

Agenda

Item #2



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

To: Commissioners

From: Jonathan Wayne, Executive Director

Date: January 18, 2010

Re: Request by Lobbyist John O'Dea for a Waiver of Late-Filing Penalty

During the 2009 lobbying year, John O'Dea was a registered lobbyist for the Associated General Contractors of Maine. He was required to file an annual report for the 2009 year by 11:59 p.m. on December 30, 2009. He filed the report at 7:50 a.m. on the following day.

Mr. O'Dea states that he received the Commission's reminders concerning the annual report, and by mistake entered the deadline in his calendar for December 31. He came to the office that day and filed the report on the morning of the deadline believing that he was on time.

In the view of the Commission staff, it was an easy mistake to make. A deadline of December 31 might make more sense as a matter of policy, but that is not the deadline in the statute. Under 3 M.R.S.A. § 317(2), the annual report is due by "[t]hirty days following the end of the year in which any person lobbied" The lobbying year ends on November 30, so thirty days after that date is December 30.

Mr. O'Dea is correct that the annual report is merely a summation of the information that he has previously filed in monthly reports during 2009. Also, it may be worth considering that he filed the report before the business day began on December 31 and the information was posted immediately to our public access website. So, the public was only minimally disadvantaged by his annual report being filed eight hours late.

Under 3 M.R.S.A. § 319(1) and Chapter 4(3)(B) of the Commission rules, the preliminary penalty amount for the late filing of an annual report is \$200. Mr. O'Dea seeks a waiver of the late filing penalty. Under the statute, the Commission may waive the penalty in whole or in part if the failure to report was due to "mitigating circumstances," which are not defined.

The Commission staff recommends a reduction to \$50 because of minimal harm to the public from the late disclosure and because of the apparent good faith of the filer.

John O'Dea
AGC Maine
PO Box 5519
Augusta, Maine 04332

15 January 2010

Jonathan Wayne
Commission on Governmental Ethics And Election Practices
135 State House Station
Augusta, Maine 04333-0135

Dear Mr. Wayne;

I am writing with regard to the late filing of my lobbyist annual report. The due date for the report was December 30, 2009. My report was filed on December 31, 2009 at 7:50 a.m. The law allows a penalty of \$200 for "every month a person is late filing the report." In my case the report was not late for a month, and in fact was fewer than eight hours late. Accordingly, I do not believe that a penalty is appropriate in this instance, and ask that the Commission would refrain from imposing such a penalty.

My report was late solely due to a clerical error on my part. When entering the deadline onto my calendar I had mistakenly calendared its due date as December 31, 2009. I received the repeated notices from the Commission, and continually re-validated my earlier clerical error. Upon arriving at my office on the morning of December 31st, my first order of business was to open the on-line form and verify the pre-filed information. At 7:50 a.m., before the start of business, I printed and filed the annual report.

My late filing, and your decision to refrain from imposing a penalty in this case would not cause harm to the public. Although late, the report was filed before your office ever opened for business. In addition, the Commission already had the information contained in the report, in that it was in each of my timely monthly reports. Finally, I filed the report without being prompted by the Commission or its staff.

I thank you for your understanding and hope you are able to get this matter before the Commission for their consideration. Please feel free to contact me if I can provide any other information that you may need.

Sincerely,

John J. O'Dea

C. Expends more than 8 hours in any calendar month lobbying on behalf of an employer of the lobbyist.

10-B. Media outlet. "Media outlet" means a radio or television station, a cable television system, newspapers, magazines and other published written materials.

10-C. Official in the executive branch. "Official in the executive branch" means an individual in a major policy-influencing position in a department or agency listed in section 959 or in Title 5, Chapter 71 and the Governor's cabinet and staff. As used in this chapter, "major policy-influencing position" means those positions listed in Title 5, chapter 71 and officers or employees of departments and agencies listed in section 959 and in Title 5, Chapter 71 who have policy development as a major function of their positions.

11. Official in the Legislative Branch. "Official in the Legislative Branch" means a member, member-elect, candidate for or officer of the Legislature or an employee of the Legislature.

