

Agenda

Item #3



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
Benjamin Dyer, Political Committee and Lobbyist Registrar

Date: June 12, 2014

Re: Request for Waiver of Late-Filing Penalty by Maine Conservation Voters Action Fund PAC

In the thirteen days before an election, all political action committees, ballot question committees and political parties must file a report within 24 hours of receiving any single contribution of \$5,000 or more or making any expenditure of \$1,000 or more.¹ The Maine Conservation Voters Action Fund PAC received a \$250,000 contribution and made a \$50,000 expenditure in the form of a contribution to another PAC during the 24-hour reporting period leading up to the June 10, 2014 primary election, but was late in reporting these transactions.

LEGAL REQUIREMENTS

PACs are required to report any single contribution of \$5,000 or more received or single expenditure of \$1,000 or more made during the 13 days before an election within 24 hours of that transaction. (21-A M.R.S.A. § 1059(2)(E)) If the PAC is late in filing the 24-hour report, the amount of the penalty is set by a formula which takes into

¹ Candidates have a similar 24-hour reporting requirement, except with a lower reporting threshold (\$1,000) for contributions.

consideration the amount of the transaction, 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. § 1062-A(3))

DISCUSSION

On May 29, 2014, MCVAF received a \$250,000 contribution from the League of Conservation Voters. On June 3, 2014, MCVAF made an expenditure in the form of a \$50,000 contribution to Maine Forward PAC. On June 9, 2014, MCVAF received a \$5,000 contribution from State Senator Justin Alford.² MCVAF initially reported all three transactions on a single 24-hour report filed on June 9, 2014. That night, Maureen Drouin, MCVAF's Principal Officer, emailed Benjamin Dyer indicating that she had made a reporting mistake and would like to discuss the matter the next day. On June 10, 2014, Ms. Drouin disclosed that the PAC failed to timely report the \$250,000 contribution and the \$50,000 expenditure because they thought that where the MCVAF was not involved with the primary election and had not made an independent expenditure, no special report was required. They filed the report as soon as they realized their mistake. The 24-hour reports were corrected on June 10, 2014 to accurately reflect the transaction dates.

Based on the statutory formula for calculating late-filed report penalties, the preliminary penalty amount totals \$32,500, calculated as follows:

² This contribution from Sen. Alford was reported in a timely manner.

Transaction	Date	Financial Activity	Penalty Rate	Days Late	Preliminary Penalty
Contribution from League of Conservation Voters	5/29/2014	\$250,000	1%	10	\$25,000
Expenditure to Maine Forward PAC	6/3/2014	\$50,000	3%	5	\$7,500

The MCVAF asks that the Commission waive the penalty, in whole or substantial part, because the size of the penalty substantially outweighs the harm suffered by the public from the late disclosure. The legislative intent, MCVAF argues, was to require the disclosure of large contributions during the 24-hour reporting period because, otherwise, those large contributions would not be reported until 42 days after the election. MCVAF further argues that no parts of the \$250,000 contribution or the \$50,000 expenditure were used by either group to fund communications influencing the June 10th primary election. Finally, MCVAF notes that it self-reported these violations and that this was the first 24-hour period following the 2013 changes to the 24-hour reporting requirements.

STAFF RECOMMENDATION

Violations of the 24-hour reporting requirements can be serious matters. 24-hour reports play an important role in informing the electorate about how money is changing hands in the critical days just before an election. In this situation, a substantial amount of money, \$300,000, changed hands without being disclosed in a timely manner. However, there are several mitigating factors which suggest that a significant reduction in the preliminary penalty would be appropriate. In spite of the large amounts involved, the harm to the

public was small. Neither MCVAF nor Maine Forward PAC used the large contributions they received to influence voters in the June 10 election, and all transactions have been fully disclosed well before the general election in November. The preliminary penalties of \$32,500 are disproportionately large compared to the harm. The MCVAF quickly acknowledged their mistakes, accepted responsibility for them, and made the corrections necessary to provide the proper disclosure. In addition, MCVAF has no previous violations. Weighing the aggravating and mitigating factors, the staff recommends that the Commission find that MCVAF failed to timely file 24-hour reports for transactions occurring on May 29, 2014 and June 3, 2014 and impose a total fine of \$1,000 (\$800 for the first violation and \$100 for the second violation).

Thank you for your consideration of this memo.



