



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

To: Commissioners
From: Erin Gordon, Candidate Registrar
Date: August 12, 2016
Re: Request for Waiver of Late-Filing Penalty by Gary Drinkwater

Gary Drinkwater is a Maine Clean Election Act candidate for Maine House of Representatives in House District 121. During the 13 days prior to an election, candidates who receive a contribution or make an expenditure of \$1,000 or more are required to file a supplemental campaign finance report within twenty-four hours of receiving the contribution or making the expenditure.

Mr. Drinkwater made an expenditure of \$1,000 or more during the 24-hour reporting period prior to the primary election. Accordingly, he was required to file a 24-Hour Report on June 10th. He filed the report late on July 12th. The report was 32 days late.

LEGAL REQUIREMENTS

Candidates are required to file 24-Hour Reports with the Commission during the 13 days prior to an election if they receive a contribution or make an expenditure of \$1,000 or more. (21-A M.R.S.A. § 1017(3-A)(C)) If the candidate is late in filing a 24-Hour 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

On July 12, treasurer Roxanne Byron logged in and filed an expenditure of \$1,058.17 with Bangor Letter Shop, dated June 9, 2016. She was immediately notified by E-Filing that a 24-Hour Report was required for that transaction, which she filed that day.

The late filing triggered the penalty process and Commission Staff sent a letter notifying him of this penalty. Based on the statutory formula for calculating late-filing penalties, the preliminary penalty is \$677.12:

Report	Due Date	Financial Activity	Penalty Rate	Days Late	Preliminary Penalty
24-Hour Report	06/10/2016	\$1,058.17	2%	32	\$677.12

STAFF COMMENTS

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 being spent to influence voters in the critical days just before an election.

Mr. Drinkwater requests a waiver of this penalty finding, based upon his inexperience as a first-time candidate and that of his treasurer.

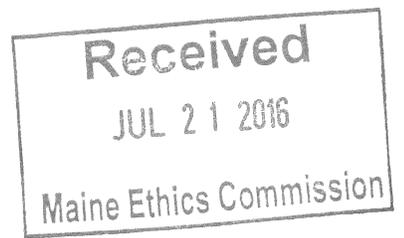
RECOMMENDATION

The Commission staff recommends a partial penalty waiver for this penalty, recommending a final penalty of no more than \$50 due to the following circumstances:

- This is the first election for both the candidate and his treasurer.
- The candidate was unopposed in his primary.
- The original penalty is disproportionate to the harm done to the public by this late filing.
- Ms. Byron, treasurer, filed the report immediately upon being notified of its requirement.

- The Commission has in the past found for the same penalty in the similar case of Rep. Michael Willette, who was uncontested in his primary and incurred a penalty of roughly the same amount.

Thank you for your consideration of this memo.



Commission on Governmental Ethics
135 State House Station
Augusta, Maine 04333

July 18,2016

Re: Notice of Violation waiver

Dear Sirs;

This morning I opened the mail and received a notice of violation.

You state that the Commission may 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.

I would request the Commission waive the penalty based upon the fact that my treasurer is new to the role, and I am a first time candidate.

As you can see by the bills, the money was spent on lawn signs, holders for signs, palm cards, post cards, and magnetic signs for my auto.

Lastly, I had no opponent in the primary.

Thank you for your consideration in this matter.

Sincerely,


Gary Drinkwater



**BANGOR LETTER SHOP
& COLOR COPY CENTER**

Penobscot Plaza
99 Washington Street
Bangor, ME 04401-6518

TEL (207) 945-9311
FAX (207) 942-9914
info@bangorlettershop.com

Received
JUL 21 2016
Maine Ethics Commission
Invoice

No: 85954	Date: 06/09/16
------------------	-----------------------

SHIP TO:
< Same as Bill To >

**COMMITTEE TO ELECT GARY DRINKWATER
38 EMERALD DRIVE
MILFORD ME 04461**

A/cct.No	Ordered by	Phone	P.O. No	Prepared by	Sales Rep	Ship By
5908	GARY DRINKWATER	356-8198		AMY		CALL
Quantity	Description					Price
200	LAWN SIGNS 22 X 28 FOLDOVER 11 X 28 TWO COLOR					645.00
200	WIRES					238.00
4	2 SETS OF MAGNETIC SIGNS TWO COLOR					120.00
					Subtotal	1,003.00
					Tax	55.17
					TOTAL	1,058.17
					Paid	0.00
					BALANCE	1,058.17
					Terms	Net 30 Days

