

Agenda

Item #2

Request for Waiver – Hon. Amy F. Volk



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
Beth Hudson, Candidate Registrar
Date: September 15, 2014
Re: Request by Representative Amy F. Volk for Waiver of Penalty – Report Deemed
Late due to Incomplete Contribution Reporting

Rep. Amy F. Volk is a candidate for State Senate, District 30. Her campaign treasurer filed the 11-Day Pre-Primary report on May 30, 2014. The report, as initially filed, was incomplete because it did not contain contributions totaling \$3,270 that were received by the campaign during the report period. The Commission staff considers the report to be late because the initially filed report was substantially non-conforming. Representative Volk requests a waiver of the preliminary penalty calculated by Commission staff.

Legal Requirements. In 2014, candidates for the Legislature and county office are required to file five campaign finance reports according to certain deadlines. If a report does not substantially conform to the disclosure requirements in Title 21-A, Chapter 13, Subchapter II, the report is not considered timely filed. 21-A M.R.S.A. § 1020-A(2). The Commission calculates a preliminary penalty based on a formula in statute that takes into consideration the number of days late multiplied by a percentage of the financial activity in the late report. § 1020-A(4-A).

Reports filed by Campaign of Rep. Amy Volk. Representative Volk was required to file the pre-primary report by 11:59 p.m. on May 30, 2014. The report was filed on May 30th by her treasurer, Barry Lucier. After filing the initial report, Mr. Lucier filed amended reports on June 5, June 23 and August 13. As shown on the attached page, contributions totaling \$3,270 were added to the report in amendments made on June 23 and August 13, 2014. (see chart on next page)

Date Report Filed	Primary Contributions Reported	General Contributions Reported	Increase in Primary Contributions	Increase in General Contributions
5/30/2014	\$10,220.00	\$1,452.97	0	0
6/05/2014	\$10,220.00	\$1,452.97	0	0
6/23/2014	\$12,640.00	\$2,202.97	\$2,420.00	\$750.00
8/13/2014	\$12,740.00	\$2,202.97	\$ 100.00	0
Total contributions added in amended reports			\$2,520.00	\$750.00

The Commission's e-filing system permits candidates to amend campaign finance reports freely. When a report is amended, the e-filing system sends a notification to the Commission staff, which prompts us to review the amended reports for compliance. It was during a routine review of amended reports that Commission staff found that Rep. Volk's pre-primary report had been substantially amended and that the initial report was incomplete.

Candidates are not required by law to notify the Commission staff when they amend reports, and Rep. Volk's treasurer did not notify the Commission staff that he was filing amendments of the report.

The preliminary penalty for the late filing is \$3,413.89, as shown on the attached correspondence.

Request for Waiver by Representative Volk. Rep. Volk requests a waiver of the penalty through her attorney, William P. Logan. Rep. Volk explains that her treasurer was unaware that others in the campaign had received contributions that were not given to him. To avoid this in the future, he will contact others in the campaign prior to filing deadlines. Rep. Volk argues that the incomplete May 30 report caused no appreciable harm to the public because she did not have an opponent in the primary election, and that the amount of the preliminary penalty is disproportionate to the size of the campaign and the amount of the unreported contributions. Rep. Volk and her treasurer regret the error.

Staff Recommendation

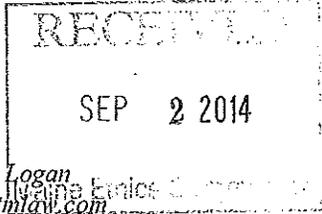
The Commission staff agrees that the harm to the public was reduced in this particular instance because the candidate did not have an opponent in the primary election. The public learned of most of the unreported contributions through the June amendment – nearly five months before the general election. In this context, the preliminary penalty of \$3,413.89 is certainly too large.

We recommend the assessment of a moderate penalty to reinforce that campaigns need to “get it right” the first time. That is the legal requirement. (Small mistakes can be the subject of amendments, and should not result in a report being considered late.)

While it is true Representative Volk has no prior violations, it is also true that, as a two-term legislator, Representative Volk has some familiarity with campaign finance reporting requirements.

In working with the campaign, the Commission staff’s view is that the Volk campaign tries hard to comply with the disclosure laws. We recommend a penalty of \$100. If you wish to consider a higher penalty, we would recommend no more than double that amount.

Thank you for your consideration of this memo.