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	
MAINE CONSERVATION VOTERS ACTION FUND 295 WATER STREET, SUITE 9 AUGUSTA, ME 04330 PHONE: (207) 620-8811 EMAIL: MAUREEN@MAINECONSERVATION.ORG		RALPH POPE 351 BALD HEAD ROAD ARROWSIC, ME 04530 PHONE: (207) 443-1445 EMAIL: JGPOPE@AOL.COM	
REPORT	DUE DATE	REPORTING PERIOD	
24 Hour Report of Major Contributions and Expenditures	05/30/2014	05/29/2014 - 05/29/2014	

FINANCIAL ACTIVITY SUMMARY

CONTRIBUTIONS AND EXPENDITURES	
1. TOTAL CONTRIBUTIONS / LOANS	\$250,000.00
2. TOTAL EXPENDITURES	\$0.00
3. TOTAL DEBTS	\$0.00

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

REPORT FILED BY: BEN DYER
REPORT FILED ON: 06/09/2014
LAST MODIFIED: 06/09/2014
PRINTED: 06/17/2014
COMMITTEE ID: 657

24-HOUR CONTRIBUTOR INFO

- | | |
|--|---|
| <ul style="list-style-type: none"> 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 | <ul style="list-style-type: none"> 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
5/29/2014	LEAGUE OF CONSERVATION VOTERS 1920 L STREET, NW SUITE 800 WASHINGTON, DC 20036		4 Monetary (Itemized)	\$250,000.00
TOTAL CONTRIBUTIONS / LOANS				\$250,000.00



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24-HOUR REPORT OF CONTRIBUTIONS AND EXPENDITURES

2014 CAMPAIGN YEAR

COMMITTEE		TREASURER	
MAINE CONSERVATION VOTERS ACTION FUND 295 WATER STREET, SUITE 9 AUGUSTA, ME 04330 PHONE: (207) 620-8811 EMAIL: MAUREEN@MAINECONSERVATION.ORG		RALPH POPE 351 BALD HEAD ROAD ARROWSIC, ME 04530 PHONE: (207) 443-1445 EMAIL: JGPOPE@AOL.COM	
REPORT	DUE DATE	REPORTING PERIOD	
24 Hour Report of Major Contributions and Expenditures	06/04/2014	06/03/2014 - 06/03/2014	

FINANCIAL ACTIVITY SUMMARY

CONTRIBUTIONS AND EXPENDITURES	
1. TOTAL CONTRIBUTIONS / LOANS	\$0.00
2. TOTAL EXPENDITURES	\$50,000.00
3. TOTAL DEBTS	\$0.00

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

REPORT FILED BY: BEN DYER
REPORT FILED ON: 06/09/2014
LAST MODIFIED: 06/09/2014
PRINTED: 06/17/2014
COMMITTEE ID: 657

24-HOUR EXPENDITURE AND PAYEE INFORMATION

EXPENDITURE TYPES				
<p>CNS Campaign consultants</p> <p>CON Contribution to other candidate, party, committee</p> <p>EQP Equipment (office machines, furniture, cell phones, etc.)</p> <p>FND Fundraising events</p> <p>FOD Food for campaign events, volunteers</p> <p>LIT Print and graphics (flyers, signs, palmcards, t-shirts, etc.)</p> <p>MHS Mail house (all services purchased)</p> <p>OFF Office rent, utilities, phone and internet services, supplies</p> <p>OTH Other</p> <p>PHO Phone banks, automated telephone calls</p>	<p>POL Polling and survey research</p> <p>POS Postage for U.S. Mail and mail box fees</p> <p>PRO Other professional services</p> <p>PRT Print media ads only (newspapers, magazines, etc.)</p> <p>RAD Radio ads, production costs</p> <p>SAL Campaign workers' salaries and personnel costs</p> <p>TRV Travel (fuel, mileage, lodging, etc.)</p> <p>TVN TV or cable ads, production costs</p> <p>WEB Website design, registration, hosting, maintenance, etc.</p>			
DATE OF EXPENDITURE	PAYEE	REMARK	TYPE	AMOUNT
6/3/2014	MAINE FORWARD PO BOX 3 AUBURN, ME 04212	CONTRIBUTION TO MAINE FORWARD PAC	CON	\$50,000.00
TOTAL EXPENDITURES FOR CANDIDATE:				\$50,000.00

FEDERLE | MAHONEY

L A W & G O V E R N M E N T A F F A I R S

June 13, 2014

VIA ELECTRONIC MAIL

Benjamin P. Dyer
Political Committee & Lobbyist Registrar
Maine Commission on Governmental Ethics & Election Practices
135 State House Station
Augusta, Maine 04333-0135

RE: Maine Conservation Voters Action Fund PAC

I am writing on behalf of my client, the Maine Conservation Voters Action Fund PAC (the "PAC") to request that the Commission waive, in whole or in part, the penalties identified in your letters to the PAC dated June 10, 2014 and June 11, 2014. As you are aware, those letters propose to penalize the PAC \$25,000 and \$7,500, respectively, for the PAC's self-reported failure to file on a timely basis two 24-hour reports during the recent 14-day period preceding the June 10th primary election.

