

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

Date: April 15, 2011

Re: Complaint against the Maine Republican Party for Late Independent Expenditure Report

I have attached the materials relating to a complaint concerning an apparent late filing of an independent expenditure report. The report was filed by the Maine Republican Party on Thursday, February 24, 2011 in connection with a special election for the House of Representatives. The date of the expenditure in the report seems to indicate that the report was filed one day late. The complaint was filed by the Maine Democratic Party.

It appears that the late filing delayed the payment of \$2,468.52 in matching funds to the Democratic nominee in the special election by one day. Under the penalty statute in the Maine Clean Election Act (21-A M.R.S.A. § 1127(1)), the Commission may assess a penalty of up to \$10,000 if the late filing of an independent expenditure report results in a late payment of matching funds.

The Maine Democratic Party requests that the Commission assess the maximum penalty. Based on our preliminary understanding of the facts of the late filing, the Commission staff has been inclined to recommend a penalty significantly less than the maximum.

The Commission staff is expecting the Maine Republican Party to file a response to the complaint in the next few days that will provide more information concerning why the report was filed late. At this time, the staff is unable to make a recommendation to you concerning a penalty.

Thank you for your consideration of this matter.



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

April 14, 2011

Christie-Lee McNally, Executive Director
Maine Republican Party
9 Higgins Street
Augusta, ME 04330

Dear Ms. McNally:

As I confirmed in my March 16, 2011 e-mail, the Maine Democratic Party's complaint concerning the late independent expenditure report in the House District 11 special election has been scheduled for the April 26 meeting of the Commission.

If the Maine Republican Party would like to respond in writing, please submit it no later than 10:00 a.m. on this Monday, April 18, 2011. Please submit it by e-mail to Jonathan.Wayne@maine.gov and Paul.Lavin@maine.gov.

Thank you.

Sincerely

A handwritten signature in black ink, appearing to read 'Jonathan Wayne', written over a printed name and title.

Jonathan Wayne
Executive Director

cc: William P. Logan, Esq. (by e-mail and regular mail)
Mary Erin Casale, Maine Democratic Party



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

March 7, 2011

Christie-Lee McNally, Executive Director
Maine Republican Party
9 Higgins Street
Augusta, ME 04330

Dear Ms. McNally:

On March 4, 2011, the Maine Ethics Commission received the attached complaint from the Maine Democratic Party concerning independent expenditure report #6 (IE #6), which was filed by the Maine Republican Party on Thursday, February 24, 2011. The report indicated that on Tuesday, February 22, the Maine Republican Party entered into an agreement or obligation to make a future payment of \$2,468.52 for a mailing in support of special election candidate Beth Turner. Because the obligation was made in the last 13 days before the March 1, 2011 special election, the report should have been filed on Wednesday, February 23, 2011. Instead, it was filed one day late on Thursday, February 24. The late filing delayed by one day an authorization to Democratic nominee Deanna House to spend \$2,468.52 in matching funds.

Pursuant to 21-A M.R.S.A. § 1020-A, the Commission staff has already sent to you correspondence concerning the "routine" late-filing penalty of \$24.69.

Additional Penalty Requested by Maine Democratic Party

In addition, under 21-A M.R.S.A. § 1127(1), the Commission "may assess a fine of up to \$10,000 for a violation of [the independent expenditure reporting requirement] if it determines that the failure to file a timely and accurate report resulted in the late payment of matching funds." The statute does not provide any guidance to the Commission concerning aggravating or mitigating factors the Commission should consider in selecting a penalty between zero and the maximum. Because the late filing of IE #6 delayed the payment of matching funds to Deanna House, the Maine Democratic Party requests that the Commission assess the maximum penalty for the late filing.

