

Agenda

Item #4



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

To: Commission Members

From: Jonathan Wayne, Executive Director

Date: November 17, 2008

Re: Request by Fed Up With Taxes PAC for a Waiver of a \$10,000 Late-Filing Penalty

Summary

Fed Up With Taxes is the political action committee formed in support of the people's veto referendum to repeal the beverage and liquor tax. The PAC was required to file two 24-hour reports on Friday, October 24 and Saturday, October 25. Instead, the PAC filed a consolidated 24-hour report on Monday, October 27 at 6:14 p.m. The preliminary penalty amounts for the two late reports are \$96.12 and \$10,000, respectively.

At the outset of the campaign in May 2008, the PAC hired a law firm to be responsible for the PAC's compliance with campaign finance reporting requirements. Taking the campaign as a whole, the attorney assigned to manage the PAC's campaign finance reporting was overall very conscientious in understanding the PAC reporting requirements and in complying with them. The Commission staff is aware of no evidence that the PAC attempted for partisan or public relations purposes to conceal its expenditures. Rather, it appears that the late filing resulted from an oversight by the attorney during the evening of Friday, October 24, which was compounded by the October 25-26 weekend.

The PAC has requested a waiver of the \$10,000 penalty. The Commission staff recommends a significant reduction from the \$10,000 penalty which the staff views as disproportionate to the harm suffered by the public due to the late disclosure. We suggest assessing a penalty of \$1,000.

The 24-Hour Reporting Requirement for PACs

During the last 13 days before an election, PACs, candidates, and political parties are required to file reports of large contributions received and/or large expenditures made to influence the election. The purpose of the 24-hour reporting requirement is to make public last-minute financial transactions made to influence the election. The final regularly scheduled campaign finance report before the general election was due on October 24th, and covered all financial activity through the 14th day before the election

(October 21). Without the 24-hour reporting requirement, the large transactions made in the last 13 days before the general election would not be available to the public, the press, and interested political actors until the next regularly scheduled campaign finance reports filed 42 days after the election.

For PACs, the 24-hour reporting requirement is:

A committee shall report any expenditure of \$500 or more made after the 14th day before the election and more than 24 hours before 5:00 p.m. on the day of the election within 24 hours of that expenditure. (21-A M.R.S.A. § 1059(2)(E))

I have attached the 2008 PAC filing schedule which explains the 24-hour reporting requirement in the bottom portion of the schedule. The requirement includes reporting on the two weekends before the general election, and includes a duty to file the report on a Saturday or Sunday. Almost all PACs are required to file their campaign finance reports using the Commission’s electronic filing system, unless the PAC files its reports on paper forms because it has received a waiver of the electronic filing requirement. Once the PAC enters the information and files the report, the public may view the report on the Commission’s public access website.

Late Filing by Fed Up With Taxes

The Fed Up With Taxes political action committee (FUWT) does not dispute that it filed two 24-hour reports late.

- On Thursday, October 23, FUWT made a single expenditure in the amount of \$2,403. Therefore, the PAC should have filed a 24-hour report on Friday, October 24 disclosing this expenditure.
- On Friday, October 24, FUWT made 11 expenditures totaling \$748,628 (see attached chart). These expenditures should have been included in a 24-hour report filed on Saturday, October 25. Instead, the PAC included these expenditures in a 24-Hour Report filed on Monday, October 27 at 6:14 p.m.

October						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
19	20	21	22	23 PAC spent \$2,403 ⇒	24 Report for \$2,403 due	25
					PAC spent \$748,628 ⇒	Report for \$748,628 due
26	27 Consolidated report filed at 6:14 p.m.	28	29	30	31	November 1

FUWT engaged the law firm of Jensen Baird Gardner Henry to comply with campaign finance reporting requirements. The filing of the reports, including the data entry on the Commission's website, was handled by an attorney at the firm, William H. Dale. Since May 2008, the Commission's PAC/Party/Lobbyist Registrar Jeremy Brown has had numerous conversations with Mr. Dale. Overall, Mr. Dale has been very conscientious in understanding the PAC reporting requirements and in complying with those requirements.

Mr. Dale's explanation for why the 24-hour reports were not filed on October 24 and 25 seems to come down to two points in the first full paragraph on page 2 of FUWT's November 12 waiver request:

- Mr. Dale filed a full, itemized 11-day pre-general election campaign finance report for FUWT that covered all of the PAC's financial activity through Tuesday, October 21. The report was timely filed at 8:49 p.m. on Friday, October 24. As he notes, it was a large report that included a total of 57 contributions and expenditures.
- Mr. Dale believes that in the late evening on October 24, he simply forgot about the daily requirement to report the PAC's expenditures over \$500 made that day and the previous day. He was out of the office during the weekend of October 25 and 26, and filed the report on October 27 when he recognized belatedly that a 24-hour report was due.

Technological Problem

The Commission's electronic filing system is a custom-made internet-based software application that was created in 2000 by an Indiana company under the direction of former employees of the Commission. The website has two basic functions:

- *Data entry.* Filers (candidates, PACs, political party committees, and lobbyists) use a secure username and password to enter the website and put information into reports that are required by statute.
- *Public access.* Once the report is filed, the information in the report is uploaded instantaneously to the Commission's website so that the public, the press, and interested political actors can access the information.

Although Mr. Dale successfully filed a 24-Hour Report at 6:14 p.m. on October 27, the contents of the report were not properly displayed on the Commission's public access website due to a technological problem. To the best of our knowledge, the problem did not in any way interfere with Mr. Dale's filing of the report, but did hamper the proper display of the information on the Commission's public access website. Instead of being displayed in a 24-Hour Report dated October 27, the contents of the report were displayed in other 24-Hour Reports that had been filed by the PAC in June 2008. The misplaced information was brought to the Commission staff's attention by Benjamin F.

Dudley, who was following the spending of FUWT because of his involvement with the opponents of the beverage tax repeal.

The Commission staff was terribly frustrated with the technological problem, and worked with Mr. Dale and the Commission's technology contractor on October 28 - 30 to diagnose and fix the problem. During this period, the Commission staff requested that Mr. Dale re-file the report using our paper reporting forms on Wednesday, October 29, so that the Commission staff could release the information to interested persons such as Mr. Dudley on a request basis.

The Commission staff regrets that the technological problem interfered with Mr. Dudley's and others' access to the information, and required additional data entry by Mr. Dale on October 28 or 29. Nevertheless, it is important to understand that the technological problem did not in any way contribute to the late filing of the 24-hour report on Monday, October 27. The problem delayed the public's access to the information once the report was filed.

The Commission's technology contractor believes it has fixed the problem, and the staff has re-entered FUWT's 24-Hour Report filed on October 27. The pdf of the report is attached. (Please note that in addition to the October 23 and 24 expenditures that were reported late, the report includes some expenditures dated October 27 which were timely reported.)

Request for Waiver of Late-Filing Penalty by the PAC

The Commission staff commenced its customary penalty process in accordance with 21-A M.R.S.A. § 1062-A(3) and (5) (attached to FUWT's request as pages 25-26). Based on the formula in paragraph 3 of the statute, the staff calculated the preliminary late-filing penalties to be \$96.12 and \$10,000, respectively, and sent a notice of the penalty amounts to Mr. Dale. On behalf of FUWT, Mr. Dale has requested a waiver of the \$10,000 penalty. In the request, Mr. Dale explains the late filing of the report on pages 1-2 of the request, describes his overall efforts to comply with the PAC reporting requirements (pages 2-4), and provides reasons the Commission should waive the penalty based on the mitigating circumstances set forth in 21-A M.R.S.A. § 1062-A(2) (pages 4-5).

Staff Recommendation

The staff recommends that the \$10,000 penalty be reduced to \$1,000, for the following reasons.

Proportionality – Harm to the Public

Certainly, there was harm to the public by the late disclosure, and the final penalty assessed should reflect that harm. News reporters, opponents such as Mr. Dudley, and members of the public are fully entitled under 21-A M.R.S.A. § 1059(2)(E) to know the

details of any PAC expenditure over \$500. The great bulk of the information reported late (the October 24 expenditures totaling \$748,628) should have been known to the public on Saturday, October 25 and it was not known until 6:14 p.m. on Monday, October 27.

While the expenditures were significant, the delay itself consisted of 2 or 2 ½ days over a weekend. The staff believes that \$1,000 is more proportionate to the harm to the public than the preliminary amount of \$10,000. We are also concerned that the automatic imposition of the maximum penalty under the Election Law may result in a Commission action that the public, political leaders, and citizens participating in the political process view as overly and harshly punitive in light of the actual circumstances.

The staff believes that the recommended amount of \$1,000 also is roughly proportionate to the large penalties paid by other PACs in recent years, and can provide more information about other PAC penalties at the November 24 meeting if you are interested.

