



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

To: Commissioners
From: Erin Gordon, Candidate Registrar
Date: August 12, 2016
Re: Request for Waiver of Late-Filing Penalty by Roger Katz

SUMMARY

This is the first of two items on the agenda of your August 31 meeting concerning candidates who did not have opponents in the June 14, 2016 primary election and who were required to file 24-Hour Reports on or before the primary. As the Commission staff raised at your June 29 meeting, we believe that the policy rationale for requiring 24-Hour Reports for the primary election is less compelling for candidates who are uncontested in their primary. In these two situations on your August 31 agenda, the Commission staff recommends waiving the penalty entirely, or reducing the preliminary penalty to \$50.

State Senator Roger Katz is running for re-election to the Maine Senate, District 15. He was unopposed in the June 14 Republican primary election.

During the 13 days prior to an election, candidates who receive a contribution or make an expenditure of \$1,000 or more are required to file a supplemental campaign finance report within twenty-four hours of receiving the contribution or making the expenditure. On June 13, 2016 (the day before the primary election), Senator Katz made a \$1,000 expenditure to an Augusta-based firm for a range of clerical services. Because the payment was exactly \$1,000 and made one day before the primary election, Senator Katz was required to file a 24-Hour Report on June 14th. He was unaware that a report was due, and filed the report 41 days late on July 25th in the process of filing his regularly scheduled post-primary report.

LEGAL REQUIREMENTS

Candidates are required to file 24-Hour Reports with the Commission during the 13 days prior to an election if they receive a contribution or make an expenditure of \$1,000 or more. (21-A M.R.S.A. § 1017(3-A)(C)) If the candidate is late in filing a 24-Hour 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))

PRELIMINARY PENALTY

On June 13, 2016, Senator Katz paid \$1,000 to Corporate Support Services to pay for services provided by Debra Bilodeau. He was unaware of the requirement to file a 24-Hour Report.

About six weeks later, Senator Katz logged into the Commission’s e-filing system on July 25 to complete his 42-Day Post-Primary Report. He entered the June 13 payment to Corporate Support Solutions. The e-filing system alerted him that a 24-Hour Report was overdue. He telephoned the Commission office, received advice, and filed both the 24-Hour Report and the 42-Day Post-Primary Report on July 25

The late filing triggered the Commission’s routine penalty procedures and the Commission staff sent a letter to Sen. Katz notifying him of the preliminary penalty, calculated as follows:

Report	Due Date	Financial Activity	Penalty Rate	Days Late	Preliminary Penalty
24-Hour Report	06/14/2016	\$1,000.00	2%	41	\$820.00

STAFF COMMENTS AND RECOMMENDATION

24-Hour Reports play an important role in informing the electorate concerning large contributions and expenditures made to influence voters in the two weeks before an

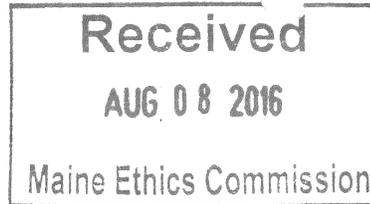
election. If 24-Hour Reports were not required, significant financial activity would not be known to the public until after the election.

Senator Katz requests that the Commission find that there was no reporting violation. In the alternative, he requests a full or substantial waiver of the monetary penalty. He explains that it did not cross his mind that he might be required to file a 24-Hour Report because he had no opponent in the primary election, and the expenditure was not designed to affect anyone's vote in the primary. The timing of the June 13 payment and the primary election was a coincidence.

The Commission staff recommends waiving the penalty entirely, or assessing a penalty of \$50. The preliminary penalty of \$820 is disproportionate to the harm to the public resulting from the late disclosure. The report was for a single transaction that was unrelated to the primary election. The public was informed of the payment on July 25, 2016, approximately 3½ months before the general election. Sen. Katz acted in good faith. It is understandable that he did not view the report as applying to him.

In terms of past practice, please be aware that through 2012 the Commission staff did not have a convenient means for identifying late 24-Hour Reports. In 2014, the Commission moved to a new electronic filing system that notified filers and the Commission staff when a large contribution or expenditure occurred which should have been disclosed in a 24-Hour Report. In 2014, the Commission assessed a \$50 penalty against Rep. Michael Willette who was uncontested in his primary election for State Senate. The Commission also assessed a penalty of \$500 against Gov. Paul LePage who did not have an opponent. The staff has given this reporting requirement further consideration and now has reservations that 24-Hour Reports should be required for the primary election for county and legislative candidates who are uncontested in their primary elections.

Thank you for your consideration of this memo.



