

Agenda

Item #7



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

To: Commission Members  
From: Jonathan Wayne, Executive Director  
Date: November 17, 2008  
Re: Complaint against Bangor Republican Committee

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On Monday, October 27, 2008, Democratic House candidate Steven Butterfield filed the attached request that the Commission investigate who had financed the distribution in the U.S. Mail of a letter expressly advocating for the election of the Republican candidate in the race, Douglas Damon. The letter was signed by Mr. Damon's neighbors, Fred and Lucille Hallsworth. The letter did not include a disclosure statement identifying the person who made or financed the expenditure for the communication.

I telephoned Mr. Damon, who denied knowledge of the expenditure for the mailing. He said that he did know, however, that his neighbors had been approached to sign a letter in support of him, but he thought it would be used as a letter to the editor of the Bangor Daily News.

Later in the day on October 27, the Bangor City Republican Committee filed an independent expenditure report stating that it paid \$1,198.23 for the mailing. Within the report, the committee's treasurer, attorney Joseph D. McCarthy, signed a form affidavit stating that the committee made the expenditure independently, and not in cooperation or consultation with Douglas Damon.

On October 27, I spoke with Mr. McCarthy and Cary Weston, the chair of the Bangor City Republican Committee. I explained that the committee was required to file an independent expenditure report within 24 hours of making an obligation to the U.S. Post Office for postage. Mr. Weston admitted that the committee made the obligation for postage on Thursday, October 23. He agreed to file an amended report with an expenditure date of October 23. I have attached a copy of the amended report.

#### **Late-Filing Penalty for Independent Expenditure Report**

The expenditure for \$1,198.23 for postage that was included in the October 27 independent expenditure report was disclosed three days late. (The report should have been filed on Friday, October 24.) In keeping with the Commission's standard procedures, the staff calculated the preliminary penalty amount to be \$34.44. The Bangor

City Republican Committee has paid this amount. I have attached the staff's correspondence regarding this penalty.

The late independent expenditure of \$1,198.23 did not delay the payment of matching funds to Steven Butterfield. As of October 24, 2008 – when the Bangor City Republican Committee should have reported the \$1,198.23 independent expenditure – Mr. Butterfield's campaign receipts had exceeded Mr. Damon's campaign receipts by \$1,254. Also, the Maine Democratic Party had made three independent expenditures in support of Mr. Butterfield totaling \$2,700. Therefore, even if the Bangor City Republican Committee had filed an independent expenditure report of \$1,198.23 on October 24, it would not have resulted in a payment of matching funds to Steven Butterfield.

### **Missing Disclosure Statement**

The Bangor City Republican Committee's expenditure for the mailing appears to violate 21-A M.R.S.A. § 1014(2) because it lacks the required disclosure statement identifying the person who made or financed the expenditure. As a result, recipients of the mailing and other interested persons were not informed in the letter that the Bangor City Republican Committee had financed it. This is valuable information that was required by law and was missing from the letter. The staff therefore recommends that the Commission assess a civil penalty of \$200 against the Bangor City Republican Committee.

Thank you for your consideration of this memorandum.



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

November 6, 2008

**By E-Mail and Regular Mail**

Cary Weston  
Chair, Bangor City Republican Committee  
c/o Sutherland Weston Marketing Communications  
6 State Street, Suite 102  
Bangor, ME 04401

Dear Mr. Weston:

As we have discussed previously by telephone, the Maine Commission on Governmental Ethics and Election Practices received the attached complaint from Steven J. Butterfield regarding a letter mailed in support of House candidate Douglas Damon signed by his neighbors Fred and Lucille Hallsworth. As chair of the Bangor City Republican Committee ("the committee"), you have verified that the committee paid \$1,198.23 to the Sutherland Weston firm to distribute the letter. The members of the Commission will consider Mr. Butterfield's complaint at their next meeting on Monday, November 24 at 9:00 a.m. in Room 208 of the Cross Office Building, 111 Sewall Street in Augusta (next to the State House).

The committee's expenditure to distribute the letter appears to violate 21-A M.R.S.A. § 1014(2) (attached) because the letter expressly advocates for the election of Mr. Damon and does not include statements that the committee paid for the communication and that it was not authorized by any candidate. The Commission members will consider at the November 24<sup>th</sup> meeting whether to find the committee in violation of § 1014(2) and whether to assess a civil fine of up to \$200 under subsection 4 of the statute. The staff likely will recommend that a civil fine be assessed in order to encourage inclusion of the required disclosure in future communications by political party committees and political action committees.

