

Additional Matter  
for 1/29/09  
Meeting –

Special Election  
Complaint



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: January 27, 2009

Re: Response of Maine Democratic Party to Proposed Penalty for Late Independent Expenditure Report

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This memorandum supplements my January 23<sup>rd</sup> memo regarding the Maine Republican Party's request that the Commission assess an additional penalty against the Maine Democratic Party under 21-A M.R.S.A. § 1127(1) for filing an independent expenditure report late. The Democratic Party submitted the attached response today through its counsel. It argues that "the late filing did not significantly result in the late payment of matching funds to Lance Harvell." (page 2)

Section 1127(1) does not list any mitigating or aggravating factors to be considered by the Commission when deciding whether or not to assess a penalty. For purposes of context, I have attached a chart of penalties assessed for other recent late independent expenditure reports. The staff finds the following factual circumstances to be relevant:

*Mitigating Factors*

- The report was filed on January 21, 2009, which was 13 days before the special election. While the Commission's payment of \$873.05 in matching funds to Lance Harvell was delayed, he did have 13 days before the special election to use the matching funds as he saw fit.

- The late independent expenditure was in the amount of \$873.05, which is less than the other costs that were reported late in 2008 (see attached chart).

*Aggravating Factors*

- Just three months ago, the Maine Democratic Party was assessed two penalties for late independent expenditure reports. Even if some employees of the party have moved on after the 2008 general election, the party should have exerted sufficient oversight of current employees to avoid this late filing.
- The filer was a state party committee which regularly makes independent expenditures during election years. In this matter, the party should be held to a high standard to encourage all political parties and PACs to adhere to the reporting requirements.

The staff believes that the assessment of an additional penalty under 21-A M.R.S.A. § 1125(1) is appropriate. Because of the factors listed above, the Commission staff recommends that the penalty not exceed \$2,500.

	Costs Reported Late	Date Due	Date Filed	# of days late	Routine Late Penalty	Additional Penalty under § 1127(1)
<b>2008 General Election</b>						
Late IE by MDP for 1 mailer in support of Peter Bowman (explanation by party: staff mistakenly believed mailer was issue advocacy)	\$4,690	9/19/08	9/26/08	7 days	\$328.30 (MDP did not ask for waiver)	\$0
Late IE by MDP for 2 mailers in support of Deborah Simpson (explanation by party: express advocacy language inserted by vendor)	\$13,194	9/20/08	10/8/08	20 days	\$5,000 (Commission declined request by MDP for a waiver)	\$0
Late IE by Realtors PAC for 2 mailers in support of Lois Snowe-Mello and Christopher Rector	\$6,156	10/11/08	10/31/08	20 days	\$1,231.20	\$10,000
<b>2009 Special Election</b>						
Late IE by MDP for 1 mailer in support of Dennis Haszko	\$873	1/17/09	1/21/09	4 days	\$174.60	

# PretiFlaherty

DANIEL W. WALKER  
 dwalker@preti.com  
 Direct Dial: (207) 791-3281

January 27, 2009

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

RECEIVED

JAN 27 2009

MAINE ETHICS COMMISSION

**RE: Maine Democratic Party Response to Complaint from Maine Republican Party Regarding Late Filing of Independent Expenditure Report in House District #89 Special Election**

Dear Jonathan:

Enclosed please find the Maine Democratic Party's (MDP's) response to the Maine Republican Party's request that the Commission consider the assessment of a civil penalty against the Maine Democratic Party under 21-A M.R.S.A. § 1127(1). Although the MDP admits that the January 21<sup>st</sup> independent expenditure report was filed four days late and a fine should be incurred of \$174.60 under § 1062-A, the MDP respectfully requests that no fine be levied under § 1127(1), as the late filing was unintentional and resulted in no real harm to the Republican candidate, Lance Harvell.

On Friday, January 16<sup>th</sup>, the MDP made expenditures for an absentee ballot application/express advocacy mailer that was to be mailed to a group of voters in House District #89. The mailing involved a two-part process that included printing at the Copy Center in Augusta and mailing via a non-profit bulk mail permit at the Augusta Post Office. Due to the Martin Luther King, Jr. three-day holiday weekend, the mailer did not arrive at the Augusta Post Office until Tuesday, January 20<sup>th</sup>. Additionally, it is unclear when the mailer would have hit mailboxes because it was sent with a non-profit bulk mail permit; which takes longer than first class mail. As a result, the earliest this mailer would have benefited the cause of the Democratic candidate would have been Wednesday January 21<sup>st</sup>, but more likely Thursday, January 22<sup>nd</sup>.

