OFFICE OF THE SECRETARY OF STATE

BILL BRADBURY
SECRETARY OF STATE

ELECTIONS DIVISION

JOHN LINDBACK
DIRECTOR

255 CAPITOL ST NE, STE 501
SALEM, OREGON 97310

ELECTIONS — (503) 986-1518

In the matter of an Insufficient Contribution and Expenditure Report by Bill A. Smith for State Representative, Bill A. Smith, Candidate, Judy B. Smith, Treasurer, for the Post-Election for the November 7, 2006, General Election	)))))	Notice of Proposed Civil Penalty; Opportunity to Request Hearing

August 27, 2008 Case Number: I9585

Bill A. Smith for State Representative (005295)
Bill A. Smith, Candidate / Judy B. Smith, Treasurer
20410 Rogers Rd
Bend, OR 97701

Dear Mr. Smith:

This letter constitutes a Notice of Proposed Civil Penalty. Please read the information below carefully and contact our office if you have any questions about its contents or necessary actions on your part.

Reason for Notice:

This notice is being sent to you as a result of the insufficient filing of your post-election contribution and expenditure report (see ORS 260.068, ORS 260.083 and OAR 165-012-0005). Based upon our examination of your post-election report, we have determined that you did not provide a sufficient name of the payee for one personal expenditure by the January 4, 2007, amendment deadline.

Authority for Civil Penalty:

The Secretary of State has the authority to impose civil penalties in accordance with ORS 260.232 and has adopted the *2006 Campaign Finance Manual* by administrative rule. The penalty is imposed against the candidate and the treasurer of record at the time of the violation.

Explanation of the Penalty Matrix:

Enclosed is the penalty matrix used in calculating civil penalties for insufficient reports. The matrix reduces the maximum statutory civil penalty for all missing or insufficient items, other than failure to provide detail of expenditures made by an agent on behalf of a committee or detail of personal expenditures, to an amount per omitted item based on whether the candidate has committed any previous insufficient violations since September 15, 2005, as follows:

- First Violation: $10 per item
- Second Violation: $15 per item
- Third or Subsequent Violation: $20 per item

The penalty for failure to provide detail of expenditures made by an agent on behalf of a committee is 1% of the amount of the agent expenditures. Failure to provide detail of personal expenditures is 5% of the amount of the personal expenditures.

The penalty is further reduced if the omitted or insufficient information is submitted prior to the deadline for a candidate or treasurer to request a hearing or up to the date of the hearing, if one is requested.

Proposed Civil Penalty:

The Secretary is proposing a civil penalty of $15.00 ($15.00 X 1 item), taking into consideration that this is the candidate's second insufficient violation.

Form #	Page #	Line #	Detail of Insufficiency	Penalty
PC 3A	1	1	Sufficient name of the payee for one personal expenditure ($15.00 X 1)	$15.00

Reduction or Waiver of Penalty:

A reduction or waiver of the penalty will be considered <u>only</u> if one of the following mitigating circumstances is present:

a) The insufficiency was the direct result of clearly-established fraud, embezzlement or other criminal activity against the committee, committee treasurer or candidate, as determined in a criminal or civil action in a court of law or independently corroborated by a report of a law enforcement agency or insurer or the sworn testimony or affidavit of an accountant or bookkeeper or the person who actually engaged in the criminal activity;

b) The insufficiency was the direct result of fire, flood or other calamitous event, resulting in physical destruction of, or inaccessibility to, committee records. [Calamitous event means a phenomenon of an exceptional character, the effects of which could not have been reasonably prevented or avoided by the exercise of due care or foresight.];

c) The insufficiency was the direct result of failure of a professional delivery service to deliver documents in the time guaranteed for delivery by written receipt of the service provider (this does not include delivery by fax); or

d) The insufficiency was the direct result of an error by the elections filing officer.

It is your responsibility to show that one of the listed circumstances occurred and that it caused the insufficiency of your report.

Opportunity to Request a Hearing:

You have 20 days* from the date you received this certified letter to take one of the following actions:

Action	Result
Request a hearing to be conducted by an independent hearings officer to present evidence of mitigating circumstances (public hearing). This hearing will be held by telephone unless you request that it be a personal appearance hearing held in Salem.	A public hearing will be scheduled within 30 days and you will be notified of the date and time. You may choose to submit written **notarized** testimony or other evidence in lieu of a public hearing. *Those documents must be received not later than three business days before the day of the hearing.*
Submit a **notarized** written explanation providing evidence of mitigating circumstances (letter hearing).	No public hearing will be scheduled and an order will be issued based on the written testimony and the hearing record (which is the agency file for this committee).
Do not take any action.	Your failure to file a sufficient report will be considered a violation of Oregon election law. However, no penalty will be assessed because the appropriate penalty is under $50.

(* If the certified letter is refused or left unclaimed at the post office, the 20-day period begins on the day the post office indicates it has given first notice of a certified letter.)

If you have questions about any part of this notice, please contact me at 503-986-1518.

Sincerely,

Stacey Jackson
Compliance Specialist

enclosures
certified mail
return receipt requested
c: uncertified

Judy B. Smith, Treasurer
20410 Rogers Rd
Bend, OR 97701