11-A. Original source. "Original source" means any person who contributes or pays \$1,000 or more in any lobbying year directly or indirectly to any employer of a lobbyist for purposes of lobbying or indirect lobbying, except that contributions of membership dues to nonprofit corporations formed under Title 13-B, under any equivalent state law or by legislative enactment are not considered contributions by an original source.

12. Person. "Person" means an individual, corporation, proprietorship, joint stock company, business trust, syndicate, association, professional association, labor union, firm, partnership, club or other organization, whether profit or nonprofit, or any municipality or quasi-municipality or group of persons acting in concert, but does not include this State or any other agency of this State.

13. Political Action Committee. "Political Action Committee" includes:

A. Any separate or segregated fund established by any corporation, membership organization, cooperative or labor organization whose purpose is to influence the outcome of an election, including a candidate or question; and

B. Any person, as defined in subsection 12 which serves as a funding and transfer mechanism and by which moneys are expended to advance, promote, defeat, influence in any way, or initiate a candidate, campaign, political party, referendum or initiated petition in this State.

14. Reimbursement. "Reimbursement" means anything of value received or to be received as repayment for expenditures.

14-A. Solicit. "Solicit" means to entreat, implore, urge or ask.

15. Year. "Year" means a twelve-month period starting December 1st and ending the following November 30th.

16. Anything of value. "Anything of value" means, but is not limited to:

A. Negotiable items:

(1) Money;

(2) A bank bill or note;

Please see
deadline for annual
report on p. 10

4-A. Legislative interests. The general areas of legislation that the employer is attempting to influence;

4-B. Legislative committees. The joint standing committees of the Legislature that the lobbyist expects to lobby during the year;

4-C. Website of employer. The address for the employer's publicly accessible website; and

5. Compensation. The amount of compensation that the lobbyist will receive for that lobbyist's services or, if an exact amount is unascertainable, the basis upon which the lobbyist will charge for those services.

The lobbyist must certify that the information on that form is true, correct and complete and that the employer has approved the information in the registration.

3 § 316-A. Registration forms for state employees or state agency employees

The Commission shall prepare and make available registration forms for the registration of state employees or state agency employees required to register pursuant to section 313-A. These forms must include the following information:

1. Names. The name, business address and contact information of the employee and the department or agency the employee is representing and the address for the publicly accessible website of the department or agency the employee is representing;

2. Position description. A position description;

3. Description of agency. A description of the department or agency the employee is representing, its jurisdiction and its activities; and

4. Legislative interests. The general subject areas of legislation that the department or agency is attempting to influence.

These forms must be signed by the employee and the signature serves as a certificate that the information on that form is true, correct and complete.

3 § 317. Reports

Reports required by this section must be on forms prescribed or approved by the commission. The forms must provide for a sworn statement that the persons signing the report acknowledge the truth and completeness of all the information contained therein.

1. Monthly session reports. During the period in which the Legislature is in session, every registered lobbyist shall file with the commission, no later than 11:59 p.m. on the 15th calendar day of each month, a report concerning the lobbyist's activities for the previous month regarding each employer.

Every lobbyist shall report that lobbyist's lobbying activities for each month that the Legislature is in session, even if no lobbying has been performed or compensation or reimbursement for expenses received for the month. In the case of a lobbyist representing multiple employers, if no lobbying or services in support of lobbying were performed, one

report listing each employer on whose behalf no lobbying was conducted may be submitted. The monthly report must contain the following information:

- A. The month to which the report pertains;
- B. The name and address of the lobbyist and employer;
- C. The names of the individuals who lobbied during the month;
- D. The specific dollar amount of compensation received for lobbying activities, as defined in section 312-A, subsection 9, during the month. The amount of compensation received for lobbying officials in the legislative branch, officials in the executive branch and constitutional officers must be reported separately.