SUMNER H. LIPMAN
DAVID M. LIPMAN
ROGER J. KATZ
LESTER F. WILKINSON, JR.
KAREN LIPMAN BOSTON
STEPHEN C. SMITH
PETER B. BICKERMAN
CALEB J. GANNON
CHRISTOPHER A. WRIGHT

August 4, 2016

Jonathan Wayne
Commission on Governmental
Ethics & Election Practices
135 State House Station
Augusta, ME 04333-0135

Re: Notice of violation and penalty for late-filed 24 hour report

Dear Mr. Wayne:

I have received a letter from Erin Gordon dated July 25, 2016. The letter sets out that the Commission Staff has made a preliminary finding that I violated the requirement to file 24 hour reports of expenditures in certain circumstances. Further, the staff has determined a preliminary penalty amount.

I am writing to set out facts in this matter from my perspective for consideration by the Commission and understand that this matter will be placed on the next Commission agenda.

Here is what happened:

When I decided to run for re-election, I hired a woman in Augusta that does business under the name of "Corporate Support Services." She performed numerous clerical duties for me, including the compilation and integration of numerous lists of voters, past contributors and others. She also assisted me in the effort to solicit contributions to qualify for Clean Election Funding. She invoiced me for those services for a flat fee of \$1,000 and I paid that invoice by check on June 13, 2016. I listed that expenditure in my 42-day post-primary report on July 25, 2016. When I attempted to file the report, I learned that the expenditure made to Corporate Support Services should have been reported within 24 hours of the expenditure, since it was within the window of time before a primary election in which expenditures of \$1,000 or more must be reported within 24 hours. This came as a total surprise to me. I make no excuse for not

Jonathan Wayne
Commission on Governmental
Ethics & Election Practices
August 4, 2016
Page 2

completely understanding the statute, but it frankly did not cross my mind that this expenditure would have required an immediate report. This is for a number of reasons, including:

1. I had no primary opponent.
2. The fact that the expenditure was made just before the primary was purely coincidental. It was not an expenditure in any way designed affect anyone's vote in the primary, since I was unopposed.

There are very good policy reasons to require 24 hour reports of expenditures in advance of a contested election. There does not appear to be any similar policy reason for such a requirement before an uncontested primary; however, I do recognize that the law appears to require it and I have no excuse for not fully understanding this.

Under all of these circumstances, I respectfully request that the Commission find no violation. In the alternative, I would ask that the Commission eliminate or substantially reduce the penalty amount.

Although it is no excuse for my not being fully aware of the requirements of the statute, I must say that I have mentioned this matter to a number of my colleagues and no one was aware of the rules of applicability in a factual situation like this.

I thank you and look forward to appearing before the Commission at its next meeting, which I understand will be August 31, 2016.

Sincerely yours,



Roger J. Katz
State Senator

RJK/mv



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

2016 CAMPAIGN YEAR

COMMITTEE		TREASURER	
ROGER J KATZ 3 WESTVIEW STREET AUGUSTA, ME 04330 PHONE: (207) 485-2394 EMAIL: RKATZ@LIPMANKATZ.COM		WILLIAM BROWNE 793 WEBBER POND ROAD VASSALBORO, ME 04989 PHONE: (207) 622-3906 EMAIL: WPBROWNE@GMAIL.COM	
REPORT	DUE DATE	REPORTING PERIOD	
24 Hour Report of Major Contributions and Expenditures	06/14/2016	06/13/2016 - 06/13/2016	

FINANCIAL ACTIVITY SUMMARY

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

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

REPORT FILED BY: EMMA BURKE
REPORT FILED ON: 07/25/2016
LAST MODIFIED: 07/25/2016
PRINTED: 08/12/2016
COMMITTEE ID: 9046

24-HOUR EXPENDITURE AND PAYEE INFORMATION

EXPENDITURE TYPES				
<p>CNS Campaign consultants</p> <p>CON Contribution to other candidate, party, committee</p> <p>EQP Equipment (office machines, furniture, cell phones, etc.)</p> <p>FND Fundraising events</p> <p>FOD Food for campaign events, volunteers</p> <p>LIT Print and graphics (flyers, signs, palmcards, t-shirts, etc.)</p> <p>MHS Mail house (all services purchased)</p> <p>OFF Office rent, utilities, phone and internet services, supplies</p> <p>OTH Other</p> <p>PHO Phone banks, automated telephone calls</p>	<p>POL Polling and survey research</p> <p>POS Postage for U.S. Mail and mail box fees</p> <p>PRO Other professional services</p> <p>PRT Print media ads only (newspapers, magazines, etc.)</p> <p>RAD Radio ads, production costs</p> <p>SAL Campaign workers' salaries and personnel costs</p> <p>TRV Travel (fuel, mileage, lodging, etc.)</p> <p>TVN TV or cable ads, production costs</p> <p>WEB Website design, registration, hosting, maintenance, etc.</p>			
DATE OF EXPENDITURE	PAYEE	REMARK	TYPE	AMOUNT
6/13/2016	CORPORATE SUPPORT SERVICES P.O. BOX 5469 AUGUSTA, ME 04332	STAFFING AND CLERICAL	SAL	\$1,000.00
TOTAL EXPENDITURES FOR CANDIDATE:				\$1,000.00