The committee is welcome to respond to the proposed finding of violation and civil fine in person at the meeting and/or by filing a written response no later than Sunday, November 16. If you choose to submit a written response, please fax it to 287-6775 or e-mail it as a pdf to [Jonathan.Wayne@maine.gov](mailto:Jonathan.Wayne@maine.gov).

RECEIVED

10/12/08

MAINE ETHICS COMMISSION

**Mr. Jonathan Wayne**  
Executive Director  
Maine Commission on Governmental Ethics and Elections Practices  
135 State House Station  
Augusta, ME 04333

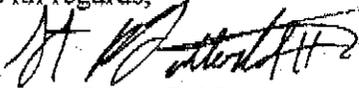
Dear Mr. Wayne:

I am the Democratic candidate in Maine House district 16 in Bangor. On Saturday, October 25, a letter sent on the behalf of my Republican opponent was brought to my attention by Don and Cindy Todd of Bangor. I have attached a copy of this letter and respectfully request that the Commission investigate the propriety of this expenditure and whether or not it was made in full compliance with germane Maine election law.

I noted that the letter, which clearly states unequivocal support for my opponent, does not bear what I believe to be proper disclosure and disclaimer statements. I do not believe it has been reported as an independent expenditure. Additionally, I would request that the Commission fully investigate the origin of any monetary expenditure to ensure that my opponent did not use campaign funds to pay for any component of this mailing, and if he did, to take appropriate action given that the letter does not bear the necessary candidate approval and disclosure statements.

Don and Cindy Todd can be reached at 2244 Ohio St. Bangor, ME 04401 or by phone at 207-945-4856. I am, of course, happy to provide any further assistance or information to the best of my knowledge and ability.

With regards,



**Steven Butterfield**  
Democratic candidate  
Maine House district 16

## 21-A MRSA § 1014

### PUBLICATION OR DISTRIBUTION OF POLITICAL COMMUNICATIONS

**1. Authorized by candidate.** Whenever a person makes an expenditure to finance a communication expressly advocating the election or defeat of a clearly identified candidate through broadcasting stations, newspapers, magazines, campaign signs or other outdoor advertising facilities, publicly accessible sites on the Internet, direct mails or other similar types of general public political advertising or through flyers, handbills, bumper stickers and other nonperiodical publications, the communication, if authorized by a candidate, a candidate's authorized political committee or their agents, must clearly and conspicuously state that the communication has been so authorized and must clearly state the name and address of the person who made or financed the expenditure for the communication. The following forms of political communication do not require the name and address of the person who made or authorized the expenditure for the communication because the name or address would be so small as to be illegible or infeasible: ashtrays, badges and badge holders, balloons, campaign buttons, clothing, coasters, combs, emery boards, envelopes, erasers, glasses, key rings, letter openers, matchbooks, nail files, noisemakers, paper and plastic cups, pencils, pens, plastic tableware, 12-inch or shorter rulers, swizzle sticks, tickets to fund-raisers and similar items determined by the commission to be too small and unnecessary for the disclosures required by this section. A communication financed by a candidate or the candidate's committee that is made through a broadcasting station is not required to state the address of the candidate or committee that financed the communication.

**2. Not authorized by candidate.** If the communication described in subsection 1 is not authorized by a candidate, a candidate's authorized political committee or their agents, the communication must clearly and conspicuously state that the communication is not authorized by any candidate and state the name and address of the person who made or financed the expenditure for the communication. If the communication is in written form, the communication must contain at the bottom of the communication in print that is no smaller in size than 10-point bold print, Times New Roman font, the words "NOT PAID FOR OR AUTHORIZED BY ANY CANDIDATE."

**2-A. Other communications.** Whenever a person makes an expenditure to finance a communication that names or depicts a clearly identified candidate and that is disseminated during the 21 days before a primary election or 35 days before a general election through the media described in subsection 1, the communication must state the name and address of the person who made or financed the communication and a statement that the communication was or was not authorized by the candidate. The disclosure is not required if the communication was not made for the purpose of influencing the candidate's nomination for election or election.

