

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: October 12, 2016
Re: Request for Waiver of Late-Filing Penalty by Robert Sezak

Robert Sezak is running for the position of County Commissioner in Somerset County. On Tuesday, September 27, 2016, all candidates for state office were required to file the 42-Day Pre-General campaign finance report. This was the third campaign finance report filed by candidates for county office this year. Mr. Sezak's report was filed one day late, on September 28, 2016. The candidate is seeking a waiver of a preliminary penalty of \$10. The report was filed one day late because on the day before the deadline Mr. Sezak telephoned the Commission office for advice on reporting an in-kind contribution. Based on the telephone conversation, Mr. Sezak concluded that the filing process was complete. Consistent with our usual procedures, the Commission staff is bringing this item to you for a decision in spite of the low amount of the preliminary penalty. (Penalties *below* \$10 are automatically waived by law.)

LEGAL REQUIREMENTS

Candidates are required to file reports with the Commission no later than 11:59 p.m. on the 42nd day before the date on which an election is held, and reports must be complete as of the 49th day before that date. (21-A M.R.S.A. § 1017(3-A)(D)) If the candidate is late in filing a regularly scheduled campaign finance 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

The 42-Day Pre-General Report covered the two-month period of July 20 to September 20, 2016. Mr. Sezak had only one transaction to disclose during this period: his campaign’s receipt of an in-kind contribution consisting of the candidate’s preparation of campaign literature on a home printer. Mr. Sezak placed a value of \$500 on this in-kind contribution.

Mr. Sezak discovered that the report had not been filed on September 28 (the day after the deadline), when he received an automated email from the Commission. He contacted the Commission office, and received assistance from Political Committee and Lobbyist Registrar Ben Dyer in filing the report.

The preliminary penalty is calculated as follows:

Report	Due Date	Financial Activity	Penalty Rate	Days Late	Preliminary Penalty
42-Day Pre-General	09/27/2016	\$500.00	2%	1	\$10.00

Mr. Sezak requests a waiver of the \$10 penalty, based on a bona fide effort to file the report and the error on the part of commission staff.

The efilings system is designed so that candidates and treasurers may enter and save transactions in the system, without filing the reports. After the candidate or treasurer has completed entering the transactions, the candidate or treasurer must complete the process by taking the additional step of clicking the on-screen button to “File Report.” Once the report has been filed, the candidate or treasurer sees a confirmation screen and receives an email verifying that the report has been filed successfully.

On Monday, September 26, 2016 (one day before the deadline), Mr. Sezak called the Commission office and spoke to Erin Gordon, the Candidate Registrar assigned to help candidates for county offices in Somerset County. He contacted her in order to make sure that he reported the in-kind contribution correctly. (A few months earlier, the

candidate had unintentionally double-reported some home printing by reporting the printing both as an in-kind contribution *and* as an expenditure.)

During that September 26 conversation, Mr. Sezak and Erin Gordon discussed how he had entered the in-kind contribution. In Mr. Sezak's written waiver request, he describes: "At the end of our conversation, I asked if we were done and the report had been filed. Ms. Gordon stated that yes, she had done it for me."

Ms. Gordon remembers the candidate describing how he had entered the in-kind contribution to reflect the literature he had printed at home and his estimation of the value. She does not recall the exact language she had used, but she said something to the effect that he had entered the in-kind contribution appropriately. Erin Gordon does not have a more precise recollection of the September 26 conversation. She assisted dozens of candidates in the days leading up to the September 27 filing deadline.

RECOMMENDATION

The Commission staff strongly prefers that candidates and treasurers file campaign finance reports themselves. It is their responsibility – not ours. As a convenience to candidates, Commission employees will sometimes administratively log into the website as the candidate and file the report when the candidate or treasurer is having difficulties using the system or if the candidate affirms by telephone that he or she had no financial activity during the time period covered by the report.

Ms. Gordon would have filed the report for Mr. Sezak if he had asked. She did not understand that he wanted her to file the report.

Having read Mr. Sezak's waiver request and spoken to Ms. Gordon, this seems to be a case of miscommunication. The candidate understood Erin Gordon to say that the filing process was complete. Whatever she said (such as, "Sounds good" or "You're all set") was intended to convey that by entering an in-kind contribution, he had appropriately

disclosed his home printing. She had no intention to imply that the report had been filed, because it had not been.

I have to differ with Mr. Sezak's perception that Erin Gordon took any pleasure in explaining our penalty procedures to him. She is a very good employee who has been polite and helpful to hundreds of candidates since her employment began in January, including under stressful conditions.