**IRWIN
&
TARDY
MORRIS**

159 Main Street
P.O. Box 476
Newport, Maine 04953

207.368.2828 T
207.368.2822 F

August 28, 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 – Hon. Amy Volk*

Dear Jonathan:

I represent Amy Volk. Please accept this letter as a request for a waiver of the preliminary penalty amount assessed in the August 14, 2014 correspondence from Ms. Hudson. The reasons supporting this request are as follows:

1. **No Prior Violations.** Rep. Volk has no history of prior violations of Ethics rules or statutes. This deemed late-filed report is an aberration in an otherwise clean filing record with the Commission. Rep. Volk's Treasurer did originally file the 11-day pre-primary report on May 30, 2014. However, at the time of filing, the Treasurer was unaware that others in the campaign had received contribution checks and that those checks not yet been delivered to the Treasurer. After receiving those contributions, the Treasurer promptly filed an amended report with the Commission. The campaign submits that the penalty arises out of the campaign's own internal efforts to amend its reports to ensure that its reports are accurate. We believe that the campaign's efforts towards this goal militate in favor of the Commission granting a waiver of the penalty in whole or in part.
2. **No Public Harm.** There is no appreciable public harm resulting from the deemed late report. First, Rep. Volk had no primary opponent. As such, no tactical advantage could have been gained by the omission of certain contributions. Second, the campaign had very limited expenditures during the reporting period, and the omitted contributions were not used to finance any of those expenditures. Finally, the error arose out of internal communication problems within the campaign, and not from an effort to subvert campaign finance laws. As such, we again believe the Commission should grant a waiver of the penalty in whole or in part.

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Jonathan Wayne
August 28, 2014
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3. **Penalty Disproportionate to Campaign.** The preliminary penalty is \$3,413.89, an amount that is grossly disproportionate. First, the report was deemed late due to the amendments relating to previously unreported contributions, which themselves total \$3,270.00. Therefore, due solely to the multiplier, the preliminary penalty amount actually exceeds the unreported contributions included in the amended report. The preliminary penalty is also grossly disproportionate to the to the actual contributions and expenditures of the campaign as a whole and also to the minimal public harm resulting from the non-disclosure.

Finally, Rep. Volk and her Treasurer regret that this error occurred. They are committed to ensuring that the campaign's reports are timely and accurately filed. To that end, the Treasurer has committed to ensuring that he contacts others in the campaign regarding contributions prior to filing future reports in order to ensure that all contributions are disclosed properly.

In light of the foregoing facts, Rep. Volk 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. Amy Volk
Barry Lucier, Treasurer



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

August 14, 2014

Amy F. Volk
4 Elbridge Oliver Way
Scarborough, ME 04074

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

Dear Representative Volk:

You were required to file the 11-Day Pre-Primary Report on May 30, 2014 by 11:59 p.m. but the report was not filed until June 23, 2014. The Commission staff considers the report late as a result of substantial non-conformity with disclosure requirements. 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 \$3,413.89. Please see the next page for the penalty calculation.

You may request that the Commission waive the penalty in whole or in part or find that there was no violation. The request must be made within 14 calendar days of your receipt of this notice. The request must be in writing and contain a full explanation of the reasons the report was filed late. Upon receiving your request, the Commission staff will schedule your request to be heard at an upcoming Commission meeting. You or your designee will have an opportunity to be heard at the meeting or you may submit a sworn statement to the Commission explaining the mitigating circumstances for its consideration.

The Commission may waive or reduce the penalty or find that there was no violation if it determines that the report was late due to mitigating circumstances, which are defined as (1) a valid emergency; (2) an error made by the Commission staff; or (3) relevant evidence that a bona fide effort was made to file the report on time. The Commission may also consider whether the penalty is disproportionate to the level of experience of the person filing the report or the harm to the public caused by the late disclosure.

The staff requests that you pay the preliminary penalty within 14 days of the date of your receipt of this notice if you do not intend to request a waiver. Please use the payment statement on the next page when paying by mail. You may also make a payment online at www.maine.gov/ethics by clicking the "Penalty Payment" link. Please contact the Commission staff at (207) 287-4179 or ethics@maine.gov if you have any questions.

Sincerely,

Beth Hudson
Candidate Registrar

cc: Barry Lucier

OFFICE LOCATED AT: 45 MEMORIAL CIRCLE, AUGUSTA, MAINE
WEBSITE: WWW.MAINE.GOV/ETHICS

PHONE: (207) 287-4179

FAX: (207) 287-6775

PENALTY CALCULATION

The penalty for filing a campaign finance report late is based on a percentage of the total contributions or expenditures for the reporting period, whichever is greater, multiplied by the number of days late. The percentage is based on your history of past violations: 1% for the first violation, 3% for the second violation, and 5% for the third and each subsequent violation. Violations for late-filed reports accumulate in the two-year period beginning on January 1st of each even-numbered year. A penalty accrues daily beginning on the day following the filing due date. Any penalty of less than \$10 is automatically waived.

HOW YOUR PENALTY WAS CALCULATED

Filer: Representative Amy F. Volk			
Late-Filed Report: 11-Day Pre-Primary			
Contributions	\$14,843.00	Penalty Base Amount	\$14,843.00
Expenditures	\$1,003.52	Percentage	1%
Due Date	05/30/2014	Daily Accrual Rate	\$148.43
Date Filed	06/23/2014	Days Late	23
Previous Violations	0	Your Total Penalty	\$3,413.89

PAYMENT STATEMENT AND PAYMENT OPTIONS

From: Representative Amy F. Volk

Penalty Amount: \$ 3,413.89

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.