Lack of Intention to Conceal

In making our recommendation, the staff places considerable weight on the overall efforts of Mr. Dale to understand and comply with the PAC reporting requirements, which we believe demonstrate complete good faith on his part. In addition, Mr. Dale's responsiveness to the staff's requests and his consistent communications with staff about reporting requirements lead the staff to believe that his intent was to comply with reporting requirements and not to conceal information from the public or his opponents. We understand that this is a subjective judgment based on Commission employees' interactions with Mr. Dale and that the Commission must make its decision based on the evidence presented to it.

Nevertheless, we believe our personal observations are objectively supported by the explanation and documentation provided by Mr. Dale, including his e-mails dated October 21, 23, and 24 (attached to FUWT's request as pages 18, 19, and 14) which demonstrate the efforts he took to ensure compliance with the 24-hour reporting requirement. A particularly good example of these efforts is the October 21 e-mail to the PAC's media consultant (Gerry Gunster), campaign manager (Newell Augur) and others stating "Just a reminder that ... starting tomorrow, ... we must report on a daily basis any expenditure over \$500. I'm the person to do the reporting electronically, so please be sure to get any such info to me on a daily basis." This is exactly the sort of coordination and attention to compliance that is necessary for large PACs such as FUWT to meet with the PAC reporting requirements.

We understand that when a PAC fails to file a campaign finance report on time in the heat of a political contest, there can be a concern – particularly to advocates on the other side – about an attempt to conceal financial activity. One critical factor in the staff's view that there was no intent to conceal in this case is the fact that Mr. Dale filed the 24-hour reports as soon as he recognized the error and did so without any notice or prompting from the Commission staff. This along with Mr. Dale's assiduous efforts to

encourage reporting compliance and the PAC's record of compliance do not suggest any attempt or intent to conceal the PAC's expenditures on October 23 and 24.

Ability to Pay

FUWT is one of the best-funded PACs in Maine in recent history. Based on current reports, it appears that the PAC spent over \$3.5 million in its successful effort to repeal the beverage and liquor tax. At your November 24 meeting, you may receive the suggestion that the penalty for the late 24-hour reports should be high to act as a deterrent.

Generally, the staff's view is that a penalty against a wealthy candidate, PAC, party committee, or lobbying firm should not be increased because of the filer's large financial resources. We are concerned that a policy that bases penalties on the ability to pay could lead to inconsistent and unfair penalties. Rather, we suggest that the penalty should be based on harm to the public, number of days late, amount of late financial activity, good faith efforts to file the report, valid emergencies, and other mitigating factors listed in 21-A M.R.S.A. § 1062-A(2).

Thank you for taking the staff's recommendation into consideration.



2008 FILING SCHEDULE For Political Action Committees

PRIMARY ELECTION: JUNE 10, 2008		GENERAL ELECTION: NOVEMBER 4, 2008
TYPE OF REPORT	FILING DEADLINE (BY 11:59 P.M.)	REPORT PERIOD
April Quarterly	April 10, 2008	January 6, 2008 – March 31, 2008
11-Day Pre-Primary*	May 30, 2008	April 1, 2008 – May 27, 2008
42-Day Post-Primary**	July 22, 2008	May 28, 2008 – July 15, 2008
October Quarterly	October 10, 2008	July 16, 2008 – September 30, 2008
11-Day Pre-General*	October 24, 2008	October 1, 2008 – October 21, 2008
42-Day Post-General	December 16, 2008	October 22, 2008 – December 9, 2008
January Quarterly	January 15, 2009	December 10, 2008 – January 5, 2009

* PACs are required to file an 11-Day Pre-Primary and an 11-Day Pre-General Election Report.

** PACs do not have to file a July Quarterly Report in 2008 but must file a 42-Day Post-Primary Election Report.

24-HOUR REPORTS

24-HOUR REPORT PERIOD (13 DAYS BEFORE THE ELECTION)	WHAT TO REPORT	WHEN TO FILE THE REPORT
<p>Primary: May 28 – June 9, 2008</p> <p>General: October 22 – November 3, 2008</p>	<p>Any single expenditure of \$500 or more.</p> <p>Orders placed with or obligations made to vendors for goods or services are considered expenditures at the time the obligations are made. Expenditures listed in 24-Hour Reports must be included in the next regular campaign finance report.</p>	<p>Within 24 hours, including Saturdays and Sundays, of making the expenditure, incurring the obligation, or placing the order and can be filed via the PAC electronic filing website.</p>

IMPORTANT INFORMATION

All regular campaign finance reports are due by 11:59 p.m. on the due date. PAC treasurers must enter the required information and click "File Report" by 11:59 p.m. on the filing deadline. The filing deadline for a 24-Hour Report depends on the time and date of the expenditure.

Commission staff will be available until 5:00 p.m. on filing deadlines to offer assistance to political action committees. Failure to seek out timely assistance from staff regarding the filing of reports will not be considered a mitigating circumstance if the report is filed late.

STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES
Mail: 135 State House Station, Augusta, Maine 04333-0135
Tel: (207) 287-6221 FAX: (207) 287-6775 Website: /www.maine.gov/ethics/
Electronic Filing: <https://secure.mainecampaignfinance.com/mainelogin.asp>

24-HOUR REPORT OF LATE EXPENDITURES - 2008 Political Action Committees

POLITICAL ACTION COMMITTEE IDENTIFICATION

Name of Political Action FED UP WITH TAXES	Telephone (866)538-9200
Mailing address P.O. BOX 7690	Acronym of PAC
City, state, zip PORTLAND ME 04112	
Ballot question(s) this PAC supports/opposes(if any) PEOPLES VETO OF CHAP. 629, P.L.2007 (PARTS D, E, AND F) SUPPORT	

TREASURER IDENTIFICATION

Name of treasurer Connors, Dana	Telephone (866)538-9200
Mailing address, city, state, zip code P.O. BOX 7690 PORTLAND ME 04112	

EXPENDITURES

Payee/Creditor: BRANDON DUGAY	Date of 10/23/2008
Address: ONE CITY CENTER	Amount of expenditure: 2,403.00
City, State, Zip PORTLAND ME 04101	Purpose of expenditure: REIMB. FOR 2 WEEKS MILEAGE & LODGING
Candidate expenditure made on behalf of (if any):	In Support or Opposition?

EXPENDITURES

Payee/Creditor: EDGE MEDIA GROUP	Date of 10/27/2008
Address: 21 MAIN STREET	Amount of expenditure: 1,000.00
City, State, Zip BANGOR ME 04401	Purpose of expenditure: FULL PAGE PRINT AD FOR FUWT
Candidate expenditure made on behalf of (if any):	In Support or Opposition?

EXPENDITURES

Payee/Creditor: GODDARD CLAUSSEN	Date of 10/28/2008
Address: 701 8TH STREET, NW	Amount of expenditure: 88,274.00
City, State, Zip WASHINGTON DC 20001	Purpose of expenditure: TRAVEL EXPENSES & PRODUCTION COSTS
Candidate expenditure made on behalf of (if any):	In Support or Opposition?

EXPENDITURES

Payee/Creditor: GODDARD CLAUSSEN	Date of 10/24/2008
Address: 701 8TH STREET, NW	Amount of expenditure: 330,664.00
City, State, Zip WASHINGTON DC 20001	Purpose of expenditure: MEDIA BUY FOR TV/RADIO/PRINT FOR 10/26-11/2
Candidate expenditure made on behalf of (if any):	In Support or Opposition?

EXPENDITURES

Payee/Creditor: GODDARD CLAUSSEN	Date of 10/24/2008
Address: 701 8TH STREET, NW.	Amount of expenditure: 50,797.00
City, State, Zip WASHINGTON DC 20001	Purpose of expenditure: MEDIA BUY FOR TV/RADIO/PRINT THRU 11/3
Candidate expenditure made on behalf of (if any):	In Support or Opposition?

EXPENDITURES

Payee/Creditor: GODDARD CLAUSSEN	Date of 10/24/2008
Address: 701 8TH STREET, NW	Amount of expenditure: 29,085.00
City, State, Zip WASHINGTON DC 20001	Purpose of expenditure: MEDIA BUY FOR PRINT FOR 10/22-10/25
Candidate expenditure made on behalf of (if any):	In Support or Opposition?

EXPENDITURES

Payee/Creditor: GODDARD CLAUSSEN	Date of 10/24/2008
Address: 701 8TH STREET, NW	Amount of expenditure: 251,872.00
City, State, Zip WASHINGTON DC 20009	Purpose of expenditure: MEDIA BUY FOR TV/RADIO/PRINT FOR 10/20 - 10/26
Candidate expenditure made on behalf of (if any):	In Support or Opposition?

