

Agenda

Item #3



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

To: Commission Members
Cc: Dennise D. Whitley
From: Jonathan Wayne, Executive Director
Date: March 21, 2008
Re: Late Registration by Dennise D. Whitley

Dennise D. Whitley filed her 2008 registration as a lobbyist for the American Heart Association on February 12, 2008. In the view of the Commission staff, the registration was filed late. As explained below, the Commission staff's standard advice is that a lobbyist must file a registration form within 15 business days after completing eight hours of lobbying in a calendar month. Then, the lobbyist must begin filing monthly lobbyist reports and must file an annual report at the end of the lobbying year.

Ms. Whitley stated on her 2008 registration form that she began lobbying for the American Heart Association this year on January 2, 2008 and met the 8-hour threshold on January 17, 2008. The Commission staff believes that her registration was therefore due February 8, 2008 (fifteen business days after January 17, excluding Martin Luther King, Jr. Day as a holiday).

Ms. Whitley has requested a waiver of the \$200 penalty for filing her registration late. This memo is to explain how the Commission staff has interpreted the registration requirement and the penalty statute. These interpretations represent the longstanding views of the Commission, and pre-date the Commission's current employees.

Requirement to Register

The Lobbyist Disclosure Law defines lobbyist as:

10. Lobbyist. "Lobbyist" means any person who is specifically employed by another person for the purpose of and who engages in lobbying in excess of 8 hours in any calendar month, or any individual who, as a regular employee of another person, expends an amount of time in excess of 8 hours in any calendar month in lobbying. "Lobbyist" does not include a lobbyist associate. (3 M.R.S.A. § 312-A(10))

Lobbyists must register as follows:

Every employer of a lobbyist and every lobbyist and lobbyist associate who lobbies on behalf of that employer shall register jointly at the office of the commission no later than 15 business days after commencement of lobbying and pay a registration fee of \$200 (3 M.R.S.A. § 313)

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

Historically, the Commission has interpreted these two provisions to mean that an individual must register fifteen business days after the date on which he or she exceeded the 8-hour threshold. I have attached the explanation of the requirement in the Lobbyist Handbook.

The Commission's website contains the advice: "The joint registration must be filed within 15 business days after the lobbyist has completed eight hours of lobbying in any calendar month." In her February 20, 2008 letter to the Commission, Ms. Whitley states that she interpreted this advice to mean that the deadline for filing the registration was the 15th calendar day of the following month – the same deadline as for the monthly lobbyist reports. (For example, the monthly lobbyist report covering the month of February is due on March 15.) Accordingly, Ms. Whitley believed that after exceeding the 8-hour threshold in January, her registration was due on February 15, 2008.

Amount of Penalties

Penalties for late filings by lobbyists are determined by 3 M.R.S.A. § 319(2):

Any person who fails to file a registration or report as required by this chapter may be assessed a fine of \$100 for each person listed or who should have been listed on the lobbyist registration for every month the person fails to register or is delinquent in filing a report pursuant to section 317. The Commission may waive the penalty in whole or in part if the Commission determines the failure to register or report was due to mitigating circumstances.

Traditionally, the Commission considered the lobbyist's registration and annual report to be joint filings on behalf of the lobbyist and the lobbyist's employer. Because two persons were listed on these documents (the lobbyist and the employer), the Commission adopted an interpretation in its rules that the penalty for filing these documents late is \$200 per month. Because the monthly lobbyist report was signed only by the lobbyist, the penalty in the Commission's rule for filing the monthly report late is \$100 per month. To be consistent with the Commission's rule and past practice, the staff recommends that the baseline penalty in Ms. Whitley's case should be \$200 per month (before any reduction for good faith misunderstanding of the filing requirement).

Recommendation

The Commission staff does not question that Ms. Whitley made a good-faith inference that the registration was due on February 15, 2008. Nevertheless, we recommend assessing a penalty of \$200 for the late registration because in recent years, the Commission has taken a fairly strict line on penalties for late-filed reports. On the other hand, the staff has no objection if you wish to reduce the penalty amount.