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Welcome back: ELIZABETH HUDSON on behalf of AMY F VOLK

Last Login: Aug 14 2014 2:41PM

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View Filings for AMY F VOLK

Amendment	Report	Filed	
	11-DAY PRE-PRIMARY	May 30 2014 12:00AM	
Amended	11-DAY PRE-PRIMARY	Jun 5 2014 4:29PM	
Amended	11-DAY PRE-PRIMARY	Jun 23 2014 8:05PM	
Amended	11-DAY PRE-PRIMARY	Aug 13 2014 6:27PM	Un-File



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

2014 CAMPAIGN FINANCE REPORT
FOR PRIVATELY FINANCED CANDIDATES

COMMITTEE		TREASURER	
AMY F VOLK 4 ELBRIDGE OLIVER WAY SCARBOROUGH, ME 04074 EMAIL: AVOLK@VOLKBOXES.COM		BARRY LUCIER 78 CUMBERLAND ROAD SOUTH PORTLAND, ME 04106 PHONE: (207) 590-3547 EMAIL: BLUCIER314@GMAIL.COM	
REPORT	DUE DATE	REPORTING PERIOD	
11-DAY PRE-PRIMARY	05/30/2014	01/01/2014 - 05/27/2014	

FINANCIAL ACTIVITY SUMMARY

RECEIPTS	TOTAL FOR THIS PERIOD	TOTAL FOR CAMPAIGN
1. CASH CONTRIBUTIONS FOR THE PRIMARY ELECTION (SCHEDULE A)	\$12,640.00	\$12,640.00
1A. CASH CONTRIBUTIONS FOR THE GENERAL ELECTION (SCHEDULE A) <i>For party candidates, general election contributions will only appear on this line after the primary.</i>		
1B. CASH CONTRIBUTIONS FOR THE GENERAL ELECTION RAISED PRIOR TO PRIMARY (Not shown on Schedule A of this report)		
2. OTHER CASH RECEIPTS (INTEREST, ETC)	\$0.03	\$0.03
3. LOANS (SCHEDULE C)	\$0.00	\$0.00
4. TOTAL RECEIPTS	\$12,640.03	\$12,640.03
EXPENDITURES		
5. EXPENDITURES (SCHEDULE B)	\$1,003.52	\$1,003.52
6. LOAN REPAYMENTS (SCHEDULE C)	\$0.00	\$0.00
7. TOTAL PAYMENTS	\$1,003.52	\$1,003.52
CASH SUMMARY		
8. CASH BALANCE AT BEGINNING OF PERIOD	\$0.00	
9. PLUS TOTAL RECEIPTS THIS PERIOD (LINE 4)	\$12,640.03	
10. MINUS TOTAL PAYMENTS THIS PERIOD (LINE 8)	\$1,003.52	
11. CASH BALANCE AT END OF PERIOD	\$11,636.51	
OTHER ACTIVITY		
12. IN-KIND CONTRIBUTIONS (SCHEDULE A-1)	\$160.72	\$160.72
13. TOTAL LOAN BALANCE AT END OF PERIOD (SCHEDULE C)	\$0.00	
14. TOTAL UNPAID DEBTS AT END OF PERIOD (SCHEDULE D)	\$0.00	
FOR PARTY CANDIDATES ONLY: CASH CONTRIBUTIONS FOR THE GENERAL ELECTION RAISED PRIOR TO PRIMARY ELECTION (INCLUDED IN LINE 1A AFTER PRIMARY ELECTION)	\$2,202.97	\$2,202.97

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

REPORT FILED BY: BARRY LUCIER
 REPORT FILED ON: 05/30/2014
 LAST MODIFIED: 06/23/2014
 PRINTED: 08/14/2014
 COMMITTEE ID: 7802

Total contributions 12,640.03 (Primary)
 2,202.97 (General)
 14,843.00 Total
 x 100
 \$ 148.43
 x 23 days
 \$ 3,413.89

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

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

- A. For the first violation, 1%; [2001, c. 714, Pt. PP, §1 (NEW); 2001, c. 714, Pt. PP, §2 (AFF).]
- B. For the 2nd violation, 3%; and [2001, c. 714, Pt. PP, §1 (NEW); 2001, c. 714, Pt. PP, §2 (AFF).]
- C. For the 3rd and subsequent violations, 5%. [2001, c. 714, Pt. PP, §1 (NEW); 2001, c. 714, Pt. PP, §2 (AFF).]

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 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.

[2001, c. 470, §8 (AMD); T. 21-A, §1020-A, sub-§5 (RP) .]

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; [2011, c. 389, §23 (AMD).]
- 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 1/5 of the amount reported late; [2011, c. 389, §24 (NEW).]
- B. Five thousand dollars for state party committee reports required under section 1017-A, subsection 4-A, paragraphs A, B, C and E, 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, §25 (AMD).]
- C. One thousand dollars for reports required under section 1017, subsection 2, paragraphs A and F and section 1017, subsection 3-A, paragraphs A and E; or [2011, c. 558, §4 (AMD).]
- D. Five hundred dollars for municipal, district and county committees for reports required under section 1017-A, subsection 4-B. [2011, c. 558, §4 (AMD).]
- E. [2011, c. 558, §5 (RP).]