Agenda Item #12

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 Credit Union League PAC

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 Credit Union League PAC (the PAC) made a total of $4,000 of expenditures in the form of a contributions to two other PACs on June 2, 2014, during the 24-hour reporting period leading up to the June 10, 2014 primary election, but was late in reporting these transactions.

LEGAL REQUIREMENTS

PACs 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. § 1059(2)(E)) If the PAC 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. § 1062-A(3))

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

DISCUSSION

On June 2, 2014, the PAC made a $3,000 contribution to the Senate Democratic Campaign Committee PAC and a $1,000 contribution to the Leadership for Maine's Future PAC. When the PAC entered the information about the transactions into the Commission's campaign finance reporting system for the 42-Day Post-Primary report, the system alerted the PAC to the late 24-hour report. The PAC filed the required 24-hour report on July 22, 2014.

Based on the statutory formula for calculating late-filed report penalties, the preliminary penalty amount totals $1,960, calculated as follows:

Transactions	Date	Financial Activity	Penalty Rate	Days Late	Preliminary Penalty
Contributions to Senate Democratic Campaign Committee PAC and Leadership for Maine's Future PAC	6/2/2014	$4,000	1%	49	$1,960

The PAC asks that the Commission waive a substantial portion of the penalty because the size of the penalty substantially outweighs the harm suffered by the public from the late disclosure. The PAC says that it was not conscious of the 24-hour reporting requirements because it was not active in influencing the June primary election.

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, $4,000 changed hands without being disclosed in a timely manner. The PAC also did not file the 24-hour report until reminded by the campaign finance reporting system. However, there are mitigating factors which suggest that a reduction in the preliminary penalty would be appropriate. The Senate Democratic Campaign Committee, the recipient of the majority of the contributions given on June 2, 2014, did not spend any money supporting or opposing candidates during the June 24-hour reporting period. Additionally, the PAC has had no previous violations. Weighing these factors, the staff recommends that the Commission find that the PAC failed to timely file the 24-hour report required for the June 2, 2014 transactions and impose a fine of $250. This is less than the $500 penalty recommended against other political committees on the agenda because the Credit Union PAC is less politically active and has smaller resources to draw on for purposes of compliance.

Thank you for your consideration of this memo.

Maine Credit Union League

2 Ledgeview Drive · Westbrook, ME 04092
Mailing Address: P.O. Box 1236 · Portland, ME 04104
207-773-5671 · 1-800-442-6715
www.mainecul.org

August 1, 2014

Mr. Benjamin P. Dyer
Political Committee and Lobbyist Registrar
Commission on Governmental Ethics and Election Practices
135 State House Station
Augusta, Maine 04333

Dear Mr. Dyer,

I am writing to you in response of your letter dated July 24, 2014, in regards to the Maine Credit Union League PAC's late filing of a required 24-hour report. The Commission staff's assessed penalty for this violation is in the amount of $1,960. I am respectfully requesting a reduction of this penalty based on mitigating circumstances.

In reviewing 21-A M.R.S.A. §1062-A-3 pertaining to reports of political action committees, I would suggest that little to no harm was suffered by the public as a result of the late disclosure. Furthermore, in the last 11 years that I have served as PAC Treasurer, the Maine Credit Union League PAC has never been found in violation of the Commission's statutes. I have always made a point of filing our required PAC reports in a timely fashion and have been in close contact with you and others at the Ethics Commission when I have questions or concerns to ensure that our reports are filed accurately and on time. Considering that the Maine Credit Union League was not taking an active role in any of the Primary races, I was not aware that a report was required of any pre-primary expenditures and my failure to do so was completely unintentional.

For these reason, I am hopeful that the Commission might consider a reduction of the assessed fee.

I greatly appreciate your time and consideration on this matter.

Sincerely,

Quincy Hentzel

Quincy Hentzel
Treasurer
Maine Credit Union League PAC

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

July 24, 2014

Ms. Quincy Hentzel, Treasurer
Maine Credit Union League PAC
PO Box 1236
Portland, ME 04104

Re: Late Filing of 24-Hour Report

Dear Ms. Hentzel,

The Commission staff has made a preliminary determination that the Maine Credit Union League PAC (the PAC) was late in filing the 24-Hour Report required for a $3,000 expenditure in the form of a contribution to Senate Democratic Campaign Committee and a $1,000 expenditure in the form of a contribution to the Leadership for Maine's Future PAC the PAC reported making on June 2, 2014. The report was due by 11:59 p.m. on June 3, 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. § 1062-A(3)). Based on the amount of financial activity in the report, the number of calendar days the report was late, and the PAC's history of violations, the commission staff has determined that a penalty of $1,960 is owed. (Please see attached penalty matrix for the calculation).