July 25, 2016

Roger J Katz
3 Westview Street
Augusta, ME 04330

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

Dear Senator Katz:

You were required to file the 24-Hour Report of Contributions and Expenditures on 06/14/2016 by 11:59 p.m., but the report was not filed until 07/25/2016. 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 \$820.00. 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 me at (207) 287-3651 or erin.gordon@maine.gov if you have any questions.

Sincerely,

Erin Gordon
Candidate Registrar

cc: William Browne

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: 2% for the first violation, 4% for the second violation, and 6% 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: Hon. Roger Katz			
Late-Filed Report: 24-Hour Report of Contributions and Expenditures			
Contributions	\$0	Penalty Base Amount	\$1000
Expenditures	\$1000	Percentage	2%
Due Date	06/14/2016	Daily Accrual Rate	\$20
Date Filed	07/25/2016	Days Late	41
Previous Violations	0	Your Total Penalty	\$820.00

PAYMENT STATEMENT AND PAYMENT OPTIONS

From: Hon. Roger Katz

Penalty Amount: \$ 820.00

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.

year. These reports must include all contributions made to and all expenditures made or authorized by or on behalf of the candidate or the treasurer of the candidate as of the end of the preceding month, except those covered by a previous report.

B. Reports must be filed no later than 11:59 p.m. on the 11th day before the date on which an election is held and must be complete as of the 14th day before that date. If a report was not filed under paragraph A, the report required under this paragraph must cover all contributions and expenditures through the 14th day before the election.

 C. Any single contribution of \$1,000 or more received or any single 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 any election must be reported within 24 hours of that contribution or expenditure. The candidate or 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.

D. Reports must be filed no later than 11:59 p.m. on the 42nd day after the date on which an election is held and must be complete for the filing period as of the 35th day after that date.

D-1. Reports must be filed no later than 11:59 p.m. on the 42nd day before the date on which a general election is held and must be complete as of the 49th day before that date, except that this report is not required for candidates for municipal office.

E. Unless further reports will be filed in relation to a later election in the same calendar year, the disposition of any surplus or deficit in excess of \$100 shown in the reports described in paragraph D must be reported as provided by this paragraph. The treasurer of a candidate with a surplus or deficit in excess of \$100 shall file reports semiannually with the commission within 15 days following the end of the 2nd and 4th quarters of the State's fiscal year, complete as of the last day of the quarter, until the surplus is disposed of or the deficit is liquidated. The first report under this paragraph is not required until the 15th day of the period beginning at least 90 days from the date of the election. The reports will be considered timely if filed electronically or in person with the commission on that date or postmarked on that date. The reports must set forth any contributions for the purpose of liquidating the deficit, in the same manner as contributions are set forth in other reports required in this section.

F. Reports with respect to a candidate who seeks nomination by petition must be filed on the same dates that reports must be filed by a candidate for the same office who seeks that nomination by primary election.

3-B. Accelerated reporting schedule. (REPEALED)

4. New candidate or nominee. A candidate for nomination or a nominee chosen to fill a vacancy under Chapter 5, subchapter 3 is subject to section 1013-A, subsection 1, except that the candidate shall register the name of a treasurer or political committee and all other information required in section 1013-A, subsection 1, paragraphs A and B within 7 days after the candidate's appointment or at least 6 days before the election, whichever is earlier. The commission shall send notification of this registration requirement and report forms and schedules to the candidate

- B. An error by the commission staff;
- C. Failure to receive notice of the filing deadline; or
- 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.

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. (REPEALED)

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, 2%;
- B. For the 2nd violation, 4%; and
- C. For the 3rd and subsequent violations, 6%.

Any penalty of less than \$10 is waived.

Violations accumulate on reports with filing deadlines in a two-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. (REPEALED)

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, except that if the financial activity reported late exceeds \$50,000, the maximum penalty is 100% of the amount reported late;

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 100% of the amount reported late;