The Commission staff leaves it to your discretion whether to waive the penalty. I personally am comfortable with waiving the \$10 penalty. I feel more strongly that you understand that our Candidate Registrars do their best to give advice to candidates and that they go to considerable effort to avoid late filings and to minimize penalties. I have no doubt that the candidate intended to file the report, and had entered the transaction one day early. So, you may wish to view this as a bona fide effort to file the report. I do not view this as an error by the Commission staff.

Thank you for your consideration of this memo.

Received

OCT 06 2016

Maine Ethics Commission

Robert Sezak
18 Bunker Ave
Fairfield, ME 04937
207-877-2484 W
207-313-7001 C
10/4/2016

Jonathan Wayne
Executive Director
Maine Ethics Commission
135 State House Station
Augusta, Maine 04333

Dear Director Wayne:

I am writing to you today to appeal a letter I received from Erin Gordon, Candidate Registrar.

I am requesting a finding of no violation regarding the notice of violation and penalty for late-filed 42-day pre-general report which I received in the mail 10/3/2016 (copy enclosed).

On 9/26/2016 I called the commission and spoke with Erin Gordon regarding an issue I had with reporting. I had attempted to file the report on that day but the online reporting site keep saying the report was not done. Upon calling the commission Ms. Gordon walked me through the steps. At the end of our conversation I asked if we were done and the report had been filed. Ms. Gordon stated that yes, she had done it for me.

On Wednesday morning I received an email alerting me to a late filing. I called the commission and asked fro speak with Ms. Gordon who was not available at the time. Another person helped me through the prompts and this time the report was successfully filed. I left a voice message for Ms. Gordon who called me back later that day. I found her to be of no help and less than caring, indeed she seemed pleased to let me know the law was clear and I owed \$10 in penalties. She also stated she would report our conversation to her supervisor, to which I stated please do.

I am requesting that there be a finding of no violation because 1) an error was made the commission staff, and 2) there is relevant evidence that a bona fide effort was made to file the report on time.

Sincerely,



Robert Sezak



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

2016 CAMPAIGN FINANCE REPORT

FOR PRIVATELY FINANCED CANDIDATES

COMMITTEE		TREASURER	
ROBERT SEZAK 18 BUNKER AVE. FAIRFIELD, ME 04937 PHONE: (207) 314-8861 EMAIL: ROBERTSEZAK@GMAIL.COM		MR. ROBERT SEZAK 18 BUNKER AVE. FAIRFIELD, ME 04937 PHONE: (207) 313-7001 EMAIL: ROBERTSEZAK@GMAIL.COM	
REPORT	DUE DATE	REPORTING PERIOD	
42-DAY PRE-GENERAL REPORT	09/27/2016	07/20/2016 - 09/20/2016	

FINANCIAL ACTIVITY SUMMARY

RECEIPTS	TOTAL FOR THIS PERIOD	TOTAL FOR CAMPAIGN
1. CASH CONTRIBUTIONS FOR THE PRIMARY ELECTION (SCHEDULE A)		
1A. CASH CONTRIBUTIONS FOR THE GENERAL ELECTION(SCHEDULE A) <i>For party candidates, general election contributions will only appear on this line after the primary.</i>	\$0.00	\$0.00
1B. CASH CONTRIBUTIONS FOR THE GENERAL ELECTION RAISED PRIOR TO PRIMARY (Not shown on Schedule A of this report)		
2. OTHER CASH RECEIPTS (INTEREST, ETC)	\$0.00	\$0.00
3. LOANS (SCHEDULE C)	\$0.00	\$0.00
4. TOTAL RECEIPTS	\$0.00	\$0.00
EXPENDITURES		
5. EXPENDITURES (SCHEDULE B)	\$0.00	\$0.00
6. LOAN REPAYMENTS (SCHEDULE C)	\$0.00	\$0.00
7. TOTAL PAYMENTS	\$0.00	\$0.00
CASH SUMMARY		
8. CASH BALANCE AT BEGINNING OF PERIOD	\$0.00	
9. PLUS TOTAL RECEIPTS THIS PERIOD (LINE 4)	\$0.00	
10. MINUS TOTAL PAYMENTS THIS PERIOD (LINE 8)	\$0.00	
11. CASH BALANCE AT END OF PERIOD	\$0.00	
OTHER ACTIVITY		
12. IN-KIND CONTRIBUTIONS (SCHEDULE A-1)	\$500.00	\$582.24
13. TOTAL LOAN BALANCE AT END OF PERIOD (SCHEDULE C)	\$0.00	
14. TOTAL UNPAID DEBTS AT END OF PERIOD (SCHEDULE D)	\$0.00	
FOR PARTY CANDIDATES ONLY: CASH CONTRIBUTIONS FOR THE GENERAL ELECTION RAISED PRIOR TO PRIMARY ELECTION (INCLUDED IN LINE 1A AFTER PRIMARY ELECTION)		