**3. Broadcasting prohibited without disclosure.** No person operating a broadcasting station within this State may broadcast any communication, as described in subsections 1 to 2-A, without an oral or written visual announcement of the disclosure required by this section.

**3-A. In-kind contributions of printed materials.** A candidate, political committee or political action committee shall report on the campaign finance report as a contribution to the candidate, political committee or political action committee any contributions of in-kind printed materials to be used in the support of a candidate or in the support or defeat of a cause to be voted upon at referendum. Any in-kind contributions of printed materials used or distributed by a candidate, political committee or political action committee must include the name or title of that candidate, political committee or political action committee as the authorizing agent for the printing and distribution of the in-kind contribution.

The use or distribution of in-kind printed materials contributed to a candidate, political committee or political action committee must be reported as an expenditure on the campaign finance report of that candidate, political committee or political action committee.



**INDEPENDENT EXPENDITURE REPORT – 2008 GENERAL ELECTION**

Name of Person/Committee Making Expenditure(s) BANGOR City Republican Committee

Mailing Address 63 FAIRWAYS

City, Zip Code BANGOR, ME 04401 Telephone 945-3504

Please check the appropriate box for the report you are filing and complete the notarized affidavit and attached schedules. Reports must be filed on Saturday or Sunday if that is when they are due by faxing the report to the Commission (287-6775). The Commission must receive the signed original report within 5 days after the fax was received.

**INDEPENDENT EXPENDITURES OF MORE THAN \$250 PER CANDIDATE**

- Independent expenditures of more than \$250 per candidate per election must be reported to the Commission within 24 hours of making the expenditure.
  - Once the aggregate amount per candidate exceeds \$250, any additional expenditures, regardless of amount, must be reported within 24 hours.
- Report of Independent Expenditure over \$250 per Candidate

**INDEPENDENT EXPENDITURES OF MORE THAN \$100 AND UP TO \$250 PER CANDIDATE (SELECT ONE REPORT)**

- If the total of expenditures per candidate exceeds \$100 but is not more than \$250, the expenditures must be reported according to the schedule below.
- Once the amount per candidate exceeds \$100, all subsequent expenditures must be reported, regardless of amount, up to \$250 per candidate. Once the amount spent per candidate exceeds \$250 in the aggregate, independent expenditures must be reported within 24 hours.
- Do not include expenditures that you listed in previously filed reports.
- During the 13-day period before an election, all independent expenditures must be reported within 24 hours.

**GENERAL ELECTION REPORTS**

Reporting Period	Filing Deadline
<input type="checkbox"/> Through July 5	July 15
<input type="checkbox"/> Through September 30	October 10
<input type="checkbox"/> Through October 21	October 24
<input type="checkbox"/> October 22 - November 4	Within 24 Hours
<input type="checkbox"/> Through December 9	December 16

**OTHER**

- Amendment to report dated: \_\_\_\_\_
- Other (specify): \_\_\_\_\_

I CERTIFY THAT THE INFORMATION IN THIS REPORT IS TRUE, CORRECT AND COMPLETE.

Joseph D. McCarthy  
 Signature of PAC or Party Treasurer, or  
 Other Authorized Person Making Expenditure(s)

10-27-08  
 Date



INDEPENDENT EXPENDITURE REPORT – 2008 GENERAL ELECTION

AFFIDAVIT

STATE OF Maine

COUNTY OF Penobscot

Joseph D. McCarthy, being duly sworn, attests that he/she made each of the expenditures listed in the attached report independently, and not in cooperation, consultation, or concert with, or at the request or suggestion of, the candidates named in the report or the authorized committees or agents of the candidates.

Joseph D. McCarthy  
(Signature of Affiant)

Sworn to before me, this 27<sup>th</sup> day of October 2008

Virginia K. Putnam  
(Notary Public/Attorney at Law)

Schedule B-IE-2

PAYMENTS AND OBLIGATIONS

- Please indicate the date, payee, expenditure type, and amount of each expenditure.
- If you are reporting an agreement or obligation to make a future payment, please check (✓) the box next to the expenditure type.

