

Agenda

Item #10



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: December 13, 2014
Re: Request for Waiver of Late-Filing Penalty by Donald Smith Campaign

Sheriff Donald "Donnie" Smith was the incumbent candidate for Sheriff in Washington County. During the period of October 22nd-November 3rd, all candidates were required to file 24-Hour Reports within one day of accepting a contribution or making an expenditure of \$1,000 or more. Sheriff Smith incurred a debt of greater than \$1,000 on October 24, 2014 for a postcard mailing(s) and paid the debt on October 29, but the 24-Hour Report was filed ten days late on November 4 (election day).

LEGAL REQUIREMENTS

Candidates are required to report any single contribution received or single expenditure made of \$1,000 or more during the 13 days before an election within 24 hours of that transaction. (21-A M.R.S.A. § 1017(3-A)(C)) If the candidate is late in filing a 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 October 24, 2014, Sheriff Smith incurred a debt of \$5,638.73 to the Bangor Letter Shop for postcard printing and mailing, triggering a 24-Hour Report due on October 25, 2014. The debt was paid with the personal funds of the candidate on October 29, 2014.

Sheriff Smith then mailed the invoice to his treasurer, Kevin Shissler. Mr. Shissler filed the report when he received the invoice in the mail on November 4, 2014.

Based on the statutory formula for calculating late-filed report penalties, the preliminary penalty for the late-filed 24-Hour Report amount totals \$563.87, calculated as follows:

Report	Date	Financial Activity	Penalty Rate	Days Late	Preliminary Penalty
24-Hour Report	11/05/2014	\$5,638.73	1%	10	\$563.87

The Donnie Smith campaign asks that the Commission waive the preliminary penalty and the finding of violation because the report was promptly filed by Sheriff Smith's treasurer once he received the invoice, and that there was no harm to the public.

STAFF RECOMMENDATION

24-Hour Reports provide the public with important information concerning last-minute financial activity to influence an election. The information is also valuable to opposing candidates and political groups. Because the Maine Legislature has required the disclosure of this information, harm to the public should be presumed even if the harm is difficult to measure. In this case, the Sheriff's race in Washington County was highly contested and Sheriff's Smith opponent was delayed the knowledge that Sheriff Smith had purchased thousands of dollars' worth of postcard mailers until it was too late for that knowledge to be of strategic use, if the opponent chose to react to the mailing. The staff disagrees with Sheriff Smith's statement that "clearly there was no harm to the public caused by the late disclosure."

Also, there was no practical obstacle to the Smith campaign filing the report on October 25, 2014. Sheriff Smith has run for political office before. The 24-hour requirement is well publicized and the campaign was aware of it (based on the filing of the report on Nov. 4, the day of the election). Sheriff Smith knew he had incurred the debt on October 24 and paid the bill on October 29. The Commission staff is unsure why he believed his campaign would wait to file a 24-Hour report until his treasurer received the invoice by

U.S. Mail on election day. He could have called the treasurer to notify him of the amount, payee, and purpose of the transaction, or filed the report himself.

The Commission staff does find that the preliminary penalty of \$563.87 is disproportionate to this violation. The staff recommends finding the report to be violation, and decreasing the penalty to \$200. Following the primary election, you assessed penalties of \$100 - \$150 for late filing of 24-hour reports in contested primary elections. In this case, the staff recommends \$200, because we believe the penalty for a general election should be higher.

Thank you for your consideration of this memo.

November 17, 2014



Emma Burke, Candidate Registrar
Commission on Governmental Ethics & Election Practices
135 State House Station
Augusta, ME 04333-0135

RE: *Donald Smith, Notice of Violation & Penalty for Late File of 24 hr. Report*

Dear Ms. Burke:

I'm in receipt of a Notice of Violation and Penalty for Late File 24-Hour Report, dated November 6, 2014.

I'm requesting that the Commission find that there was no violation and not assess penalty. I paid the amount owed to Bangor Letter Shop on Thursday, October 30, 2014, which with my Capitol One credit card. I enclose a copy of that transaction, which shows that the actual transaction date was October 29, 2014, but was posted on October 30, 2014.

My treasurer, Kevin Shissler, lives in Hancock County. I live in Washington County. After I had paid the bill – I'm not sure if it was on Thursday or Friday – I mailed the invoice from Bangor Letter Shop to Treasurer Kevin Shissler. The invoice was received by my treasurer when he retrieved his mail on November 3rd or 4th. Mr. Shissler then promptly filed a report with the Secretary of State.

There was no intent by me or my treasurer to file the report late. It is simply the time delay associated with the delivery of mail and the fact that Mr. Shissler did not receive the invoice I sent to him until after the weekend.

I am respectfully requesting that the Commission find that there is no violation and to not assess the penalty.

In your letter you indicated that the Commission may waive or reduce the penalty, or find that there was no violation under certain circumstances. In this case, under Subsection (3), I made every effort to see that the report was filed on time, and so did Treasurer Kevin Shissler. Given the fact of time delay in receipt of mail, and the fact that there was a weekend involved in the interim, I respectfully request that the Commission find that there was no violation and, therefore, there should be no penalty. In addition, clearly there was no harm to the public caused by the late disclosure.

I respectfully request that the Commission find no violation, and that there be no penalty assessed due based on the circumstances described in this letter.

Thank you for your consideration.