For the 2009 legislative session, the Commission staff may recommend that you propose an amendment to make the penalty statute (3 M.R.S.A. § 319) more clear and less expensive for mistakes that are promptly remedied.



American Heart Association | American Stroke Association

Learn and Live.

51 US Route 1, Suite M
Scarborough, ME 04074-9374

Tel. 207.879.5700 Tel. 800.937.0944

Fax 207.879.5918

www.americanheart.org

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FEB 25 2008

February 20, 2008

MAINE ETHICS COMMISSION
Attn: Gavin O'Brien, Registrar
State of Maine
Commission on Governmental Ethics and Election Practices
135 State House Station
Augusta, Maine 04333-0135

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Dear Commission Members:

Please consider this letter as a request for a penalty waiver. When I filed my 2008 registration, I was under the assumption that my registration needed to be filed within the fifteen days following the month in which I reached at least 8 hours of lobbying activity. I indicated on my registration that I had reached that threshold on 1/17/08. So, I filed within the 15 days after the close of the month as is usual with filing a long form. I reread the Lobbyist registration information on the webpage: "The joint registration must be filed within 15 business days after the lobbyist has completed eight hours of lobbying in any calendar month." I feel it is confusing and can be interpreted as needing to file within fifteen days after the end of the calendar month, as we do with monthly reporting. Because this was an unintentional violation, I am asking for a waiver of the penalty fee.

I also question that the penalty is \$200, because I am the only lobbyist for my organization. The letter states that "a penalty of \$100 for each person listed on the lobbyist registration." The only reason that another person is listed on my registration is that the form asks for the name of my supervisor who is out of state and does not lobby in Maine.

On behalf of my employer, a non-profit organization, I try to comply with Maine's Lobbyist criteria and I apologize that my registration was determined not in compliance, but it was an error of misunderstanding the registration regulations.

Thank you for your consideration. I await your decision.

Dennise D. Whitley
Maine Advocacy Director
American heart Association
51 US Route 1
Suite M
Scarborough, Maine 04074





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

February 14, 2008

To: Dennise Whitley, Lobbyist for:
 American Heart Association, Founders Affiliate

From: Gavin O'Brien, Registrar

Every employer of a lobbyist and every lobbyist and lobbyist associate who lobbies on behalf of that employer is required to register jointly with the Commission no later than **15 business days** after the point at which the lobbyist has lobbied more than 8 hours in a calendar month, and pay a registration of \$200 for each lobbyist and \$100 for each lobbyist associate.

Your joint registration was received in this office on 2/12/08, along with your registration fee of \$200. The registration submitted for the above-named employer indicates that the date when you met your 8 hours of lobbying in a single month was 1/17/08. Based on this date, your registration should have been filed no later than 2/8/08. Any person who fails to file a registration in a timely manner may be assessed a penalty of \$100 for each person listed on the lobbyist registration; thus, the preliminary determination of the penalty that may be imposed for your late registration is \$200.

If you agree with this preliminary penalty determination, you may use the attached billing statement to pay that penalty within 30 days of the date of this notice. Please mail your remittance to the Commission on Governmental Ethics and Election Practices, 135 State House Station, Augusta, Maine 04333.

However, if you have a valid reason for filing late, you may request a final penalty determination by the Commission. Requests for penalty waivers must be received within 15 days of the date of this letter. The Commission will notify you of the disposition of your case within 10 days after its determination.

Any person who fails to file a report or pay a fee may be suspended from further lobbying by written notice of the Commission until such failure is corrected.

Please direct any questions you may have about this matter to the Commission at (207) 287-6221.

