

Agenda

Item #8



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
Emma Burke, Candidate Registrar
Date: January 14, 2015
Re: Request for Waiver of Late-Filing Penalty for Non-Compliant Report filed by
John Cleveland

In the 2014 elections, Sen. John Cleveland of Auburn ran for re-election to the Maine Senate, District 20, as a Maine Clean Election Act candidate. A challenger won the election. On October 24, 2014, all candidates were required to file an 11-Day Pre-General Report. A volunteer for Senator Cleveland filed the report on time, but the report did not include two expenditures made on October 9 and 15 to Curry Printing & Marketing totaling \$8,787.01. In mid-December (after the campaign's final report was filed), the Commission staff noticed a discrepancy and contacted the campaign. The campaign volunteer conceded that two expenditures were missing from the 11-Day Pre-General Report, and the report was amended. The originally filed report is considered 54 days late, because it did not substantially comply with the disclosure requirements.

LEGAL REQUIREMENTS

Candidates are required to file a report on the eleventh day before the date on which an election is held and must be complete for the filing period as of the fourteenth day before that date. (21-A M.R.S.A. § 1017(3-A)(B)) A report is not timely filed unless it is filed by the deadline and substantially conforms to the disclosure requirements of Chapter 13 of the Election Law. (21-A M.R.S.A. § 1020-A(2)) If the candidate is late in filing a substantially conforming 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

On December 17, 2014, the 11-Day Pre-General Report was amended to include two expenditures that were omitted from the originally filed report:

Date	Payee	Remarks	Exp Type	Amount
10/9/2014	CURRY PRINTING & MARKETING	MAILER/ABS VOTERS	LIT	\$1,108.41
10/15/2014	CURRY PRINTING & MARKETING	TWO MAILERS	LIT	\$7,678.60

The campaign has requested a waiver through a letter from Auburn attorney Richard Trafton, the treasurer for the campaign. Our understanding is that campaign's reports were actually filed by James Wilkins, a volunteer whom the campaign registered with the Commission as an "authorized agent." Based on our interactions with the campaign, we believe Mr. Trafton's letter puts a generous gloss on the campaign's detection and remedying of the under-reporting. In the interest of an accurate assessment of the facts, our understanding is set out below.

On December 15, 2014, the campaign filed its final report for the election cycle, and on December 16 submitted a check to return unspent Maine Clean Election Act (MCEA) funds. Candidate Registrar Emma Burke noted a significant difference between the ending cash balance on the final report (\$9,085.41) and the amount of unspent MCEA funds returned to our office (\$298.40). She left voicemail messages on December 16 for the treasurer (Mr. Trafton) and the authorized agent (Mr. Wilkins).

Ms. Burke heard back from Mr. Wilkins the next day, December 17, 2014. Mr. Wilkins candidly admitted that he missed two expenditures when preparing the 11-Day Pre-General Report. He said something to the effect of "They're right here in the checkbook.

I don't know how I missed them." He apologized for the failure to include them in the 11-Day Pre-General Report.

Mr. Wilkins gave the detailed information for the two expenditures to Ms. Burke over the phone (date, payee, purpose, and amount). She entered the information in the Commission's e-filing system on behalf of the campaign, and amended the report as a convenience to the campaign.

Based on the statutory formula for calculating late-filed report penalties, the preliminary penalty amount is \$5,000, calculated as follows:

Report	Date	Financial Activity	Penalty Rate	Days Late	Preliminary Penalty
11-Day Pre-General Report	10/24/2014	\$17,439.63	1%	54	\$9,417.40 \$5,000 maximum

The Cleveland campaign asks that the Commission waive the preliminary penalty of \$5,000 because it is disproportionate to the harm to the public from the late report.

STAFF RECOMMENDATION

Accurate and complete campaign finance reports are an integral part of Maine Campaign Finance Law. Incomplete and nonconforming reports are harmful to both the public and the opposing candidate and political committees.

In this case, the harm to the public was not minimal. The unreported expenditures represent 35% of the campaign's total spending, and this Senate race was closely watched. Fortunately, the mailings themselves presumably would have indicated who paid for them.

The staff agrees that the preliminary penalty of \$5,000 is disproportionately high, relative to the harm to the public. We recommend granting a partial waiver and reducing the penalty to \$250. We are concerned about the fairness of assessing too large a penalty

against the candidate, based on an apparent mistake by a volunteer, Mr. Wilkins. We also appreciate Mr. Wilkins' candidness in acknowledging the error.