Donald Smith

Washington, ss

November 17, 2014

Personally appeared Donald Smith, who made oath to the foregoing statement as true to the best of his knowledge.

Before me,

Paula Johnson-Bolfe
Notary Public/Attorney-at-Law

Paula Johnson-Bolfe
(Print or Type Name of Notary)

My Commission Expires: Dec. 11, 2020

11/13/2014



[Print this page](#)

Transaction Details

Merchant Name:
Transaction Date:
Posted Date:
Amount:
Category:
Details:
**Appears on your statement
as:**

BANGOR LETTER SHOP INC
Wednesday, 10/29/2014
Thursday, 10/30/2014
\$6,638.73
Other Services
Printing Services
BANGOR LETTER SHOP INC BANGOR ME 044016518
USA



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

24-HOUR REPORT OF CONTRIBUTIONS AND EXPENDITURES

2014 CAMPAIGN YEAR

COMMITTEE		TREASURER
MR. DONALD G SMITH PO BOX 527 LUBEC, ME 04652 PHONE: (207) 263-5321 EMAIL: WCSO.1911@GMAIL.COM		KEVIN SHISSLER 6 OCEAN LANE FRANKLIN, ME 04634 PHONE: (207) 565-1055 EMAIL: KSHISSLER@MAINE.RR.COM
REPORT	DUE DATE	REPORTING PERIOD
24 Hour Report of Major Contributions and Expenditures	10/25/2014	10/24/2014 - 10/24/2014

FINANCIAL ACTIVITY SUMMARY

CONTRIBUTIONS AND EXPENDITURES	
1. TOTAL CONTRIBUTIONS / LOANS	\$5,638.73
2. TOTAL EXPENDITURES	\$5,638.73
3. TOTAL DEBTS	\$0.00

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

REPORT FILED BY: KEVIN SHISSLER
REPORT FILED ON: 11/04/2014
LAST MODIFIED: 11/04/2014
PRINTED: 11/19/2014
COMMITTEE ID: 7041

24-HOUR CONTRIBUTOR INFO

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	CONTRIBUTOR/ CONTRIBUTION TYPE	AMOUNT
10/24/2014	DONALD SMITH PO BOX 527 LUBEC, ME 04652		2 Monetary (Itemized)	\$5,638.73
TOTAL CONTRIBUTIONS / LOANS				\$5,638.73

24-HOUR EXPENDITURE AND PAYEE INFORMATION

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	Mall 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
10/24/2014	BANGOR LETTER SHOP & COLOR COPY CENTER 99 WASHINGTON STREET BANGOR, ME 04401	POSTCARD PRINTING AND MAILING.	LIT	\$5,638.73
TOTAL EXPENDITURES FOR CANDIDATE:				\$5,638.73

Bangor Letter Shop & Copy Center

99 Washington Street
 Bangor, ME 04401-6518
 Tel: (207)945-9311 Fax: (207)942-9914
 Email: Info@bangorlettershop.com

Statement

10/30/2014

CTE Donnie Smith for Sheriff
 Don Brown
 PO Box 3370
 Brewer, ME 04412

TERMS: INVOICES WITH POSTAGE DUE 10 DAYS, All Other Invoices net 30 days.
 Service Charge of 1% (APR 12%) per month may be added to the unpaid balance after 30 days.

DATE	TRANSACTION	AMOUNT	BALANCE
09/01/2014	Balance forward		0.00
10/24/2014	INV #81191	1,626.31	1,626.31
10/24/2014	INV #81192	4,012.42	5,638.73
10/30/2014	PMT #1263 - Inv#81191/192	-5,638.73	0.00
		OVER 90 DAYS PAST DUE	AMOUNT DUE
		0.00	\$0.00

Bangor Letter Shop Inc
 99 Washington St
 Bangor, ME 04401
 207-945-9311

TERMINAL ID.: 70780417
 MERCHANT #: 300979538716

EXP: ** ** KEVED CNP
 MAIL ORDER SALE
 BATCH: 006415
 Oct 29, 14
 RRN: 43072049991 AUTH: 09347E
 V-CODE: A
 TRAN SEQ #: 001263

CUSTOMER NUMBER: 5526519666062517
 P.O. NUMBER: 811928191
 TRANSACTION ID: 10291FCJZTNN

APPROVAL 09347E

TOTAL \$5638.73

THANK YOU!

CUSTOMER COPY



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

November 6, 2014

Mr. Donald Smith
PO Box 527
Lubec, Maine 04652

Re: Notice of Violation and Penalty for Late-Filed 24-Hour Report

Dear Mr. Smith:

You were required to file a 24-Hour Report on 10/25/2014 by 11:59 p.m., but the report was not filed until 11/04/2014. 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 \$563.87. 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: Mr. Kevin Shissler

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

PHONE: (207) 287-4179

FAX: (207) 287-6775

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: Donald Smith			
Late-Filed Report: 24-Hour Report			
Contributions	\$5,638.73	Penalty Base Amount	\$5,638.73
Expenditures	\$5,638.73	Percentage	1%
Due Date	10/25/2014	Daily Accrual Rate	\$56.38
Date Filed	11/04/2014	Days Late	10
Previous Violations	0	Your Total Penalty	\$563.87

PAYMENT STATEMENT AND PAYMENT OPTIONS

From: Donald Smith

Penalty Amount: \$563.87

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.