

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 Vern Cook for Senator, Vern Cook, ) Final Order  
Candidate/Treasurer, for the Second Pre-Election for the )  
May 18, 2004, Primary Election ) Case No. I8347

October 5, 2005

Vern Cook for Senator (004842)  
Vern Cook, Candidate/Treasurer  
519 NE 4th  
Gresham, OR 97030

Dear Mr. Cook:

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 Vern Cook for Senator (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 February 23, 2004. The statement reported Vern Cook, the candidate, as the treasurer and 100 NE Sandy Dell Rd, Troutdale, OR 97060 as the address to which all committee correspondence was to be sent.
2. The committee filed a second pre-election report with the secretary on May 4, 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 date of one contribution (1 item).
5. On June 18, 2004, an amendment to the committee's report was filed. The amendment provided one item of previously insufficient information.
6. On August 25, 2004, the committee filed a discontinuing Statement of Organization, updating the mailing address to 519 NE 4<sup>th</sup>, Gresham, OR 97030.
7. 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/treasurer at the above-referenced address. 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 received and signed for by the committee on June 17, 2005.
8. On June 22, 2005, the secretary received a notarized letter from Vern Cook in lieu of a personal appearance at a public hearing.
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

Vern Cook, 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 Vern Cook'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

Vern Cook for Senator's second pre-election contribution and expenditure report, filed on May 4, 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 explains that the amendment to the second pre-election report was mailed on June 1, 2004. The amendment was due by 5 p.m. on June 3, 2004, but was not received in the Elections Division office until June 18, 2004. Although this is an unfortunate incident, it does not constitute a mitigating circumstance in which the secretary would reduce or waive the civil penalty. The mitigating circumstance clearly states that guaranteed delivery must be by "written receipt of the service provider." The U.S. Postal Service does not guarantee by written receipt for first class mail delivery. The written testimony also explains that perhaps the problem was due to the State's internal mailing system and that receipt at the State's central mail office could have been timely but delivery from there to the Secretary of State agency was delayed. Again, guaranteed delivery with a written receipt would have shown on which date the amendment was actually mailed and on which date it first reached the State's mail system.

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.

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Jennifer Hertel, Compliance Specialist

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