Thank you for your consideration of this memo.

RECEIVED
DEC 22 2014
Maine Ethics Commission

M. Kelly Matzen
Richard L. Trafton

TRAFTON & MATZEN, LLP
ATTORNEYS AT LAW
TEN MINOT AVENUE
(AT COURT STREET)
POST OFFICE BOX 470
AUBURN, MAINE 04212-0470
(207) 784-4531 Telephone
(207) 784-8738 Facsimile
trafton@traftonandmatzen.com
www.TraftonandMatzen.com

Pasquale F. Matorino
Of Counsel

W.A. Trafton, Jr.
(1918 - 1994)

December 22, 2014

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

RE: Hon. John Cleveland - Notice of Violation and Penalty

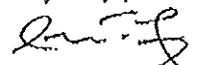
Dear Mr. Wayne:

As Treasurer of John Cleveland's campaign for the State Senate, I request a waiver of the \$5,000.00 penalty imposed by the Commission's letter of December 18, 2014, addressed to Senator Cleveland. I request the Commission consider the following information from which it can easily determine that the penalty is disproportionate to the harm to the public caused by the late filed 11-Day Pre-General Report.

The recently completed campaign was Senator Cleveland's fifth for State office, and the first for which a violation and penalty arose. Due to a very busy campaign schedule, Senator Cleveland relied on a volunteer to prepare the 11-Day Pre-General Report, as well as other Reports to the Commission. This volunteer discovered his own omission of expenditures as he prepared the next Report due December 16. Upon this discovery, the volunteer filed, without notice from the Commission, an amended 11-Day Report listing the omitted expenditures. This amended Report was, of course, past the 11-Day Report's filing deadline, giving rise to the violation and penalty.

Senator Cleveland never received notice from either his opponent who defeated him in the General Election, or the Commission, of any problem with the first filed 11-Day Report, suggesting that neither his opponent's successful campaign nor the public was harmed by the original Report filed in error. Consequently, I request the Commission waive the \$5,000.00 penalty in lieu of a nominal penalty of \$50.00 which I will pay forthwith.

Very truly yours,


Richard L. Trafton

cc: Senator Cleveland

Original Report



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 MCEA CANDIDATES

COMMITTEE		TREASURER	
JOHN J CLEVELAND 201 MAIN ST AUBURN, ME 04210 EMAIL: JCLEVELAND@CDCORP.ORG		RICHARD L TRAFTON PO BOX 470 AUBURN, ME 04210 PHONE: (207) 784-2893 EMAIL: RTRAFTON@TRAFTONANDMATZEN.COM	
REPORT	DUE DATE	REPORTING PERIOD	
11-DAY PRE-GENERAL	10/24/2014	09/17/2014 - 10/21/2014	

FINANCIAL ACTIVITY SUMMARY

CASH ACTIVITY	TOTAL FOR THIS PERIOD	TOTAL FOR CAMPAIGN
1. CASH BALANCE FROM LAST REPORT	\$23,323.16	
2. SEED MONEY CONTRIBUTIONS	\$0.00	\$1,500.00
3. MAINE CLEAN ELECTION ACT PAYMENTS & AUTHORIZATIONS	\$0.00	\$23,580.00
4. SALE OF CAMPAIGN PROPERTY (SCHEDULE E, PART 2)	\$0.00	\$0.00
5. OTHER CASH RECEIPTS (INTEREST, ETC.,)	\$0.00	\$0.00
6. MINUS EXPENDITURES (SCHEDULE B)	\$8,652.62	\$10,409.46
7. CASH BALANCE AT CLOSE OF PERIOD	\$14,670.54	
OTHER ACTIVITY		
8. IN-KIND SEED MONEY CONTRIBUTIONS	\$0.00	\$0.00
9. TOTAL UNPAID DEBTS AT CLOSE OF PERIOD (SCHEDULE D)	\$0.00	

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

REPORT FILED BY: JAMES WILKINS
REPORT FILED ON: 10/22/2014
LAST MODIFIED: 10/22/2014
PRINTED: 12/23/2014
COMMITTEE ID: 7583

