

Agenda

Item #11



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 15, 2015
Re: Request for Waiver of Late-Filing Penalty for Non-Compliant Report Filed by
Hon. James Gillway

In the November 4, 2014 general election, Rep. James Gillway ran for re-election to the Maine House of Representatives, District 98. Rep. Gillway won general election. On October 24, 2014, all candidates were required to file an 11-Day Pre-General Report. Representative Gillway's campaign filed the report early, but omitted a \$3,177.40 expenditure for two mailers that the candidate made on the last day of the report period (after he filed the report). He filed an amended version of the report on December 6, which was 43 days late.

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 considered timely filed only if it is submitted by the deadline and substantially complies with the disclosure requirements 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

The original version of Representative Gillway's 11-Day Pre-General Report was filed five days early, on October 19, 2014. An amended version, which increased the amount of expenditures from \$957.14 to \$4,134.14, was filed December 6, 2014. Commission staff received notice of the filing of an amended report via the efilings system, which led to a routine review of the amended version of the report. The staff noted that the amount of expenditures from the original filing to the amended version more than quadrupled, meaning that the original report was substantially non-compliant.

Based on the statutory formula for calculating late-filed report penalties, the preliminary penalty amount totals \$1,777.85 calculated as follows:

Report	Date	Financial Activity	Penalty Rate	Days Late	Preliminary Penalty
11-Day Pre-General Report	10/24/2014	\$4,134.14	1%	43	\$1,777.85

The Gillway campaign asks that the Commission waive the preliminary penalty. The circumstances that led to the late report are as follows: In the third week of October, the candidate had visited the Bangor Letter Shop to order two mailings for his House district. He filed his report on October 19, five days before the deadline. He explains that he always files his campaign finance reports before the deadline.

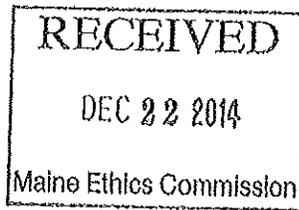
Rep. Gillway became increasingly concerned because he did not receive printer's proofs from the Bangor Letter Shop. He visited the shop on Tuesday, October 21. This is two days *after* he had already filed the 11-Day Pre-General Report. The shop disclosed that it had misplaced one of his two draft mailers. While he was in the shop on October 21, he paid \$3,177.40 for the two mailings. When doing so, he failed to realize that he was making the payment *on the last day of the period* for the 11-Day Pre-General Report and should amend the previously filed report to include the payment.

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.

Rep. Gillway has provided a plausible, complete explanation for the omission of the report. The preliminary penalty of \$1,777.85 is disproportionate to the harm to the public from the late disclosure. The Commission staff recommends a reduction of the penalty to \$100.

Thank you for your consideration of this memo.



79 Bowen Road
Searsport, Maine 04974
December 16, 2014

Commission on Governmental Ethics
and Election Practices
135 State House Station
Augusta, Maine 04333-0135

Dear Commission:

I am respectfully requesting a waiver of penalty for a violation and penalty for late-filed 11 Day Pre-General Election report issued December 8, 2014. The details of my experience is as follows:

During the third week of October, I visited the Bangor Letter Shop to have them design two mailers to send out for my campaign. I believe my visit was made on Tuesday. I was informed that by Friday, I should have my first proof to look at and that it could go out as early as Monday of the next week. I became concerned when no proof arrived by Monday. I visited the shop on Tuesday, October 21 and discovered that they had misplaced one of the two draft mailers. At this point, I feared that the mailers would not go out at all. I did realize that I was approaching the mandated 48 hour report period but absolutely did not realize that I was still in the 11 Day Pre-General reporting period. I had already filed my 11 Day Pre-General report on October 19th. I have always filed my reports before the deadline and after the report period ended. In this case, I did not even realize that I submitted my report before the reporting period ended. On the spot standing in the print shop, in my mind, I was trying to ensure that everyone would know that I ordered this literature well before the mandatory 24 hour report period. I sincerely did not want anyone to have the impression that I was trying to do anything wrong. By being concerned about this, I triggered the exact opposite result. I realize that had I just let the Bangor Letter shop bill me, I would have received the invoice after the election when writing a check would simply be reported on the final 42 Day Post General Election Report.