PAID 6/20/16
CK # 504 \$1058.17

*Thank You
For Your Business*

PLEASE PAY THE BALANCE FROM THIS INVOICE - NO STATEMENT WILL BE SENT.
Bangor Letter Shop & Color Copy Ctr · 99 WASHINGTON STREET · Bangor, ME 04401-5410 · (207) 945-9311

(print# 1)





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

2016 CAMPAIGN YEAR

COMMITTEE		TREASURER	
GARY ALLEN DRINKWATER 38 EMERALD DR. MILFORD, ME 04461 PHONE: (207) 356-8198 EMAIL: RIPH20@AOL.COM		ROXANNE BYRON 9 TALLWOOD DR. MILFORD, ME 04461 PHONE: (207) 852-0438 EMAIL: VERMONTER56@ROADRUNNER.COM	
REPORT	DUE DATE	REPORTING PERIOD	
24 Hour Report of Major Contributions and Expenditures	06/10/2016	06/09/2016 - 06/09/2016	

FINANCIAL ACTIVITY SUMMARY

CONTRIBUTIONS AND EXPENDITURES	
1. TOTAL CONTRIBUTIONS / LOANS	\$0.00
2. TOTAL EXPENDITURES	\$1,058.17
3. TOTAL DEBTS	\$0.00

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

REPORT FILED BY: MRS. ROXANNE BYRON
REPORT FILED ON: 07/12/2016
LAST MODIFIED: 07/12/2016
PRINTED: 07/21/2016
COMMITTEE ID: 9349

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
6/9/2016	BANGOR LETTER SHOP 99 WASHINGTON STREET BANGOR, ME 04401	200 LAWN SIGNS, 200 WIRES AND 2 SETS OF MAGNETIC SIGNS FOR VEHICLES	LIT	\$1,058.17
TOTAL EXPENDITURES FOR CANDIDATE:				\$1,058.17

July 14, 2016

Gary Drinkwater
38 Emerald Drive
Milford, ME 04461

Re: Notice of Violation and Penalty for Late-Filed 24-Hour Report

Dear Mr. Drinkwater:

You were required to file the 24-Hour Report on 06/10/2016 by 11:59 p.m., but the report was not filed until 07/12/2016. Under the Commission's statutes (21-A M.R.S.A. § 1020-A(4-A)) 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 \$677.12. 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 me at (207) 287-3651 or erin.gordon@maine.gov if you have any questions.

Sincerely,

Erin Gordon
Candidate Registrar

cc: Roxanne Byron

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: 2% for the first violation, 4% for the second violation, and 6% 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: Gary Drinkwater			
Late-Filed Report: 24-Hour Report (Primary)			
Contributions	\$0	Penalty Base Amount	\$1058.17
Expenditures	\$1058.17	Percentage	2%
Due Date	06/10/2016	Daily Accrual Rate	\$21.16
Date Filed	07/12/2016	Days Late	32
Previous Violations	0	Your Total Penalty	\$677.12

PAYMENT STATEMENT AND PAYMENT OPTIONS

From: Gary Drinkwater

Penalty Amount: \$ 677.12

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.

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.

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.

 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 of 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.

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.

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.

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.

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.

3-B. Accelerated reporting schedule. (REPEALED)

4. New candidate or nominee. A candidate for nomination or a nominee chosen to fill a vacancy under Chapter 5, subchapter 3 is subject to section 1013-A, subsection 1, except that the candidate shall register the name of a treasurer or political committee and all other information required in section 1013-A, subsection 1, paragraphs A and B within 7 days after the candidate's appointment or at least 6 days before the election, whichever is earlier. The commission shall send notification of this registration requirement and report forms and schedules to the candidate

- B. An error by the commission staff;
- C. Failure to receive notice of the filing deadline; or
- 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.

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. (REPEALED)

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

-  A. For the first violation, 2%;
- B. For the 2nd violation, 4%; and
- C. For the 3rd and subsequent violations, 6%.

Any penalty of less than \$10 is waived.

Violations accumulate on reports with filing deadlines in a two-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 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 registration or report may be provisionally filed by transmission of a facsimile copy of the duly executed report to the commission, as long as the facsimile copy is filed by the applicable deadline and an original of the same report is received by the commission within 5 calendar days thereafter.