Original Report

**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	DESIGNS BY SKIP, INC 144 MAIN STREET AUBURN, ME 04210	LAWN SIGNS	LIT	\$1,671.15
9/25/2014	CURRY PRINTING & MARKETING 31 MILL ST. AUBURN, ME 04210	MAILERS	MHS	\$3,543.06
10/6/2014	CURRY PRINTING & MARKETING 31 MILL ST. AUBURN, ME 04210	MAILING	MHS	\$1,108.41
10/6/2014	WEZR RADIO 555 CENTER STREET AUBURN, ME 04210	FRENCH LANGUAGE RADIO ADS	RAD	\$80.00
10/8/2014	CURSO BEYCHOK 352 NAPOLEON STREET BATON ROUGE, LA 70802	DESIGN/MAILING	MHS	\$2,250.00
TOTAL EXPENDITURES FOR CANDIDATE:				\$8,652.62

AS amended on 12/17/14



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 MCEA CANDIDATES

COMMITTEE		TREASURER
JOHN J CLEVELAND 201 MAIN ST AUBURN, ME 04210 EMAIL: JCLEVELAND@CDCORP.ORG		RICHARD L TRAFTON PO BOX 470 AUBURN, ME 04210 PHONE: (207) 784-2893 EMAIL: RTRAFTON@TRAFTONANDMATZEN.COM
REPORT	DUE DATE	REPORTING PERIOD
11-DAY PRE-GENERAL	10/24/2014	09/17/2014 - 10/21/2014

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2. SEED MONEY CONTRIBUTIONS	\$0.00	\$1,500.00
3. MAINE CLEAN ELECTION ACT PAYMENTS & AUTHORIZATIONS	\$0.00	\$23,580.00
4. SALE OF CAMPAIGN PROPERTY (SCHEDULE E, PART 2)	\$0.00	\$0.00
5. OTHER CASH RECEIPTS (INTEREST, ETC.,)	\$0.00	\$0.00
6. MINUS EXPENDITURES (SCHEDULE B)	\$17,439.63	\$19,196.47
7. CASH BALANCE AT CLOSE OF PERIOD	\$5,883.53	
OTHER ACTIVITY		
8. IN-KIND SEED MONEY CONTRIBUTIONS	\$0.00	\$0.00
9. TOTAL UNPAID DEBTS AT CLOSE OF PERIOD (SCHEDULE D)	\$0.00	

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

REPORT FILED BY: EMMA BURKE
REPORT FILED ON: 10/22/2014
LAST MODIFIED: 12/17/2014
PRINTED: 01/14/2015
COMMITTEE ID: 7583



As amended on 12/17/14

**SCHEDULE B
EXPENDITURES**

EXPENDITURE TYPES				
CNS	Campaign consultants	POL	Polling and survey research	
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10/8/2014	OURSO BEYCHOK 352 NAPOLEON STREET BATON ROUGE, LA 70802	DESIGN/MAILING	MHS	\$2,250.00
10/9/2014	CURRY PRINTING & MARKETING 31 MILL ST. AUBURN, ME 04210	MAILER/ABS VOTERS	LIT	\$1,108.41
10/15/2014	CURRY PRINTING & MARKETING 31 MILL ST. AUBURN, ME 04210	TWO MAILERS	LIT	\$7,678.60
TOTAL EXPENDITURES FOR CANDIDATE:				\$17,439.63



21-A MRS § 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



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

December 18, 2014

Hon. John Cleveland
201 Main Street
Auburn, Maine 04210

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

Dear Senator Cleveland:

You filed your 11-Day Pre-General Report on October 22, 2014, and subsequently filed an amended version of the report on December 17, 2014. The amended version of the report significantly increased the amount of expenditures than originally reported. Therefore, the Commission staff considers the report late as a result of substantial non-conformity with disclosure requirements (21-A M.R.S.A. § 1020-A(2)). Under the Commission's statutes 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 \$9,417.40, which exceeds the maximum statutory penalty. Therefore, your penalty is capped at \$5,000. (21-A M.R.S.A. §1020-A(5-A)(A)). 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,

Emma Burke
Candidate Registrar

cc: Richard Trafton, James Wilkins

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: Hon. John Cleveland			
Late-Filed Report: 11-Day Pre-General			
Contributions	\$0	Penalty Base Amount	\$17,439.63
Expenditures	\$17,439.63	Percentage	1%
Due Date	10/24/2014	Daily Accrual Rate	\$174.39
Date Filed	12/17/2014	Days Late	54
Previous Violations	0	Your Total Penalty	\$9,417.40 - \$5,000 maximum

PAYMENT STATEMENT AND PAYMENT OPTIONS

From: Hon. John Cleveland

Penalty Amount: \$ 5,000

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.