EXPENDITURES

Payee/Creditor: MICHAEL D. MEYERS CO., INC.	Date of 10/24/2008
Address: 1803 42ND AVE E	Amount of expenditure: 80,210.00
City, State, Zip SEATTLE W 98112	Purpose of expenditure: PRODUCTION, POSTAGE, TARGET MAILING & PRINTING
Candidate expenditure made on behalf of (if any):	In Support or Opposition?

EXPENDITURES

Payee/Creditor: THE STEMBER GROUP	Date of 10/24/2008
Address: 2133 12TH PLACE, NW	Amount of expenditure: 1,000.00
City, State, Zip WASHINGTON DC 20009	Purpose of expenditure: GRASSROOTS OUTREACH WEEK OF 9/29
Candidate expenditure made on behalf of (if any):	In Support or Opposition?

EXPENDITURES

Payee/Creditor: THE STEMBER GROUP	Date of 10/24/2008
Address: 2133 12TH PLACE NW	Amount of expenditure: 1,000.00
City, State, Zip WASHINGTON DC 20009	Purpose of expenditure: GRASSROOTS OUTREACH WEEK OF 10/6
Candidate expenditure made on behalf of (if any):	In Support or Opposition?

EXPENDITURES

Payee/Creditor: THE STEMBER GROUP	Date of 10/24/2008
Address: 2133 12TH PLACE, NW	Amount of expenditure: 1,000.00
City, State, Zip WASHINGTON DC 20009	Purpose of expenditure: GRASSROOTS OUTREACH WEEK OF 10/20
Candidate expenditure made on behalf of (if any):	In Support or Opposition?

EXPENDITURES

Payee/Creditor: THE STEMBER GROUP	Date of 10/24/2008
Address: 2133 12TH PLACE, NW	Amount of expenditure: 1,000.00
City, State, Zip WASHINGTON DC 20009	Purpose of expenditure: GRASSROOTS OUTREACH WEEK OF 10/27
Candidate expenditure made on behalf of (if any):	In Support or Opposition?

EXPENDITURES

Payee/Creditor: THE STEMBER GROUP	Date of 10/24/2008
Address: 2133 12TH PLACE, NW	Amount of expenditure: 1,000.00
City, State, Zip WASHINGTON DC 20009	Purpose of expenditure: GRASSROOTS OUTREACH WEEK OF 11/3
Candidate expenditure made on behalf of (if any):	In Support or Opposition?

EXPENDITURES

Payee/Creditor: THE STEMBER GROUP	Date of 10/24/2008
Address: 2133 12TH PLACE, NW	Amount of expenditure: 1,000.00
City, State, Zip WASHINGTON DC 20009	Purpose of expenditure: GRASSROOTS OUTREACH WEEK OF 10/13
Candidate expenditure made on behalf of (if any):	In Support or Opposition?

I, Connors, Dana, certify that the information in this report is true, correct and complete.

Signature of Treasurer _____

Date 10/27/2008



KENNETH M. COLE III
NICHOLAS S. NADZO
FRANK H. FRYE
DAVID J. JONES
MICHAEL A. NELSON
RICHARD H. SPENCER, JR.
ALAN R. ATKINS
RONALD A. EPSTEIN
WILLIAM H. DALE
JOSEPH H. GROFF III
F. BRUCE SLEEPER
DEBORAH M. MANN
LESLIE E. LOWRY III

PATRICIA M. DUNN
MICHAEL J. QUINLAN
R. LEE IVY
FRANK K. N. CHOWDRY
NATALIE L. BURNS
SALLY J. DAGGETT
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VIA EMAIL & U.S. MAIL

November 12, 2008

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

RECEIVED

NOV 13 2008

MAINE ETHICS COMMISSION

Re: Waiver Request 24 Hour Report Late Filings Penalty (Fed Up With Taxes)

Dear Jonathan:

I am writing on behalf of the Fed Up With Taxes (FUWT) PAC in response to your letter to me dated October 23, 2008 and Jeremy Brown's letter to me dated October 30, 2008, both of which I received on November 3, 2008 (copies attached; pp. 1-4), to request a waiver of the financial penalty for late filing of certain 24 Hour Reports, as set forth in Mr. Brown's letter.

In summary, on behalf of the PAC, I attempted to make twelve 24 Hour Report filings on Monday, October 27 for one "over \$500 expenditure" incurred on Thursday, October 23 and for eleven "over \$500 expenditures" incurred on Friday, October 24. The State's electronic filing system was malfunctioning on that Monday (and the following day, Tuesday), and so with the prior approval of the Ethic Commission's staff, I made the filings by fax on Wednesday. See attached (pp. 5-13). The two day delay caused by the faulty electronic reporting system was not the PAC's fault, and the Commission's staff has acknowledged that, as does the proposed penalty. Therefore the delays in filing at issue are primarily the wrongfully over-looked, initial date, Friday, October 24, and then the two intervening weekend days, Saturday and Sunday, October 25 and 26.

Most importantly, all PAC officials, including Treasurer Dana Connors and Campaign Manager Newell Augur, as well as the Washington, DC consulting firm managing the campaign, had done all that was required of them and were informed that

~ Over 50 Years of Service ~

November 12, 2008

Page 2

the law firm and I had filed all of the required reports on time. The law firm feels so strongly about this that it will contribute any money necessary to cover any penalties not waived by the Commission and occasioned by the late filings of the 24 Hour Reports referenced above.

I would like to be able to say the electronic filing system that was malfunctioning on Monday and Tuesday was also malfunctioning on Thursday and Friday, October 23 and 24, but, in retrospect, I think I simply forgot about the 24 Hour Report filing requirements because on that same day, October 24, the PAC was required to make its "11 Day Pre-General Election Filing" for the period October 1 through October 21, which I did at 8:49 pm that Friday evening. That was a lengthy report, listing 21 separate cash contributions and 46 separate expenditures. Ironically, in an attempt to insure that the reports were properly and timely reported, since the PAC's formation last spring, I have made all the electronic filings, including the actual data entries, myself. There was no reason--good, bad or indifferent--for me not to have made the separate 24 Hour Report filings that same Friday evening. Indeed, after submitting the lengthy 11 Day Pre-General Election filing that Friday evening, I sent an email around to all of the key PAC campaign representatives confirming my filing of the 11 Day Report and even reminding them of the additional 24 Hour Report filing requirements. See attached (p. 14).

Background

In order to keep track of the financial contributions received and the expenditures made for PAC reporting purposes, and for our own internal record keeping purposes, the PAC and my law firm established both a computer-based system and a paper file system to record the names and addresses of contributors, the dates the monies are received and an office protocol to make sure each contribution is not only entered in both of those systems, but is also witnessed in person by two different people at my office.

Likewise, for expenditures over \$2,000, we developed an additional office protocol that required a personal approval and signature for each expenditure by (a) Gerry Gunster, a principal of the Goddard Claussen public affairs consulting firm in Washington, (b) Newell Augur, the campaign manager who split his time between his law office in Brunswick and the PAC's campaign headquarters in downtown Portland and (c) our law office in downtown Portland.

Here, the law firm, as agent for the PAC's Treasurer, had me make all of the various electronic filings as provided by the Commission's printed schedule for 2008. See attached (p. 15). When I received the filing schedule last spring, I "tickled" each of the filing dates, as well as one week in advance and one day in advance reminder dates,

November 12, 2008
Page 3

on my personal calendar on my computer. That is the only calendar I use for all of my law firm matters, and I look at it throughout the day, each and every business day, including Sundays when I almost always come to the office. Pursuant to that routine, I have made all of the appropriate filings for this PAC throughout the summer and fall.

In addition to the tickle dates on my electronic calendar, I have kept immediately adjacent to my desk a red-well accordion folder in which I kept my various paper folders and my paper print-outs of emails and faxes for this PAC. Included in the accordion folder was a white three ring notebook, my "PAC bible," in which I kept paper copies of important materials for the PAC, such as photocopies of the applicable State statutes, official State regulations and print-outs of the relevant materials from the Commission's website. Most importantly, the first page in the notebooks is, and has been since last spring, the Commission's 2008 Filing Schedule, color-coded for each of the specific filing dates, including the 24 Hour Reports for October of 2008. See attached (p. 16).

In addition, I took it upon myself to remind all of the PAC's key, individual representatives of the various filing dates as they appeared on my tickler system on my calendar. I have attached copies of the same. I understood this to be my principal responsibility for the PAC, aside from the occasional more general legal question that would arise. Frankly, I took it upon myself to be all but a "pain in the neck" in terms of reminding PAC officials repeatedly of these reporting requirements. See attached (pp. 17-19). Except for my omissions on October 23 and 24, our system or protocol worked as designed: all PAC officials, from Mr. Connors as Treasurer, to Attorney Augur as campaign manager, through and including the Goddard Claussen firm as the outside campaign consultant, properly and timely reported the cash contributions, the in-kind contributions and the expenditures to my office for electronic filing, and I then filed them with the Commission.