Commission's Next Meeting

I would like to schedule the Maine Democratic Party's complaint for the next meeting of the Commission on Thursday, March 31, 2011. The meeting will be held at 9:00 a.m. at the Commission's office at 45 Memorial Circle. If possible, please respond to the Maine

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

PHONE: (207) 287-4179

FAX: (207) 287-6775

Christie-Lee McNally

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March 7, 2011

Democratic Party's complaint by Friday, March 18. If a response is not possible by that date, this matter may be scheduled for the April 26 meeting of the Commission.

Preliminary Staff Recommendation

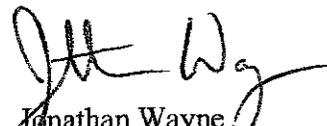
For purposes of your response, please be aware that the Commission staff preliminary intends to recommend an additional penalty under § 1127(1) in the range of \$500 - \$1,000. Our recommendation could increase or decrease after reading your response.

After reviewing late independent expenditure violations, the most similar violation we could find was the late filing of an independent expenditure report by the Maine Democratic Party for a February 2009 special election. In that instance, the Democratic Party filed an independent expenditure report four days late, which (after a holiday weekend) caused a one-day delay in the payment of \$873.05 in matching funds to Republican nominee Lance Harvell. Mr. Harvell did receive the correct amount of matching funds 13 days before the special election. The Maine Democratic Party stated that the report was late due to an internal mistake. The Commission assessed a penalty of \$250 under § 1127(1), in addition to the routine penalty of \$174.60 assessed under 21-A M.R.S.A. § 1020-A. In case you wish to refer to them, the materials for that violation may be found at <http://www.maine.gov/ethics/meetings/2009/20090129.htm> by clicking on the link for Special Election Complaint under the heading of Other Business.

The staff views the late filing of IE #6 for this year's special election as somewhat more serious because more matching funds were delayed (\$2,468.52) and because the delay occurred in the last six days before the March 1 special election. Therefore, we would recommend a penalty moderately higher than the \$250 penalty assessed against the Maine Democratic Party in the February 2009 special election.

Please telephone me if you have any questions.

Sincerely



Jonathan Wayne
Executive Director

cc: Mary Erin Casale, Maine Democratic Party

MAINE Democratic PARTY

Ben Grant, Chairman
Janet Mills, Vice Chair
Susan Cook, Secretary
Betty Johnson, Treasurer
Roy Gedat, Assistant Treasurer

P.O. Box 5258 ■ Augusta, ME 04332-5258 ■ P 207.622.6233 ■ www.mainedems.org

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

Complaint against the Maine Republican Party

Dear Jonathan,

On behalf of the Maine Democratic Party, I am filing a formal complaint against the Maine Republican Party. I respectfully request that the Commission find that the Independent Expenditure Report 6 filed by the Maine Republican Party on February 24th fails to comply with the statutory reporting requirements. After having made such a finding, I respectfully urge the Commission to assess, at the same time or later hearing, the maximum penalty available under Maine law.

Under 21-A M.R.S.A. section 1012(3)(A) and Commission Rule 94-270 Chapter 1, Section 7(3), an expenditure must be reported at the time of obligation regardless of whether any payment has been made for the good or service. Further, under Commission Rule 94-270 Chapter 1, Section 10(3)(B), expenditures at this point in the campaign season must be reported in 24 hours.

On Thursday, February 24th, the Commission found that Independent Expenditure Report 6 had been filed one day late. Under the Commission's statutes, the late filing of a report by a party triggers an enforcement process. (21-A M.R.S.A. section 1020-A(4-A)) The Commission staff calculated a preliminary penalty for the late finding of \$24.69.

The above stated penalty and finding illustrates a failure by the Maine Republican Party to comply with Maine law. The Party suspects that the reporting of these expenditures was intentionally delayed by the MRP in order to prevent to release of matching funds to Democratic candidate Deanna House.

The Maine Republican Party is an organization that has significant experience and understanding of Maine's Clean Elections Act and proper filing procedure. It is also critical to note that there was only one race occurring in the State at this time to monitor and file reports for. Filing Independent Report 6 a day late delayed the release of matching funds to candidate House in a critical time before the election, and the MRP should be assessed an appropriate penalty.