 Cut Along Dotted Line

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

From: Dennise Whitley, Lobbyist for:
 American Heart Association, Founders Affiliate

Re: Penalty for late filing of Joint Lobbyist/Employer Registration

Amount Enclosed: \$ _____
 Check/M.O. No.: # _____

Please Make Check/M.O. Payable to Treasurer, State of Maine

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

STATE OF MAINE
 COMMISSION ON GOVERNMENTAL ETHICS & ELECTION PRACTICES

Mail: 135 State House Station, Augusta, Maine 04333

Office: 242 State Street, Augusta, Maine

Phone: (207) 287-6221 Fax: (207) 287-6775

Website: <http://www.maine.gov/ethics>

Electronic Filing: <http://mainecampaignfinance.com/public/home.asp>

LOBBYIST/EMPLOYER JOINT REGISTRATION

1. Lobbyist name WHITLEY, DENNISE D.		
Lobbyist's Firm/Organization American Heart Association, Founders Affiliate		
Business address 51 US ROUTE 1, STE. M	Telephone (207)523-3007	Fax (207)879-5918
City, state, zip code SCARBOROUGH ME 04074	E-mail Dennise.whitley@heart.org	
Name of person authorized by lobbyist to sign reports if different from lobbyist		

2. Employer name AMERICAN HEART ASSOCIATION, FOUNDERS AFFILIATE		Principal contact name BILL THOMPSEN	
Business address 20 SPEEN STREET		Telephone (508)620-1700	Fax (508)620-6157
City, state, zip code FRAMINGHAM MA 01701		E-mail bill.thompson@heart.org	
Name of person authorized by employer to sign annual report if different from principal contact			

3. Please list the names of lobbyist associates.

N/A

4. Indicate the date when lobbying commenced, or is expected to commence.	1/2/2008
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4a. Date when lobbying exceeded 8 hours in a calendar month.	1/17/2008
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5. Specify the amount of compensation that the lobbyist will receive for the lobbyist's services or, if an exact amount is unascertainable, the basis upon which the lobbyist will charge for those services.

\$28.62/HR. HOURLY RATE ALLOCATED PER HOUR OF LOBBYING ACTIVITY

6. Indicate the primary nature of the business of the person employing the lobbyist by checking ONE category below.

HEALTH CARE

We, the undersigned, hereby swear or affirm that the information contained in this registration is true and complete, and that no information is knowingly withheld.	
SIGNATURE ON FILE	1/2/2008
Signature of lobbyist	Date
_____	_____
SIGNATURE ON FILE	2/12/2008
Signature of employer	Date
_____	_____

Sworn falsification is a Class D crime (17-A MRSA Section 453).



MAINE LOBBYIST HANDBOOK

**STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0135
PHONE: (207) 287-4179
FAX: (207) 287-6775**

WWW.MAINE.GOV/ETHICS

REGISTRATION

* [Lobbyists must file a joint registration for each employer (client) with the Ethics Commission once they have reached 8 hours of lobbying in a calendar month. The registration form and fee must be filed no later than 15 business days after the lobbyist has lobbied more than 8 hours in a calendar month. This is the only report that must be filed on paper. All other reports must be filed electronically.

Registration fees: Lobbyist: \$200
 Lobbyist Associate: \$100

Once registered, lobbyists are required to file monthly reports with the Commission even if no work was performed during the month that is covered by the report. Monthly reports must be filed by every lobbyist who is registered, even if the lobbyist has registered before meeting the 8-hour threshold.

The Lobbyist/Employer Joint Registration form is filed on an annual basis. The lobbying year is December 1st - November 30th. All registrations expire on November 30th.

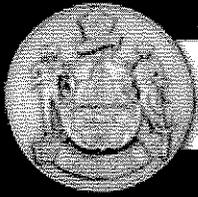
An employee of the State of Maine who meets the requirements as a lobbyist for a state agency must register with the Commission using a special form, but is not required to file monthly or annual reports.

ELECTRONIC FILING

Beginning January 1, 2006, all lobbyists must file monthly session reports and annual reports through the Commission's electronic filing system. The Commission may make an exception to the electronic filing requirement if a lobbyist submits a written request that states that the lobbyist lacks access to the technology or does not have the technological ability to file reports electronically. The request for exception must be submitted at least 10 days prior to the deadline for the first report that the lobbyist is required to file for the lobbying year. The Commission will grant reasonable requests for exceptions.