Pursuant to § 1127(1), the commission may assess a fine "if it determines that the failure to file a timely and accurate report resulted in the late payment of matching funds." In this case, because the MDP's independent expenditure occurred over the Martin Luther King, Jr. three-day weekend, the earliest Rep. Harvell could have received matching funds would have been on Tuesday, January 20<sup>th</sup>, when the Ethics Commission staff returned from the long weekend. Even though the MDP filed its independent expenditure report the next day, on Wednesday, January 21<sup>st</sup>, the mailer would not have hit mailboxes until later that day and a more realistic date of Thursday, January 22<sup>nd</sup>.

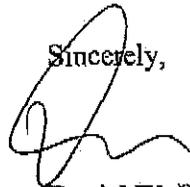
**Preti Flaherty Beliveau & Pachios LLP** Attorneys at Law

1423784.1  
 45 Memorial Circle | Augusta, ME 04330 | TEL 207.623.5300 | FAX 207.623.2914 | Mailing address: P.O. Box 1058 | Augusta, ME 04332-1058

PRETI FLAHERTY  
Jonathan Wayne  
January 27, 2009  
Page 2

The MDP is not disputing the lateness of the independent expenditure report—an internal mistake was recognized, and the Party immediately filed the report and followed up with a phone call with the Commission acknowledging the lateness of the report. Therefore, pursuant to § 1062-A, the MDP should receive a fine. However, a fine under § 1127(1) is not warranted, as the late filing did not significantly result in the late payment of matching funds to Lance Harvell. Mr. Harvell received his matching funds on Wednesday, January 21<sup>st</sup>, and therefore had sufficient time to respond to the mailers that were hitting mailboxes in his district on either that day or the next day with nearly two weeks left before the election. Thus, we respectfully request that no additional fine be imposed pursuant to § 1127(1).

Sincerely,



Daniel W. Walker



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: January 23, 2009

Re: Complaint from Maine Republican Party

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The State of Maine is holding a special election to fill a vacancy in House District # 89 which was created when Janet Mills became the Maine Attorney General. The two candidates in the election are Dennis Haszko (Democrat) and Lance Harvell (Republican).

This morning I received the attached request from Mark J. Ellis, State Chairman of the Maine Republican Party. Mr. Ellis requests that the Commission consider the assessment of a civil penalty against the Maine Democratic Party under 21-A M.R.S.A. § 1127(1) because the Democratic Party's late filing of an independent expenditure report delayed the payment of matching funds to Lance Harvell. Under that statute, the Commission may assess a civil penalty of up to \$10,000 if it determines that the late filing of a report delayed the payment of matching funds to a candidate.

On Wednesday, January 21<sup>st</sup>, the Maine Democratic Party filed the attached independent expenditure report stating that it paid \$873.05 for a mailing in support of its nominee, Dennis Haszko. The date of the expenditure shown in the report is Friday, January 16. So, the report should have been filed on Saturday, January 17. It was filed four days late. On the day the report was filed, I received a telephone call from a representative of the Democratic Party who acknowledged that the report was late and could result in a late-filing penalty.

The Commission staff has already sent a notice of the routine penalty for the late filing, in the amount of \$174.60. I am told that the Democratic Party will pay that soon. Mr. Ellis is requesting that the Commission assess a discretionary, additional payment under § 1127(1) because the payment of matching funds to Mr. Harvell was delayed.

There is no question that the lateness of the report delayed matching funds to some degree, although practically speaking the delay may have been only by one day. Had the report been filed on time on Saturday, January 17, we would have seen the report on Tuesday, January 20 after we returned from the holiday weekend. That Tuesday, we would have paid \$873.05 in matching funds to Mr. Harvell. Since the report was filed on Wednesday, January 21<sup>st</sup>, we paid him \$873.05 in matching funds on that Wednesday.

During the next two weekends, the Commission staff will be checking the office fax machine on Saturdays and Sundays for independent expenditure reports, as has been our past practice.

Mr. Ellis requests that you consider the proposed penalty at your next regularly scheduled meeting, January 29, 2009. In support of that request, he relies on 21-A M.R.S.A. § 1002(1) which provides:

In the 28 days preceding an election, the commission shall meet in Augusta within one calendar day of the filing of any complaint or question with the commission. Agenda items in the 28 days preceding an election must be decided within 24 hours of the filing unless all parties involved agree otherwise.

