

BILL BRADBURY  
SECRETARY OF STATE



ELECTIONS DIVISION  
JOHN LINDBACK  
DIRECTOR  
141 STATE CAPITOL  
SALEM, OREGON 97310-0722  
ELECTIONS—(503) 986-1518

BEFORE THE SECRETARY OF STATE  
OF THE  
STATE OF OREGON

In the matter of an Insufficient Contribution and Expenditure ) Final Order  
Report by The Committee to Keep Judge Burton (Claudia) )  
Claudia Burton, Candidate, Russell Lipetzky, Treasurer, for ) Case No. I8301  
the First Pre-Election for the May 18, 2004, Primary Election )

November 17, 2005

The Committee to Keep Judge Burton (Claudia) (004683)  
Claudia Burton, Candidate / Russell Lipetzky, Treasurer  
495 State St Ste 410  
Salem, OR 97301

Dear Judge Burton:

This is a Final Order issued by the Secretary of State (secretary) for your failure to file a sufficient first pre-election contribution and expenditure report for the May 18, 2004, Primary Election.

On June 14, 2005, the secretary notified The Committee to Keep Judge Burton (Claudia) (committee), pursuant to ORS 260.232(2), that it had failed to file a sufficient report and that the secretary may impose a civil penalty. An opportunity for a hearing was provided in that notice. The committee submitted written testimony in the form of a notarized statement in lieu of a personal appearance at a public hearing. Accordingly, after consideration of the applicable law and evidence presented, Jennifer Hertel, Hearings Officer with the Elections Division, is entering the following Order.

FINDINGS OF FACT

1. The committee's Statement of Organization (SEL 220), applicable during the reporting period, was filed with the secretary on January 27, 2004. The statement reported Russell Lipetzky as the treasurer and PO Box 2869, Salem, OR 97301-2869 as the mailing address for both candidate and committee correspondence.
2. The committee filed a first pre-election report with the secretary on April 8, 2004.
3. On April 27, 2004, the secretary sent the committee an exam letter that itemized the areas where the report was not in compliance. The committee was asked to submit the necessary amended information by May 6, 2004, to avoid penalties for failure to file a sufficient report.

4. On the day following the May 6, 2004, amendment deadline, the committee's report was still missing the following required information: a PC 3A form, Personal Expenditures for Reimbursement, detailing personal expenditures of \$1,233.37 made by the candidate by the May 6, 2004, deadline.
5. On June 3, 2005, the secretary sent the committee a Notice of Proposed Civil Penalty. The notice was sent by both certified and first class mail to the candidate and was sent by first class mail to the treasurer at the above-referenced address. The notice proposed a civil penalty of \$61.67 and allowed the committee 20 days to request a hearing. All three copies of the notice were returned as "unable to forward" by the post office.
6. On June 14, 2005, the secretary sent the Notice of Proposed Civil Penalty to the committee's physical address listed on the Statement of Organization at 495 State St Ste 410, Salem, OR 97301. The notice was sent by both certified and first class mail to the candidate and was sent by first class mail to the treasurer. The notice sent by certified mail was received and signed for by Sarah J. Lutz on June 15, 2005.
7. On July 1, 2005, the secretary received a notarized letter from Russell Lipetzky in lieu of a personal appearance at a public hearing.
8. On July 19, 2005, an amendment to the committee's report was filed. The amendment provided a payee name for an expenditure previously incorrectly reported on the PC 3A.
9. The letter—attached as Exhibit A—was reviewed, considered, and made part of the record.
10. The secretary has record of no previous insufficient filings during the two-year period beginning September 15, 2003.

#### ULTIMATE FINDINGS OF FACT

Claudia Burton, Candidate, and Russell Lipetzky, Treasurer, failed to file a sufficient first pre-election contribution and expenditure report for the May 18, 2004, Primary Election.

#### CONCLUSIONS OF LAW

Candidate Claudia Burton's and Treasurer Russell Lipetzky's failure to file a sufficient first pre-election contribution and expenditure report for the May 18, 2004, Primary Election violated ORS 260.058, ORS 260.083 and OAR 165-012-0005. A civil penalty may be imposed for this violation under ORS 260.232(1)(b).

#### OPINION

The Committee to Keep Judge Burton (Claudia)'s first pre-election contribution and expenditure report, filed on April 8, 2004, was insufficient. An exam letter was sent to the committee detailing the insufficiencies of the report and an amendment to the report was required to be filed by May 6, 2004. The committee failed to file an amendment which satisfied all the items listed on the exam letter by the deadline.

A maximum \$10,000 civil penalty may be imposed for this violation. The *2004 Campaign Finance Manual*, which contains a penalty calculation matrix on pages 104 and 105, is designated in OAR 165-012-0005 as the procedure manual for Oregon campaign finance regulations.

After reviewing and considering the evidence and information on file in this office, the hearings officer finds that there has been a violation of Oregon election law. The explanation provided in the notarized testimony does not adequately mitigate the failure to file a sufficient report by the deadline. The testimony included three affidavits, one each from Claudia Burton, the candidate, Russell Lipetzky, the treasurer, and Sarah Lutz, the staff member of Mr. Lipetzky's law firm who was completing the campaign finance reports. At issue is the reporting of the \$1,200 payment to Russell Lipetzky for compensation for his time and the time his employees' spent on campaign matters, and the identity of the payees of various personal expenditures.

All three affidavits stressed the committee's desire to report all information accurately, even to the point of over-disclosing. It was perhaps this desire to over-disclose which created the problem, as the original entry on the PC 3 with a "W" code was correct. However, it was then again reported on the PC 3A with the same code. Ms. Lutz stated in her affidavit that she made several calls to the Elections Division on how to report and code these expenditures. She also stated that the information she received from the Division was confusing. However, she does not name the employee that she spoke with. The amendment filed on July 19, 2005, did not address all of the insufficiencies identified in the proposed penalty notice.

While it is unfortunate that there was a misunderstanding as to how to report and make corrections to these expenditures, it does not constitute a mitigating circumstance in which the secretary would reduce or waive the civil penalty. The mitigating circumstances are listed on the proposed penalty notice and on page 97 of the *2004 Campaign Finance Manual*. Absent one of these mitigating circumstances, the penalty is assessed.

The penalty is 5% of personal expenditures, less 50% for corrections provided prior to the issuance of the proposed penalty notice or during the hearing –  
[( \$1,220.42 X 5%) + (\$12.95 X 5% - 50%)] = \$61.35.

#### ORDER

It is ordered that a penalty of \$61.35 is assessed. If your payment is not received within 60 days, the Order will be forwarded to our accounting division for collection and may subsequently be sent to the Oregon Department of Revenue.

Please refer to case number I8301 when mailing your payment.

RIGHT TO JUDICIAL REVIEW

You have the right to appeal this Order to the Oregon Court of Appeals pursuant to ORS 183.482. To appeal you must file a petition for judicial review with the Court of Appeals within 60 days from the day this Order was served to you. Because this Order was mailed to you, the date of service is the day it was *mailed*, not the day you received it. If you do not file a petition for judicial review within the 60-day time period, you will lose your right to appeal.

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Jennifer Hertel, Compliance Specialist

DATE of Service: \_\_\_\_\_

c: Russell Lipetzky, Treasurer  
495 State St Ste 410  
Salem, OR 97301