

# Agenda

## Item #2



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: July 21, 2009

Re: Request for Waiver of Late Filing Penalties by Androscoggin County Republican Committee

The Androscoggin County Republican Committee failed to file three campaign finance reports disclosing 2008 financial activity. The reports were due on July 15, 2008, October 24, 2008, and January 15, 2009. Party committees that raise or spend more than \$1,500 in a calendar year are required to file campaign finance reports for that year with the Commission. By May 2008, the committee had received \$5,076 in contributions, so it was required to file the three subsequent reports.

In March 2009, the Commission's PAC/Party/Lobbyist Registrar, Jeremy Brown, discovered that the committee was required to file the reports for 2008. He e-mailed the chair of the committee, former State Representative Scott Lansley. In March and April 2009, Mr. Lansley took on the responsibility of gathering the information necessary to file the reports. Apparently, no one else was functioning as committee treasurer during that period. Mr. Lansley filed the three reports on May 23, 2009, just before your last meeting.

The preliminary penalty amounts for the late filings are:

	Total Contributions	Total Expenditures	Preliminary Penalty Amount
July 15, 2009	\$0	\$0	\$0
October 24, 2008	\$0	\$1,471	\$500
January 15, 2009	\$0	\$2,240	\$500

The staff's May 26, 2009 penalty letter to Mr. Lansley is attached. Late penalties for county party committee reports cannot exceed \$500.

On July 12, 2009, Mr. Lansley submitted a letter by e-mail requesting a waiver of the penalties on behalf of the committee. He explains the factors contributing to the late filing of the reports, including the turnover in two committee treasurers during the spring of 2008 and an assurance that he received at that time that all reports "were up to date." Jeremy Brown asked Mr. Lansley for a signed copy of the letter, but we have not

received one to date. Mr. Lansley is expected to be present at your July 30 meeting to respond to any questions.

My understanding of the facts of this matter come from Jeremy Brown, who will be leaving the Commission's employment on Friday, July 24<sup>th</sup> (before your meeting). The Commission staff recommends reducing both penalties by 50% to \$250 each, for a total of \$500. Based on his interactions with Mr. Lansley, Jeremy finds the letter to be credible, specifically:

- When Jeremy Brown contacted Scott Lansley as the committee chair in March 2009, he seemed to be genuinely surprised to learn that reports were overdue.
- Based on his communications with the committee treasurer who resigned in early 2008, Jeremy Brown is not surprised that she did not understand the filing requirements and did not adequately warn the leadership of the committee that reports would be due later in 2008.
- Since then, the committee has appointed a new treasurer who has invested significant time in understanding the filing requirements.

Nevertheless, the Commission staff believes that some penalty is appropriate for the late reports. During the summer and fall of 2008, the committee spent well more than the \$1,500 reporting threshold. It was the committee's responsibility to understand its filing requirements and, if necessary, to seek guidance from the Commission or the State Republican Party to determine whether reports were necessary. A single telephone call to our office or a glance at the filing schedule on the Commission website would have indicated that party committees receiving or spending more than \$1,500 during a calendar year must file campaign finance reports with the Commission according to prescribed deadlines.

For the above reasons, the Commission staff believes the two preliminary penalties totaling \$1,000 are disproportionately high to the level of experience of Mr. Lansley in filing party committee reports and to the harm suffered by the public from the late disclosure. We recommend a reduction by 50% to \$250 each, for a total of \$500.

Thank you for your consideration of this memorandum.

Dear Mr. Wayne and the Ethics Commission Members,

I am writing today on behalf of the Androscoggin County Republican Committee in regards to the late filing of the committee's treasurer reports for the time periods January 2008 through November 2008.