Expenditure Types			
LIT	Printing and graphics (flyers, signs, palmcards, etc.)	PRT	Print media ads only (newspapers, magazines)
MHS	Mail house (all services purchased)	RAD	Radio ads, production costs
PHO	Phone banks, automated telephone calls	TVN	TV or cable ads, production costs
POL	Polling and research survey	WEB	Website design, registration, hosting, maintenance, etc.
POS	Postage for U.S. Mail and mail box fees	OTH	Other (include description)

Date of expenditure	Payee, address, zip code	Expenditure type	✓	Amount
10/23	Seether Land Webster Marketing Communications 16 State St. Ste 102 Bangor 04401	LIT		1,698.23
10/27	Same as above	RAD		3,000.00
10/27	Same as above	MHS/RAD		301.77
A. Expenditures for this page =>				5,000.00
B. Total for all other Schedule B-IE-2 pages (if any) =>				N/A
C. Total independent expenditures for this reporting period (A+B). This amount should equal the total amount for all candidates listed on Schedule B-IE-1. =>				5,000.00

Schedule B-IE-1

CANDIDATE(S) SUPPORTED/OPPOSED

- Please list all candidates that were the subjects of independent expenditures.
- If more than one candidate was the subject of the expenditure, allocate the expenditure among the candidates.

Office sought by candidate (including district # or county)	Candidate's name	Indicate whether expenditure was made in support of or in opposition to the candidate	Amount expended this reporting period for each candidate
#16	Doug Damon	support	\$5,000.00
Total expenditures for all candidates this reporting period. This amount should equal the total independent expenditures listed on Schedule B-IE-2, Line C. ⇒			\$5,000.00



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

October 28, 2008

Mr. Joseph D. McCarthy  
Treasurer  
Bangor City Republican Committee  
63 Fairways  
Bangor, ME 04441

Re: Late Independent Expenditure Report

Dear Mr. McCarthy:

Our records show that the Bangor City Republican Committee filed an Independent Expenditure Report on October 27, in which the committee reported a financial obligation or expenditure in excess of \$250 having occurred on October 23.

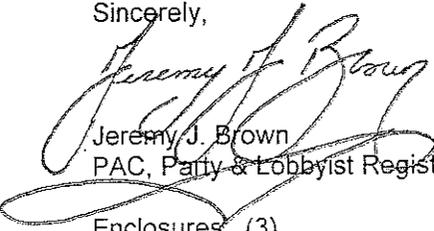
Chapter 1 § 10(3)(B) of the Commission Rules require that Independent Expenditures aggregating in excess of \$250 per candidate made by any person, party committee, political committee or political action committee be reported to the Commission within 24 hours of those expenditures.

Penalties for late reports are based on the amount of financial activity reported, the number of calendar days a report is filed late, and the committees filing history. Pursuant to the statutory formula found in 21-A M.R.S.A § 1020-A, the Commission has assessed a preliminary penalty of \$34.44. Please refer to the enclosed penalty matrix for more information.

If you believe you have a valid reason for filing late, you may request that the Commission review your case make a final penalty determination. Any request for a Commission determination must be made within 10 calendar days of receiving this notice, beginning the day you sign for receipt. If this notice has been refused or left unclaimed at the post office, the 10-day period will begin on the day the post office indicates that it gave first notice of a certified letter. Upon receipt of your request for a Commission determination, we will schedule you to appear before the Commission at the next regularly scheduled meeting. You may appear before the Commission personally, designate a representative to appear on your behalf, or submit a notarized written statement in which you provide an explanation of the mitigating circumstances you wish the Commission to take into consideration. The Commission will notify you of the disposition of your case within 10 days after its determination.

Please direct any questions you may have about this matter to me at 287-6221.

Sincerely,

  
Jeremy J. Brown  
PAC, Party & Lobbyist Registrar

Enclosures: (3)

OFFICE LOCATED AT: 242 STATE STREET, AUGUSTA, MAINE  
WEBSITE: WWW.MAINE.GOV/ETHICS

PHONE: (207) 287-4179

FAX: (207) 287-6775

October 28, 2008

Mr. Joseph D. McCarthy  
Treasurer  
Bangor City Republican Committee  
63 Fairways  
Bangor, ME 04441

The Commission staff has made a preliminary determination that a penalty of \$34.44 applies for the late filing of your Independent Expenditure Report received by the Commission on October 27, 2008. If you agree with this preliminary determination, please make your check or money order in that amount payable to "**Treasurer, State of Maine,**" and send it, along with the bottom half of this letter, to the **Commission on Governmental Ethics and Election Practices, 135 State House Station, Augusta, Maine 04333**, within 30 days of the date noted above. You may also pay your penalty online using your Visa or MasterCard by selecting the "penalty payment" option on the lower left portion of our homepage ([www.maine.gov/ethics](http://www.maine.gov/ethics)). Please see the instructions included in the attached letter if you would like the Commission to make a final determination of any penalty to be assessed in this case.