Generally, the quarterly electronic filings could be made satisfactorily on the Commission's electronic filing system (the system is not, however, "user friendly" in terms of allowing correction of incorrect data entries or amending previously filed reports), but filing the 24 Hour Reports was problematic from the inception, starting last spring. In particular, our PAC was organized on May 30, 2008 and, according to the Commission's 2008 Filing Schedule, and a legal interpretation from the Commission staff, all PAC's were required to comply with the same electronic 24 hour expenditure filing requirements as individual candidates with respect to the June 10 primary elections. That seemed nonsensical to me regarding PAC's, but to be safe rather than sorry, I took the initiative and contacted Commission staffer, Jeremy Brown. See attached (pp. 20-21). He apparently was "assigned" to our PAC, and I contacted him about this and was

November 12, 2008

Page 4

told that the PAC's had to comply with the 24 Hour Expenditure Report filing requirements for the June 10 primary. That was fine, and I attempted to do so, but immediately was confronted with the electronic system's refusal to accept data entries in the "11 Day Pre-Primary" filing categories if the dates of the entries were later than May 27 but prior to June 9; instead entries for June 4, for example, had to be entered in the "42 Day Post-Primary" filing category and even then exactly where individual entries ended up was a little random. See attached (pp. 22-24). Maybe this foreshadowed the trouble we would experience with the 24 Hour Reports in October.

Waiver Request

With that background, Jensen Baird Gardner & Henry, on behalf of its client, the Fed Up With Taxes PAC, requests a waiver of the \$10,000 fine for late reporting as outlined in Mr. Brown's letter to me dated October 30, 2008. I understand that both the applicable statute and the applicable regulations expressly allow for such a waiver. See 21-A M.R.S.A. § 1062-A and 94-270 CMR ch. 1, § 4(2)(B)(1-7)(copies attached)(pp. 25-28). The PAC offers the following arguments in support of this request.

First, the size of the penalty is disproportionate to any harm suffered by the public. Here, it was apparent through our timely filings prior to October 23 that there were very sizeable cash contributions being made to this PAC and being spent on media advertising. There were no surprises in that regard; indeed, the PAC had accepted sizeable cash contributions in the late spring and then spent the same to secure the requisite number of petition signatures to get its referendum question on the November ballot. Likewise, the cash contributions and expenditures shown on the 11 Day Pre-General Election filing on October 24 showed substantial contributions and expenditures as of that filing date. And, of course, as a ballot question, there was no issue of denying matching funds for a "Maine clean election" candidate.

Second, there was no attempt here to hide the late filings. They were apparent on the face of the 24 Hour Reports filed by fax on October 29 (and had been on the attempted electronic filings on October 27 and 28). Unfortunately, the length of the delay and the initial size of the fine are increased by the intervening weekend days of October 25 and 26. There were no expenditures over \$500 over that weekend, and so PAC officials had no reason to wonder if I had filed such reports on either Saturday or Sunday. I tried to remedy the late filings on the next business day, Monday, October 27.

Third, there is my personal good faith effort throughout this campaign, starting last spring with my frequent inquiries to the Commission's staff contact person, Mr. Brown, trying to comply with the sometimes conflicting filing requirements (e.g., PAC's having

Jensen Baird
Gardner Henry

November 12, 2008

Page 5

to make 24 hour expenditure filings for the June 10 primary even though they were not being voted on at the primary) and the sometimes quirky electronic filing system (e.g., the system's insistence on recording those 24 hour expenditures that were post-May 27, but pre-June 10, only in the 42 Day Post Primary filing category). This is coupled with my frequent reminders to the PAC's key staffers to be mindful of the filing requirements. I have only been involved in one previous State-wide ballot question campaign (the Passamaquoddy Tribe's racino question last year), and have no prior instances of non-compliance.

And fourth, the PAC took all reasonable steps to comply with the applicable campaign finance reporting requirements, including hiring a law firm to design and implement a reporting system to insure proper reporting, and was, in fact, informed by the law firm that all required filings had been made. There cannot be any reasonable suggestion that anyone involved with the PAC intended to deceive the public with these late filings.

Conclusion

Again, on behalf of the Fed Up With Taxes PAC, I request a waiver of the proposed \$10,000 fine and believe the matters presented above provide ample bases for the same under the applicable statute and regulations. I plan to attend the Commission meeting at which this matter will be considered and will be pleased to answer any further questions at that time.

Thank you.

Sincerely,



William H. Dale

WHD/ljs

Enclosures

cc: Jeremy Brown, PAC Registrar

Dana Connors, FUWT Treasurer

Newell Augur, Esq., FUWT Campaign Manager



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

October 23, 2008

RECEIVED

NOV 03 2008

Jensen Baird Gardner & Henry

By E-Mail and Regular Mail

William H. Dale, Esq.
Jensen Baird Gardner & Henry
P.O. Box 4510
Portland, ME 04112-4510

Dear Mr. Dale:

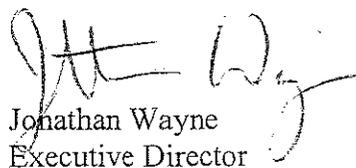
Thank you for your response to the request filed by Benjamin F. Dudley. With respect to the political action committee's October 1 expenditures to Goddard Clausen, Mr. Dudley is not going to be asking the members of the Commission to take any action with regard to that matter. The Commission's meeting for tomorrow has been canceled due to the withdrawal of two requests.

I want to apologize again for the problems you encountered with the Commission's electronic filing system.

With regard to the late penalties for the 24-hour reports, I have enclosed the penalty letter which the Commission staff prepared. The letter will be mailed tomorrow. In case the political action committee (PAC) wishes to ask for a waiver of the penalty, I have attached 21-A M.R.S.A. § 1062-A(2), which lists mitigating circumstances under which the Commission may waive the penalty in whole or in part. Because of the large amount of the penalty, I would encourage the PAC to request a waiver of the penalty. Any decision on a waiver request would be made by the members of the Commission at a public meeting. The Commission's next meeting is scheduled for November 24, 2008.

If you have any questions, please contact Jeremy Brown or me. Thank you again for your cooperation.

Sincerely,



Jonathan Wayne
Executive Director

OFFICE LOCATED AT: 242 STATE STREET, AUGUSTA, MAINE
WEBSITE: WWW.MAINE.GOV/ETHICS

PHONE: (207) 287-4179

FAX: (207) 287-6775

- / -



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

October 30, 2008

RECEIVED

NOV 03 2008

Mr. William H. Dale
 General Counsel
 Fed Up With Taxes PAC
 Ten Free Street
 P.O. Box 4510
 Portland, ME 04112-4510

Jansen Baird Gardner & Henry

Re: Late 24-Hour Report of Expenditures

Dear Mr. Dale:

Our records show that the above mentioned PAC filed a 24-Hour Report of Late Expenditures on October 27, in which the Committee reported one expenditure dating October 23, and 11 expenditures dated October 24. In accordance with 21-A M.R.S.A § 1059 (2)(E), PACs must report any expenditure of \$500 or more made after the 14th day before an election within 24 hours of that expenditure.

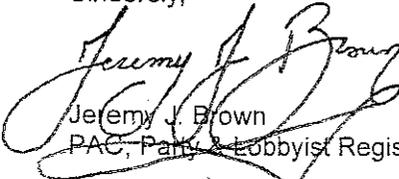
Penalties for late reports are based on the amount of financial activity reported, the number of calendar days a report is filed late, and the committees filing history. As there should have been two filings, one indicating the expenditure dated October 23 and another indicating all expenditures dated October 24, the Commission staff has assessed two **preliminary** penalties using the formula outlined in 21-A M.R.S.A. § 1062-A (3). Please refer to the enclosed penalty matrix for more information on how these penalties were determined:

- (1) For the late filing of a 24 Hour Report of Late Expenditures disclosing the October 23rd expenditure of \$2,403 the Commission Staff has assessed a preliminary penalty of \$96.12.
- (2) For the late filing of a 24-Hour Report of Late Expenditures disclosing all transactions dated October 24th, the Commission Staff has assessed a preliminary penalty of \$10,000, which is the maximum permitted by 21-A M.R.S.A. § 1020-A(5-A)(A).

If you believe you have a valid reason for filing late, you may request that the Commission review your case make a final penalty determination. Any request for a Commission determination must be made within 10 calendar days of receiving this notice. Upon receipt of your request for a Commission determination, we will schedule you to appear before the Commission at the next regularly scheduled meeting. You may appear before the Commission personally, designate a representative to appear on your behalf, or submit a notarized written statement in which you provide an explanation of the mitigating circumstances you wish the Commission to take into consideration. The Commission will notify you of the disposition of your case upon making a determination.

