

Agenda

Item #6

Request for Waiver – Roger Hicks



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
Beth Hudson, Candidate Registrar
Date: November 15, 2014
Re: Request by Roger B. Hicks for Waiver of Penalty – Report Deemed Late due to
Incomplete Contribution Reporting

In the November 4, 2014 general election, Roger Hicks was one of three candidates for Commissioner of York County, District 3. His campaign treasurer filed the 11-Day Pre-Primary report on October 23, 2014. The report, as initially filed, was incomplete because it did not contain an expenditure of \$369.25 that the campaign incurred on September 17, 2014. The Commission staff considers the report to be late because the initially filed report did not substantially conform to the disclosure requirements in the Election Law. Through his treasurer, Kathleen G. Harmon, Mr. Hicks requests a waiver of the preliminary penalty calculated by Commission staff.

Legal Requirements. In 2014, candidates for county office are required to file five campaign finance reports according to certain deadlines. If a report does not substantially conform to the disclosure requirements in Title 21-A, Chapter 13, Subchapter II, the report is not considered timely filed. 21-A M.R.S.A. § 1020-A(2). The Commission calculates a preliminary penalty based on a formula in statute that takes into consideration the number of days late multiplied by a percentage of the financial activity in the late report. § 1020-A(4-A).

Reports filed by Campaign of Mr. Hicks. Mr. Hicks was required to file the pre-general report by 11:59 p.m. on October 24, 2014. The report was filed on October 23rd by his treasurer. After filing the initial report, Ms. Harmon amended the report on November 5, 2014 to add an expenditure made on September 17th in the amount of \$369.25. This was the only expenditure Mr. Hicks had during the time period for this report.

The Commission's e-filing system permits candidates to amend campaign finance reports freely. When a report is amended, the e-filing system sends a notification to the Commission staff, which prompts us to review the amended reports for compliance. It was during a routine review of amended reports that Commission staff found that Mr. Hicks's pre-general report had been substantially amended and that the initial report was incomplete.

Request for Waiver by Mr. Hicks. The preliminary penalty for the late report is \$44.28. Mr. Hicks requests a waiver of the penalty through his treasurer, Ms. Harmon. When she initially filed the 11-Day Pre-General report, Ms. Harmon did not include the September 17th expenditure of \$369.25 for printing. She described the circumstances as follows:

The Candidate provided the receipt for the expenditure in a timely manner, however, it had not been reflected in the bank statement and I did not include it in the original filing. Upon receipt of the bank statement for the period September 22, 2014 through October 21, 2014, I confirmed the check had been processed and amended the October 23, 2014 filing to include the \$369.25 expenditure.

We are interpreting her as saying that she was relying on the bank statement ending 9/21/2014, and the expenditure had not cleared as of that date. Once she saw the bank statement ending on 10/21/2014 which included the expenditure, she amended the report.

Ms. Harmon explains that there was no intent by her or the candidate to misrepresent this expenditure, she was a first-time treasurer, and had no indication that amending a report could cause the original filing to be considered not timely filed. Ms. Harmon further suggests that the E-filing system does not provide information explaining the consequences for filing an amended report.

Staff Recommendation

The Commission staff accepts that Ms. Harmon and Mr. Hicks did not intend to misrepresent the campaign's expenditures, however, the Election Law requires that all candidates disclose every expenditure on campaign finance reports submitted to the Commission. Even though the candidate had obtained a receipt one month before the report was due and provided it to his treasurer, she did not include the expenditure in the report that she filed on 10/23/2014.

Overall, the Commission staff does not recommend a waiver of the preliminary penalty of \$44.28, because there does not seem to be a good reason for the omission. The campaign knew of the expenditure, it occurred roughly one month before the report was due, the campaign had had a receipt for the payment, but the expenditures was not shown on the report.

If you would like to grant a partial waiver, however, you could take into consideration that Ms. Harmon was a first-time treasurer and this was not a large campaign. The total campaign's expenditures through 10/21/2014 were \$1,305.

Thank you for your consideration of this memo.

State of Maine Commission on Governmental Ethics and Election Practices
Attn: Beth Hudson
135 State House Station
Augusta, Maine 04333-0135

Dear Ms. Hudson:

This letter is to request the reported violation of late filing for the report due October 24, 2014 be removed and/or the penalty waived from the record of Roger B. Hicks. As the Treasurer for this candidate's campaign, I made every effort to complete the filing on time by filing on October 23, 2014. (Please see note below)

View Filings for ROGER B HICKS

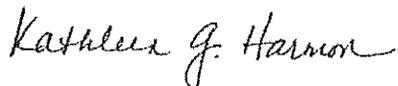
Amendment	Report	Filed
	11-DAY PRE-GENERAL	Oct 23 2014 9:22PM
Amended	11-DAY PRE-GENERAL	Nov 5 2014 6:55PM

The Candidate provided the receipt for the expenditure in a timely manner, however, it had not been reflected in the bank statement and I did not include it in the original filing. Upon receipt of the bank statement for the period September 22, 2014 through October 21, 2014, I confirmed the check had been processed and amended the October 23, 2014 filing to include the \$369.25 expenditure. There was no intent by myself or the Candidate to misrepresent this expenditure.

I am requesting this violation be removed at this time. This was my first experience as Treasurer and in using this website. There was no indication when I filed the amended report that this would present an issue and that the original filing would be negated. Additionally, there is very little information, if any, on the website explaining the consequences of filing an amended report. It would be helpful for others like me to have additional instruction clearly provided through the website in the future.