Due to extenuating circumstances, we are requesting relief of the late filing charges for the following reasons:

- In this time period we elected new officers for the Androscoggin County Committee, which resulted in losing information required. Also, we were told by the treasurer of record, at that time, all reports were up to date. This compounded when our newly elected treasurer had taken over at the end of May. The new treasurer was sworn in during our June 16, 2008 meeting.
- The new treasurer assumed the position for approximately one and half months and resigned July 28. When he resigned, I was told all records were together. Also, I was told all reports were up to date and again these were not the correct facts of information.
- During this time period, June through September, this was the election cycle with many expenses that were outside of our regular operation. We do not operate daily in off year election cycles, so our expenses were expanded to and by more than one individual.
- I am not certain of the exact date, but it is my recollection that I was not made aware of the late filing or missing of reports until after the November 2008 election. It was at that time I started to find the records required to fill out our reports to file. Over the next several months and many requests made, I was able to obtain the records and receipts to file an accurate report.
- We have appointed a new treasurer and implemented new accounting procedures to help prevent this situation from arising in the future. We have implemented a new record of accounting that requires 2 signatures for the bank account. Also, all officers will receive a complete accounting print out of the committee's expenditure and receiving of funds.
- The new treasurer voluntarily drove to Augusta to meet with Jeremy Brown to receive training in filing reports and a calendar of the due dates. The committee believes these measures will prevent this from happening in the future.

I thank you for the time to explain our situation and would again ask for leniency in the way of fines for these infractions. I will be happy to answer any questions you may have. It my intention to attend the Commission's next meeting on July 30, 2009 to answer any questions you may have.

Respectfully,

Honorable Scott E. Lansley  
Chairman Androscoggin County Republican Committee

SEL

Important Reminders:  
A record of delivery kept by the Postal Service for each  
Certified Mail may ONLY be combined with First-Class Mail or Priority Mail.  
Certified Mail is available for any class of international mail. For



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

May 26, 2009

Mr. Scott Lansley  
Androscoggin County Republican Committee  
70 Lansley Drive  
Sabattus, ME 04280

Re: Campaign Finance Report Late Filing

Dear Mr. Lansley:

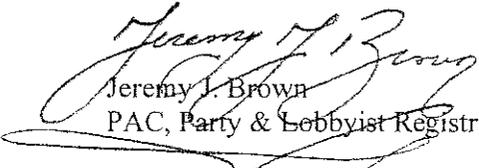
The 11-Day Pre-General and January Quarterly reports for the above mentioned party committee were received by our office on May 23, 2009. These reports were due on October 21, 2008 and January 15, 2009 respectively.

Penalties for late reports are based on the amount of financial activity during the filing period, the number of calendar days a report is filed late, and the committees filing history. Based on this formula however, the penalty for each of these filings would exceed the maximum permitted by statute for a municipal, county or district committee. The Commission has therefore assessed preliminary penalties of \$500 *for each* of the delinquent reports. Please refer to the enclosed penalty matrices for more information.

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, beginning the day you sign for receipt. If this notice has been refused or left unclaimed at the post office, the 10-day period will begin on the day the post office indicates that it gave first notice of a certified letter. 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 within 10 days after its determination.

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

Sincerely,

  
Jeremy J. Brown  
PAC, Party & Lobbyist Registrar

Enclosure: (2)

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

**BASIS FOR PENALTIES  
21-A M.R.S.A. Section §1020-A**

**Committee Name:** Androscoggin Cnty Republican Cmte      **Report Title:** 11-Day Pre-General  
**Due Date:** October 24, 2008  
**Previous Violation(s):** 0      **Filed Date:** May 23, 2009

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.**

<b>Penalty Example:</b>		<b>Your Penalty is calculated as follows:</b>	
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>\$1,471.09</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>\$14.71</u>
\$25.00	One percent of total contributions	x	<u>211</u>
X 2	Number of calendar days late		<u>\$3,103.81</u>
\$50.00	<b>Total Penalty</b>	<b>Total penalty accrued:</b>	<u><u>\$3,103.81</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 1020(5-A)(D)

\$500 for municipal, district and county committees

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

**BASIS FOR PENALTIES  
21-A M.R.S.A. Section §1020-A**

**Committee Name:** Androscoggin Cnty Republican Cmte      **Report Title:** January Semiannual  
**Due Date:** January 15, 2009  
**Previous Violation(s):** 2      **Filed Date:** May 23, 2009