I actually never received any of my own mailers. I do know that, at least some, did go out because my opponent came to me and thanked me for being professional and not dragging his name through the mud.

This was my first campaign running as a traditional candidate and I did struggle with the reporting system. Most of my contributions were small grassroots neighbor donations which required a lot of data entry. If I should run again, I will contemplate hiring someone to help with record keeping. I did close out my campaign prior to getting the notice of late report. I made contributions to other candidates and political committees in order to avoid the need to further reports.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "James S. Grlway". The signature is written in a cursive, somewhat stylized script.

James S. Grlway

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 PRIVATELY FINANCED CANDIDATES

COMMITTEE		TREASURER	
HONORABLE JAMES S GILLWAY 79 BOWEN RD SEARSPORT, ME 04974 PHONE: (207) 323-3250 EMAIL: JGILLWAY@YAHOO.COM		ROBERT HANISH 49 HARBORVIEW DR STOCKTON SPRINGS, ME 04981-4381 PHONE: (207) 323-2639 EMAIL: ROBERTHANISH@GMAIL.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)	\$0.00	\$744.00
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>	\$1,350.00	\$5,415.00
1B. CASH CONTRIBUTIONS FOR THE GENERAL ELECTION RAISED PRIOR TO PRIMARY (Not shown on Schedule A of this report)		\$0.00
2. OTHER CASH RECEIPTS (INTEREST, ETC)	\$0.00	\$0.00
3. LOANS (SCHEDULE C)	\$0.00	\$0.00
4. TOTAL RECEIPTS	\$1,350.00	\$6,159.00
EXPENDITURES		
5. EXPENDITURES (SCHEDULE B)	\$957.14	\$2,776.28
6. LOAN REPAYMENTS (SCHEDULE C)	\$0.00	\$0.00
7. TOTAL PAYMENTS	\$957.14	\$2,776.28
CASH SUMMARY		
8. CASH BALANCE AT BEGINNING OF PERIOD	\$2,989.86	
9. PLUS TOTAL RECEIPTS THIS PERIOD (LINE 4)	\$1,350.00	
10. MINUS TOTAL PAYMENTS THIS PERIOD (LINE 8)	\$957.14	
11. CASH BALANCE AT END OF PERIOD	\$3,382.72	
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, HONORABLE JAMES S GILLWAY, CERTIFY THAT THE INFORMATION CONTAINED IN THIS REPORT IS TRUE, ACCURATE, AND COMPLETE TO THE BEST OF MY KNOWLEDGE.

REPORT FILED BY: HONORABLE JAMES S GILLWAY
 REPORT FILED ON: 10/19/2014
 LAST MODIFIED: 10/19/2014
 PRINTED: 12/23/2014
 COMMITTEE ID: 7592

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
9/19/2014	HOME DEPOT 26 STEPHEN KING DRIVE AUGUSTA, ME 04330	DEBIT CARD PURCHASE FOR SOLAR LIGHTS FOR SIGNS	OTH	\$45.41
9/29/2014	SAM'S CLUB 47 HASKELL ROAD BANGOR, ME 04401	DEBIT CARD TRANSACTION FOR FLING INTO FALL EVENT AND PARADE CANDY AND FOOD.	FOD	\$67.67
9/30/2014	BANGOR LETTER SHOP 99 WASHINGTON STREET BANGOR, ME 04401-6518	CHECK 0110 FOR 150 SIGNS	LIT	\$792.31
10/1/2014	STEAMBOAT SUNOCO 161 EAST MAIN STREET SEARSPORT, ME 04974	DEBIT CARD TRANSACTION FOR FUEL TO GO DOOR TO DOOR FOR THE WEEK.	TRV	\$51.75
TOTAL EXPENDITURES FOR CANDIDATE:				\$957.14

Amended
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 PRIVATELY FINANCED CANDIDATES

