

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: August 15, 2014

Re: Request for Waiver of Late-Filing Penalty by Hon. Michael Willette

State Rep. Michael Willette is running for State Senate, District 2 in the November 4, 2014 general election. He was not opposed in the June 10, 2014 primary election. In the thirteen days before an election, all candidates must file a report within 24 hours of receiving any single contribution or making any expenditure of \$1,000 or more. Michael Willette made a \$1,345 expenditure for yard signs during the 24-hour reporting period leading up to the June 10, 2014 primary election, but was late in reporting the payment.

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 the 24-Hour Report, the amount of the penalty is set by a formula which takes into 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. § 1020-A)

DISCUSSION

On June 3, 2014, Rep. Willette made a \$1,345 expenditure to Austin Sign Works for yard signs. When Rep. Willette entered his expenditures in his 42-Day Post-Primary Report on July 22, 2014, the Commission's e-filing website recognized that the expenditure was required to be reported in a 24-Hour Report with a deadline of June 4, 2014. The e-filing system alerted Rep. Willette to this reporting requirement, and created a 24-Hour Report for him to file. Rep. Willette filed the 24-Hour Report on July 22, 2014, 47 days after the deadline of June 4, 2014.

Based on the statutory formula for calculating late-filed report penalties, the preliminary penalty amount totals \$632.15, calculated as follows:

Transaction	Date	Financial Activity	Penalty Rate	Days Late	Preliminary Penalty
Expenditure to Austin Sign Works	6/3/2014	\$1,345	1%	47	\$632.15

Rep. Willette asks that the Commission waive the penalty, in whole or in part, because there was no appreciable public harm associated with the late filing. He argues that he was in an uncontested primary and received no tactical advantage by filing the report late for a ubiquitous purchase such as yard signs. Rep. Willette contends that because the Commission no longer pays matching funds to Maine Clean Election Act candidates, the harm to the public of a late 24-hour report is reduced. Also, Rep. Willette notes that he has no prior violations of Ethics Commission rules or statute, and the preliminary penalty

is disproportionate to the size of the campaign and the expenditure, equaling roughly one-half of the reported expenditure.

STAFF RECOMMENDATION

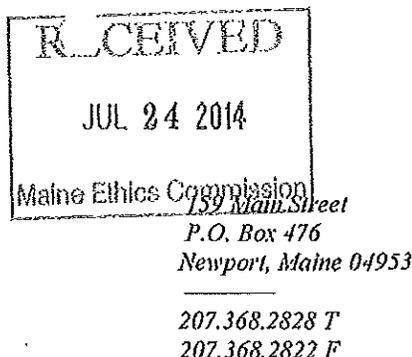
24-Hour Reports are important in helping disclose to the public how money is being spent to influence elections in the critical time before an election. The primary purpose of these reports is disclosure of significant last-minute financial activity – not making the former system of matching funds work.

In this situation, however, there are several mitigating factors which suggest that a significant reduction in the preliminary penalty would be appropriate. The public harm was reduced because Rep. Willette was not in an opposed primary. The signs themselves, presumably, state who paid for them (although they do not state the amount of the purchase). Because of the reduced harm to the public, the Commission staff recommends assessing a financial penalty of \$50 to underscore that the 24-hour requirement deserves attention.

Thank you for your consideration of this memo.

William P. Logan
wlogan@itmlaw.com

IRWIN
&
TARDY
MORRIS



July 22, 2014

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

Re: *Request for Waiver of Preliminary Penalty – Michael Willette*

Dear Jonathan:

I represent Michael Willette. Please accept this letter as a request for a waiver of the preliminary penalty amount assessed in the July 22, 2014 correspondence from Ms. Burke. The reasons supporting this request are as follows:

1. **No Prior Violations.** Mr. Willette has no history of prior violations of Ethics rules or statutes. This failure to file a 24-hour report is an aberration in an otherwise clean filing record with the Commission. This failure to report simply resulted from a standard expenditure occurring during the 14 days prior to the primary. Where candidates have no primary opponent, they often fail to appreciate or realize that they still are subject to the 24-hour reporting requirement. Additionally, as a realtor, this expenditure occurred during the peak business season for Mr. Willette, which likely contributed to his failure to realize he needed to file a 24-hour report.
2. **No Public Harm.** There is no appreciable public harm resulting from the late report. First, Mr. Willette had no primary opponent. As such, no tactical advantage could have been gained. Second, the expenditure was for yard signs, a ubiquitous expenditure for all campaigns (and which contain disclaimers indicating who paid for them). As such, the delay in the public's knowledge of the expenditure resulted in no real harm. Finally, the 24-hour reporting requirement was key provision of the "matching funds" statutory structure, in which the reporting requirement permitted ethics staff to swiftly disperse matching funds to MCEA candidates. Since matching funds are no longer available, this also militates in favor of waiving or reducing the preliminary penalty amount.