The late-filed 24-hour reports in these matters were triggered by two separate financial transactions involving the PAC during the 14-day period preceding the primary. First, on May 29, 2014, the PAC received a contribution from the League of Conservation Voters in the amount of \$250,000. Second, on June 3, 2014, the PAC made a contribution to another registered Maine political action committee, Maine Forward PAC, in the amount of \$50,000. Under 21-A M.R.S.A. §1059 (2)(E), each of these transactions necessitated a 24-hour report because they occurred within 14 days of the primary election. Notably, the requirement that the \$250,000 contribution be reported within 24 hours was enacted by the Maine Legislature in 2013. The PAC discovered these errors on June 9, 2014 and immediately notified the Commission staff. The aforementioned penalty letters were subsequently issued.

Maine law authorizes the Commission to "waive [a] penalty, in whole or in part, if it is disproportionate to . . . the level of harm suffered by the public from the late disclosure." 21-A M.R.S.A. §1062-A (2). As described in greater detail below, the \$32,500 total penalty far outweighs any harm suffered by the public from the late disclosure and thus, should be waived or significantly reduced. There was no actual harm to the public in this instance because the contributions received and made by the PAC during the 14 days before the primary were not used in any way to influence the primary itself. They were nothing more than ministerial financial transactions that, only by sheer coincidence, happened to occur during a 24-hour reporting period.

As the Commission is aware, the legislative intent behind requiring 24-hour reporting of large contributions and expenditures immediately before an election is to ensure that voters know—before casting their vote—who may be attempting to influence that election. The statutory section governing 24-hour reporting of large contributions and expenditures was amended at the request of the Commission in the 2013 legislative session. See P.L. 2013 c. 334, s. 28, introduced as L.D. 1299, An Act to Amend Campaign Finance Laws. Prior to that time, the statute covered only expenditures. In explaining the need to broaden the requirement to cover large contributions as well, Commission Director Jonathan Wayne testified at the May 6, 2013 public hearing as follows:

The Commission proposes that PACs and political parties be required to file a 24-Hour Report of any single contribution of \$5,000 or more received during the last 13 days before an election. Under current law, this *last-minute funding* is not reported until 42 days after the election. *We believe the public's understanding of who is influencing the vote would be improved if this information were available before the election.*

(emphasis added). Director Wayne's comments underscore that the rationale behind requiring 24-hour reporting in the days before an election is to inform voters about who is attempting to influence the outcome of that particular election. If that were not the rationale, it is reasonable to assume that the Commission would have proposed, and that the Legislature would have adopted, a 24-hour reporting requirement for all large contributions and expenditures at any time during a campaign season. The fact that the Legislature temporally linked each 24-hour reporting period with a particular election illustrates that the public's legitimate interest in getting that information quickly extends only to contributions and expenditures aimed at influencing that particular election.

In the present matter, it cannot be said that the public was harmed by the PAC's late filing. The \$250,000 contribution received by the PAC was in no way used by the PAC to influence the June 10th primaries. That the contribution occurred on May 29, 2014—just one day into the 24-hour reporting period—was a pure, albeit unfortunate, coincidence. Likewise, the PAC's \$50,000 contribution to Maine Forward PAC on June 3, 2014 was completely unrelated to the June 10th primaries. As Maine Forward's own campaign finance reports verify, the \$50,000 once received was not expended prior to June 10th to influence the outcome of any primary. Indeed, the contribution just as easily could have occurred, and in retrospect probably should have occurred, after the primaries.

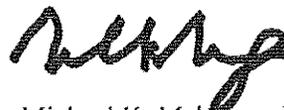
In light of the foregoing, the PAC's failure to file the two 24-hour reports can only be considered a technical violation of the statute. Because both the May 29th contribution and the June 3rd expenditure were wholly unrelated to the June 10th primaries, the public was in no way deprived of any information that would have been relevant to their votes. Given the lack of any harm to the public, the proposed total penalty of \$32,500 is excessive and should be reduced significantly or waived altogether.