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.**

<b>Penalty Example:</b>		<b>Your Penalty is calculated as follows:</b>	
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>\$2,239.63</u>
\$2,500	Greater amount of the total contributions received or expenditures made during the filing period	X	<u>5%</u>
X .01	Percent prescribed for first violation		<u>\$111.98</u>
\$25.00	One percent of total contributions	X	<u>128</u>
X 2	Number of calendar days late		
\$50.00	Total Penalty	Total penalty accrued:	<u><u>\$14,333.44</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 1020(5-A)(D)

\$500 for municipal, district and county committees

## 21-A MRSA §1020-A. FAILURE TO FILE ON TIME

**1. Registration.** A candidate that fails to register the name of a candidate, treasurer or political committee with the commission within the time allowed by section 1013-A, subsection 1 may be assessed a forfeiture of \$10. The commission shall determine whether a registration satisfies the requirements for timely filing under section 1013-A, subsection 1.

[ 1995, c. 483, §15 (NEW) .]

**2. Campaign finance reports.** A campaign finance report is not timely filed unless a properly signed or electronically submitted copy of the report, substantially conforming to the disclosure requirements of this subchapter, is received by the commission by 11:59 p.m. on the date it is due. Except as provided in subsection 7, the commission shall determine whether a report satisfies the requirements for timely filing. The commission may waive a penalty if the commission determines that the penalty is disproportionate to the size of the candidate's campaign, the level of experience of the candidate, treasurer or campaign staff or the harm suffered by the public from the late disclosure. The commission may waive the penalty in whole or in part if the commission determines the failure to file a timely report was due to mitigating circumstances. For purposes of this section, "mitigating circumstances" means:

A. A valid emergency determined by the commission, in the interest of the sound administration of justice, to warrant the waiver of the penalty in whole or in part; [1999, c. 729, §5 (AMD) .]

B. An error by the commission staff; [1999, c. 729, §5 (AMD) .]

C. Failure to receive notice of the filing deadline; or [1999, c. 729, §5 (AMD) .]

D. Other circumstances determined by the commission that warrant mitigation of the penalty, based upon relevant evidence presented that a bona fide effort was made to file the report in accordance with the statutory requirements, including, but not limited to, unexplained delays in postal service. [1999, c. 729, §5 (NEW) .]

[ 2007, c. 443, Pt. A, §21 (AMD) .]

**3. Municipal campaign finance reports.** Municipal campaign finance reports must be filed, subject to all the provisions of this subchapter, with the municipal clerk on forms prescribed by the Commission on Governmental Ethics and Election Practices. The municipal clerk shall send any notice of lateness required by subsection 6 and shall notify the commission of any late reports subject to a penalty.

[ 1995, c. 625, Pt. B, §5 (AMD) .]

### 4. Basis for penalties.

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

**4-A. Basis for penalties.** The penalty for late filing of a report required under this subchapter, except for accelerated campaign finance reports required pursuant to section 1017, subsection 3-B, is a percentage of the total contributions or expenditures for the filing period, whichever is greater, multiplied by the number of calendar days late, as follows:

A. For the first violation, 1%; [2001, c. 714, Pt. PP, §1 (NEW); 2001, c. 714, Pt. PP, §2 (AFF) .]

B. For the 2nd violation, 3%; and [2001, c. 714, Pt. PP, §1 (NEW); 2001, c. 714, Pt. PP, §2 (AFF) .]

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

Any penalty of less than \$10 is waived.

Violations accumulate on reports with filing deadlines in a 2-year period that begins on January 1st of each even-numbered year. Waiver of a penalty does not nullify the finding of a violation.

A report required to be filed under this subchapter that is sent by certified or registered United States mail and postmarked at least 2 days before the deadline is not subject to penalty.

A registration or report may be provisionally filed by transmission of a facsimile copy of the duly executed report to the commission, as long as the facsimile copy is filed by the applicable deadline and an original of the same report is received by the commission within 5 calendar days thereafter.