COMMITTEE		TREASURER	
HONORABLE JAMES S GILLWAY 79 BOWEN RD SEARSPORT, ME 04974 PHONE: (207) 323-3250 EMAIL: JGILLWAY@YAHOO.COM		ROBERT HANISH 49 HARBORVIEW DR STOCKTON SPRINGS, ME 04981-4381 PHONE: (207) 323-2639 EMAIL: ROBERTHANISH@GMAIL.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)	\$0.00	\$744.00
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>	\$1,350.00	\$5,415.00
1B. CASH CONTRIBUTIONS FOR THE GENERAL ELECTION RAISED PRIOR TO PRIMARY (Not shown on Schedule A of this report)		\$0.00
2. OTHER CASH RECEIPTS (INTEREST, ETC)	\$0.00	\$0.00
3. LOANS (SCHEDULE C)	\$0.00	\$0.00
4. TOTAL RECEIPTS	\$1,350.00	\$6,159.00
EXPENDITURES		
5. EXPENDITURES (SCHEDULE B)	\$4,134.54	\$5,953.68
6. LOAN REPAYMENTS (SCHEDULE C)	\$0.00	\$0.00
7. TOTAL PAYMENTS	\$4,134.54	\$5,953.68
CASH SUMMARY		
8. CASH BALANCE AT BEGINNING OF PERIOD	\$2,989.86	
9. PLUS TOTAL RECEIPTS THIS PERIOD (LINE 4)	\$1,350.00	
10. MINUS TOTAL PAYMENTS THIS PERIOD (LINE 8)	\$4,134.54	
11. CASH BALANCE AT END OF PERIOD	\$205.32	
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, HONORABLE JAMES S GILLWAY, CERTIFY THAT THE INFORMATION CONTAINED IN THIS REPORT IS TRUE, ACCURATE, AND COMPLETE TO THE BEST OF MY KNOWLEDGE.

REPORT FILED BY: HONORABLE JAMES S GILLWAY
 REPORT FILED ON: 10/19/2014
 LAST MODIFIED: 12/06/2014
 PRINTED: 12/23/2014
 COMMITTEE ID: 7592

Amended
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
9/19/2014	HOME DEPOT 26 STEPHEN KING DRIVE AUGUSTA, ME 04330	DEBIT CARD PURCHASE FOR SOLAR LIGHTS FOR SIGNS	OTH	\$45.41
9/29/2014	SAM'S CLUB 47 HASKELL ROAD BANGOR, ME 04401	DEBIT CARD TRANSACTION FOR FLING INTO FALL EVENT AND PARADE CANDY AND FOOD.	FOD	\$67.67
9/30/2014	BANGOR LETTER SHOP 99 WASHINGTON STREET BANGOR, ME 04401-6518	CHECK 0110 FOR 150 SIGNS	LIT	\$792.31
10/1/2014	STEAMBOAT SUNOCO 161 EAST MAIN STREET SEARSPORT, ME 04974	DEBIT CARD TRANSACTION FOR FUEL TO GO DOOR TO DOOR FOR THE WEEK.	TRV	\$51.75
10/21/2014	BANGOR LETTER SHOP 99 WASHINGTON STREET BANGOR, ME 04401-6518	PAID FOR TWO DISTRICT WIDE MAILERS. INVOICE NUMBERS: 81189; 81190;81232;81233	MHS	\$3,177.40
TOTAL EXPENDITURES FOR CANDIDATE:				\$4,134.54

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 8, 2014

Hon. James Gillway
79 Bowen Road
Searsport, Maine 04974

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

Dear Representative Gillway:

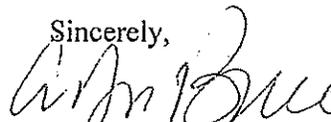
You filed your 11-Day Pre-General Report on October 19, 2014, and subsequently filed an amended version of the report on December 6, 2014. The amended version of the report significantly increased the amount of expenditures than originally reported. Therefore, the Commission staff considers the report 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 \$1,777.85. 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: Robert Hanish

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: Hon. James Gillway			
Late-Filed Report: 11-Day Pre-General			
Contributions	\$1,350	Penalty Base Amount	\$4,134.54
Expenditures	\$4,134.54	Percentage	1%
Due Date	10/24/2014	Daily Accrual Rate	\$41.34
Date Filed	12/06/2014	Days Late	43
Previous Violations	0	Your Total Penalty	\$1,777.85

PAYMENT STATEMENT AND PAYMENT OPTIONS

From: Hon. James Gillway

Penalty Amount: \$ 1,777.85

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.