The Commission will provide the lobbyist a user code, temporary password and directions to file reports electronically. All reports, except the registration, can be filed electronically.

Lobbyists with multiple employers will have one user code and password.



MAINE COMMISSION ON

Governmental Ethics & Election Practices

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Registration

Every [lobbyist](#) must file a joint registration with his or her employer (client), and pay a registration fee of \$200 for each lobbyist and \$100 for each [lobbyist associate](#). (Please read the [definitions](#) of lobbying, lobbyist, and legislative action and the [Lobbying FAQ](#) to determine if you qualify as a lobbyist.) The registration may be completed [online](#) or [on paper](#). The joint registration must be filed within 15 business days after the lobbyist has completed eight hours of lobbying in any calendar month. Lobbyists may register by completing the paper registration form and submitting it along with the fees to the Commission. Lobbyists may also use the online registration feature on this website. Please see the link to "Lobbyist Registration" in the navigational menu on the left hand side of this page.

The registration expires on November 30 after the end of the next legislative session. The registration may also be [terminated](#) if the employer notifies the Commission that it is no longer engaging the lobbyist, or if the employer and lobbyist file an [annual report](#).

Every registered lobbyist is required to file [monthly reports](#) with the Commission, except that after the legislative session has ended, the lobbyist may request a [waiver](#) of the requirement if the lobbyist does not anticipate conducting any further lobbying before the following December 1st.

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3 MRSA §312-A. Definitions

3 §312-A. Definitions

As used in this chapter, unless the context otherwise indicates, the following words have the following meanings. [1983, c. 160, §1 (NEW) .]

. . .

9. Lobbying. "Lobbying" means to communicate directly with any official in the legislative branch or any official in the executive branch or with a constitutional officer for the purpose of influencing any legislative action or with the Governor or the Governor's cabinet and staff for the purpose of influencing the approval or veto of a legislative action when reimbursement for expenditures or compensation is made for those activities. "Lobbying" includes the time spent to prepare and submit to the Governor, an official in the legislative branch, an official in the executive branch, a constitutional officer or a legislative committee oral and written proposals for, or testimony or analyses concerning, a legislative action. "Lobbying" does not include time spent by any person providing information to or participating in a subcommittee, stakeholder group, task force or other work group regarding a legislative action by the appointment or at the request of the Governor, a Legislator or legislative committee, a constitutional officer, a state agency commissioner or the chair of a state board or commission as long as the person's regular employment does not otherwise include lobbying.

[2007, c. 373, §1 (AMD) .]

10. Lobbyist. "Lobbyist" means any person who is specifically employed by another person for the purpose of and who engages in lobbying in excess of 8 hours in any calendar month, or any individual who, as a regular employee of another person, expends an amount of time in excess of 8 hours in any calendar month in lobbying. "Lobbyist" does not include a lobbyist associate.

[1993, c. 691, §5 (RPR) .]

SECTION HISTORY

1983, c. 160, §2 (NEW). 1985, c. 779, §4 (AMD). 1987, c. 816, §KK4 (AMD). 1987, c. 868, §2 (AMD). 1993, c. 446, §§A1-10, B1, 2 (AMD). 1993, c. 691, §§4-9 (AMD). 1993, c. 446, §A20 (AFF). 2007, c. 373, §§1, 2 (AMD).

3 MRSA §313. Registration of lobbyists and employers

3 §313. Registration of lobbyists and employers

Every employer of a lobbyist and every lobbyist and lobbyist associate who lobbies on behalf of that employer shall register jointly at the office of the commission no later than 15 business days after commencement of lobbying and pay a registration fee of \$200 for the registration of each lobbyist and \$100 for the registration of each lobbyist associate or such other amounts as the commission determines approximate the cost to the commission of administering and enforcing the provisions of this chapter. [1999, c. 745, §1 (AMD) .]

SECTION HISTORY

1975, c. 621, §2 (RP). 1975, c. 576, (RPR). 1975, c. 724, (REN). 1977, c. 108, §1 (AMD). 1991, c. 465, §1 (AMD). 1993, c. 446, §B3 (AMD). 1993, c. 691, §10 (RPR). IB 1995, c. 1, §7 (AMD). 1999, c. 745, §1 (AMD).

