



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

To: Commission

From: Emma Burke, Political Committee & Lobbyist Registrar

Date: July 10, 2013

Re: Updates and Staff Recommendations for PACs with Inaccurate Balances

In early 2023, Political Committee & Lobbyist Registrar Emma Burke emailed all PAC treasurers and principal officers requesting they confirm their reported ending cash balance on their January Quarterly Reports was accurate. When a PAC files a campaign finance report with the Commission, the eFiling system calculates the cash balance based on the entered transactions. This reported balance is shown on the cover sheet of the report PDF and should correspond to the PAC's actual balance in its bank account. PACs were requested to supply this information because a law creating new financial restrictions and prohibitions for PACs had taken effect on January 1, 2023; it was critical for all PACs to have an accurate cash balance for the campaign finance report due in April. Currently, seven PACs, out of 110, have been unable to rectify balance discrepancies, with some requesting Commission approval to make balance adjustments in their eFiling accounts.

Background

On January 1, 2023, 21-A M.R.S. §§ 1056-C & 1056-D went into effect, prohibiting Leadership PACs or SSF (separate and segregated fund) PACs from receiving contributions from business entities. "Business entity" was defined as "a firm, partnership, corporation, incorporated association, labor organization or other organization, whether organized as a for-profit or a nonprofit entity." The prohibition included direct contributions from business entities to Leadership and SSF PACs, *and* donations from other PACs and party committees derived from business entity funds received before 2023. Funds accepted by PACs and party committees before 2023 were allowed to be donated to Leadership PACs and SSF PACs without the business entity prohibition applying, making it critical all January Quarterly Reports (with a reporting period end date of December 31, 2022) have an accurate ending cash balance.

Previously, the Commission has granted Commission staff approval to make balance adjustments in eFiling for discrepancies if the balance is off by no more than \$1,000; for discrepancies greater than \$1,000, the staff must request Commission approval.

PACs with Inaccurate Balances

On February 7, 2023, Ms. Burke sent the first notice to PAC treasurers and principal officers requesting confirmation the ending cash balance of their January Quarterly Report was accurate.

Of the 110 registered PACs:

- 80 confirmed their reported and campaign account cash balances matched.
- 17 reported a discrepancy of \$1,000 or less between their reported cash balance and the cash balance in their campaign bank account. For those, Ms. Burke entered a balance adjustment transaction in their eFiling account.
- 3 reported a balance discrepancy of more than \$1,000 but found errors in their reporting and made amendments to reports that either made their balances match or reduced the discrepancy to \$1,000 or less so Ms. Burke could enter a balance adjustment transaction.
- 3 reported a balance discrepancy in the range of \$1,000 - \$2,000 and were unable to file amendments to bring the discrepancy to \$1,000 or less. These PACs received permission from Chairman Schneider for Ms. Burke to enter a balance adjustment transaction in their eFiling accounts.
- 7 have reported a balance discrepancy of more than \$1,000. Four of these PACs are discussed in this memo.

Maine Optometric Association PAC

The principal officer of the Maine Optometric Association PAC (“MOA”) is Eric Lehouillier and the treasurer is Caroline Fontaine. MOA first registered as PAC in 2002, and since then has reported \$105,820.88 in contributions. The reported ending cash balance on MOA’s 2023 January Quarterly Report is \$27,942.80, while the actual cash balance as of December 31, 2022 was \$32,498.63, creating a discrepancy of \$4,555.83. Ms. Fontaine has worked diligently to find the reporting errors, and been communicative with Ms. Burke, but has not been able to find enough to close the balance discrepancy. It appears the reporting issues existed before she was treasurer of MOA and are potentially more than five years old. MOA has requested a balance adjustment transaction be approved by the Commission.

Maine Senate Republican Majority

The principal officer of the Maine Senate Republican Majority (“MSRM”) is Senator Trey Stewart and the treasurer is Ashley Luszczki. MSRM first registered as PAC in 2008, and since then has reported \$3,373,076.95 in contributions. The reported ending cash balance on MSRM’s 2023 January Quarterly Report is \$21,734.14, while the actual cash balance as of December 31, 2022 was \$14,686.44, creating a discrepancy of \$7,047.77. Ms. Luszczki has put in a significant amount of effort to find reporting errors, and been communicative with Ms. Burke, but has not been able to find enough to close the balance discrepancy. The reporting errors likely existed before she was treasurer of MSRM and are potentially more than five years old. MSRM has requested a balance adjustment transaction be approved by the Commission.

