

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 Friends of Joan Draper, Joan Draper, Candidate,) Final Order
Donna L. Butler, Treasurer, for the First Pre-Election for the)
May 16, 2006, Primary Election) Case No. I9367

November 15, 2007

Friends of Joan Draper (005336)
Joan Draper, Candidate / Donna L. Butler, Treasurer
1783 NW 143rd Ave #21
Portland, OR 97229

Dear Ms. Draper:

This is a Final Order issued by the Secretary of State (secretary) for your failure to file a sufficient first pre-election contribution and expenditure report for the May 16, 2006, Primary Election.

On September 5, 2007, the secretary notified Friends of Joan Draper (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, Kathy Schamp, 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 March 7, 2006. The mailing address provided on the Statement of Organization for the candidate was 1783 NW 143rd Ave #21, Portland, OR 97229. The statement reported Donna L. Butler as the treasurer and PO Box 1304, Silverton, OR 97381 as the address to which all committee correspondence was to be sent.
2. The committee filed a first pre-election report with the secretary on April 10, 2006.
3. On April 25, 2006, 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 May 4, 2006, to avoid penalties for failure to file a sufficient report.

4. On the day following the May 4, 2006, amendment deadline, the committee's report was still missing the following required information: the signature of the candidate or treasurer (1 item).
5. On May 15, 2006, an amendment to the committee's report was filed. The amendment provided one item of previously insufficient information.
6. On September 5, 2007, 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 received and signed for by Joan Draper on September 6, 2007.
7. On September 26, 2007, the secretary received a notarized letter from Donna L. Butler in lieu of a personal appearance at a public hearing.
8. The letter—attached as Exhibit A—was reviewed, considered, and made part of the record.
9. The secretary has record of no previous insufficient filings during the two-year period beginning September 15, 2005.

ULTIMATE FINDINGS OF FACT

Joan Draper, Candidate, and Donna L. Butler, Treasurer, failed to file a sufficient first pre-election contribution and expenditure report for the May 16, 2006, Primary Election.

CONCLUSIONS OF LAW

Candidate Joan Draper's and Treasurer Donna L. Butler's failure to file a sufficient first pre-election contribution and expenditure report for the May 16, 2006, 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 Friends of Joan Draper's first pre-election contribution and expenditure report, filed on April 10, 2006, 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 May 4, 2006. 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 *2006 Campaign Finance Manual*, which contains a penalty calculation matrix on pages 108 and 109, 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 filed by Ms. Butler alleges that "the Elections Division was not issuing penalties unless the campaign finance report was never signed", the method of enforcement has been changed and that filers were not notified of a change in enforcement procedures. She also asserts that because a signed PC 1 Summary Statement of Contributions and Expenditures was filed with amendments containing new transactions after May 4th, thus changing the totals on the PC 1, that should eliminate the need to sign the original PC 1.

The *2006 Campaign Finance Manual* is adopted by OAR 165-012-0005. On page 96 of the manual it clearly states in part under the heading Signature of the Candidate or Treasurer, that "the signature must be the original signature of the candidate or treasurer. " It also states that "if a report is filed electronically, a signed copy of the PC 1 Summary Statement must also be **submitted by the report filing deadline.**" Emphasis added. This requirement has been in place since at least 1990.

Additionally, the Penalty Matrix for Insufficient Filings on pages 108 – 109 explains what constitutes an insufficient item on a report; the signature of the treasurer is included in the list of items which the secretary may issue a penalty for failure to provide by a given deadline.

After the filing deadline for a report the filing officer has 10 business days to review the report. If there are entries listed that do not include all the required information, an exam letter identifying the insufficient items is sent to the treasurer. If all the requested information is filed by the amendment deadline provided in the exam letter, the report is considered sufficient and there is no penalty. Omitted or insufficient information submitted after the deadline but prior to the deadline for a candidate or treasurer to request a hearing with regard to a notice of civil penalty will result in a 50% per item reduction of the penalty.

In this particular case the treasurer's signature was not submitted with the original first pre-election report, nor was the signature submitted by the deadline specified in the exam letter, which was May 4, 2006, however it was received on May 15, 2006, resulting in a 50% reduction for that item.

Since this is the first violation by the candidate, the penalty is \$10.00 per omission, less 50% for every omitted item submitted after the amendment deadline but prior to the deadline for a candidate or treasurer to request a 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.

Kathy Schamp, Compliance Specialist

DATE of Service: _____

c: Donna L. Butler, Treasurer
PO Box 1304
Silverton, OR 97381