Under 21-A M.R.S.A. Section 1127(1) the Commission may assess a fine if it determines that "the failure to file a timely and accurate report resulted in the late payment of matching funds." The late filing by the MRP directly affected Deanna House's ability to receive and spend matching funds, thus requiring the maximum fine.



The purpose of these penalties is to discourage similar behavior in the future to ensure the integrity of Maine's clean election system by the violator through monetary assessments. Such a penalty is designed not only to cost the violator money, but political cache and integrity. By flaunting the law and deliberately filing late, the MRP is following a national Republican political strategy recently employed by the Republican State Leadership Committee in the November 2010 election that resulted in the largest fine ever assessed by the Commission. These recent actions make clear that the MRP has adopted this blueprint for all of its independent expenditures. Those who participate in Maine election campaigns must abide by the above listed statutes whether or not it is convenient for them to do so and not merely view penalties and fines as the cost of doing business. In order to preserve the integrity of our process, the penalties for such actions must truly deter similar actions in the future.

Pursuant to the foregoing reasons, the Maine Democratic Party respectfully requests that the Commission rule that the Maine Republican Party violated Maine law and assess the maximum penalty under the law.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink that reads "M. E. Casale". The signature is written in a cursive, slightly slanted style.

Mary Erin Casale

Executive Director



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

RECEIVED
 FEB 24 2011
 Maine Ethics Commission

1E6

INDEPENDENT EXPENDITURE REPORT - HOUSE DISTRICT 11 SPECIAL ELECTION

Name of Person/Committee Making Expenditure(s) MAINE Republican Party
 Mailing Address 9 Hyman St
 City, Zip Code Augusta, ME 04340 Telephone 622-6247

The requirement to file an independent expenditure report is based on the total or aggregate amount spent per candidate for the election. When the total expenditures per candidate exceeds the threshold amount, a report must be filed by the appropriate deadline.

Please check the appropriate box for the report you are filing and complete the notarized affidavit and attached schedules.

Reports must be filed on weekends and holidays if that is when they are due by faxing the report to the Commission (287-6775). The Commission must receive the signed original report within 5 days after the fax was received.

Is this an amendment to a previously filed report? <input type="checkbox"/> Yes <input type="checkbox"/> No		Date report was filed:
TOTAL INDEPENDENT EXPENDITURES OVER \$100 PER CANDIDATE		
MADE ON OR BEFORE FEBRUARY 15, 2011:		
<input type="checkbox"/> 14-Day Pre-Election Report	Due by 5:00 p.m. on February 15, 2011	
TOTAL INDEPENDENT EXPENDITURES OVER \$100 PER CANDIDATE WITHIN 13 DAYS BEFORE THE ELECTION		
MADE ON OR AFTER FEBRUARY 16 THROUGH FEBRUARY 28, 2011:		
<input checked="" type="checkbox"/> 24-Hour Report	Within 24 hours of exceeding \$100	

I CERTIFY THAT THE INFORMATION IN THIS REPORT IS TRUE, CORRECT AND COMPLETE.

Christie M. McKelley
 Signature of PAC or Party Treasurer, or
 Other Authorized Person Making Expenditure(s)

2/24/11
 Date



INDEPENDENT EXPENDITURE REPORT – HOUSE DISTRICT 11 SPECIAL ELECTION

AFFIDAVIT

STATE OF Maine

COUNTY OF Kennebec

I, Christina Mabelly, being duly sworn, attest that I made each of the expenditures listed in the attached report independently, and not in cooperation, consultation, or concert with, or at the request or suggestion of, the candidates named in the report or the authorized committees or agents of the candidates.