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

REPORT FILED BY: MR. ROBERT SEZAK
REPORT FILED ON: 09/28/2016
LAST MODIFIED: 09/28/2016
PRINTED: 10/12/2016
COMMITTEE ID: 8667

SCHEDULE A - 1 IN-KIND CONTRIBUTIONS

- In-kind contributions are goods and services (including facilities) that a candidate received at no cost or at a cost less than the fair market value. they include all goods and services purchased for the campaign by the candidate or supporters if the campaign does not expect to reimburse the candidate or supporter. These contributions may come from the candidate, candidate's family, supporters, PACs, party committees, or other entities.
- For contributors who gave more than \$50, the names, address, occupation, and employer must be reported. If "information requested" is listed instead of occupation and employer, the candidate is waiting to receive that information.
- In-kind contributions of \$50 or less can be added together and reported as a lump sum.
- If the candidate received a discount on goods and services, the amount of the discount must be reported as an in-kind contribution.
- Total contributions (cash and in-kind) from the same source (except the candidate and candidate's spouse or domestic partner) may NOT exceed \$350 in any election for the legislative candidates, \$750 for county candidates, or \$1500 for gubernatorial candidates. For party candidates, the primary and general elections are considered separate election. For non-party candidates, there is only one election, the general election.

1 = Individual

2 = Candidate/ Spouse/ Domestic Partner

3 = Commercial Source

4 = Nonprofit Organization

5 = Political Action Committee

6 = Political Party Committee

7 = Ballot Question Committee

8 = Other Candidate/ Candidate Committee

9 = Candidate / Candidate Committee

10 = General Treasury Transfer

11 = Transfer from Previous Campaign

12 = Contributors giving \$50 or less

13 = Contributors giving \$100 or less

14 = Contributors giving \$200 or less

15 = MCEA Payment

16 = Financial Institution

DATE RECEIVED	CONTRIBUTOR'S NAME, ADDRESS, ZIP	OCCUPATION AND EMPLOYER	DESCRIPTION (of goods, services, facilities, or discounts received)	TYPE	AMOUNT
9/10/2016	ROBERT SEZAK 18 BUNKER AVE. FAIRFIELD, ME 04937	SELF	1000 BROCHURES	2	\$500.00
TOTAL IN-KIND CONTRIBUTIONS					\$500.00

September 29, 2016

Robert Sezak
18 Bunker Avenue
Fairfield, ME 04937

Re: Notice of Violation and Penalty for Late-Filed 42-Day Pre-General Report

Dear Mr. Sezak:

You were required to file the 42-Day Pre-General Report on 09/27/2016 by 11:59 p.m., but the report was not filed until 09/28/2016. 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 \$10.00. 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:

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: Robert Sezak			
Late-Filed Report: 42-Day Pre-General			
Contributions	\$500.00	Penalty Base Amount	\$500.00
Expenditures	\$0	Percentage	2%
Due Date	09/27/2016	Daily Accrual Rate	\$10.00
Date Filed	09/28/2016	Days Late	1
Previous Violations	0	Your Total Penalty	\$10.00

PAYMENT STATEMENT AND PAYMENT OPTIONS

From: Robert Sezak

Penalty Amount: \$ 10.00

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.

Maine Revised Statutes
Title 21-A: ELECTIONS

Chapter 13: CAMPAIGN REPORTS AND FINANCES

§1017. REPORTS BY CANDIDATES

3-A. Other candidates. A treasurer of a candidate for state or county office other than the office of Governor shall file reports with the commission and municipal candidates shall file reports with the municipal clerk as follows. Once the first required report has been filed, each subsequent report must cover the period from the end date of the prior report filed.

A. In any calendar year in which an election for the candidate's particular office is not scheduled, when any candidate or candidate's political committee has received contributions in excess of \$500 or made or authorized expenditures in excess of \$500, reports must be filed no later than 11:59 p.m. on July 15th of that year and January 15th of the following calendar 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. [2007, c. 443, Pt. A, §16 (AMD).]

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. [2007, c. 443, Pt. A, §16 (AMD).]

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 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. [2013, c. 334, §11 (AMD).]

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. [2007, c. 443, Pt. A, §16 (AMD).]



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. [2009, c. 190, Pt. A, §5 (AMD).]

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. [2007, c. 443, Pt. A, §16 (AMD).]

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. [1991, c. 839, §15 (AMD); 1991, c. 839, §34 (AFF).]

[2013, c. 334, §11 (AMD) .]

Maine Revised Statutes
Title 21-A: ELECTIONS
Chapter 13: CAMPAIGN REPORTS AND FINANCES

§1020-A. FAILURE TO FILE ON TIME

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.

[2011, c. 558, §3 (AMD) .]