The PAC 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 PAC filed late. Upon receiving your request, the Commission staff will schedule your appeal for an 1upcoming 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 PAC 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

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."

Ms. Quincy Hentzel, Treasurer
Maine Credit Union League PAC
PO Box 1236
Portland, ME 04104

Violation: Late 24-hour Report
Amount Due: **$1,960.00**

Committee Name:	Maine Credit Union League PAC	**Report Title:**	24-Hour Report
		Due Date:	June 3, 2014
Previous Violation(s):	N/A	**Filed Date:**	July 11, 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:
The treasurer files the PAC's report two (2) days late. The PAC has not had any previous late violations this biennium. The PAC reports a total of $2,500 in contributions and $1,500 in expenditures for the filing period. The penalty is

$2,500	Greater amount of the total contributions received or expenditures made during the filing period
X .01	Percent prescribed for first violation
$25.00	One percent of total contributions
X 2	Number of calendar days late
$50.00	Total Penalty

Your Penalty is calculated as follows:

Contributions / Expenditures:	$4,000.00
	X
Percent Prescribed:	1%
	$40.00
	X
Number of days late:	49
Total penalty accrued:	$1,960.00

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 1062-A(3)
$10,000 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.

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
MAINE CREDIT UNION LEAGUE - LEGISLATIVE ACTION COMMITTEE PO BOX 1236 PORTLAND, ME 04104 PHONE: (207) 773-5671 EMAIL: QHENTZEL@MAINECUL.ORG	QUINCY HENTZEL PO BOX 1236 PORTLAND, ME 04104 PHONE: (207) 773-5671 EMAIL: QHENTZEL@MAINECUL.ORG

REPORT	DUE DATE	REPORTING PERIOD
24 Hour Report of Major Contributions and Expenditures	06/03/2014	06/02/2014 - 06/02/2014

FINANCIAL ACTIVITY SUMMARY

CONTRIBUTIONS AND EXPENDITURES	
1. TOTAL CONTRIBUTIONS / LOANS	$0.00
2. TOTAL EXPENDITURES	$4,000.00
3. TOTAL DEBTS	$0.00

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

REPORT FILED BY: QUINCY HENTZEL
REPORT FILED ON: 07/22/2014
LAST MODIFIED: 07/22/2014
PRINTED: 08/15/2014
COMMITTEE ID: 659

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
6/2/2014	LEADERSHIP FOR MAINE'S FUTURE P.O. BOX 476 NEWPORT, ME 04953	CONTRIBTUION TO SUPPORT FUNDRAISING EVENT	CON	$1,000.00
6/2/2014	SENATE DEMOCRATIC CAMPAIGN COMMITTEE P.O. BOX 2207 AUGUSTA, ME 04338	CONTRIBUTION TO SUPPORT FUNDRAISING EVENT	CON	$3,000.00
			TOTAL EXPENDITURES FOR CANDIDATE:	$4,000.00

21-A M.R.S.A. § 1059. REPORT; FILING REQUIREMENTS

Committees required to register under section 1052-A, 1053-B or 1056-B shall file an initial campaign finance report at the time of registration and thereafter shall file reports in compliance with this section. All reports must be filed by 11:59 p.m. on the day of the filing deadline, except that reports submitted to a municipal clerk must be filed by the close of business on the day of the filing deadline. [2013, c. 334, §27 (AMD).]

1. Contents; quarterly reports and election year reports.

[2007, c. 443, Pt. A, §35 (RP) .]

2. Reporting schedule. Committees shall file reports according to the following schedule.

A. All committees shall file quarterly reports:

(1) On January 15th, and the report must be complete as of December 31st;

(2) On April 10th, and the report must be complete as of March 31st;

(3) On July 15th, and the report must be complete as of June 30th; and

(4) On October 5th, and the report must be complete as of September 30th. [2011, c. 691, Pt. A, §19 (RPR).]

B. General and primary election reports must be filed:

(1) On the 11th day before the date on which the election is held and must be complete as of 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 as of the 35th day after that date. [2007, c. 443, Pt. A, §35 (AMD).]

C. Preelection and post-election reports for special elections or ballot measure campaigns must be filed:

(1) On the 11th day before the date on which the election is held and must be complete as of 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 as of the 35th day after that date. [2011, c. 389, §45 (AMD).]

D. A committee that files an election report under paragraph B or C is not required to file a quarterly report when the deadline for that quarterly report falls within 10 days of the filing deadline established in paragraph B or C. [1991, c. 839, §29 (RPR).]

E. A committee shall report any single contribution of $5,000 or more received or 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 treasurer 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, §28 (AMD).]

[2013, c. 334, §28 (AMD) .]

3. Report of expenditures made after the 11th day and more than 48 hours before any election.

[1989, c. 504, §§28, 31 (RP) .]

4. Special election reports.

[1989, c. 504, §§28, 31 (RP) .]

