

Agenda

Item #5



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: Request for Waiver of Late-Filing Penalties by Joseph Palmieri

11-Day Pre-General Report

The 2010 Senate campaign of Joseph Palmieri filed its 11-day pre-general campaign finance report on the deadline of October 22, 2011, but the report significantly under-disclosed the expenditures for the five-week period covered by the report. When it was originally filed, the report disclosed a total of \$1,786 in expenditures. The actual expenditures for the period totaled \$8,854, as shown in the amended report the campaign filed 56 days later on December 17. The report as originally filed under-reported the expenditures by \$7,067, which represented 80% of the actual expenditures for the period. As a result, the public did not have access to most of the candidate's expenditures for the period until after the election.

Because the report did not substantially conform to the disclosure requirements, the Commission staff is considering it to be 56 days late, under 21-A M.R.S.A. §1020-A(2). The preliminary penalty for the late report is the maximum of \$5,000. (Without the imposition of the \$5,000 maximum, the preliminary penalty based on the statutory formula would be \$14,875.)

Through a January 24, 2011 letter from its counsel, the campaign requests a waiver of the late-filing penalty. The campaign explains that the candidate mistakenly believed he had sent all expense records to his treasurer, and the omitted expenses were lost in the shuffle.

The Commission staff recommends a waiver of the late-filing penalty because the preliminary penalty of \$5,000 is disproportionate to the harm to the public from the late disclosure, and because of the significant penalties recommended by staff for the violations in the final audit report. Accordingly, the staff recommends a penalty of \$300 for this violation.

42-Day Post-General Report

The campaign was required to file a 42-day post-general report on December 14, 2010. He filed the report three days late on December 17. The preliminary penalty for filing the report three days late is \$1,349.08. The campaign requests a waiver because the candidate mistakenly believed that he had an extension to file the report because his election was involved in a recount.

The Commission staff recommends a waiver of the late filing penalty because the preliminary penalty of \$1,349.88 is disproportionate to the harm to the public from the late disclosure, and because of the significant penalties recommended by staff for the violations in the final audit report. Accordingly, the staff recommends a penalty of \$100 for this violation.

The total penalties recommended by staff for these two late filings is \$400.



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

December 21, 2010

BY CERTIFIED MAIL AND REGULAR MAIL

Mr. Joseph Palmieri
35 Jennies Court
South Portland, ME 04106

**Re: Late 42-Day Post-General Campaign Finance Report Due 12/14/2010
Late 11-Day Pre-General Campaign Finance Report Due 10/22/2010**

Dear Mr. Palmieri:

Late Filing of the 42-Day Post-General Report.

Preliminary penalty amount. You filed a 42-Day Post-General campaign finance report on 12/17/2010. 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 \$1,349.08. (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. Maine Clean Election Act funds can not be used to pay penalties.

Late Filing of the 11-Day Pre-General Report.

Preliminary penalty amount. You filed an 11-Day Pre-General campaign finance report on 10/22/2010 that reported \$1,786.80 in expenditures for the report period. You amended this report on 12/17/2010 and reported \$8,854.12 in expenditures. Under Maine Election Law (21-A M.R.S.A. §1020-A (2)):

“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.”

The Commission staff has determined that your report as originally filed on 10/22/2010 did not substantially conform with the disclosure requirements due to the under-reporting of \$7,067.32 in expenditures for the report period. The under-reported amount is one-third of the total amount of MCEA funds you were authorized to spend on your entire campaign and four times larger than what was originally reported when the report was filed on 10/22/2010.

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 \$5,000.00. (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. Maine Clean Election Act funds can not be used to pay penalties.

Requesting a waiver. You may ask the members of the Ethics Commission to waive the preliminary penalties 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,



Sandy Thompson
Candidate Registrar

cc: James Soule (by regular mail)

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Joseph Palmieri
 35 Jennies Court
 So. Portland, ME
 04106

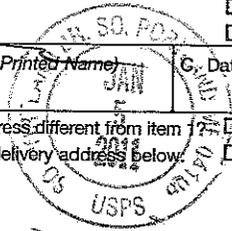
ST

COMPLETE THIS SECTION ON DELIVERY

A. Signature Agent
 Addressee

B. Received by (Printed Name) C. Date of Delivery

D. Is delivery address different from item 1? Yes
 If YES, enter delivery address below: No



3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

2. Article Number

(Transfer from service label)

7006 2150 0003 4779 8920

December 21, 2010

Mr. Joseph Palmieri
35 Jennies Court
South Portland, ME 04106

The Commission staff has calculated a preliminary penalty amount for the late filing of your **42-Day Post-General** 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 Sandy Thompson at 287-4179.