3 MRSA §319. Penalty

3 §319. Penalty

1. Failure to file registration or report. Any person who fails to file a registration or report as required by this chapter may be assessed a fine of \$100 for each person listed or who should have been listed on the lobbyist registration for every month the person fails to register or is delinquent in filing a report pursuant to section 317. The commission may waive the penalty in whole or in part if the commission determines the failure to register or report was due to mitigating circumstances.

[1993, c. 691, §22 (RPR) .]

1-A. Notice of suspension. Any person who fails to file a report or pay a fee as required by this chapter may be suspended from further lobbying by written notice of the commission until such failure is corrected.

[1993, c. 446, Pt. B, §12 (AMD) .]

2.

[1979, c. 632, §3 (RP) .]

3. Exemption. Notwithstanding section 317, subsection 1, a registered lobbyist is exempt from the penalty imposed under this section if, while the Legislature is convened in special session, the lobbyist failed to file a report with the commission pursuant to section 317 if no lobbying has been performed during that special session.

[1993, c. 446, Pt. B, §13 (AMD) .]

SECTION HISTORY

1975, c. 576, (NEW). 1975, c. 621, §2 (RP). 1975, c. 724, (REN). 1977, c. 696, §17 (AMD). 1979, c. 632, §3 (RPR). 1989, c. 114, (AMD). 1991, c. 465, §2 (AMD). 1993, c. 446, §§A15,B11-13 (AMD). 1993, c. 691, §22 (AMD).

- E. If the Director and Counsel are in agreement that the subject matter of a request for an investigation is clearly outside the jurisdiction of the Commission, the staff may forward the request to the appropriate authority or return it to the person who made the request, provided that the staff notifies the Commission members of the action at the next Commission meeting.
- F. The signature of a person authorized to sign a report or form constitutes certification by that person of the completeness and accuracy of the information reported. The use of a password in filing an electronic report constitutes certification of the completeness and accuracy of the report.

3. Lobbyist Disclosure Procedures

- A. **Report Review.** The Commission staff will monitor all filings made pursuant to 3 M.R.S.A. §311 *et seq.* for timeliness, legibility, and completeness. The staff will send the lobbyist a notice of any apparent reporting deficiency, including failure to use prescribed forms. The notice will include a request that the deficiency be corrected within 15 business days of the notice. If remedy is not made, it will be noted on the agenda of the next Commission meeting. The Commission may reject reports that are incomplete or illegible.
- B. **Late Registrations and Reports.** Notice will be given by mail to any lobbyist whose registration, monthly disclosure report, or annual report is delinquent. In the case of a late monthly report, the notice must be mailed within 7 business days following the filing deadline for the report. In the case of late annual reports and registrations, the notice must be mailed within 15 business days following the filing deadline. The notice must include a statement specifying the amount assessed. A penalty of \$100 will be assessed the lobbyist for every month that a monthly disclosure report is late and a penalty of \$200 will be assessed the lobbyist and employer for every month a registration or annual report is filed late. For purposes of 3 M.R.S.A. §319(1), the month will end on the 15th day of the month following the month in which a report was due. Any failure to submit a required report, registration, or penalty fee will be noted on the Commission agenda.
- C. **Suspensions.** The Commission may suspend any person from lobbying who fails to file a required report or pay an assessed fee. A notice of the suspension must be mailed to the lobbyist by U.S. Certified Mail within three days following the suspension. Reinstatement will occur on the date the required report or payment is received in the Commission office. A notice of the reinstatement must be mailed to the lobbyist by U.S. Certified Mail or given directly to the lobbyist within three days following receipt of the required report or payment.
- D. **Request for Penalty Waiver.** A lobbyist may request a waiver of any late penalty the lobbyist incurs. The request must be made in writing to the Commission and must state the reason for the delinquency. Any such request must be noted on the agenda of the next Commission meeting. Only the Commission may grant penalty waivers.