A House United

The principal officer of A House United (“AHU”) is Speaker of the House Rachel Talbot Ross, and the treasurer is Sean Smith. AHU first registered as PAC in 2021, and since then has reported \$54,794.33 in contributions. The reported ending cash balance on AHU’s 2023 January Quarterly Report is \$28,584.75, while the actual cash balance as of December 31, 2022 was \$34,328.86, creating a discrepancy of \$5,744.11. Mr. Smith communicated to Ms. Burke via email on March 31st he is “confident” the differences can be reconciled and found. This was repeated during a phone call on June 14th.

House Democratic Campaign Committee

The principal officer of the House Democratic Campaign Committee (“HDCC”) is Sean Smith, and the treasurer is Steve Von Vogt. HDCC first registered as PAC in 2002, and since then has reported \$5,554,383.40 in contributions. The reported ending cash balance on HDCC’s 2023 January Quarterly Report is \$229,498.25, while the actual cash balance as of December 31, 2022 was \$160,665.12, creating a discrepancy of \$68,833.13. In an email to Ms. Burke on March 31st, Mr. Smith stated:

“...the last time we were asked to reset our balance was in 2013. Since that time, the [HDCC] has had nearly \$12M in transactions that it has entered into at least two different Ethics online software systems, possibly three [...] I know that there were issues with balances being carried forward with those changes. \$68K represents a fraction of a percentage in the total transactions of this committee since the last balance reset of 2013. Our balance has been off for a long time (since around the time the newest version of the software came online in 2018),

and while we are going to go back and try attempt to reconcile this difference, we believe that the discrepancy (whether it was an IT issue or error on our part) most likely happened many years ago.”

HDCC requests a balance adjustment transaction be approved by the Commission.

Other PACs

Three other PACs are currently working on correcting their balance discrepancies and will not be discussed in detail here. Two of the PACs are having audits performed, and one has a small discrepancy that has been delayed in being corrected due to treasurer illness.

Staff Recommendations

MOA & MSRM

The Commission staff recommend the Commission approve balance adjustment transactions for MOA and MSRM. The treasurers of these PACs have put in a significant amount of time trying to find causes for their discrepancies and have not been successful. Likely, the discrepancies developed over many years, and quite possibly were caused or compounded by eFiling data conversions (2013 and 2018) and technological bugs in calculating totals during 2018-2019 that have since been fixed. The PACs are 21 and 15 years old, respectively, and attempting to find errors from that long ago would be close to an impossible task. Therefore, the Commission staff suggest the most logical way to correct the discrepancies is by making a balance adjustment in eFiling.

AHU

The Commission staff recommend no balance adjustment transaction for AHU as it is two years old and has had the same treasurer and principal officer. It is likely the discrepancy is due to reporting errors. The Commission staff understands the PAC intends to find the source of the discrepancy. We recommend the PAC be given a deadline after the current legislative session concludes to review its records and make amendments to its reports.

HDCC

There are several mitigating and aggravating factors in the argument for a balance adjustment transaction for HDCC. Mr. Smith’s contentions are accurate – HDCC’s data have gone through at least two data conversions, and when the current eFiling system went live in 2018, there were many bugs affecting numerical report totals that were not fully remedied by our vendor until 2019.

Regardless of whether a PAC is directly asked whether its balance is accurate, they are responsible for accurate reporting reflecting their financial activity. Previously, the HDCC was requested to notify the Commission staff if their balance was inaccurate. Mr. Von Vogt was emailed by former Commission staffer, Michael Dunn, in July 2020 and September 2020, but it does not appear he responded. Mr. Von Vogt has been HDCC's treasurer for 17 years and has filed dozens of reports with inaccurate balances without notifying the Commission. Initially, when Ms. Burke emailed PACs of the need to confirm their balances, stating "I need you or another individual associated with the committee to confirm that balance is accurate," Mr. Von Vogt responded 32 minutes later saying "Emma, looks ok to me." It wasn't until Mr. Smith contacted Ms. Burke by phone at the end of March the Commission staff became aware of the PAC's balance issues.

The Commission staff believe it is unlikely the causes for most of the discrepancy can be found at this point, however, they think it may be prudent to ascertain whether the last five years of HDCC's reporting is accurate before recommending a balance adjustment transaction. The Commission understands the HDCC will be examining its financial activity since July 1, 2018 to see if it can identify causes for the discrepancy. We will check with the PAC before the July 24 meeting to see if there is an update. The Commission staff welcome any decisions or questions from the Commission and testimony from HDCC to help create a plan for correcting HDCC's near \$70,000 balance discrepancy.