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

[ 2007, c. 443, Pt. A, §22 (AMD) .]

### 5. Maximum penalties.

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

**5-A. Maximum penalties.** Penalties assessed under this subchapter may not exceed:

A. Five thousand dollars for reports required under section 1017, subsection 2, paragraph B, C, D, E or H; section 1017, subsection 3-A, paragraph B, C, D or F; section 1017, subsection 4; and section 1019-B, subsection 3; [2003, c. 448, §4 (AMD) .]

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

C. One thousand dollars for reports required under section 1017, subsection 2, paragraphs A and F and section 1017, subsection 3-A, paragraphs A and E; [2003, c. 628, Pt. A, §4 (AMD) .]

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

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

[ 2003, c. 628, Pt. A, §4 (AMD) .]

**6. Request for a commission determination.** Within 3 days following the filing deadline, a notice must be sent to a candidate and treasurer whose registration or campaign finance report is not received by 11:59 p.m. on the deadline date, informing them of the basis for calculating penalties under subsection 4 and providing them with an opportunity to request a commission determination. The notice must be sent by certified United States mail. Any request for a determination must be made within 10 calendar days of receipt of the commission's notice. The 10-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 10-day period begins on the day the post office indicates it has given first notice of a certified letter. A candidate or treasurer requesting a determination may either appear in person or designate a representative to appear on the candidate's or treasurer's behalf or submit a notarized written explanation of the mitigating circumstances for consideration by the commission.

[ 2007, c. 443, Pt. A, §23 (AMD) .]

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

If no determination is requested, the commission staff shall calculate the penalty as prescribed in subsection 4-A and shall mail final notice of the penalty to the candidate and treasurer. A detailed summary of all notices must be provided to the commission.

[ 2007, c. 443, Pt. A, §24 (AMD) .]

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

[ 2007, c. 443, Pt. A, §25 (AMD) .]

**8-A. Penalties for failure to file report.** The penalty for failure to file a report required under this subchapter may not exceed the maximum penalties as provided in subsection 5-A.

[ 2003, c. 628, Pt. A, §6 (NEW) .]

**9. List of late-filing candidates.** The commission shall prepare a list of the names of candidates who are late in filing a report required under section 1017, subsection 2, paragraph C or D or section 1017, subsection 3-A, paragraph B or C within 30 days of the date of the election and shall make that list available for public inspection.

[ 1995, c. 483, §15 (NEW) .]

**10. Enforcement.** The commission staff has the responsibility for collecting the full amount of any penalty and has all necessary powers to carry out this responsibility. Failure to pay the full amount of any penalty levied under this subchapter is a civil violation by the candidate, treasurer, political party or other person whose campaign finance activities are required by this subchapter to be reported. Thirty days after issuing the notice of penalty, the commission shall report to the Attorney General the name of any person who has failed to pay the full amount of any penalty. The Attorney General shall enforce the violation in a civil action to collect the full outstanding amount of the penalty. This action must be brought in the Superior Court for Kennebec County or the District Court, 7th District, Division of Southern Kennebec.

[ 1999, c. 426, §33 (AMD) .]

#### SECTION HISTORY

1995, c. 483, §15 (NEW). IB 1995, c. 1, §15 (AMD). 1995, c. 625, §B5 (AMD). RR 1995, c. 1, §10 (COR). RR 1995, c. 2, §38 (COR). 1999, c. 426, §§32,33 (AMD). 1999, c. 729, §5 (AMD). 2001, c. 470, §§7,8 (AMD). 2001, c. 714, §PP1 (AMD). 2001, c. 470, §11 (AFF). 2001, c. 714, §PP2 (AFF). 2003, c. 302, §4 (AMD). 2003, c. 448, §4 (AMD). 2003, c. 628, §§A3-6 (AMD). RR 2003, c. 1, §14 (COR). 2007, c. 443, Pt. A, §§21-25 (AMD). MRS A T.21A ., §§1020A/4,5 (AMD) .

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