

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 Kane for DA, Brendan Kane, Candidate, Janet ) Final Order  
Cummiskey, Treasurer, for the Second Pre-Election for the )  
May 18, 2004, Primary Election ) Case No. I8341  
)

October 5, 2005

Kane for DA (004750)  
Brendan Kane, Candidate / Janet Cummiskey, Treasurer  
306 SW Coast Hwy STE 200  
Newport, OR 97365

Dear Mr. Kane:

This is a Final Order 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 June 16, 2005, the secretary notified Kane for DA (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

0. The committee's Statement of Organization (SEL 220), applicable during the reporting period, was filed with the secretary on December 16, 2003. The statement reported Janet Cummiskey as the treasurer and 306 SW Coast Hwy STE 200, Newport, OR 97365 as the mailing address for both candidate and committee correspondence.
1. The committee filed a second pre-election report with the secretary on May 6, 2004.
2. 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.

3. On the day following the June 3, 2004, amendment deadline, the committee's report was still missing the following required information: sufficient occupational information for four contributors and purposes for three in-kind contributions (7 items).
4. On June 11, 2004, an amendment to the committee's report was filed. The amendment provided seven items of previously insufficient information.
5. On June 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 address. The notice proposed a civil penalty of \$35.00 and allowed the committee 20 days to request a hearing. The notice sent by certified mail was received and signed for by Brendan Kane on June 21, 2005.
6. On July 6, 2005, the secretary received a notarized letter from Brendan Kane in lieu of a personal appearance at a public hearing.
7. The letter—attached as Exhibit A—was reviewed, considered, and made part of the record.
8. On September 13, 2005 an amended Statement of Organization was received by the secretary changing the treasurer's address to 11710 NE Beverly Dr, Newport, OR 97365.
9. The secretary has record of no previous insufficient filings during the two-year period beginning September 15, 2003.

#### ULTIMATE FINDINGS OF FACT

Brendan Kane, Candidate, and Janet Cummiskey, Treasurer, failed to file a sufficient second pre-election contribution and expenditure report for the May 18, 2004, Primary Election.

#### CONCLUSIONS OF LAW

Candidate Brendan Kane's and Treasurer Janet Cummiskey'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).

#### OPINION

The Kane for DA's second pre-election contribution and expenditure report, filed on May 6, 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 June 3, 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 submitted by Mr. Kane explains that amendments were not filed by the deadline because he was on vacation. While it is unfortunate that he was unavailable to file the necessary amendments this is not a mitigating circumstance in which the Secretary can reduce the penalty or waive the violation.

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 or during the hearing.

#### 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.

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Jennifer Hertel, Compliance Specialist

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

c: Janet Cummiskey, Treasurer  
11710 NE Beverly Dr  
Newport, OR 97365