Please direct any questions you may have about this matter to me at 287-6221.

Sincerely,


 Jeremy J. Brown
 PAC, Party & Lobbyist Registrar

Enclosures: (2)

cc: Mr. Newell Augur, Chairman, P.O. Box 7690, Portland, ME 04112
 Mr. Dana Connors, Treasurer, P.O. Box 7690, Portland, ME 04112

OFFICE LOCATED AT: 242 STATE STREET, AUGUSTA, MAINE
 WEBSITE: WWW.MAINE.GOV/ETHICS

PHONE: (207) 287-4179

FAX: (207) 287-6775

**COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES
PENALTY MATRIX FOR LATE POLITICAL ACTION COMMITTEE REPORT FILINGS**

**BASIS FOR PENALTIES
21-A M.R.S.A. Section 1062-A**

Committee Name: Fed Up With Taxes **Report Title:** 24-Hour Report of Late Expenditures
Due Date: October 24, 2008
Previous Violation(s): 0 **Filed Date:** October 27, 2008

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%

A penalty begins to accrue at 11:59 p.m. on the day the report is due.

Penalty Example:		Your Penalty is calculated as follows:	
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		Contributions / Expenditures:	<u>\$2,403.00</u>
\$2,500	Greater amount of the total contributions received or expenditures made during the filing period	X	<u>1%</u>
X .01	Percent prescribed for first violation		<u>\$24.03</u>
\$25.00	One percent of total contributions	X	<u>4</u>
X 2	Number of calendar days late		<u>\$96.12</u>
\$50.00	Total Penalty	Total penalty accrued:	<u><u>\$96.12</u></u>

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 1062-A(4)

\$10,000 for 11-Day Pre Election reports, 42-Day Post-Election reports, and 24-Hour reports

\$5,000 for Quarterly reports

**COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES
PENALTY MATRIX FOR LATE POLITICAL ACTION COMMITTEE REPORT FILINGS**

**BASIS FOR PENALTIES
21-A M.R.S.A. Section 1062-A**

Committee Name: Fed Up With Taxes **Report Title:** 24-Hour Report of Late Expenditures
Previous Violation(s): 1 **Due Date:** October 25, 2008
Filed Date: October 27, 2008

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%

A penalty begins to accrue at 11:59 p.m. on the day the report is due.

Penalty Example:		Your Penalty is calculated as follows:	
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:		Contributions / Expenditures:	\$748,628.00
\$2,500	Greater amount of the total contributions received or expenditures made during the filing period	x	3%
X .01	Percent prescribed for first violation		\$22,458.84
\$25.00	One percent of total contributions	x	3
X 2	Number of calendar days late		\$67,376.52
\$50.00	Total Penalty	Total penalty accrued:	

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 1062-A(4)

\$10,000 for 11-Day Pre Election reports, 42-Day Post-Election reports, and 24-Hour reports

\$5,000 for Quarterly reports

Revised 5/08

William H. Dale

From: William H. Dale
Sent: Tuesday, October 28, 2008 6:26 PM
To: 'jbrown@maine.gov'
Subject: Fed Up With Taxes

Jeremy

After you and I spoke this afternoon (and right after you and Jonathan Wayne and I spoke slightly later this afternoon), I again tried to enter my "daily report" list of expenditures for yesterday (which I thought I had entered yesterday) and today. I thought they were all properly entered, but now once again, I cannot view them or print them off.

Sorry, but I guess I need more help!

Thanks.

Bill Dale

William H. Dale
Jensen Baird Gardner & Henry
Ten Free St., P.O. Box 4510
Portland, ME 04112
wdale@jbgh.com
(207) 775-7271
(207) 775-7935 (Fax)



**JENSEN BAIRD
GARDNER-HENRY**

Attorneys at Law

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(207) 775-7271 (Phone)
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(1914-1987)

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NICHOLAS S. NADZO
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DAVID J. JONES
MICHAEL A. NELSON
RICHARD H. SPENCER, JR.
ALAN R. ATKINS
RONALD A. EPSTEIN
WILLIAM H. DALE
JOSEPH H. GROFF III
F. BRUCE SLEEPER
DEBORAH M. MANN
LESLIE E. LOWRY III

PATRICIA M. DUNN
MICHAEL J. QUINLAN
R. LEE IVY
FRANK K. N. CHOWDRY
NATALIE L. BURNS
SALLY J. DAGGETT
BRENDAN P. RIELLY
SUZANNE R. SCOTT
LORAIN L. HITE
MARCIA G. CORRADINI
NICHOLAS J. MORRILL
SARAH M. LAVIGNE

VIA FAX & U.S. MAIL

October 29, 2008

Mr. Jeremy Brown
PAC, Party & Lobbyist Registrar
Commission on Governmental Ethics
and Election Practices
135 State House Station
Augusta, ME 04333-0135

Re: Fed Up With Taxes PAC/24 Hour Reports (Paper Filing)

Dear Jeremy:

As a follow up to our email exchanges this morning and our telephone conversation late yesterday afternoon, please find enclosed eighteen (18) "24 Hour Reports" for the Fed Up With Taxes PAC because of our apparent computer glitch in sending and/or receiving these. As with the electronic filings, in submitting these paper copies, I declare them to be true, correct and complete.

I have also enclosed three (3) print-outs I received from your automated response system showing the dates and times I tried to file these on Monday, October 27, and on Tuesday, October 28. I think we will have additional 24 Hour Reports to file for today, Wednesday, October 29, before the day is over.

If you have any questions, please call me. Thank you.

Sincerely,



William H. Dale

WHD/ljs
Enclosures

~ Over 50 Years of Service ~

- 6 -

William H. Dale

From: William H. Dale
Sent: Tuesday, October 28, 2008 6:26 PM
To: jbrown@maine.gov
Subject: Fed Up With Taxes

Jeremy

After you and I spoke this afternoon (and right after you and Jonathan Wayne and I spoke slightly later this afternoon), I again tried to enter my "daily report" list of expenditures for yesterday (which I thought I had entered yesterday) and today. I thought they were all properly entered, but now once again, I cannot view them or print them off.

Sorry, but I guess I need more help!

Thanks.

Bill Dale

William H. Dale
Jensen Baird Gardner & Henry
Ten Free St., P.O. Box 4510
Portland, ME 04112
wdale@jbgh.com
(207) 775-7271
(207) 775-7935 (Fax)



William H. Dale

From: ethics@maine.gov
Sent: Monday, October 27, 2008 6:21 PM
To: fedupwithtaxes@gmail.com; William H. Dale
Subject: Maine CF Filed Report Receipt

This is an automatic response from Maine's Electronic Filing System.
The report entitled 'Ballot PACs - 24-Hour Report' was filed on 10/27/2008 6:14:50 PM EST
for PAC1302.

Send Inquiries to:
State of Maine - Commission on Governmental Ethics and Election Practices
135 State House Station
Augusta, ME 04333-0135
(207) 287-4179
ethics@maine.gov

William H. Dale

From: ethics@maine.gov
Sent: Tuesday, October 28, 2008 10:21 AM
To: fedupwithtaxes@gmail.com; William H. Dale
Subject: Maine CF Filed Report Receipt

This is an automatic response from Maine's Electronic Filing System.
The report entitled 'Ballot PACs - 24-Hour Report' was filed on 10/28/2008 10:16:19 AM EST for PAC1302.

Send Inquiries to:
State of Maine - Commission on Governmental Ethics and Election Practices
135 State House Station
Augusta, ME 04333-0135
(207) 287-4179
ethics@maine.gov

William H. Dale

From: ethics@maine.gov
Sent: Tuesday, October 28, 2008 11:21 AM
To: fedupwithtaxes@gmail.com; William H. Dale
Subject: Maine CF Filed Report Receipt

This is an automatic response from Maine's Electronic Filing System.
The report entitled 'Ballot PACs - 24-Hour Report' was filed on 10/28/2008 11:13:29 AM EST
for PAC1302.

Send Inquiries to:
State of Maine - Commission on Governmental Ethics and Election Practices
135 State House Station
Augusta, ME 04333-0135
(207) 287-4179
ethics@maine.gov

William H. Dale

From: ethics@maine.gov
Sent: Tuesday, October 28, 2008 11:21 AM
To: fedupwithtaxes@gmail.com; William H. Dale
Subject: Maine CF Filed Report Receipt

This is an automatic response from Maine's Electronic Filing System.
The report entitled 'Ballot PACs - 24-Hour Report' was filed on 10/28/2008 11:17:51 AM EST for PAC1302.