5. Electronic filing. 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 committee submits a written request that states that the committee lacks access to the technology or the technological ability to file reports electronically. The request for an exception must be submitted within 30 days of the registration of the committee. The commission shall grant all reasonable requests for exceptions.

[2007, c. 443, Pt. A, §35 (AMD) .]

SECTION HISTORY
1985, c. 161, §6 (NEW). 1989, c. 7, §O6 (AMD). 1989, c. 504, §§28,31 (RPR). 1989, c. 833, §§16-20 (AMD). 1991, c. 839, §29 (AMD). 2003, c. 628, §B5 (AMD). 2005, c. 301, §§25,26 (AMD). 2007, c. 443, Pt. A, §35 (AMD). 2007, c. 571, §9 (AMD). 2009, c. 190, Pt. A, §§23, 24 (AMD). 2009, c. 366, §9 (AMD). 2009, c. 366, §12 (AFF). 2009, c. 652, Pt. A, §22 (AMD). 2011, c. 367, §2 (AMD). 2011, c. 389, §§43-45 (AMD). 2011, c. 389, §62 (AFF). 2011, c. 691, Pt. A, §19 (AMD). 2013, c. 334, §§27, 28 (AMD).

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21-A M.R.S.A. § 1062-A. FAILURE TO FILE ON TIME

1. Registration. A political action committee required to register under section 1052-A or 1053-B or a ballot question committee required to register under section 1056-B that fails to do so or that fails to provide the information required by the commission for registration may be assessed a fine of no more than $2,500. In assessing a fine, the commission shall consider, among other things, whether the violation was intentional, the amount of campaign and financial activity that occurred before the committee registered, whether the committee intended to conceal its campaign or financial activity and the level of experience of the committee's volunteers and staff.

[2013, c. 334, §30 (AMD) .]

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 6, the commission shall determine whether a required report satisfies the requirements for timely filing. The commission may waive a penalty in whole or in part if it is disproportionate to the level of experience of the person filing the report or to 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 of the committee treasurer 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, §9 (AMD).]

B. An error by the commission staff; or [1999, c. 729, §9 (AMD).]

C. 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. [2007, c. 443, Pt. A, §38 (AMD).]

[2009, c. 190, Pt. A, §29 (AMD) .]

3. 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%; [1995, c. 483, §21 (NEW).]

B. For the 2nd violation, 3%; and [1995, c. 483, §21 (NEW).]

C. For the 3rd and subsequent violations, 5%. [1995, c. 483, §21 (NEW).]

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

[2007, c. 443, Pt. A, §39 (AMD) .]

4. Maximum penalties. The maximum penalty under this subchapter is $10,000 for reports required under section 1056-B or section 1059, 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, §49 (AMD) .]

5. Request for a commission determination. If the commission staff finds that a political action committee has failed to file a report required under this subchapter, the commission staff shall mail a notice to the treasurer of the political action committee within 3 business days following the filing deadline informing the treasurer that a report was not received. If a political action committee files a report required under this subchapter late, a notice of preliminary penalty must be forwarded to the treasurer of the political action committee whose report is not received by 11:59 p.m. on the deadline date, informing the treasurer of the commission staff finding of violation and preliminary penalty calculated under subsection 3 and providing the treasurer with an opportunity to request a determination by the commission. A request for determination must be made within 14 calendar days of receipt of the commission's notice. A principal officer or treasurer requesting a determination may either appear in person or designate a representative to appear on the principal officer's or treasurer'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, §31 (AMD) .]

6. Final notice of penalty. After a commission meeting, notice of the final determination of the commission and the penalty, if any, imposed pursuant to this subchapter must be sent to the principal officer and the treasurer of the political action 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 principal officer and to the treasurer of the political action committee. A detailed summary of all notices must be provided to the commission.

[2009, c. 302, §9 (AMD) .]

7. List of late-filing committees. The commission shall prepare a list of the names of political action committees that are late in filing a report required under section 1059, subsection 2, paragraph B, subparagraph (1) or section 1059, subsection 2, paragraph C or D within 30 days of the date of the election and shall make that list available for public inspection.

[2007, c. 443, Pt. A, §41 (AMD) .]

8. Failure to file. A person who fails to file a report as required by this subchapter within 30 days of the filing deadline is guilty of a Class E crime, except that, if a penalty pursuant to subsection 8-A is assessed and collected by the commission, the State may not prosecute a violation under this subsection.

[2003, c. 628, Pt. A, §8 (AMD) .]

8-A. Penalties for failure to file report. The commission may assess a civil penalty for failure to file a report required by this subchapter. The maximum penalty for failure to file a report required under section 1056-B or section 1059 is $10,000.

[2009, c. 190, Pt. A, §31 (AMD) .]

9. 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, §10 (RPR) .]