Jonathan Wayne
July 22, 2014
Page 2 of 2

3. Penalty Disproportionate to Campaign. The preliminary penalty is \$632.15, an amount that is disproportionate to the campaign or the expenditure. First, the initial expenditure totaled \$1,345.00. Therefore, due solely to the multiplier, the penalty amount is essentially one-half of the actual expenditure amount itself and a significant penalty in relation to the actual contributions and expenditures of the campaign as a whole.

In light of the foregoing facts, Mr. Willette requests that the Commission waive the preliminary penalty assessed by Commission Staff either in whole or in part. If the staff or the Commission requires any additional information, please feel free to contact me at your convenience. I plan to be present at the Commission meeting this matter is scheduled for to respond to any inquiries. Thank you for your attention to this request.

Sincerely,



William P. Logan, Esq.

cc: Hon. Michael Willette



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	
MICHAEL J WILLETTE 80 HARDY ST PRESQUE ISLE, ME 04769 EMAIL: MIKEBLACKBEAR@GMAIL.COM		PAMELA L WILLETTE 80 HARDY ST PRESQUE ISLE, ME 04769 PHONE: (207) 227-5300 EMAIL: WILLETTEP@GMAIL.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	\$1,345.00
3. TOTAL DEBTS	\$0.00

I, HONORABLE MICHAEL J WILLETTE, CERTIFY THAT THE INFORMATION CONTAINED IN THIS REPORT IS TRUE, ACCURATE, AND COMPLETE TO THE BEST OF MY KNOWLEDGE.

REPORT FILED BY: HONORABLE MICHAEL J WILLETTE
REPORT FILED ON: 07/22/2014
LAST MODIFIED: 07/22/2014
PRINTED: 08/07/2014
COMMITTEE ID: 7031

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	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
6/3/2014	AUSTIN SIGN WORKS 2414 MILFORD SQUARE PIKE QUAKERTOWN, PA 18951	YARD SIGNS	LIT	\$1,345.00
TOTAL EXPENDITURES FOR CANDIDATE:				\$1,345.00

August 8, 2014

Hon. Michael Willette
80 Hardy Street
Presque Isle, Maine 04769

**Re: Late Penalty for 24-Hour Report of Contributions and Expenditures Campaign
Finance Report – Due 6/04/2014**

Dear Representative Willette:

Preliminary penalty amount. You filed a 24-Hour Report for Contributions and Expenditures campaign finance report on July 22, 2014. Under the Election Law, the Commission must calculate a preliminary penalty for the late filing, based on the amount of financial activity during the report period, the number of days the report was filed late, and the candidate's filing record. The preliminary penalty for the late filing of your report is \$632.15. (Please refer to the enclosed penalty matrix for the calculation.) If you agree to pay the penalty, please use the enclosed billing statement within 14 days of receiving this letter. Please do not use Maine Clean Election Act funds to pay the penalty.

Requesting a waiver. You may ask the members of the Ethics Commission to waive the preliminary penalty due to mitigating circumstances (defined below). To request a waiver, please send a letter within 14 days of receiving this notice that contains a full explanation of the reasons you filed late. If you request a waiver, the Commission staff will notify you of the date and time of the public meeting at which the Commissioners will consider your request. You or a person you designate may appear at the meeting. The Commission staff will notify you of the Commissioners' decision shortly afterward.

Mitigating circumstances. The Election Law defines mitigating circumstances as: (1) a valid emergency, (2) an error by the Commission staff, (3) failure to receive notice of the filing deadline, or (4) relevant evidence presented that a *bona fide* effort was made to file the report in accordance with the statutory requirements. Also, the Commission may waive a preliminary penalty 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.

Please call me at 287-4179 if you have any questions.

Sincerely,

Emma Burke
Candidate Registrar

Cc: Pamela Willette

August 8, 2014

The Commission staff has calculated a preliminary penalty of \$632.15 for the late filing of your 24-Hour Report of Contributions and Expenditures campaign finance report. Please pay the penalty or request a waiver within 14 days of receiving this notice. If the Commission does not receive a payment or waiver request, the Commission will send you a final notice requesting payment within 30 days.

To pay the penalty, submit a check or money order to the address below, along with the bottom half of this letter. Or, please pay online using a credit or debit card at the web address listed below. If you would like to request a waiver of the preliminary penalty, please see the instructions included in the attached letter.

Failure to pay the full amount of an assessed penalty is a civil violation. The Commission is required to report to the Attorney General the name of any person who fails to pay a late-filing penalty. If you have questions, please call Emma Burke at 287-4179.