In the case of a regular employee, the specific dollar amount must be computed by multiplying the number of hours devoted to the preparation of documents and research for the primary purpose of influencing legislative action and to lobbying by the employee's regular rate of pay based on a 40-hour week;

- E. The specific dollar amount of expenditures made or incurred by the lobbyist during the month that is the subject of the report for purposes of lobbying as defined in section 312-A, subject 9 for which the lobbyist has been or expects to be reimbursed. The amount of expenditures for lobbying officials in the legislative branch, officials in the executive branch and constitutional officers must be reported separately;

E-1. When expenditures for the purposes of indirect lobbying exceed \$15,000 during the month that is the subject of the report, the specific dollar amount of expenditures for indirect lobbying made or incurred during the month by a lobbyist, lobbyist associate or employer, with separate totals for expenditure categories as determined by the commission, the legislative actions that are the subject of the indirect lobbying and a general description of the intended recipients;

- F. The total amount of expenditures by the lobbyist or the employer directly to or on behalf of one or more covered officials, including members of the official's immediate family;

G. For any expenditure of money or anything of value made by the lobbyist or employer on behalf of a covered official or a member of the official's immediate family with a total retail value of \$25 or more, the name of the official or family member, the person making the expenditure and the date, amount and purpose of the expenditure;

G-1. The date, and a description of an event, a list of all officials in the legislative branch or executive branch or members of an official's immediate family in attendance and the total amount of expenditures for the event, if the total amount of the expenditures for officials and family members is \$250 or more;

- H. A list of each legislative action by Legislative Document number, specific issue, nomination or other matter in connection with which the lobbyist is engaged in lobbying;

I. A list specifically identifying each legislative action for which the lobbyist was compensated or expects to be compensated, or expended in excess of \$1,000 for lobbying activities related to those actions and a statement of the amounts compensated or expended for each; and

J. A list of all of the employer's original sources and a statement of the dollar amounts contributed or paid by the original sources to the employer. If the original source is a corporation formed under Titles 13 or 13-A, nonprofit corporation formed under Title 13-B or limited partnership under Title 31, the corporation, nonprofit organization or limited partnership, not the individual members or contributors, must be listed as the original source.

★ [**2. Annual report.** Thirty days following the end of the year in which any person lobbied pursuant to section 313, the lobbyist and the lobbyist's employer shall file with the Commission a joint report that must contain the information required in subsection 1, for all lobbying activities for the year.

The reports required by subsection 1 must be signed by the person designated by the lobbyist in section 316, subsection 1. The reports required by this subsection must be signed by both the designated person and the employer.

If the date any report required by this section is due falls on a day other than a regular business day, the report is due on the first regular business day next following the due date.

In addition to the amounts identified in subsection 1 as compensation received or expenditure made for the primary purpose of lobbying, this annual report must include the total amount of compensation received by the lobbyist or the lobbying firm, or expended by the employer, except compensation received or expended for purposes not related to lobbying.

2-A. Electronic filing. Beginning January 1, 2006, a lobbyist shall file monthly session reports under subsection 1 and annual reports under subsection 2 through an electronic filing system developed by the Commission. The Commission may make an exception to this electronic filing requirement if a lobbyist submits a written request that states that the lobbyist lacks access to the technology or the technological ability to file reports electronically. The request for an exception must be submitted at least 10 days prior to the deadline for the first report that the lobbyist is required to file for the lobbying year. The Commission shall grant all reasonable requests for exceptions.

3. Facsimile copies. The Commission may, by rules adopted pursuant to the Maine Administrative Procedure Act, Title 5, chapter 375, establish procedures and fees by which facsimile copies of duly executed reports required by this section may be received and filed with the Commission.

4. Monthly non-session reports. When the Legislature is not in regular session, every registered lobbyist must either file:

A. With the lobbyist's last monthly report for that regular session a statement that the lobbyist will not engage in lobbying activities when the Legislature is not in session. The lobbyist is required to file a monthly report for lobbying activity conducted during a special session; or

B. If the lobbyist is engaged in lobbying in any of those months, a monthly report in the manner prescribed in subsection 1 even if compensation or reimbursement for expenses has not been received for the month.

If the lobbyist did not expect to be engaged in lobbying when the Legislature was not in session, the Commission may waive the requirement for the months between the end of the session and the renewal of lobbying.