Cut Along Dotted Line

For Office Use Only:
Account: MCGEEP
Fund: 014 Approp: 02

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

From: Mr. Joseph Palmieri

RE: Penalty for late filing of 42-Day Post-General Campaign Finance Report

Penalty ID: 1767

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

Joseph Palmieri

Your penalty is calculated as follows:

Receipts/Expenditures:	\$ <u>8,993.89</u>
Percent prescribed:	<u>5%</u>
	\$ <u>449.69</u>
Number of days late:	X <u>3</u>
Total penalty accrued:	\$ <u>1,349.08</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.

COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES

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\$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

Joseph Palmieri

Your penalty is calculated as follows:

Receipts/Expenditures:	\$ <u>8,854.12</u>
Percent prescribed:	<u>3%</u>
	\$ <u>265.62</u>
Number of days late:	X <u>56</u>
Total penalty accrued:	\$ <u>14,874.92*</u>
Maximum Allowed:	\$ 5,000.00

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



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135 December 21, 2010

Mr. Joseph Palmieri
35 Jennies Court
South Portland, ME 04106

The Commission staff has calculated a preliminary penalty amount for the late filing of your **11-Day Pre-General** 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 Sandy Thompson at 287-4179.

Cut Along Dotted Line

For Office Use Only:
Account: MCGEEP
Fund: 014 Approp: 02

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

From: Mr. Joseph Palmieri

RE: Penalty for late filing of 11-Day Pre-General Campaign Finance Report

Penalty ID: 1776

Amount Enclosed: \$ _____

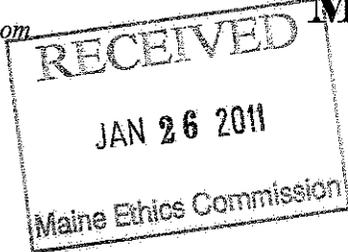
Check/M.O. No.: # _____

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

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

**IRWIN
&
TARDY
MORRIS**

William P. Logan
wlogan@itmlaw.com



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

207.368.2828 T
207.368.2822 F

January 24, 2011

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

Re: *Joseph Palmieri*
Late 11-day Pre-General Report due 10/22/10
Late 42-day Post-General Report due 12/14/10

Dear Commissioners:

Please be advised that this office represents Mr. Palmieri with respect to the two reporting issues identified above. Please accept this letter as a request that the Commission waive the assessed penalties due to the mitigating circumstances detailed below.

The reasons explaining the late filing of the 11-day Pre-General are as follows: Mr. Palmieri would pay for all his campaign's expenses and would then send the information about those expenses to his Treasurer who would file the necessary reports accordingly. The 11-day General Report was timely filed on 10/22/10. However, some expenses were not reported in the original filing but were later included in an amended filing. The omitted expenses had gotten "lost in the shuffle" as Mr. Palmieri juggled running his campaign with operating his self-owned business in Scarborough. Additionally, at the time the omitted expenses were incurred, Mr. Palmieri was repeatedly travelling back and forth to Fort Drum with his son who was in the process of being deployed to Afghanistan. Mr. Palmieri mistakenly believed he had sent all expense records to his Treasurer to be reported. The Treasurer did not discover the omitted expenses until reviewing bank records while completing the 42-day Post-General Report. Upon discovery of the expenses, the report was promptly amended to reflect the mistakenly omitted expenses.

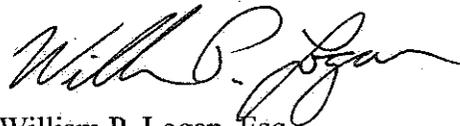
The reason the 42-day report was filed late was that Mr. Palmieri mistakenly believed that he had an extension to file the report because he had undergone a recount. This belief was based on a misunderstanding he had from discussions with persons assisting with his recount, and not from any discussions with the Commission staff. Mr. Palmieri soon realized his mistake and the report was filed promptly thereafter, albeit three days past the deadline.

Commission on Governmental Ethics and Election Practices
January 24, 2011
Page 2 of 2

Mr. Palmieri made a good faith effort to file his campaign reports as required by the MCEA. This was his first campaign for elected office and his Treasurer also lacked any prior experience with campaign finance reporting. Secondly, there was no public harm suffered by either late filing. The expenses were uses of MCEA funds and therefore would not have triggered any release of matching funds to his opponent. Thus, no conceivable tactical advantage could have been gained. Finally, the assessed penalties are approximately one-third of the total amount of MCEA funds authorized for Mr. Palmieri's campaign. In light of these mitigating circumstances, as well as the reasons delineated above, Mr. Palmieri requests that the Commission waiver the substantial preliminary penalties assessed against him.

Please advise my office of the date and time for the public meeting to address this request. Feel free to contact me directly should you have any questions or concerns concerning this matter.

Sincerely,



William P. Logan, Esq.

cc: Joseph Palmieri

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.

[1995, c. 483, §15 (NEW) .]

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) .]