Cut Along Dotted Line

For Office Use Only:
Account: MCGEEP

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

From: Hon. Michael Willette

RE: Penalty for late filing of 24-Hour Report of Contributions and Expenditures
 Campaign Finance Report

Amount Enclosed: \$ _____

Check/M.O. No.: # _____

**Please Make Check or Money Order Payable to Treasurer, State of Maine
Or Pay Online at <http://www.maine.gov/online/ethics/penalties>**

COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES

PENALTY MATRIX FOR LATE CANDIDATE REPORT FILINGS

BASIS FOR PENALTIES
21-A M.R.S.A. Section 1020-A(4-A)

The penalty for late filing of a required report is a percentage of the total contributions or expenditures for the filing period, whichever is greater, multiplied by the number of calendar days the report is filed late, as follows:

- For the first violation, 1%
- For the second violation, 3%
- For the third and each subsequent violation, 5%

Example: The treasurer files the candidate's report two (2) days late. The candidate has not had any previous late violations this biennium. The candidate reports a total of \$2,500 in contributions and \$1,500 in expenditures for the filing period. The penalty is calculated as follows:

\$2,500	Greater amount of the total contributions received or expenditures made during the filing period
<u>X .01</u>	Percent prescribed for first violation
\$25.00	One percent of total contributions
<u>X 2</u>	Number of calendar days late
\$50.00	Total penalty

Your penalty is calculated as follows:

Receipts/Expenditures:	\$1,345.00
Percent prescribed:	X <u>.01</u>
One Percent of total contributions	\$13.45
Number of days late:	X 47
Total penalty accrued:	<u>\$632.15</u>

A penalty begins to accrue on the day following the due date of the report.

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

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

MAXIMUM PENALTIES
21-A M.R.S.A. Section 1020-A(5-A)

\$5,000 for reports required to be filed 42 days before an election,
11 days before an election, 42 days after an election, and for 24-hour reports;
\$1,000 for semiannual reports.

21-A M.R.S.A. § 1017. REPORTS BY CANDIDATES

...

3-A. Other candidates. A treasurer of a candidate for state or county office other than the office of Governor shall file reports with the commission and municipal candidates shall file reports with the municipal clerk as follows. Once the first required report has been filed, each subsequent report must cover the period from the end date of the prior report filed.

A. In any calendar year in which an election for the candidate's particular office is not scheduled, when any candidate or candidate's political committee has received contributions in excess of \$500 or made or authorized expenditures in excess of \$500, reports must be filed no later than 11:59 p.m. on July 15th of that year and January 15th of the following calendar year. These reports must include all contributions made to and all expenditures made or authorized by or on behalf of the candidate or the treasurer of the candidate as of the end of the preceding month, except those covered by a previous report. [2007, c. 443, Pt. A, §16 (AMD).]

B. Reports must be filed no later than 11:59 p.m. on the 11th day before the date on which an election is held and must be complete as of the 14th day before that date. If a report was not filed under paragraph A, the report required under this paragraph must cover all contributions and expenditures through the 14th day before the election. [2007, c. 443, Pt. A, §16 (AMD).]

✓ C. Any single contribution of \$1,000 or more received or any single expenditure of \$1,000 or more made after the 14th day before any election and more than 24 hours before 11:59 p.m. on the day of any election must be reported within 24 hours that contribution or expenditure. The candidate or 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, §11 (AMD).]

D. Reports must be filed no later than 11:59 p.m. on the 42nd day after the date on which an election is held and must be complete for the filing period as of the 35th day after that date. [2007, c. 443, Pt. A, §16 (AMD).]

D-1. Reports must be filed no later than 11:59 p.m. on the 42nd day before the date on which a general election is held and must be complete as of the 49th day before that date, except that this report is not required for candidates for municipal office. [2009, c. 190, Pt. A, §5 (AMD).]

E. Unless further reports will be filed in relation to a later election in the same calendar year, the disposition of any surplus or deficit in excess of \$100 shown in the reports described in paragraph D must be reported as provided by this paragraph. The treasurer of a candidate with a surplus or deficit in excess of

\$100 shall file reports semiannually with the commission within 15 days following the end of the 2nd and 4th quarters of the State's fiscal year, complete as of the last day of the quarter, until the surplus is disposed of or the deficit is liquidated. The first report under this paragraph is not required until the 15th day of the period beginning at least 90 days from the date of the election. The reports will be considered timely if filed electronically or in person with the commission on that date or postmarked on that date. The reports must set forth any contributions for the purpose of liquidating the deficit, in the same manner as contributions are set forth in other reports required in this section. [2007, c. 443, Pt. A, §16 (AMD).]

F. Reports with respect to a candidate who seeks nomination by petition must be filed on the same dates that reports must be filed by a candidate for the same office who seeks that nomination by primary election. [1991, c. 839, §15 (AMD); 1991, c. 839, §34 (AFF).]

[2013, c. 334, §11 (AMD) .]

21-A MRSA § 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