

Agenda

Item #9



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 7, 2014

Re: Request for Waiver of Late-Filing Penalty by Allen Stehle

Allen Stehle is a candidate for Sheriff of Penobscot County in the 2014 general election. Because he is not enrolled in any party, he was not a candidate in the June 10, 2014 primary elections. In the thirteen days before any election, all candidates must file a report within 24 hours of receiving any single contribution or making any expenditure of \$1,000 or more. Mr. Stehle contributed \$2,000 to his campaign during the 24-hour reporting period leading up to the June 10, 2014 primary election, but did not report the transaction within 24 hours.

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 any 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 9, 2014, Mr. Stehle contributed \$2,000 to his campaign. When Mr. Stehle entered this contribution in his 42-Day Post-Primary Report on July 21, 2014, the Commission's e-filing website recognized that the contribution was required to be reported in a 24-Hour Report with a deadline of June 10, 2014. The e-filing system alerted Mr. Stehle to this reporting requirement, and created a 24-Hour Report for him to file. Mr. Stehle filed the 24-Hour Report on July 21, 2014, 40 days after the deadline of June 10, 2014.

Based on the statutory formula for calculating late-filed report penalties, the preliminary penalty amount totals \$800, calculated as follows:

Transaction	Date	Financial Activity	Penalty Rate	Days Late	Preliminary Penalty
Contribution from candidate to campaign	6/9/2014	\$2,000	1%	40	\$800

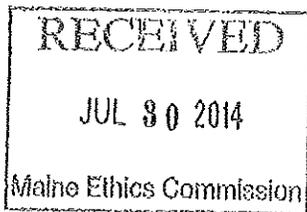
Mr. Stehle asks that the Commission waive the preliminary penalty because the amount of the penalty is disproportionate to the size of his campaign, which has raised in total \$5,110. Mr. Stehle also notes that he is a first-time candidate, and none of his campaign staff have been involved with a campaign previously. Furthermore, Mr. Stehle, an unenrolled candidate, argues that due to his non-partisan status and his inability to run in the primary election, his contribution could not influence the primary election, and the purpose of the contribution was to start up his campaign for the general election. The funds were not spent prior to the primary election.

STAFF RECOMMENDATION

24-Hour Reports are important to helping disclose to the public how money is being spent to influence elections in the critical time before an election. In this instance, there are several mitigating factors. Mr. Stehle is an unenrolled candidate and therefore did not participate as a candidate in the primary election. The public interest in knowing of the candidate's contribution to his campaign prior to the primary election was minimal. He is also a first-time candidate and was unaware that unenrolled candidates are subject to the 24-hour reporting period. The contribution was intended to be his start-up funds for the general election and was, essentially, ill-timed with the 24-hour reporting period. Weighing the factors, the staff recommends that the Commission waive the entire penalty. In the long run, the Commission staff recommends a statute or rule change clarifying that unenrolled candidates for legislative and county office are not required to file 24 hour Reports during the 13 days before a primary election.

Thank you for your consideration of this memo.

July 30, 2014



Allen T. Stehle
PO Box 159
Corinth ME 04427

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

Dear Commissioners:

I am in receipt of your letter dated, July 21, 2014 where I was assessed a preliminary penalty in the amount of \$800.00 for late filing of a 24-Hour Report for Contributions and Expenditures.

I understand why I was assessed this preliminary penalty and would respectfully ask the commission to waive this \$800.00 penalty for the following reasons.

I, along with my staff, have no experience in running a campaign--this is the first time I have ever run for public office and none of us have been involved in a campaign.

When I made the initial contribution of \$2,000.00 on June 9, 2014 at Bangor Savings Bank, it was to open a campaign checking account that would be used for the November General Election.

I did not feel that I had to file the report because, as an Independent/un-enrolled candidate I was:

1. I could not participate in the Primary Election;
2. I was required to collect twice the number of signatures as a party candidate would need in order to get on the November ballot;
3. And, I am not allowed to place my campaign signs in the public way until six weeks before the General Election.

For these reasons, I planned to start my campaign after the Primary Election. My initial contribution of \$2,000.00 was just to establish the banking account for my campaign.

July 30, 2014

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I made the initial deposit from my own personal funds to start the bank account on June 9, 2014, one day prior to the Primary Election, which is the reason it triggered the 24-Hour Report to be filed. However, in order to establish a clear separation of accounting functions, I do not have signature authority over my account and the only signatory is my Deputy Treasurer, Renee Dunton. I made the deposit on the day before the Primary Election but had no access to the funds, nor was the bank account officially opened until several days later. That is when Renee Dunton went to the bank to sign the signature card authorizing her to disburse funds when we actually had campaign expenses, of which we had none at the time.