Under normal circumstances, I usually try to give respondents a period of at least two weeks with which to respond to a proposed civil penalty, but during this 28-day period before an election the 24-hour requirement is in effect.

In this case, I have not yet heard back from the Democratic Party or its counsel since forwarding Mr. Ellis' request to them. Without reading the party's response, I cannot offer a recommendation on behalf of the Commission staff. I will provide you with the Democratic Party's response once I receive it.

Thank you for your consideration of this matter.

**Wayne, Jonathan**

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**From:** Mark J. Ellis [mark.j.ellis@verizon.net]  
**Sent:** Friday, January 23, 2009 4:56 AM  
**To:** Wayne, Jonathan  
**Cc:** Julie O'Brien; Philip Roy; Charlie Webster  
**Subject:** Late IE Report by Maine Democratic Party

1/23/09

Mr. Wayne:

On behalf of the Maine Republican Party, I request that the Commission consider whether the Maine Democratic Party should be assessed a civil fine pursuant to 21-A MRSA Section 1127 because their late filing of an independent expenditure report resulted in the late payment of matching funds to Lance Harvell. Though Maine law requires the Commission to meet within one day to consider any complaint or question raised within 28 days of an election, I would be satisfied if this matter was considered by the Commission at its meeting currently scheduled for January 29th.

Thank you for your attention to this matter.

Mark J. Ellis  
State Chairman  
Maine Republican Party

1/23/2009

2009 Special Election



RECEIVED

JAN 21 2009

MAINE ETHICS COMMISSION

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

**INDEPENDENT EXPENDITURE REPORT - 2009 SPECIAL ELECTION**

Name of Person/Committee Making Expenditure(s) MAINE DEMOCRATIC PARTY  
Mailing Address 160 WINTHROP ST.  
City, Zip Code AUGUSTA 04332 Telephone 602-6283

Please check the appropriate box for the report you are filing and complete the notarized affidavit and attached schedules. Reports must be filed on Saturday or Sunday if that is when they are due by faxing the report to the Commission (287-6775). The Commission must receive the signed original report within 5 days after the fax was received.

**INDEPENDENT EXPENDITURES OF MORE THAN \$250 PER CANDIDATE**

- Independent expenditures of more than \$250 per candidate per election must be reported to the Commission within 24 hours of making the expenditure.
- Once the aggregate amount per candidate exceeds \$250, any additional expenditures, regardless of amount, must be reported within 24 hours.

Report of Independent Expenditure over \$250 per Candidate

**INDEPENDENT EXPENDITURES OF MORE THAN \$100 AND UP TO \$250 PER CANDIDATE (SELECT ONE REPORT)**

- If the total of expenditures per candidate exceeds \$100 but is not more than \$250, the expenditures must be reported according to the schedule below.
- Once the amount per candidate exceeds \$100, all subsequent expenditures must be reported, regardless of amount, up to \$250 per candidate. Once the amount spent per candidate exceeds \$250 in the aggregate, independent expenditures must be reported within 24 hours.
- Do not include expenditures that you listed in previously filed reports.
- During the 13-day period before an election, all independent expenditures must be reported within 24 hours.

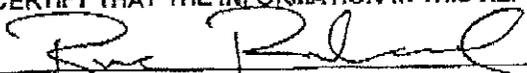
**SPECIAL ELECTION ELECTION REPORTS**

Reporting Period	Filing Deadline
<input type="checkbox"/> Through January 23, 2009	January 23, 2009
<input type="checkbox"/> After January 23, 2009	Within 24 Hours

**OTHER**

- Amendment to report dated: \_\_\_\_\_
- Other (specify): \_\_\_\_\_

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

  
Signature of PAC or Party Committee Treasurer, or  
Other Authorized Person Making Expenditure(s)

JAN 21, 2009  
Date

2009 Special Election



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](http://www.maine.gov/ethics)  
Phone: 207-287-4179  
Fax: 207-287-5775

**INDEPENDENT EXPENDITURE REPORT – 2009 SPECIAL ELECTION**

**AFFIDAVIT**

STATE OF Maine  
COUNTY OF Cumberland

Richard Redmond, being duly sworn, attests that he/she made each of the expenditures listed in the attached report independently, and not in cooperation, consultation, or concert with, or at the request or suggestion of, the candidates named in the report or the authorized committees or agents of the candidates.

