

FINDINGS OF FACT

1. The Committee filed a Post-Election Contributions and Expenditure Report with the Elections Division on December 2, 2004. (Ex. C.) The Report was insufficient in that the report did not list a range of dates within the reporting period on 121 contributions. (Testimony of Ms. Jackson.)
2. On December 17, 2004, the Elections Division sent the Committee an Exam Letter detailing this insufficiency. (Ex. D.) The deadline for filing amendments and corrections was December 30, 2004. (Ex. D; testimony of Ms. Jackson.)
3. The Elections Division received the corrections on January 4, 2005. (Ex. E.)
4. This is the Committee's second insufficient filing. (Testimony of Ms. Jackson.)

CONCLUSIONS OF LAW

The Elections Division properly assessed a civil penalty of \$907.50 for an insufficient filing.

OPINION

ORS 260.073 states in relevant part:

“(1) Except as otherwise provided in ORS 260.112, each political committee, other than a candidate's principal campaign committee, supporting or opposing one or more candidates or measures at the general election shall file the following with each appropriate filing officer:

* * * *

“(d) A post-election statement of contributions received and expenditures made by or on behalf of the political committee, not sooner than the 21st day and not later than the 30th day after the date of the election. The accounting period for a statement required by this paragraph begins on the 15th day before the date of the election and ends on the 20th day after the date of the election.”

ORS 260.283 states in relevant part:

“(1) A statement filed under ORS 260.058, 260.063, 260.068, 260.073, 260.076 or 260.118 or section 6, chapter 542, Oregon Laws 2003, shall list:

(a) Under contributions, all contributions received. Except as provided in ORS 260.085, the statement shall list the name, occupation and address of each person, and the name and address of each political committee, that contributed an aggregate amount of more than \$50 on behalf of a candidate or to a political committee and the total amount contributed by that person or political committee.

The Secretary has adopted the *2004 Campaign Finance Manual* as the procedures and guidelines to be used for compliance with Oregon campaign finance regulations. OAR 165-012-0005.

The Elections Division as the party asserting the position that the filing was insufficient bears the burden of presenting evidence. ORS 183.450(2). The Elections Division has provided evidence in the form of the documentary record and testimony that convincingly establishes that the Post Election Contribution and Expenditure Report contained insufficiencies in that it listed an incorrect range of dates for 121 contributions. The documentary record and the testimony also establish that corrections were due on December 30, 2004, but were not received until January 4, 2005.

The Penalty Matrix in the *2004 Campaign Finance Manual* specifies that the penalty for a second insufficiency violation is calculated \$15 per violation. The penalty is reduced by 50 percent if a correction is made before the time to request a hearing. In this case, the corrections were made within the time to request a hearing. Consequently, under the Matrix, the penalty is \$907.50 or $\$15 \times 121 - \$907.50 = \$907.50$.

The Committee concedes that it, in fact, violated the provision of the manual requiring that contributions made during the 21 days before the election to 15 days after the election be reported on the First Post Election report. It also concedes that it did not correct the insufficiencies within the required time.

The Committee does not contend that any specific mitigating circumstance applies in this case. Rather, it contends that because the person normally charged with preparing reports was ill, it made the errors. It argues that it made a good faith effort to comply with the rules. It argues that its good faith effort to make a sufficient filing should be considered in setting the amount of the penalty. The *Campaign Finance Manual* states “the Secretary of State...may impose civil penalties for failure to file a ...sufficient report.” *Campaign Finance Manual 2004* at 95. Similarly, ORS 260.232(1)(b) states that the Secretary “may impose a civil penalty” for failing to file a sufficient report. This language gives the Secretary discretion whether to assess a civil penalty for such violations; however, the Secretary has limited that discretion by stating in the manual that mitigating circumstances are limited to five types. *Id* at 97. The Elections Division interprets this to mean that absent one of the specified mitigating circumstances, the civil penalty will be assessed based on the matrices found in the Manual. I defer to the agency’s interpretation of its own rules. Accordingly, I find that unless the Committee establishes one of the mitigating circumstances outlined in the Manual, a civil penalty must be assessed based on the matrix found in the Manual.

If the Secretary had not circumscribed his own discretion, under these circumstances, I might consider a good faith attempt to be a mitigating factor. However, where, as here, the agency has limited its own discretion, I am bound by that limitation. Therefore, I am without authority to conclude that the civil penalty herein should be eliminated or reduced. The Committee's arguments that the statutes or rules need to be changed are arguments that need to be addressed in either the legislature or in the rule making process. Accordingly, I recommend that the \$907.50 penalty be upheld.

FINAL ORDER

The Salem Fire PAC is assessed a civil penalty of \$907.50 for insufficient filing of required information in its Post-Election Contribution and Expenditure Report.

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.

Bill Bradbury, Secretary of State

Date

CERTIFICATE OF SERVICE

I certify that on April 26, 2006, I served the attached Final Order by mailing in a sealed envelope, with first class postage prepaid, a copy thereof address as follows:

SALEM FIRE PAC (000245)
RAYMOND T. MURRY, TREASURER
265 COMMERCIAL ST NE STE 240
SALEM, OR 97301

Stacey Jackson, Compliance Specialist