



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

Commission Meeting 11/18/2015
Agenda Item #3

To: Commissioners

From: Benjamin Dyer, Political Committee and Lobbyist Registrar

Date: November 5, 2015

Re: Request for Waiver of Late-Filing Penalty by Legalize Maine PAC

All political action committees are required to file campaign finance reports by deadlines set in statute. The Legalize Maine PAC (the PAC), a PAC formed to promote the passage of a citizens' initiative to legalize marijuana, was required to file its regular 2015 October Quarterly report by October 5, 2015, but did not do so until October 13.

LEGAL REQUIREMENTS

PACs are required to file campaign finance reports according to a schedule set by statute. (21-A M.R.S.A. §1059(2)) The 2015 October Quarterly report was due on October 5, 2015. If a PAC is late in filing a campaign finance report, the amount of the preliminary penalty is set by a formula which takes into consideration the amount of the contributions or expenditures (whichever is greater) that were reported late, 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))

DISCUSSION

The PAC registered with the Commission on November 11, 2014, and timely-filed one post-election report and three quarterly reports thereafter. After the PAC failed to file its

2015 October Quarterly report, Commission staff mailed a reminder to file on October 6, 2015. The PAC filed the report eight days late on October 13, 2015.

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

Filing	Due Date	Financial Activity	Penalty Rate	Days Late	Preliminary Penalty
2015 October Quarterly Report	10/5/2015	\$47,816.26	1%	8	\$3,825.28

In its request for a waiver, the PAC accepts responsibility for the late filing of the report and offers three justifications for a waiver of the preliminary penalty: that the PAC's treasurer is inexperienced at managing a PAC, the treasurer fell ill with the flu around the filing deadline, and there was missing contributor employer/occupation information that the PAC did not receive until after the filing deadline. The PAC also notes that it has brought in a volunteer with experience as an officer manager to assist the treasurer in his record-keeping and filing responsibilities.

STAFF RECOMMENDATION

The timely filing of accurate campaign finance reports is the bedrock of Maine's campaign finance disclosure system. Violations of these reporting requirements can be serious because the public is denied information it needs to determine who is financing campaign activity in Maine and the connections among entities that money creates. In this case, over \$47,000 in contributions were not reported by the filing deadline. The Commission staff does not believe that the absence of employer/occupation information

justifies the late filing of a campaign finance report. Organizations should indicate that this information is requested and later amend the transactions when that information is received. The Commission staff is also reluctant to view the flu as a “valid emergency of the committee treasurer” sufficient to warrant a waiver. However, the Commission staff does view the inexperience of treasurer as a significant mitigating factor warranting a reduction in the preliminary penalty. As noted above, the PAC initially registered in November of 2014, and the treasurer has not previously been an officer in an organization reporting to the Commission. In addition, while the 2015 October Quarterly report was the fifth regular campaign finance report filed by the PAC, it was only the third report with financial activity. The PAC indicates that, to prevent late-filings in the future, its treasurer has enlisted the help of a volunteer to assist with record-keeping and provide a backup for report filing. Considering these factors, the staff recommends that the Commission grant a partial waiver and reduce the penalty to \$1,000.

Thank you for your consideration of this memo.

9/5/2015

Received
NOV 05 2015

Dear Mr. Dyer,

I am writing to you today to request a waiver on the penalty of \$3,825.28 for the late filing of Legalize Maine's 2015 October Quarterly Report. The reasons for the reports late filing are mostly due to the 1) treasurer's inexperience at managing a PAC, 2) a medical issue that occurred on October 4th thru 7th and 3) donors information that was missing and not wanting to leave information blank.

- 1) The PAC treasurer does not have previous experience running a PAC or the administrative tracking that comes from running an organization that receives donations from a variety of businesses and individuals. Legalize Maine also had supporters send checks, with little or no information on their employment or background. This being the treasurer's first time managing a PAC and organization like this, he became disorganized and did not have an adequate system for putting in donations as they were received. The treasurer was overwhelmed with responsibilities from his PAC duties and other duties for Legalize Maine.
- 2) The treasurer got very sick with a flu and was unable to fulfill his position due to the illness from October 4th to October 7th.
- 3) After the treasurer recovered from his illness, he realized there was not adequate information on some donations to file them. It took a less then a week to gather the needed information so the PAC report could be properly filed.

In the future, I have come up with the plan to prevent these issues from occurring again.

- 1) I have started to work with a volunteer who has experience as an office manager with back end work. We have formed a filing system to ensure that any donations sent in are followed by an immediate letter back and logged accordingly. I have started to train her in what is needed to make a quarterly report, so we can easily input data before the deadline date. We have changed our fund raising letters to include a request for the donors employer and background. I have started to work with her on other Legalize Maine administrative tasks to ensure I do not get overwhelmed again.
- 2) By training our volunteer on how to properly file the PAC report, along with the information that needs to be submitted, if I am incapacitated again, she will be able to file the report on time.
- 3) By working with the volunteer, we have created a better tracking system for donors and their information. This will help share the work load and ensure there is a better system for Legalize Maine.

As treasurer of this PAC, I take responsibility for my actions on filing this report 8 days late. I am asking that the Commission consider allowing me to appeal this penalty at an upcoming Commission meeting. I am willing to provide any information or documents you need and answer questions. Thank you for your consideration and please do not hesitate to contact me if you need more information.

Thank you,

Paul McCarrier *P. T. McCarrier*
Treasurer, Legalize Maine PAC
207-615-4457



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135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

October 13, 2015

Paul McCarrier, Treasurer
Legalize Maine PAC
PO Box 6
Freedom, ME 04941

Re: Late Filing of 2015 October Quarterly Campaign Finance Report

Dear Mr. McCarrier:

The Commission staff has made a preliminary determination that the Legalize Maine PAC (the PAC) was late in filing its 2015 October Quarterly Report. The report was due by 11:59 p.m. on October 5, 2015 but was not filed until October 13, 2015. 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 \$3,825.28 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 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 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) 287-4179 or send me an email at benjamin.p.dyer@maine.gov if you have questions.

Sincerely,

A handwritten signature in cursive script that reads "Benjamin P. Dyer".

Benjamin P. Dyer
Political Committee and Lobbyist Registrar

Payment Receipt

Mail payment to:

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

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

Paul McCarrier, Treasurer
Legalize Maine PAC
PO Box 6
Freedom, ME 04941

Violation: Late 2015 October Quarterly Report
Amount Due: **\$3,825.28**

Committee Name: Legalize Maine PAC

Report Title: 2015 October Quarterly

Due Date: October 5, 2015

Previous Violation(s): N/A

Filed Date: October 13, 2015

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 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	Contributions / Expenditures:	<u>\$47,816.26</u>
X .01	Percent prescribed for first violation	Percent Prescribed:	<u>1%</u>
\$25.00	One percent of total contributions	Number of days late:	<u>8</u>
X 2	Number of calendar days late	Total penalty accrued:	<u>\$3,825.28</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 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.

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.

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.

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.

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.

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.

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.

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.

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) .]