Failure to pay the full amount of an assessed penalty is a civil violation. The Commission is required to report to the Attorney General the name of any person who fails to pay the full amount of any penalty.

Please direct any questions you may have about this matter to the Commission at 287-4179.

**Cut Along Dotted Line**

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To: Commission on Governmental Ethics and Election Practices  
135 State House Station  
Augusta, Maine 04333

From: Bangor City Republican Committee

RE: Penalty for late filing of Independent Expenditure Report (\$34.44)

For Office Use Only Account: CGEEP Fund: 010 Appr: 01
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Amount Enclosed: \$ \_\_\_\_\_

Check/M.O. No.: # \_\_\_\_\_

**PLEASE MAKE CHECK PAYABLE TO TREASURER, STATE OF MAINE.**

**COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES  
PENALTY MATRIX FOR LATE PARTY COMMITTEE REPORT FILINGS**

**BASIS FOR PENALTIES  
21-A M.R.S.A. Section §1020-A**

**Committee Name:** Bangor City Republican Committee      **Report Title:** Independent Expenditure Report  
**Due Date:** October 24, 2008  
**Previous Violation(s):** 0      **Filed Date:** October 27, 2008

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.**

<b>Penalty Example:</b>		<b>Your Penalty is calculated as follows:</b>	
The treasurer files the candidate's report two (2) days late. The candidate has not had any previous late violations this biennium. The candidate 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>\$1,148.23</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>3</u>
X 2	Number of calendar days late	Total penalty accrued:	<u>\$34.44</u>
\$50.00	<b>Total Penalty</b>		

**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 1020(5-A)(D)

November 21, 2008

Cary Weston  
Chair, Bangor Republican City Committee  
721 Kenduskeag Ave.  
Bangor, ME 04401  
Tel: 207-990-2019

Mr. Jonathan Wayne  
Executive Director  
Maine Commission on Governmental Ethics and Elections Practices  
135 State House Station  
Augusta, ME 04333

Dear Mr. Wayne:

Thank you for forwarding to me the details of the November 24th meeting of the Maine Commission on Governmental Ethics and Elections Practices.

I understand that the Bangor Republican City Committee ("Committee") is on the agenda for the violation of 21-A M.R.S. §1014(2) regarding a letter produced and distributed by the Committee in support of Doug Damon, Republican Candidate for House District 17. I also understand that the basis of the violation was the omission of a "paid for" line, representing that the mailing was authorized and paid for by the Committee.

I regret that I am unable to attend the Commission's meeting in person due to a conflicting commitment. If the Commission would allow, I would like to submit this as a written response in place of my attendance.

Upon learning of the violation, I, as Chair of the Committee, promptly contacted the Executive Director to discuss the basis of the violation. On behalf of the Committee, I accepted full responsibility for the violation and explained that the Committee would cooperate fully with the Executive Director's recommendations to the Commission regarding the violation.

In effort to provide the Commission with perspective, and not by way of offering an excuse, I feel compelled to state that the Committee's leadership team had not, prior to this election season, been engaged in City politics. We have worked hard to maintain compliance with the State's election laws and operate within the framework of established ethics practices, but, as with all things new, we are learning as we go. I would like to stress that the violation in this case was by no means intentional; it was simply an oversight by people newly engaged in the political process.

The letter in support of Doug Damon represented approximately 30% of the Committee's expenditures in support of the candidate, with additional funds being spent to increase exposure via radio airtime. All radio segments did include required disclaimers and all filings for radio expenditures were made according to the deadlines established by the Commission.

Thank you for the opportunity to submit this letter for consideration by the Commission. We look forward to the Commission's decision on this matter following its meeting on the 24th.

Sincerely,

A handwritten signature in black ink, appearing to read 'C. Weston', with a horizontal line underneath.

Cary Weston  
Chair, Bangor Republican City Committee