3 § 318. Restricted activities

1. Contingent compensation. No person shall accept employment as a lobbyist on a basis which makes that person's compensation contingent in any manner upon the outcome of any legislative action.

2. Instigation of legislative action. No person shall instigate the introduction or commencement of any legislative action for the purpose of obtaining employment as a lobbyist to oppose or support such legislative action.

3 § 319. Penalty

1. Failure to file registration or report. Any person who fails to file a registration or report as required by this chapter may be assessed a fine of \$100 for each person listed or who should have been listed on the lobbyist registration for every month the person fails to register or is delinquent in filing a report pursuant to section 317. The Commission may waive the penalty in whole or in part if the Commission determines the failure to register or report was due to mitigating circumstances.

1-A. Notice of suspension. Any person who fails to file a report or pay a fee as required by this chapter may be suspended from further lobbying by written notice of the Commission until such failure is corrected.

2. (REPEALED).

3. Exemption. Notwithstanding section 317, subsection 1, a registered lobbyist is exempt from the penalty imposed under this section if, while the Legislature is convened in special session, the lobbyist failed to file a report with the Commission pursuant to section 317 if no lobbying has been performed during that special session.

3 § 319.A Testimony before Legislature; lobbyist

1. Disclosure of compensation. A lobbyist or lobbyist associate who testifies before a joint select or joint standing committee of the Legislature shall disclose to the committee as part of the testimony, the name of the person or organization that the lobbyist or lobbyist associate is representing. A lobbyist or lobbyist associate shall disclose to the committee orally or in written form, the name of any person who is being compensated by the lobbyist or lobbyist associate or by the person or organization that the lobbyist or lobbyist associate is representing to testify before that committee.

2. Report of violation. A member of the Legislature may file a complaint with the commission alleging a violation of this section in accordance with the Joint Rules of the Legislature. The commission shall notify all interested parties and shall investigate any apparent violations of this section.

3. Penalty. If a lobbyist or lobbyist associate fails to disclose information required in subsection 1, the commission may:

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 reported. The use of a password in filing an electronic report constitutes certification of the completeness and accuracy of the report.

3. Lobbyist Disclosure Procedures

- A. **Report Review.** The Commission staff will monitor all filings made pursuant to 3 M.R.S.A. §311 *et seq.* for timeliness, legibility, and completeness. The staff will send the lobbyist a notice of any apparent reporting deficiency, including failure to use prescribed forms. The notice will include a request that the deficiency be corrected within 15 business days of the notice. If remedy is not made, it will be noted on the agenda of the next Commission meeting. The Commission may reject reports that are incomplete or illegible.
- B. **Late Registrations and Reports.** Notice will be given by mail to any lobbyist whose registration, monthly disclosure report, or annual report is delinquent. In the case of a late monthly report, the notice must be mailed within 7 business days following the filing deadline for the report. In the case of late annual reports and registrations, the notice must be mailed within 15 business days following the filing deadline. The notice must include a statement specifying the amount assessed. A penalty of \$100 will be assessed the lobbyist for every month that a monthly disclosure report is late and a penalty of \$200 will be assessed the lobbyist and employer for every month a registration or annual report is filed late. For purposes of 3 M.R.S.A. §319(1), the month will end on the 15th day of the month following the month in which a report was due. Any failure to submit a required report, registration, or penalty fee will be noted on the Commission agenda.
- C. **Suspensions.** The Commission may suspend any person from lobbying who fails to file a required report or pay an assessed fee. A notice of the suspension must be mailed to the lobbyist by U.S. Certified Mail within three days following the suspension. Reinstatement will occur on the date the required report or payment is received in the Commission office. A notice of the reinstatement must be mailed to the lobbyist by U.S. Certified Mail or given directly to the lobbyist within three days following receipt of the required report or payment.
- D. **Request for Penalty Waiver.** A lobbyist may request a waiver of any late penalty the lobbyist incurs. The request must be made in writing to the Commission and must state the reason for the delinquency. Any such request must be noted on the agenda of the next Commission meeting. Only the Commission may grant penalty waivers.