Benjamin P. Dyer
June 13, 2014
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Finally, although not formally recognized under the statute as a "mitigating circumstance," it is worth noting that the statutory language subjecting the \$250,000 contribution to 24-hour reporting was enacted just last year, and that the June 10th primary was the very first state election since its enactment. Similarly, upon discovering their error with respect to both transactions, the PAC immediately self-reported the violation. The PAC would respectfully request that the Commission keep both of these facts in mind as it weighs the merits of waiving or reducing the proposed penalty.

Thank you for your continued attention to this matter. I look forward to the prospect of discussing this matter with the Commission at its June 25, 2014 meeting.

Sincerely,



Michael K. Mahoney, Esq.

cc: Ralph Pope, PAC Treasurer
Maureen Drouin

Maine Revised Statutes
Title 21-A: ELECTIONS
Chapter 13: CAMPAIGN REPORTS AND FINANCES

§1059. REPORT; FILING REQUIREMENTS

Committees required to register under section 1052-A, 1053-B or 1056-B shall file an initial campaign finance report at the time of registration and thereafter shall file reports in compliance with this section. All reports must be filed by 11:59 p.m. on the day of the filing deadline, except that reports submitted to a municipal clerk must be filed by the close of business on the day of the filing deadline. [2013, c. 334, §27 (AMD) .]

1. Contents; quarterly reports and election year reports.

[2007, c. 443, Pt. A, §35 (RP) .]

2. Reporting schedule. Committees shall file reports according to the following schedule.

A. All committees shall file quarterly reports:

- (1) On January 15th, and the report must be complete as of December 31st;
- (2) On April 10th, and the report must be complete as of March 31st;
- (3) On July 15th, and the report must be complete as of June 30th; and
- (4) On October 5th, and the report must be complete as of September 30th. [2011, c. 691, Pt. A, §19 (RPR) .]

B. General and primary election reports must be filed:

- (1) On the 11th day before the date on which the election is held and must be complete as of the 14th day before that date; and
- (2) On the 42nd day after the date on which the election is held and must be complete as of the 35th day after that date. [2007, c. 443, Pt. A, §35 (AMD) .]

C. Preelection and post-election reports for special elections or ballot measure campaigns must be filed:

- (1) On the 11th day before the date on which the election is held and must be complete as of the 14th day before that date; and
- (2) On the 42nd day after the date on which the election is held and must be complete as of the 35th day after that date. [2011, c. 389, §45 (AMD) .]

D. A committee that files an election report under paragraph B or C is not required to file a quarterly report when the deadline for that quarterly report falls within 10 days of the filing deadline established in paragraph B or C. [1991, c. 839, §29 (RPR) .]

✓ E. A committee shall report any single contribution of \$5,000 or more received or single expenditure of \$1,000 or more made after the 14th day before the election and more than 24 hours before 5:00 p.m. on the day of the election within 24 hours of that contribution or expenditure. The treasurer is not required to include in this report expenditures for overhead expenses or compensation paid to an employee or other member of the campaign staff who has received payments at regular intervals that have been disclosed in previously filed campaign finance reports. As used in this paragraph, "overhead expenses" includes, but is not limited to, rent, utility payments, taxes, insurance premiums or similar administrative expenses. [2013, c. 334, §28 (AMD) .]

[2013, c. 334, §28 (AMD) .]

**Maine Revised Statutes
Title 21-A: ELECTIONS**

Chapter 13: CAMPAIGN REPORTS AND FINANCES

§1062-A. FAILURE TO FILE ON TIME

1. **Registration.** A political action committee required to register under section 1052-A or 1053-B or a ballot question committee required to register under section 1056-B that fails to do so or that fails to provide the information required by the commission for registration may be assessed a fine of no more than \$2,500. In assessing a fine, the commission shall consider, among other things, whether the violation was intentional, the amount of campaign and financial activity that occurred before the committee registered, whether the committee intended to conceal its campaign or financial activity and the level of experience of the committee's volunteers and staff.

[2013, c. 334, §30 (AMD) .]

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 6, the commission shall determine whether a required report satisfies the requirements for timely filing. The commission may waive a penalty in whole or in part if it is disproportionate to the level of experience of the person filing the report or to 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 of the committee treasurer 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, §9 (AMD) .]

