject to the penalties in section 1020-A, subsection 4-A.

[2003, c. 1, §13 (COR) .]

6. Notice; forms. A state party committee shall notify all county, district and municipal party committees of the same political party of the party committee reporting requirements. The party committees shall obtain the necessary forms from the commission to complete the filing requirements.

[1991, c. 839, §23 (NEW); 1991, c. 839, §33 (AFF) .]

7. Exemption. Any party committee receiving and expending less than \$1,500 in one calendar year is exempt from the reporting requirements of this section for that year.

[1991, c. 839, §23 (NEW); 1991, c. 839, §33 (AFF) .]

8. Municipal elections. When a party committee makes contributions or expenditures on behalf of a candidate for municipal office subject to this subchapter, it shall file a copy of the reports required by this section with the clerk in that candidate's municipality.

[2011, c. 389, §19 (AMD); 2011, c. 389, §62 (AFF) .]

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

period, whichever is greater, multiplied by the number of calendar days late, as follows:

- A. For the first violation, 1%; [2001, c. 714, Pt. PP, §1 (NEW); 2001, c. 714, Pt. PP, §2 (AFF).]
- B. For the 2nd violation, 3%; and [2001, c. 714, Pt. PP, §1 (NEW); 2001, c. 714, Pt. PP, §2 (AFF).]
- C. For the 3rd and subsequent violations, 5%. [2001, c. 714, Pt. PP, §1 (NEW); 2001, c. 714, Pt. PP, §2 (AFF).]

Any penalty of less than \$10 is waived.

Violations accumulate on reports with filing deadlines in a 2-year period that begins on January 1st of each even-numbered year. Waiver of a penalty does not nullify the finding of a violation.

A report required to be filed under this subchapter that is sent by certified or registered United States mail and postmarked at least 2 days before the deadline is not subject to penalty.

A registration or report may be provisionally filed by transmission of a facsimile copy of the duly executed report to the commission, as long as the facsimile copy is filed by the applicable deadline and an original of the same report is received by the commission within 5 calendar days thereafter.

5. Maximum penalties.

[2001, c. 470, §8 (AMD); T. 21-A, §1020-A, sub-§5 (RP) .]

5-A. Maximum penalties. Penalties assessed under this subchapter may not exceed:

- A. Five thousand dollars for reports required under section 1017, subsection 2, paragraph B, C, D, E or H; section 1017, subsection 3-A, paragraph B, C, D, D-1 or F; and section 1017, subsection 4; [2011, c. 389, §23 (AMD).]
- A-1. Five thousand dollars for reports required under section 1019-B, subsection 4, except that if the financial activity reported late exceeds \$50,000, the maximum penalty is 1/5 of the amount reported late; [2011, c. 389, §24 (NEW).]
- B. Five thousand dollars for state party committee reports required under section 1017-A, subsection 4-A, paragraphs A, B, C and E, except that if the financial activity reported late exceeds \$50,000, the maximum penalty is 1/5 of the amount reported late; [2011, c. 389, §25 (AMD).]
- C. One thousand dollars for reports required under section 1017, subsection 2, paragraphs A and F and section 1017, subsection 3-A, paragraphs A and E; or [2011, c. 558, §4 (AMD).]
- D. Five hundred dollars for municipal, district and county committees for reports required under section 1017-A, subsection 4-B. [2011, c. 558, §4 (AMD).]
- E. [2011, c. 558, §5 (RP).]

[2011, c. 558, §§4, 5 (AMD) .]

6. Request for a commission determination. If the commission staff finds that a candidate or political committee has failed to file a report required under this subchapter, the commission staff shall mail a notice to the candidate or political committee within 3 business days following the filing deadline informing the candidate or political committee that a report was not received. If a candidate or a political committee files a report required under this subchapter late, a notice of preliminary penalty must be sent to the candidate or political committee whose registration or campaign finance report was not received by 11:59 p.m. on the deadline date, informing the candidate or political committee of the staff finding of violation and preliminary penalty calculated under subsection 4-A and providing the candidate or political committee with an opportunity to request a determination by the commission. Any request for a determination must be made within 14 calendar days of receipt of the commission's notice. A candidate or political committee requesting a determination may either appear in person or designate a representative to appear on the candidate's or political committee's behalf or submit a sworn statement explaining the mitigating circumstances for consideration by the commission. A final determination by the commission may be appealed to the Superior Court in accordance with Title 5, chapter 375, subchapter 7 and the Maine Rules of Civil Procedure, Rule 80C.

[2013, c. 334, §17 (AMD) .]

7. Final notice of penalty. If a determination has been requested by the candidate or political committee and made by the commission, notice of the commission's final determination and the penalty, if any, imposed pursuant to this subchapter must be sent to the candidate and the political committee.

If a determination is not requested, the preliminary penalty calculated by the commission staff is final. The commission staff shall mail final notice of the penalty to the candidate and treasurer. A detailed summary of all notices must be provided to the commission.

[2009, c. 302, §6 (AMD) .]

8. Failure to file report. The commission shall notify a candidate who has failed to file a report required by this subchapter, in writing, informing the candidate of the requirement to file a report. The notice must be sent by certified mail. If a candidate fails to file a report after 2 notices have been sent by the commission, the commission shall send a final notice by certified mail informing the candidate of the requirement to file and that the matter may be referred to the Attorney General for criminal prosecution. A candidate who fails to file a report as required by this subchapter after the commission has sent the notices required by this subsection is guilty of a Class E crime.

[2007, c. 443, Pt. A, §25 (AMD) .]

8-A. Penalties for failure to file report. The penalty for failure to file a report required under this subchapter may not exceed the maximum penalties as provided in subsection 5-A.

[2003, c. 628, Pt. A, §6 (NEW) .]

9. List of late-filing candidates. The commission shall prepare a list of the names of candidates who are late in filing a report required under section 1017, subsection 2, paragraph C or D or section 1017, subsection 3-A, paragraph B or C within 30 days of the date of the election and shall make that list available for public inspection.

[1995, c. 483, §15 (NEW) .]

10. Enforcement. A penalty assessed pursuant to this section that has not been paid in full within 30 days after issuance of a notice of the final determination may be enforced in accordance with section 1004-B.

[2009, c. 302, §7 (RPR) .]