5. Maximum penalties. (REPEALED)

5-A. Maximum penalties. Penalties assessed under this subchapter may not exceed:

A. Five thousand dollars for reports required under section 1017, subsection 2, paragraph B, C, D, E or H; section 1017, subsection 3-A, paragraph B, C, D, D-1 or F; and section 1017, subsection 4, except that if the financial activity reported late exceeds \$50,000, the maximum penalty is 100% of the amount reported late;

A-1. Five thousand dollars for reports required under section 1019 B, subsection 4, except that if the financial activity reported late exceeds \$50,000, the maximum penalty is 100% of the amount reported late;

3. Expenditure. The term “expenditure:”

A. Includes:

(1) A purchase, payment, distribution, loan, advance, deposit or gift of money or anything of value made for the purpose of influencing the nomination or election of any person to state, county or municipal office, except that a loan of money to a candidate by a financial institution in this State made in accordance with applicable banking laws and regulations and in the ordinary course of business is not included;

 (2) A contract, promise or agreement, expressed or implied, whether or not legally enforceable, to make any expenditure;

(3) The transfer of funds by a candidate or a political committee to another candidate or political committee; and

(4) A payment or promise of payment to a person contracted with for the purpose of influencing any campaign as defined in section 1052, subsection 1; and

B. Does not include:

(1) Any news story, commentary or editorial distributed through the facilities of any broadcasting station, cable television system, newspaper, magazine or other periodical publication, unless the facilities are owned or controlled by any political party, political committee, candidate, or spouse or domestic partner of a candidate;

(1-A) Any communication distributed through a public access television channel on a cable television system if the communication complies with the laws and rules governing the channel and all candidates in the race have an equal opportunity to promote their candidacies through the channel;

(2) Activity or communication designed to encourage individuals to register to vote or to vote if that activity or communication does not mention a clearly identified candidate;

(3) Any communication by any membership organization or corporation to its members or stockholders, if that membership organization or corporation is not organized primarily for the purpose of influencing the nomination or election of any person to state or county office;

(4) The use of real or personal property and the cost of invitations, food and beverages, voluntarily provided by an individual to a candidate in rendering voluntary personal services for candidate-related activities, if the cumulative value of these activities does not exceed \$250 with respect to any election;

(5) Any unreimbursed travel expenses incurred by an individual in the course of providing voluntary personal services to a candidate and paid for by that individual, if the cumulative amount of these expenses does not exceed \$350 with respect to any election;

(5-A) Any unreimbursed campaign-related travel expenses incurred and paid for by the candidate or the candidate's spouse or domestic partner;

(6) Any communication by any person that is not made for the purpose of influencing the nomination for election, or election, of any person to state, county or municipal office;

Chapter 1: PROCEDURES

SUMMARY: This Chapter describes the nature and operation of the Commission, and establishes procedures by which the Commission's actions will be governed.

SECTION 7. EXPENDITURES

1. **Expenditures by Consultants, Employees, and Other Agents of a Political Campaign**
 - A. Each expenditure made on behalf of a candidate, political committee, or political action committee by any person, agency, firm, organization, etc., employed or retained for the purpose of organizing, directing, managing or assisting the candidate, the candidate's committee, or the political action committee must be reported separately by the candidate or committee as if made or incurred by the candidate or committee directly. The report must include the name of the third party vendor or payee to whom the expenditure was made, the date of the expenditure, and the purpose and amount of the expenditure. It is not sufficient to report only the total retainer or fee paid to the person, agency, firm, organization, etc., if that retainer or fee was used to pay third party vendors or payees for campaign-related goods and services.
 - B. If a candidate or committee has paid a media buyer, advertising consultant or similar contractor to purchase advertising time or for the production of television or radio advertising, the candidate or committee may disclose the advertising time and production costs in the aggregate, rather than itemizing each payment made by the contractor to a third party vendor or payee. *Maine Clean Election Act* candidates must obtain from their contractor(s) documentation of every payment of \$50 or more made on their behalf by a contractor or subcontractor related to television or radio advertising.
2. **Expenditures by Political Action Committees.** In addition to the requirements set forth in 21-A M.R.S.A. §1060(4), the reports must contain the purpose of each expenditure and the name of each payee and creditor.
3. **Timing of Reporting Expenditures**
 -  A. Placing an order with a vendor for a good or service; signing a contract for a good or service; the delivery of a good or the performance of a service by a vendor; or a promise or an agreement (including an implied one) that a payment will be made constitutes an expenditure, regardless whether any payment has been made for the good or service.

- B. Expenditures must be reported at the earliest of the following events:
- (1) The placement of an order for a good or service;
 - (2) The signing of a contract for a good or service;
 - (3) The delivery of a good or the performance of a service by a vendor;
 - (4) A promise or an agreement (including an implied one) that a payment will be made; or
 - (5) The making of a payment for a good or service.
- C. At the time the duty to report an expenditure arises, the person submitting the report is required to determine the value of goods and services to be rendered (preferably through a written statement from the vendor) and to report that value as the amount of the expenditure. If the expenditure involves more than one candidate election, the report must include an allocation of the value to each of those candidate elections.