B. An error by the commission staff; or [1999, c. 729, §9 (AMD) .]

C. 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. [2007, c. 443, Pt. A, §38 (AMD) .]

[2009, c. 190, Pt. A, §29 (AMD) .]

3. **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 period, whichever is greater, multiplied by the number of calendar days late, as follows:

A. For the first violation, 1%; [1995, c. 483, §21 (NEW) .]

B. For the 2nd violation, 3%; and [1995, c. 483, §21 (NEW) .]

C. For the 3rd and subsequent violations, 5%. [1995, c. 483, §21 (NEW) .]

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 calendar year. Waiver of a penalty does not nullify the finding of a violation.

A report required to be filed under this subchapter that is sent by certified or registered United States mail and postmarked at least 2 days before the deadline is not subject to penalty.

A required report may be provisionally filed by transmission of a facsimile copy of the duly executed report to the commission, as long as an original of the same report is received by the commission within 5 calendar days thereafter.

[2007, c. 443, Pt. A, §39 (AMD) .]

4. Maximum penalties. The maximum penalty under this subchapter is \$10,000 for reports required under section 1056-B or section 1059, except that if the financial activity reported late exceeds \$50,000, the maximum penalty is 1/5 of the amount reported late.

[2011, c. 389, §49 (AMD) .]

5. Request for a commission determination. If the commission staff finds that a political action committee has failed to file a report required under this subchapter, the commission staff shall mail a notice to the treasurer of the political action committee within 3 business days following the filing deadline informing the treasurer that a report was not received. If a political action committee files a report required under this subchapter late, a notice of preliminary penalty must be forwarded to the treasurer of the political action committee whose report is not received by 11:59 p.m. on the deadline date, informing the treasurer of the commission staff finding of violation and preliminary penalty calculated under subsection 3 and providing the treasurer with an opportunity to request a determination by the commission. A request for determination must be made within 14 calendar days of receipt of the commission's notice. A principal officer or treasurer requesting a determination may either appear in person or designate a representative to appear on the principal officer's or treasurer's behalf or submit a sworn statement explaining the mitigating circumstances for consideration by the commission. A final determination by the commission may be appealed to the Superior Court in accordance with Title 5, chapter 375, subchapter 7 and the Maine Rules of Civil Procedure, Rule 80C.

[2013, c. 334, §31 (AMD) .]

6. Final notice of penalty. After a commission meeting, notice of the final determination of the commission and the penalty, if any, imposed pursuant to this subchapter must be sent to the principal officer and the treasurer of the political action committee.

If a determination is not requested, the preliminary penalty calculated by the commission staff is final. The commission staff shall mail final notice of the penalty to the principal officer and to the treasurer of the political action committee. A detailed summary of all notices must be provided to the commission.

[2009, c. 302, §9 (AMD) .]

7. List of late-filing committees. The commission shall prepare a list of the names of political action committees that are late in filing a report required under section 1059, subsection 2, paragraph B, subparagraph (1) or section 1059, subsection 2, paragraph C or D within 30 days of the date of the election and shall make that list available for public inspection.

[2007, c. 443, Pt. A, §41 (AMD) .]

8. Failure to file. A person who fails to file a report as required by this subchapter within 30 days of the filing deadline is guilty of a Class E crime, except that, if a penalty pursuant to subsection 8-A is assessed and collected by the commission, the State may not prosecute a violation under this subsection.

[2003, c. 628, Pt. A, §8 (AMD) .]

8-A. Penalties for failure to file report. The commission may assess a civil penalty for failure to file a report required by this subchapter. The maximum penalty for failure to file a report required under section 1056-B or section 1059 is \$10,000.

[2009, c. 190, Pt. A, §31 (AMD) .]

9. Enforcement. A penalty assessed pursuant to this section that has not been paid in full within 30 days after issuance of a notice of the final determination may be enforced in accordance with section 1004-B.

[2009, c. 302, §10 (RPR) .]

SECTION HISTORY

1995, c. 483, §21 (NEW). 1999, c. 426, §34 (AMD). 1999, c. 729, §9 (AMD). 2003, c. 628, §§A7-9 (AMD). 2007, c. 443, Pt. A, §§38-41 (AMD). 2009, c. 190, Pt. A, §§28-31 (AMD). 2009, c. 302, §§8-10 (AMD). 2011, c. 389, §49 (AMD). 2013, c. 334, §§30, 31 (AMD).

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