Send Inquiries to:
State of Maine - Commission on Governmental Ethics and Election Practices
135 State House Station
Augusta, ME 04333-0135
(207) 287-4179
ethics@maine.gov

- 11 -

William H. Dale

From: ethics@maine.gov
Sent: Tuesday, October 28, 2008 11:51 AM
To: fedupwithtaxes@gmail.com; William H. Dale
Subject: Maine CF Filed Report Receipt

This is an automatic response from Maine's Electronic Filing System.
The report entitled 'Ballot PACs - 24-Hour Report' was filed on 10/28/2008 11:42:36 AM EST
for PAC1302.

Send Inquiries to:
State of Maine - Commission on Governmental Ethics and Election Practices
135 State House Station
Augusta, ME 04333-0135
(207) 287-4179
ethics@maine.gov

-12-

William H. Dale

From: ethics@maine.gov
Sent: Tuesday, October 28, 2008 6:11 PM
To: fedupwithtaxes@gmail.com; William H. Dale
Subject: Maine CF Filed Report Receipt

This is an automatic response from Maine's Electronic Filing System.
The report entitled 'Ballot PACs - 24-Hour Report' was filed on 10/28/2008 6:07:52 PM EST
for PAC1302.

Send Inquiries to:
State of Maine - Commission on Governmental Ethics and Election Practices
135 State House Station
Augusta, ME 04333-0135
(207) 287-4179
ethics@maine.gov

William H. Dale

From: William H. Dale

Sent: Friday, October 24, 2008 8:45 PM

To: 'Gerry Gunster'; Joseph H. Groff, III; 'Nancy Carlson'; 'Kristine Ossenfort'; naugur@mainelobby.com

Subject: FUWT PAC 11 Days Pre-General Election Electronic Reporting

Gerry et als:

This email is to confirm that today, Friday, October 24, at approx. 8:30 pm, Portland, Maine prevailing time, I filed the above report electronically with the State of Maine Ethics Comm'n, as required for the period October 1 thru October 21.

Any questions, please call me. Thanks.

Bill Dale

PS Please remember that thru November 3 we have a daily reporting requirement (for expenditures only over \$500). Thanks.

William H. Dale

Jensen Baird Gardner & Henry

Ten Free St., P.O. Box 4510

Portland, ME 04112

wdale@jbgh.com

(207) 775-7271

(207) 775-7935 (Fax)



10/30/2008

-14-



2008 FILING SCHEDULE
For Political Action Committees

PRIMARY ELECTION: JUNE 10, 2008		GENERAL ELECTION: NOVEMBER 4, 2008
TYPE OF REPORT	FILING DEADLINE (BY 11:59 P.M.)	REPORT PERIOD
April Quarterly	April 10, 2008	January 6, 2008 – March 31, 2008
11-Day Pre-Primary*	May 30, 2008	April 1, 2008 – May 27, 2008
12-Day Post-Primary**	July 22, 2008	May 28, 2008 – July 15, 2008
October Quarterly	October 10, 2008	July 16, 2008 – September 30, 2008
11-Day Pre-General*	October 24, 2008	October 1, 2008 – October 21, 2008
42-Day Post-General	December 16, 2008	October 22, 2008 – December 9, 2008
January Quarterly	January 15, 2009	December 10, 2008 – January 5, 2009

* PACs are required to file an 11-Day Pre-Primary and an 11-Day Pre-General Election Report.

** PACs do not have to file a 12-Day Post-Primary Report in 2008 but must file a 42-Day Post-Primary Election Report.

24-HOUR REPORTS

24-HOUR REPORT PERIOD (13 DAYS BEFORE THE ELECTION)	WHAT TO REPORT	WHEN TO FILE THE REPORT
<p>Primary: May 28 – June 9, 2008</p> <p>General: October 22 – November 3, 2008</p>	<p>Any single expenditure of \$500 or more.</p> <p>Orders placed with or obligations made to vendors for goods or services are considered expenditures at the time the obligations are made. Expenditures listed in 24-Hour Reports must be included in the next regular campaign finance report.</p>	<p>Within 24 hours, including Saturdays and Sundays, of making the expenditure, incurring the obligation, or placing the order and can be filed via the PAC electronic filing website.</p>

IMPORTANT INFORMATION

All regular campaign finance reports are due by 11:59 p.m. on the due date. PAC treasurers must enter the required information and click "File Report" by 11:59 p.m. on the filing deadline. The filing deadline for a 24-Hour Report depends on the time and date of the expenditure.

Commission staff will be available until 5:00 p.m. on filing deadlines to offer assistance to political action committees. Failure to seek out timely assistance from staff regarding the filing of reports will not be considered a mitigating circumstance if the report is filed late.

PAC 1302

2008 Election Year



COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES
Mail: 135 State House Station, Augusta, Maine 04333
Office: 242 State Street, Augusta, Maine

Website: www.maine.gov/ethics
Phone: 207-287-4179
Fax: 207-287-6775

Jeremy
287-6221

2008 FILING SCHEDULE For Political Action Committees

PRIMARY ELECTION: JUNE 10, 2008 **GENERAL ELECTION: NOVEMBER 4, 2008**

TYPE OF REPORT	FILING DEADLINE (BY 11:59 P.M.)	REPORT PERIOD
April Quarterly	April 10, 2008	January 6, 2008 – March 31, 2008
✓ 11-Day Pre-Primary*	May 30, 2008	April 1, 2008 – May 27, 2008
✓ 42-Day Post-Primary**	July 22, 2008	May 28, 2008 – July 15, 2008
✓ October Quarterly	October 10, 2008	July 16, 2008 – September 30, 2008
✓ 11-Day Pre-General*	October 24, 2008	October 1, 2008 – October 21, 2008
42-Day Post-General	December 16, 2008	October 22, 2008 – December 9, 2008
January Quarterly	January 15, 2009	December 10, 2008 – January 5, 2009

* PACs are required to file an 11-Day Pre-Primary and an 11-Day Pre-General Election Report.

** PACs do not have to file a 42-Day Post-Primary Report in 2008 but must file a 42-Day Post-Primary Election Report.

24-HOUR REPORTS

24-HOUR REPORT PERIOD (13 DAYS BEFORE THE ELECTION)	WHAT TO REPORT	WHEN TO FILE THE REPORT
Primary: May 28 – June 9, 2008 General: October 22 – November 3, 2008	Any single expenditure of \$500 or more. Orders placed with or obligations made to vendors for goods or services are considered expenditures at the time the obligations are made. Expenditures listed in 24-Hour Reports must be included in the next regular campaign finance report.	Within 24 hours, including Saturdays and Sundays, of making the expenditure, incurring the obligation, or placing the order and can be filed via the PAC electronic filing website.

3 dates

IMPORTANT INFORMATION

All regular campaign finance reports are due by 11:59 p.m. on the due date. PAC treasurers must enter the required information and click "File Report" by 11:59 p.m. on the filing deadline. The filing deadline for a 24-Hour Report depends on the time and date of the expenditure.

Commission staff will be available until 5:00 p.m. on filing deadlines to offer assistance to political action committees. Failure to seek out timely assistance from staff regarding the filing of reports will not be considered a mitigating circumstance if the report is filed late.

William H. Dale

From: William H. Dale
Sent: Tuesday, July 22, 2008 4:44 PM
To: 'Gerry Gunster'
Cc: Joseph H. Groff, III; naugur@mainelobby.com
Subject: Fed Up With Taxes PAC; 42 Day Post-primary Ethics Comm'n Reporting

Gerry:

This email is to confirm that I have filed electronically the above-captioned reports with the Maine Ethics Comm'n in Augusta. The filing is for the period through and including July 15, 2008 (and was made in part on July 21 and finished up on July 22). The reports made be viewed by going to the Maine State government's web site, clicking onto the State Agencies button and then the Ethics Comm'n button. The pages are "read only."

Any questions, please call me. Thanks.

Bill Dale

William H. Dale
Jensen Baird Gardner & Henry
Ten Free St., P.O. Box 4510
Portland, ME 04112
wdale@jbgh.com
(207) 775-7271
(207) 775-7935 (Fax)



7/22/2008

-17-

William H. Dale

From: William H. Dale
Sent: Tuesday, October 21, 2008 3:45 PM
To: 'Gerry Gunster'; Joseph H. Groff, III; naugur@mainelobby.com; 'Nancy Carlson'
Cc: Mary L. Behrens
Subject: Fed Up With Taxes PAC reporting

Gerry et als:

Just a reminder that under the Maine PAC rules, starting tomorrow, Wednesday, October 22 thru November 3, we must report on a daily basis any expenditure over \$500. I'm the person to do the reporting electronically, so please be sure to get any such info to me on a daily basis.

Thanks.