[2009, c. 190, Pt. A, §13 (AMD) .]

3. (TEXT EFFECTIVE UNTIL 8/1/11) 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.

[1995, c. 625, Pt. B, §5 (AMD) .]

3. (TEXT EFFECTIVE 8/1/11) Municipal campaign finance reports. Municipal campaign finance reports must be filed, subject to all the provisions of this subchapter, with the municipal clerk in a town or city that has chosen to be governed by this subchapter 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.

[2009, c. 366, §12 (AFF); 2009, c. 366, §6 (AMD) .]

4. Basis for penalties.

[2001, c. 470, §7 (AMD); T. 21-A, §1020-A, sub-§§4, 5 (RP) .]

4-A. Basis for penalties. The penalty for late filing of a report required under this subchapter, except for accelerated campaign finance reports required pursuant to section 1017, subsection 3-B, 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.

The penalty for late filing of an accelerated campaign finance report as required in section 1017, subsection 3-B may be up to but no more than 3 times the amount by which the contributions received or expenditures obligated or made by the candidate exceed the applicable Maine Clean Election Fund disbursement amount, per day of violation. The commission shall make a finding of fact establishing when the report was due prior to imposing a penalty under this subsection. A penalty for failure to file an accelerated campaign finance report must be made payable to the Maine Clean Election Fund. In assessing a penalty for failure to file an accelerated campaign finance report, the commission shall consider the existence of mitigating circumstances. For the purposes of this subsection, "mitigating circumstances" has the same meaning as in subsection 2.

[2007, c. 443, Pt. A, §22 (AMD) .]

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; section 1017, subsection 4; and section 1019-B, subsection 3; [2009, c. 190, Pt. A, §14 (AMD).]
- B. Five thousand dollars for state party committee reports required under section 1017-A, subsection 4-A, paragraphs A, B, C and E; [2003, c. 628, Pt. A, §4 (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; [2003, c. 628, Pt. A, §4 (AMD).]

D. Five hundred dollars for municipal, district and county committees for reports required under section 1017-A, subsection 4-B; or [2003, c. 628, Pt. A, §4 (AMD).]

E. Three times the unreported amount for reports required under section 1017, subsection 3-B, if the unreported amount is less than \$5,000 and the commission finds that the candidate in violation has established, by a preponderance of the evidence, that a bona fide effort was made to file an accurate and timely report. [2001, c. 714, Pt. PP, §1 (NEW); 2001, c. 714, Pt. PP, §2 (AFF).]

[2009, c. 190, Pt. A, §14 (AMD) .]

6. Request for a commission determination. If the commission staff finds that a candidate or political committee has failed to file a report required under this subchapter, the commission staff shall mail a notice by certified mail to the candidate or political committee within 3 business days following the filing deadline informing the candidate or political committee that a report was not received. If a candidate or a political committee files a report required under this subchapter late, a notice of preliminary penalty must be sent to the candidate or political committee whose registration or campaign finance report was not received by 11:59 p.m. on the deadline date, informing the candidate or political committee of the staff finding of violation and preliminary penalty calculated under subsection 4-A and providing the candidate or political committee with an opportunity to request a determination by the commission. The notice must be sent by certified mail. Any request for a determination must be made within 14 calendar days of receipt of the commission's notice. The 14-day period during which a determination may be requested begins on the day a recipient signs for the certified mail notice of the proposed penalty. If the certified letter is refused or left unclaimed at the post office, the 14-day period begins on the day the post office indicates it has given first notice of a certified letter. A candidate or political committee requesting a determination may either appear in person or designate a representative to appear on the candidate's or political committee's behalf or submit a sworn statement explaining the mitigating circumstances for consideration by the commission. A final determination by the commission may be appealed to the Superior Court in accordance with Title 5, chapter 375, subchapter 7 and the Maine Rules of Civil Procedure, Rule 80C.

[2009, c. 302, §5 (RPR) .]

7. Final notice of penalty. If a determination has been requested by the candidate or political committee and made by the commission, notice of the commission's final determination and the penalty, if any, imposed pursuant to this subchapter must be sent to the candidate and the political committee.

If a determination is not requested, the preliminary penalty calculated by the commission staff is final. The commission staff shall mail final notice of the penalty to the candidate and treasurer. A detailed summary of all notices must be provided to the commission.

[2009, c. 302, §6 (AMD) .]

8. Failure to file report. The commission shall notify a candidate who has failed to file a report required by this subchapter, in writing, informing the candidate of the requirement to file a report. The notice must be sent by certified mail. If a candidate fails to file a report after 2 notices have been sent by the commission, the commission shall send a final notice by certified mail informing the candidate of the requirement to file and that the matter may be referred to the Attorney General for criminal prosecution. A candidate who fails to file a report as required by this subchapter after the commission has sent the notices required by this subsection is guilty of a Class E crime.