

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 Chuck Burley for State Representative,) Final Order
Charles H. (Chuck) Burley, Candidate, Joanne Luke,)
Treasurer, for the Second Pre-Election for the) Case No. I8595
November 2, 2004, General Election)

January 27, 2006

Chuck Burley for State Representative (004727)
Charles H. (Chuck) Burley, Candidate / Joanne Luke, Treasurer
PO Box 9424
Bend, OR 97708

Dear Representative Burley:

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 November 2, 2004, General Election.

On December 2, 2005, the secretary notified Chuck Burley for State Representative (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 December 8, 2003. The statement reported Joanne Luke as the treasurer and PO Box 9424, Bend, OR 97708 as the mailing address for both candidate and committee correspondence.
2. The committee filed a second pre-election report with the secretary on October 18, 2004.

3. On November 5, 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 November 18, 2004, to avoid penalties for failure to file a sufficient report.
4. On the day following the November 18, 2004, amendment deadline, the committee's report was still missing the following required information: the complete address for one contributor (1 item).
5. On December 2, 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 \$10.00 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 December 6, 2005.
6. On December 19, 2005, the secretary received a notarized letter from Charles H. Burley 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. The secretary has record of no previous insufficient filings during the two-year period beginning September 15, 2003.

ULTIMATE FINDINGS OF FACT

Charles H. (Chuck) Burley, Candidate, and Joanne Luke, Treasurer, failed to file a sufficient second pre-election contribution and expenditure report for the November 2, 2004, General Election.

CONCLUSIONS OF LAW

Candidate Charles H. (Chuck) Burley's and Treasurer Joanne Luke's failure to file a sufficient second pre-election contribution and expenditure report for the November 2, 2004, General Election violated ORS 260.068, ORS 260.083 and OAR 165-012-0005. A civil penalty may be imposed for this violation under ORS 260.232(1)(b).

OPINION

Chuck Burley for State Representative's second pre-election contribution and expenditure report, filed on October 18, 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 November 18, 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 Representative Burley explains that the treasurer made the correction in the committee's electronic filing software and emailed the amendment to the Elections Division on November 11, 2004. Attached to the testimony is a paper copy of the amendment and a copy of page one of the exam letter noting the date that the amendment was emailed to the Elections Division by the treasurer. Representative Burley also suggests that the paper amendment filed with the testimony satisfies the insufficiency identified in the exam letter.

We have reviewed all of the email received in the Division's electronic filing mailbox and did not find an electronically filed second pre-election electronic amendment. It is the policy of the Elections Division to reply to all electronically filed contribution and expenditure submissions, notifying a committee if the electronic data successfully posts to the Division database. We also examined the electronic filing "sent" mailbox and did not find any kind of notification to the committee regarding the successful posting of a second pre-election amendment.

The committee requests that "the failure of a professional delivery service," even without written receipt, be considered in reducing or waiving the penalty. The Elections Division cannot apply this mitigating circumstance to this case for the following reasons:

1. It does not apply to the emailed transmission of electronically filed reports;
2. ORS 260.159(5) requires that a committee filing its contribution and expenditure reports electronically must also submit any amendments to those reports electronically; and
3. ORS 246.021(4)(b) states that "The secretary shall not accept the filing of the statement in any form other than an electronic format."

While this is an unfortunate incident, it is not a mitigating circumstance in which the secretary may waive or reduce the penalty.

Since this is the first violation by the candidate, the penalty is \$10.00 per omission.

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: Joanne Luke, Treasurer
PO Box 9424
Bend, OR 97708