Bill Dale

William H. Dale
Jensen Baird Gardner & Henry
Ten Free St., P.O. Box 4510
Portland, ME 04112
wdale@jbgh.com
(207) 775-7271
(207) 775-7935 (Fax)



William H. Dale

From: William H. Dale
Sent: Thursday, October 23, 2008 3:22 PM
To: 'Gerry Gunster'; Joseph H. Groff, III; naugur@mainelobby.com; 'Nancy Carlson'; 'Kristine Ossenfort'
Subject: FUWT PAC Maine Ethics Reporting

Gerry et als:

We are now dealing with two separate Maine Ethics reporting requirements. First, as I have indicated to you before by email, starting on Tuesday, October 22 of this week and running through November 3, we under a daily reporting requirement for expenditures (only) for all items in excess of \$500.

And second, tomorrow, Friday, October 24, we have to make our full (both expenses and receipts) "11 Days Prior to the General Election" filing for the period October 1 through October 21. I believe I have all the info to make that filing tomorrow, Friday, unless some of you have "in kind" reports for that time period that I have not yet received; if so, please get them to me for tomorrow. Also, if there is any strategy to be considered in when I make tomorrow's filing, please confer among yourselves and let me know; otherwise, I plan to make the electronic filing in the early afternoon, sometime after lunch.

Thanks.

Bill Dale

William H. Dale
Jensen Baird Gardner & Henry
Ten Free St., P.O. Box 4510
Portland, ME 04112
wdale@jbgh.com
(207) 775-7271
(207) 775-7935 (Fax)



11/11/2008

-19-

William H. Dale

From: William H. Dale
Sent: Monday, May 19, 2008 11:20 AM
To: Brown, Jeremy J
Subject: RE: PAC reporting requirements

Jeremy:

All I needed was the answer. Thanks again for your help.

Bill

William H. Dale
Jensen Baird Gardner & Henry
Ten Free St., P.O. Box 4510
Portland, ME 04112
wdale@jbgh.com
(207) 775-7271
(207) 775-7935 (Fax)



From: Brown, Jeremy J [mailto:Jeremy.J.Brown@maine.gov]
Sent: Monday, May 19, 2008 9:48 AM
To: William H. Dale
Subject: RE: PAC reporting requirements

Bill,

Funny you should ask that as we recently had a discussion regarding whether these should be only for PACs participation in the election or required by all PACs. Unfortunately our interpretation of the statutes is that they are required regardless of activity. For this reason apparently the staff decided last year that PACs will be required to file all 7 reports during 2008.

We may address this for the future but for this year, yes you will have to file both the 11-day pre and 42 day post reports.

If you have any questions give me a call.

Jeremy J. Brown

PAC, PARTY & LOBBYIST REGISTRAR

STATE OF MAINE

COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES

PHONE: (207) 287-6221

FAX: (207) 287-6775

EMAIL: jeremy.j.brown@maine.gov

WEB: www.maine.gov/ethics

5/19/2008

-20-

From: William H. Dale [mailto:WDale@JBGH.com]
Sent: Sunday, May 18, 2008 5:27 PM
To: Brown, Jeremy J
Subject: PAC reporting requirements

Jeremy:

I have a question regarding PAC reporting requirements. In particular, I represent the Fed Up With Taxes PAC, which is of course aiming for the November general election. Do we need to make the 11 day pre-June primary and the 42 day post-June primary filings? It doesn't seem as though we should, but the on-line instructions suggest we do have to make those filings.

Can you help me out?

Thanks.

Bill

William H. Dale
Jensen Baird Gardner & Henry
Ten Free St., P.O. Box 4510
Portland, ME 04112
wdale@jbgh.com
(207) 775-7271
(207) 775-7935 (Fax)



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William H. Dale

From: William H. Dale
Sent: Wednesday, June 04, 2008 2:23 PM
To: Joseph H. Groff, III
Subject: Fed Up With Taxes PAC Ethics Commn electronic filing up-date

Joe:

Here's the latest, as of Wednesday, June 4, at 2:00 pm:

- all cash contributions (except one for \$500 where the check is post-dated for June 13) have been entered to date; included now are the two hold-over checks for \$1,000 each from last week; as per the State Ethics Comm'n, we are using the 42 day post primary election category to enter these transactions even though that seems counterintuitive, as it is the only way the computer will accept any data entry after May 27;

- all expenditures have been entered to date (including the most recent payment to National Petition Management for \$75,000); in discussing these with my Ethics Comm'n liaison, Jeremy Brown, we are entering daily all expenditures over \$500 in the 11 day pre-primary election time period in the 42 day post election time period category, as that is all the computer will accept the way it is programmed; also, all of the expenditures have been moved from Schedule B over to Schedule B-1;

- all in-kind contributions have been entered to date; and

- our only "unpaid obligation" that the reports are now showing is the printing bill to Brown Fox Printing for \$3,522.55.

Any questions, please call me. Thanks.

Bill

William H. Dale
Jensen Baird Gardner & Henry
Ten Free St., P.O. Box 4510
Portland, ME 04112
wdale@jbgh.com
(207) 775-7271
(207) 775-7935 (Fax)



W. Dale

From: ethics@maine.gov
Sent: Thursday, June 05, 2008 1:11 PM
To: fedupwithtaxes@gmail.com; William H. Dale
Subject: Maine CF Filed Report Receipt

This is an automatic response from Maine's Electronic Filing System.
The report entitled 'Ballot PACs - 24-Hour Report' was filed on 6/5/2008 1:10:23 PM EST
for PAC1302.

Send Inquiries to:
State of Maine - Commission on Governmental Ethics and Election Practices
135 State House Station
Augusta, ME 04333-0135
(207) 287-4179
ethics@maine.gov

-23-

William H. Dale

From: ethics@maine.gov
Sent: Thursday, June 05, 2008 1:21 PM
To: fedupwithtaxes@gmail.com; William H. Dale
Subject: Maine CF Filed Report Receipt

This is an automatic response from Maine's Electronic Filing System.
The report entitled '42-Day Post-General' was filed on 6/5/2008 1:17:41 PM EST for PAC1302.

Send Inquiries to:
State of Maine - Commission on Governmental Ethics and Election Practices
135 State House Station
Augusta, ME 04333-0135
(207) 287-4179
ethics@maine.gov

5. Aggregate expenditures. An aggregation of expenditures and cumulative aggregation of expenditures to a candidate, campaign, political committee, political action committee, party committee, referendum or initiated petition;

6. Identification of contributions. Names, occupations, places of business and mailing addresses of contributors who have given more than \$50 to the political action committee in the reporting period and the amount and date of each contribution, except that an organization qualifying as a political action committee under section 1052, subsection 5, paragraph A, subparagraph (5) is required to report only those contributions made to the organization for the purpose of promoting, defeating or influencing a ballot question or the nomination or election of a candidate to political office and all transfers to or funds used to support the political action committee from the general treasury of the organization; and

7. Other expenditures. Operational expenses and other expenditures in cash or in kind that are not made on behalf of a candidate, committee or campaign, except that an organization qualifying as a political action committee under section 1052, subsection 5, paragraph A, subparagraph (5) is required to report only those expenditures made for the purpose of promoting, defeating or influencing a ballot question or the nomination or election of a candidate to political office.

21A § 1061. Dissolution of committees

Whenever any political action committee determines that it will no longer solicit or accept any contributions, incur any obligations, make any expenditures to or on behalf of any candidate, political committee, party committee or political action committee to initiate, support, defeat or influence in any way the outcome of a referendum, initiated petition or election and the committee has no outstanding loans, debts or other obligations, the committee shall file a termination report that includes all financial activity from the end date of the previous reporting period through the date of termination with the commission. If a termination report is not filed, the committee shall continue to file periodic reports as required in this chapter.

21A § 1062. Failure to file on time (REPEALED)

21A § 1062-A. Failure to file on time

1. Registration. A political action committee required to register under section 1053 that fails to do so in accordance with section 1053 or that fails to provide the information required by the Commission for registration may be assessed a forfeiture of \$250.

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 6, the Commission shall determine whether a required report satisfies the requirements for timely filing. The Commission may waive a penalty if it is disproportionate to the level of experience of the person filing the report or to 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 of the committee treasurer 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;
- B. An error by the Commission staff; or
- C. 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. 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%;
- B. For the 2nd violation, 3%; and
- C. For the 3rd and subsequent violations, 5%.

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 calendar 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 two (2) days before the deadline is not subject to penalty.

A required report may be provisionally filed by transmission of a facsimile copy of the duly executed report to the Commission, as long as an original of the same report is received by the Commission within 5 calendar days thereafter.

4. Maximum penalties. The maximum penalties under this subchapter are \$10,000 for reports required under section 1059, subsection 2, paragraphs B, C and E and \$5,000 for reports required under section 1059, subsection 2, paragraph A.