Christina Mabelly
Signature of Affiant

Sworn to before me, this 27 day of February 2011

Cynthia B. Phillips
(Notary Public/Attorney at Law)

My commission expires: **CYNTHIA B. PHILLIPS**
Notary Public, Maine
My Commission Expires October 7, 2011

Schedule B-IE-1
CANDIDATE(S) SUPPORTED/OPPPOSED

- Please list all candidates that were the subjects of independent expenditures.
- If more than one candidate was the subject of the expenditure, allocate the expenditure among the candidates.

Office sought by candidate (including district # or county)	Candidate's name	Indicate whether expenditure was made in support of or in opposition to the candidate	Amount expended this reporting period for each candidate
HD 11	Beth Turner	Support	246852
Total expenditures for all candidates this reporting period. This amount should equal the total independent expenditures listed on Schedule B-IE-2, Line C. =>			246852

**Schedule B-IE-2
PAYMENTS AND OBLIGATIONS**

- Please indicate the date, payee, expenditure type, and amount of each expenditure.
- If you are reporting an agreement or obligation to make a future payment, please check (✓) the box next to the expenditure type.

Expenditure Types			
LT	Printing and graphics (flyers, signs, palm cards, etc.)	PRT	Print media ads only (newspapers, magazines)
MHS	Mail house (all services purchased)	RAD	Radio ads, production costs
PHO	Phone banks, automated telephone calls	TVN	TV or cable ads, production costs
POL	Polling and research survey	WEB	Website design, registration, hosting, maintenance, etc.
POS	Postage for U.S. Mail and mail box fees	OTH	Other (include description)

Date of expenditure	Payee, address, zip code	Expenditure type	✓	Amount
2/22	State Street Strategies 401 N 2nd St HARRISBURG, PA 17101	MHS	✓	2468.52
A. Expenditures for this page =>				2468.52
B. Total for all other Schedule B-IE-2 pages (if any) =>				
C. Total independent expenditures for this reporting period (A+B). <i>This amount should equal the total amount for all candidates listed on Schedule B-IE-1.</i> =>				2468.52

Schedule B-IE-3
EXPENDITURE DETAILS

- If you file an independent expenditure report after February 21, 2011 for the special election in House District 11, you must provide the following information.

<p>1. The date on which the person making the expenditure placed the order with the vendor for the goods or services</p>	<p>2/22/11</p>
<p>2. The approximate date when the vendor began providing design or any other services in connection with the expenditure</p>	<p>2/20/11</p>
<p>3. The date on which the person making the expenditure first learned of the total amount of the expenditure</p>	<p>2/22/11</p>
<p>4. A statement why the expenditure could not be reported by the eighth day before the election</p>	<p>Decided to do one more mail.</p>

21-A MRSA §1127. VIOLATIONS

 **1. Civil fine.** In addition to any other penalties that may be applicable, a person who violates any provision of this chapter or rules of the commission adopted pursuant to section 1126 is subject to a fine not to exceed \$10,000 per violation payable to the fund. The commission may assess a fine of up to \$10,000 for a violation of the reporting requirements of sections 1017 and 1019-B if it determines that the failure to file a timely and accurate report resulted in the late payment of matching funds. In addition to any fine, for good cause shown, a candidate, treasurer, consultant or other agent of the candidate or the political committee authorized by the candidate pursuant to section 1013-A, subsection 1 found in violation of this chapter or rules of the commission may be required to return to the fund all amounts distributed to the candidate from the fund or any funds not used for campaign-related purposes. If the commission makes a determination that a violation of this chapter or rules of the commission has occurred, the commission shall assess a fine or transmit the finding to the Attorney General for prosecution. A final determination by the commission may be appealed to Superior Court in accordance with Title 5, chapter 375, subchapter 7 and the Maine Rules of Civil Procedure, Rule 80C. Fines assessed or orders for return of funds issued by the commission pursuant to this subsection that are not paid in full within 30 days after issuance of a notice of the final determination may be enforced in accordance with section 1004-B. Fines paid under this section must be deposited in the fund. In determining whether or not a candidate is in violation of the expenditure limits of this chapter, the commission may consider as a mitigating factor any circumstances out of the candidate's control.

