

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)
Report by the Committee to Elect Derrick Kitts, Derrick Kitts,) Final Order by Default
Candidate / Treasurer, for the Second Pre-Election for the)
May 18, 2004, Primary Election) Case No. I8336
)

January 26, 2006

Committee to Elect Derrick Kitts (004081)
Derrick Kitts, Candidate / Treasurer
PO Box 1946
Hillsboro, OR 97123

Dear Representative Kitts:

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

On November 16, 2005, the secretary notified the Committee to Elect Derrick Kitts (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; however, no request for a hearing was received by the secretary within the time permitted in the notice. Accordingly, after consideration of the records and files of the secretary regarding this matter, the secretary 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 December 5, 2003. The mailing address provided on the Statement of Organization for the candidate was PO Box 1946, Hillsboro, OR 97123.
2. The committee filed a second pre-election report with the secretary on May 6, 2004.
3. On May 21, 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 June 3, 2004, to avoid penalties for failure to file a sufficient report.

4. On the day following the June 3, 2004, amendment deadline, the committee's report was still missing the following required information: the name of the payee for one personal expenditure (1 item).
5. On June 17, 2004, an amendment to the committee's report was filed. The amendment provided one item of previously insufficient information.
6. On December 2, 2004, the secretary received an amended SEL 220 updating the mailing address for committee committee to c/o Lori Piercy, 29993 Maple Dr, Rainier OR 97048.
7. On November 16, 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 addresses. The notice proposed a civil penalty of \$5.00 and allowed the committee 20 days to request a hearing. The notice sent by certified mail was returned unclaimed and the post office indicated it gave first notice on November 17, 2005.
8. The committee did not request a public hearing or submit notarized testimony in lieu of a public hearing.
9. The secretary has record of no previous insufficient filings during the two-year period beginning September 15, 2003.

ULTIMATE FINDINGS OF FACT

Derrick Kitts, Candidate / Treasurer, failed to file a sufficient second pre-election contribution and expenditure report for the May 18, 2004, Primary Election.

CONCLUSIONS OF LAW

Candidate / Treasurer Derrick Kitts's failure to file a sufficient second 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).

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.

Since this is the first violation by the candidate, the penalty is \$10.00 per omission, less 50% for every omitted item provided prior to the issuance of the proposed penalty notice.

ORDER

It is ordered that no penalty be assessed because the appropriate penalty is under \$50.

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.

Jennifer Hertel, Compliance Specialist

DATE of Service: _____

c: Derrick Kitts, Treasurer
c/o Lori Piercy
29993 Maple Dr
Rainier, OR 97048