I appreciate your review of this information and consideration of my request.

Respectfully,



Kathleen G. Harmon
Treasurer for Roger B. Hicks
Candidate for County Commissioner



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

November 6, 2014

Roger B. Hicks
506 Deerwander Road
Hollis, Maine 04042

Re: Notice of Violation and Penalty for Late-Filed 11-Day Pre-General Report

Dear Mr. Hicks:

You were required to file the 11-Day Pre-General Report on October 24, 2014 by 11:59 p.m. but the report was not filed until November 5, 2014. The Commission staff considers the report late as a result of substantial non-conformity with disclosure requirements. 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 \$44.28. 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 the Commission staff at (207) 287-4179 or ethics@maine.gov if you have any questions.

Sincerely,

Beth Hudson
Candidate Registrar

cc: Kathleen G. Harmon

OFFICE LOCATED AT: 45 MEMORIAL CIRCLE, AUGUSTA, MAINE
WEBSITE: WWW.MAINE.GOV/ETHICS

PHONE: (207) 287-4179

FAX: (207) 287-6775

CORRECTED - 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: 1% for the first violation, 3% for the second violation, and 5% 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: Roger B. Hicks			
Late-Filed Report: 11-Day Pre-General			
Contributions	\$20.00	Penalty Base Amount	\$369.25
Expenditures	\$369.25	Percentage	1%
Due Date	10/24/2014	Daily Accrual Rate	\$3.69
Date Filed	11/5/2014	Days Late	12
Previous Violations	0	Your Total Penalty	\$44.28

PAYMENT STATEMENT AND PAYMENT OPTIONS

From: Roger B. Hicks

Penalty Amount: \$ 44.28

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.

State of Maine Commission on Governmental Ethics and Election Practices
Attn: Beth Hudson
135 State House Station
Augusta, Maine 04333-0135

Dear Ms. Hudson:

This letter is to request the reported violation of late filing for the report due October 24, 2014 be removed and/or the penalty waived from the record of Roger B. Hicks. As the Treasurer for this candidate's campaign, I made every effort to complete the filing on time by filing on October 23, 2014. (Please see note below)

View Filings for ROGER B HICKS

Amendment	Report	Filed	
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I appreciate your review of this information and consideration of my request.

Respectfully,



Kathleen G. Harmon
Treasurer for Roger B. Hicks
Candidate for County Commissioner



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

2014 CAMPAIGN FINANCE REPORT

FOR PRIVATELY FINANCED CANDIDATES

COMMITTEE		TREASURER	
ROGER B HICKS 506 DEERWANDER RD HOLLIS, ME 04042 EMAIL: RAADHICKS@ROADRUNNER.COM		KATHLEEN G HARMON 605 DEERWANDER RD HOLLIS, ME 04042 PHONE: (207) 727-5075 EMAIL: KGHARMON@ROADRUNNER.COM	
REPORT	DUE DATE	REPORTING PERIOD	
11-DAY PRE-GENERAL	10/24/2014	09/17/2014 - 10/21/2014	

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>	\$20.00	\$622.50
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	\$695.00
3. LOANS (SCHEDULE C)	\$0.00	\$0.00
4. TOTAL RECEIPTS	\$20.00	\$1,317.50
EXPENDITURES		
5. EXPENDITURES (SCHEDULE B)	\$369.25	\$1,305.21
6. LOAN REPAYMENTS (SCHEDULE C)	\$0.00	\$0.00
7. TOTAL PAYMENTS	\$369.25	\$1,305.21
CASH SUMMARY		
8. CASH BALANCE AT BEGINNING OF PERIOD	\$361.54	
9. PLUS TOTAL RECEIPTS THIS PERIOD (LINE 4)	\$20.00	
10. MINUS TOTAL PAYMENTS THIS PERIOD (LINE 8)	\$369.25	
11. CASH BALANCE AT END OF PERIOD	\$12.29	
OTHER ACTIVITY		
12. IN-KIND CONTRIBUTIONS (SCHEDULE A-1)	\$0.00	\$0.00
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, KATHLEEN G HARMON, CERTIFY THAT THE INFORMATION CONTAINED IN THIS REPORT IS TRUE, ACCURATE, AND COMPLETE TO THE BEST OF MY KNOWLEDGE.

REPORT FILED BY: KATHLEEN G HARMON
 REPORT FILED ON: 10/23/2014
 LAST MODIFIED: 11/05/2014
 PRINTED: 11/13/2014
 COMMITTEE ID: 7574

**SCHEDULE A
CASH CONTRIBUTIONS**

- 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.
- Cash contributions of \$50 or less can be added together and reported as a lump sum.
- Contributor Types

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	OCCUPATION AND EMPLOYER	TYPE	ELECTION	AMOUNT
9/17/2014	ROGER B HICKS 506 DEERWANDER RD HOLLIS CENTER, ME 04042	WESTERN EXPRESS DESCRIPTION: General Business CONTRIBUTION	2	General	\$20.00
TOTAL CASH CONTRIBUTIONS FOR PRIMARY					\$0.00
TOTAL CASH CONTRIBUTIONS FOR GENERAL					\$20.00

**SCHEDULE B
EXPENDITURES**

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
9/17/2014	CARDINAL PRINTING CO, INC PO BOX 115 DENMARK, ME 04022	RACK CARDS	LIT	\$369.25
TOTAL EXPENDITURES FOR CANDIDATE:				\$369.25

21-A MRSA § 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) .]