[2009, c. 302, §23 (AMD) .]

2. Class E crime. A person who willfully or knowingly violates this chapter or rules of the commission or who willfully or knowingly makes a false statement in any report required by this chapter commits a Class E crime and, if certified as a Maine Clean Election Act candidate, must return to the fund all amounts distributed to the candidate.

[1995, c. 1, §17 (NEW) .]

SECTION HISTORY

IB 1995, c. 1, §17 (NEW). 2003, c. 81, §1 (AMD). 2005, c. 301, §33 (AMD). 2005, c. 542, §6 (AMD). 2009, c. 302, §23 (AMD).

IRWIN
&
TARDY
MORRIS

William P. Logan
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P.O. Box 476
Newport, Maine 04953

207.368.2828 T
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Via e-mail only
Jonathan.Wayne@maine.gov
Paul.Lavin@maine.gov

April 18, 2011

Jonathan Wayne, Executive Director
Commission on Governmental Ethics
and Election Practices
135 State House Station
Augusta, ME 04333-0135

Re: *Complaint against Maine Republican Party*

Dear Jonathan:

Please accept this letter as the written response of the Maine Republican Party to the complaint filed by the Maine Democratic Party concerning independent expenditure #6.

The Party concedes independent expenditure report No. 6 was filed one day late. The reason why the report was not timely filed is as follows. At the time of the expenditure, the Party was not employing any staff to assist with elections, as it does during a normal election period. A volunteer was assisting our Executive Director with the special election. That volunteer was acting as a liaison between the ED and third parties, such as the vendor in question. This volunteer was not authorized to independently make any expenditures, but rather needed to obtain approval from the Party.

The Party had been contemplating whether to send a mailing for the special election and the volunteer was part of those discussions. The volunteer, apparently believing the final decision had been made, contacted the vendor on February 22, 2011 and authorized the mailer. However, the Party had not made a final decision on whether to make the expenditure at that time. Further compounding the mistake, the volunteer did not communicate this action to the Party. On February 24, 2011, the Party decided to order the mailer and the Party's ED contacted the vendor to place the order. At this time she discovered from the vendor that the order had been placed two days earlier. Upon learning of this, the Party filed an independent expenditure report that same day. The report correctly identified the date the order had been placed, *i.e.* 2/22/11.

Letter to Jonathan Wayne
Page 2 of 2
April 18, 2011

As shown above, the late reporting of the expenditure was not part of any "strategy" but rather the result of an internal error. Moreover, the Party quickly identified the error and filed the report only one day late, correctly noting the date of the expenditure. As such, the delay in matching funds was minimized by the Party's prompt action. Moreover, there has not been a history of prior violations by the Maine Republican Party¹. Accordingly, any additional fine imposed under 21-A § 1127(1) should not be substantial.

This situation is most similar to the late filing of an independent expenditure report by the Maine Democratic Party in the February 2009 special election that resulted in a fine of \$250.00. Both late filings were the result of internal errors. However, there are several differences that merit consideration. First, the amount of the expenditure in this case is higher, \$2,468.52 vs. \$873.05. However, this report was filed only one day late whereas the MDP's 2009 report was filed four days late. Perhaps most importantly, there have not been recent violations committed by the Maine Republican Party. Conversely, in 2009 the MDP had just been fined a \$10,000 penalty in the preceding general election.

In light of the foregoing, undersigned counsel respectfully submits that the circumstances of this matter would warrant an additional fine of an amount similar to the fine imposed against the Maine Democratic Party in 2009.

Thank you for your attention to this matter.

Sincerely,



William P. Logan, Esq.

cc: Maine Republican Party

¹ It is unfortunate the Maine Democratic Party attempts to attribute a prior violation by another party, the RSLC, to the Maine Republican Party. The very concept is contrary to the letter and spirit of Maine's election laws, violates fundamental notions of fairness and is contrary to basic logic.