(Signature of Affiant)

Sworn to before me, this 21<sup>st</sup> day of January 2009

(Notary Public/Attorney at Law)

LEANNE LENTZ SPENCER  
Notary Public, Maine  
My Commission Expires January 26, 2013

Schedule B-IE-1

CANDIDATE(S) SUPPORTED/OPOSED

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

Office sought by candidate (including district # or county)	Candidate's name	Indicate whether expenditure was made in support of or in opposition to the candidate	Amount expended this reporting period for each candidate
Dist 89 House	DENNIS HASZKO	SUPPORT	\$ 873.05
Total expenditures for all candidates this reporting period. This amount should equal the total independent expenditures listed on Schedule B-IE-2, Line C. =>			\$ 873.05

Schedule B-IE-2

PAYMENTS AND OBLIGATIONS

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

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

Date of expenditure	Payee, address, zip code	Expenditure type	✓	Amount
1/16/09	COPY CENTER 27 COURT ST./AUGUSTA 04332	PRINTING		\$ 742.00
1/16/09	AUGUSTA POST OFFICE 40 WESTERN AVE/AUGUSTA 04330	POSTAGE		\$ 131.05
A. Expenditures for this page =>				\$ 873.05
B. Total for all other Schedule B-IE-2 pages (if any) =>				
C. Total independent expenditures for this reporting period (A+B). This amount should equal the total amount for all candidates listed on Schedule B-IE-1. =>				\$ 873.05

## 21-A MRSA §1002. MEETINGS OF COMMISSION

**1. Meeting schedule.** The commission shall meet in Augusta for the purposes of this chapter at least once per month in any year in which primary and general elections are held and every 2 weeks in the 60 days preceding an election. In the 28 days preceding an election, the commission shall meet in Augusta within one calendar day of the filing of any complaint or question with the commission. Agenda items in the 28 days preceding an election must be decided within 24 hours of the filing unless all parties involved agree otherwise.

**2. Telephone meetings.** The commission may hold meetings over the telephone if necessary, as long as the commission provides notice to all affected parties in accordance with the rules of the commission and the commission's office remains open for attendance by complainants, witnesses, the press and other members of the public. Notwithstanding Title 1, chapter 13, telephone meetings of the commission are permitted:

A. During the 28 days prior to an election when the commission is required to meet within 24 hours of the filing of any complaint or question with the commission; or [2007, c. 571, §5 (NEW).]

B. To address procedural or logistical issues before a monthly meeting, such as the scheduling of meetings, deadlines for parties' submission of written materials, setting of meeting agenda, requests to postpone or reschedule agenda items, issuing subpoenas for documents or witnesses and recusal of commission members. [2007, c. 571, §5 (NEW).]

**3. Other meetings.** The commission shall meet at other times on the call of the Secretary of State, the President of the Senate, the Speaker of the House or the chair or a majority of the members of the commission, as long as all members are notified of the time, place and purpose of the meeting at least 24 hours in advance.

**4. Office hours before election.** The commission office must be open with adequate staff resources available to respond to inquiries and receive complaints from 8 a.m. until at least 5:30 p.m. on the Saturday, Sunday and Monday immediately preceding an election and from 8 a.m. until at least 8 p.m. on election day.

## 21-A MRSA §1127. VIOLATIONS

**1. Civil fine.** In addition to any other penalties that may be applicable, a person who violates any provision of this chapter or rules of the commission adopted pursuant to section 1126 is subject to a fine not to exceed \$10,000 per violation payable to the fund. The commission may assess a fine of up to \$10,000 for a violation of the reporting requirements of sections 1017 and 1019-B if it determines that the failure to file a timely and accurate report resulted in the late payment of matching funds. This fine is recoverable in a civil action. In addition to any fine, for good cause shown, a candidate, treasurer, consultant or other agent of the candidate or the committee authorized by the candidate pursuant to section 1013-A, subsection 1 found in violation of this chapter or rules of the commission may be required to return to the fund all amounts distributed to the candidate from the fund or any funds not used for campaign-related purposes. If the commission makes a determination that a violation of this chapter or rules of the commission has occurred, the commission shall assess a fine or transmit the finding to the Attorney General for prosecution. Fines paid under this section must be deposited in the fund. In determining whether or not a candidate is in violation of the expenditure limits of this chapter, the commission may consider as a mitigating factor any circumstances out of the candidate's control.

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