5. Request for a commission determination. Within three (3) days following the filing deadline, a notice must be forwarded to the principal officer and treasurer of the political action committee whose report is not received by 11:59 p.m. on the deadline date, informing them of the basis for calculating penalties under subsection 3 and providing them with an opportunity to request a commission determination. The notice must be sent by certified United States mail. A request for determination must be made within ten (10) calendar days of receipt of the Commission's notice. The ten-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 ten-day period begins on the day the post office indicates it has given first notice of a certified letter. A principal officer or treasurer requesting a determination may either appear in person or

- (3) An oral request by a Legislator for an opinion with respect to his or her own circumstances will not be considered an official request for an advisory opinion, and a Legislator making such a request will be so notified, by letter, and encouraged to file a written request.
- B. **Complaints.** Any written complaint will be included in the agenda of the next Commission meeting.
- (1) **Complaint by a Legislator.** Copies of any sworn complaint filed by a Legislator will promptly be sent to the Legislator against whom the complaint has been lodged and to the Commission Chair, in each case identifying the Legislator making the complaint. A complaint invokes the Commission's authority only if made under oath and only if it addresses an alleged conflict of interest relating to circumstances arising during the term of the legislature then in office.
 - (2) **Other Complaints**
 - (a) The Director will review each complaint to determine whether the matter relates to the Commission's statutory mandate. When a complaint is filed, the Director, in consultation with Commission Counsel, will review the matter to determine whether the complaint has sufficient merit to warrant recommending the calling of a meeting. When a meeting is called, the Commission will determine in executive session whether to hear the complaint. If the nature of the complaint clearly does not fall within the scope of the Commission's jurisdiction, the Director will so notify the complainant by letter within 14 days of receiving the complaint. In such cases, the respondent need not be notified. The Commission may reverse any administrative decision.
 - (b) An oral complaint by any person alleging a conflict of interest concerning any legislator does not constitute a complaint under 1 M.R.S.A. §1013(2)(B), and a person registering such a complaint will be so notified, by letter.
- C. **Referral by Presiding Officer.** When a Legislator has requested an advisory opinion from the Presiding Officer of the House of which he/she is a member, and the Presiding Officer has referred the inquiry directly to the Commission, the Director will arrange a meeting of the Commission as soon as possible to consider the question.
2. **Election Campaign Reporting and Maine Clean Election Act Violations**
- A. **Report Review.** The Commission staff will review all reports filed pursuant to 21-A M.R.S.A., chapters 13 and 14 to verify compliance with the reporting requirements set by statute or rule. Notice of any omission, error, or violation will be given by mail to the filer and a copy of the notice and any other communication made to or from the filer relating to the problem(s) will be placed

in the filer's record. The Commission staff will establish a reasonable time period for the filer to remedy any omission or error. If the filer fails to respond within that time frame, the Commission staff may extend the time period within which the filer must comply or place the matter on the agenda of the next Commission meeting, along with all documents relating to the case. Additionally, any apparent violations or occurrences of substantial nonconformance with the requirements of the law will be placed on the agenda of the next meeting.

- B. **Late Reports and Registrations.** Where required by statute, notice of failure to file a required report will be timely sent by Commission staff. When a report or registration is filed late, the Director's recommendations will be based on the following considerations:
- (1) Lateness of report or registration,
 - (2) Reason for lateness,
 - (3) Kind of report (more stringent application for pre-election reports),
 - (4) Amount of campaign funds not properly reported,
 - (5) Previous record of the filer,
 - (6) Good faith effort of the filer to remedy the matter; and
 - (7) Whether the late filing had an effect on a certified candidate's eligibility for matching funds.
- C. Reports of noncompliance with the provisions of the campaign registration and reporting laws or the Maine Clean Election Act that may come to the attention of the Commission staff from any source other than review of the reports filed will be reported to the Commission Chair. Any person (as defined in 21-A M.R.S.A. §1001) may make an official request for a Commission investigation or determination by filing a written request at the Commission's office, setting forth such facts with sufficient details as are necessary to specify the alleged violation. Statements should be made upon personal knowledge. Statements which are not based upon personal knowledge must identify the source of the information which is the basis for the request, so that respondents and Commission staff may adequately respond to the request. A copy of any such written request will be promptly mailed to the candidate or organization alleged to have violated the statutory requirements. An official request will be placed on the agenda of the next Commission meeting.
- D. An oral report of a violation, or a written request containing insufficient detail to specify the violation charged, does not constitute an official request for a Commission determination, and a person registering such a complaint will be so notified.
- E. The signature of a person authorized to sign a report or form constitutes certification by that person of the completeness and accuracy of the information

BENJAMIN DUDLEY

9 PONCE STREET, PORTLAND, MAINE 04101 TEL: (207) 712-0891 November 24, 2008

November 23, 2008

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

Dear Mr. Wayne:

This letter is in response to your November 17 memo regarding "Agenda Item #4" for the upcoming Commission meeting.

I respectfully disagree with your recommendation to reduce the \$10,000 penalty against the Fed Up With Taxes PAC (FUWT) for their late filing of two 24-hour reports last month.

In establishing a penalty, Title 21-A, §1062-A, paragraph 2 gives the Commission discretion around a number of factors, including "harm suffered by the public" and other enumerated "mitigating circumstances" (i.e., intervening emergencies, Commission staff error, and other impediments to timely reporting despite "a bona fide effort".)

In your memo, you propose a penalty reduction for the following reasons: (a) your belief that a \$10,000 fine would be disproportionate to the harm to the public, (b) your belief that FUWT did not intend to conceal expenditures, and (c) that FUWT's ability to pay the larger fine should not be a determinant in assessing the final penalty.

With respect to the public harm question, you suggest that a \$10,000 fine would be disproportionate because (a) it was a brief delay in filing of 2 to 2 ½ days over a weekend, and (b) assessing the maximum penalty will be perceived as too harsh.

The Legislature established 24-hour reporting for the purpose of timely public access to information about late campaign expenditures. With respect, to think of a late 24-hour filing as less significant because it was only 2 days late appears to miss the point. To think of it this way is analogous to an employer saying about an employee failing to report for work, "Joe didn't show up on Monday or Tuesday, but he was here on Wednesday, so he wasn't that late." The fact is, it took FUWT twice the time it should have to file appropriately.

I must also emphasize the sheer magnitude of the expenditures in question (as you also did in your memo): \$750,000. To put some perspective on this, this figure is 170% of the opposing PAC's expenditures for the entirety of the campaign cycle. As a decision-maker for Health Coverage for Maine PAC, during the final weeks of the campaign, I did check the Ethics Commission website multiple times daily for this information in order that our expenditure decisions could be informed by it (as FUWT was free to do with our reports). FUWT's error meaningfully deprived the public of information it was entitled to have.

Government penalties should be proportionate, so I laud you for your concern about how the Commission will be perceived by the interested public in levying the maximum fine. It is difficult to set a monetary value on this harm, but fortunately the Legislature has already done so (§1062-A, paragraph 3). Proportionality may also be found in the Legislature's setting a statutory maximum penalty (§1062-A, paragraph 4). FUWT stands to benefit significantly by virtue of the maximum penalty; your penalty matrix for the report due on 10/25 calculates that without the maximum, FUWT would face a \$67,376.52 fine. It is fair to say that with the maximum \$10,000 penalty, FUWT will receive leniency amounting to more than \$57,000.

With respect to the intent question, absent "relevant evidence presented that a bona fide effort was made to file the report in accordance with the statutory requirements" (§1062-A paragraph 2), the statute gives the Commission no authority to take into account a violator's intent to file.

With respect to ability to pay, in establishing the basis for Mr. Dale's intent to file on time, you also reveal him to be someone who has thorough understanding of the filing requirements. Paragraph 2 actually stipulates that a reduction may apply to violators who are less sophisticated:

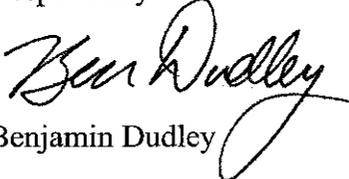
"The Commission may waive a penalty if it is disproportionate to the level of experience of the person filing the report . . . "

Ironically, your argument to reduce FUWT's fine because of intent, actually makes the case against any reduction. Related to Mr. Dale's detailed understanding of filing requirements, high expectations for FUWT's full compliance should be expected given the resources available for professional oversight; their total reported expenditures to date are \$3.8 million (with the 42-day post-general report still to come).

In conclusion, a reduction in FUWT's penalty would be inconsistent with other fines levied by the Commission during this campaign cycle (e.g., the maximum \$5,000 fine against the Maine Democratic Party, also for an error made by one of their vendors). It would also render ridiculous any notion of penalties as a deterrent to non-compliance; a \$1,000 penalty would amount to merely .14% of the late-reported expenditure.

FUWT has met none of the criteria that would merit a reduction in penalty, let alone a reduction of 90%.

Respectfully


Benjamin Dudley