If I understand the reason for the 24-Hour Reporting Rule, it is for a quick response in the waning days leading up to a Primary or General Election to report contributions and expenditures in excess of \$1,000.00 to assure the public that a candidate is not trying to sway an election at the last moment. In my case as an un-enrolled candidate who could not participate in the Primary Election and whose name was not on the ballot, there is no way that I could sway an election that I am could not participate in.

Since I am running my campaign without using public dollars, I feel that the preliminary penalty amount is disproportionate to the size of my campaign.

Taking all this into account, plus the fact that there was no harm suffered by the public from this late disclosure, I respectfully ask the Commission to waive this preliminary penalty amount.

Sincerely,



Allen T. Stehle
Candidate for Penobscot County Sheriff



Commission on Governmental Ethics and Election Practices
Mail: 135 State House Station, Augusta, Maine 04333
Office: 45 Memorial Circle, Augusta, Maine
Website: www.maine.gov/ethics
Phone: 207-287-4179
Fax: 207-287-6775

24-HOUR REPORT OF CONTRIBUTIONS AND EXPENDITURES

2014 CAMPAIGN YEAR

COMMITTEE		TREASURER
MR. ALLEN T STEHLE PO BOX 159 CORINTH, ME 04427 PHONE: (207) 285-7839 EMAIL: ASTEHLE@BEALCOLLEGE.EDU		WILLIAM ROGER LAWRENCE 29 TRANSALPINE ROAD LINCOLN, ME 04457 PHONE: (207) 403-1477 EMAIL: LBRLAWRENCE@AOL.COM
REPORT	DUE DATE	REPORTING PERIOD
24 Hour Report of Major Contributions and Expenditures	06/10/2014	06/09/2014 - 06/09/2014

FINANCIAL ACTIVITY SUMMARY

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

I, MS. RENEE SYLVIA DUNTON, CERTIFY THAT THE INFORMATION CONTAINED IN THIS REPORT IS TRUE, ACCURATE, AND COMPLETE TO THE BEST OF MY KNOWLEDGE.

REPORT FILED BY: MS. RENEE SYLVIA DUNTON
REPORT FILED ON: 07/21/2014
LAST MODIFIED: 07/21/2014
PRINTED: 08/07/2014
COMMITTEE ID: 7438

24-HOUR CONTRIBUTOR INFO

1 = Individual

2 = Candidate/ Spouse/ Domestic Partner

3 = Commercial Source

4 = Nonprofit Organization

5 = Political Action Committee

6 = Political Party Committee

7 = Ballot Question Committee

8 = Other Candidate/ Candidate Committee

9 = Candidate / Candidate Committee

10 = General Treasury Transfer

11 = Transfer from Previous Campaign

12 = Contributors giving \$50 or less

13 = Contributors giving \$100 or less

14 = Contributors giving \$200 or less

15 = MCEA Payment

16 = Financial Institution

DATE RECEIVED	CONTRIBUTOR	OCCUPATION AND EMPLOYER	CONTRIBUTOR/ CONTRIBUTION TYPE	AMOUNT
6/9/2014	ALLEN STEHLE 42 HIGHVIEW LN CORINTH, ME 04427	BEAL COLLEGE DESCRIPTION: COLLEGE PRESIDENT CANDIDATE CONTRIBUTION FOR START UP OF COMPAIGN	2 Monetary (Itemized)	\$2,000.00
TOTAL CONTRIBUTIONS / LOANS				\$2,000.00

August 8, 2014

Mr. Allen Stehle
PO Box 159
Corinth, Maine 04427

**Re: Late Penalty for 24-Hour Report of Contributions and Expenditures Campaign
Finance Report – Due 6/10/2014**

Dear Mr. Stehle:

Preliminary penalty amount. You filed a 24-Hour Report for Contributions and Expenditures campaign finance report on July 21, 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 \$800.00. (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: William Lawrence, Renee Dunton

August 8, 2014

The Commission staff has calculated a preliminary penalty of \$800.00 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: Mr. Allen Stehle

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:	\$2,000.00
Percent prescribed:	X <u>.01</u>
One Percent of total contributions	\$20.00
Number of days late:	X 40
Total penalty accrued:	<u>\$800</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