

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 a Late Contribution and Expenditure Report ) Final Order  
by the Florence Area Democratic Club, Eileen Gray, )  
Treasurer, for the Second Pre-Election for the ) Case No. L7603  
February 3, 2004, Special Election )

August 4, 2004

Florence Area Democratic Club (003791)  
Eileen Gray, Treasurer  
1913 West Park Dr  
Florence, OR 97439-9735

Dear Ms. Gray:

This is a Final Order issued by the Secretary of State (secretary) for your failure to file a timely second pre-election contribution and expenditure report for the February 3, 2004, Special Election.

On June 10, 2004, the secretary notified the Florence Area Democratic Club (committee), pursuant to ORS 260.232(2), that it had failed to file the 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 secretary received the second pre-election report on February 10, 2004, which is 13 business days after the date on which the report was due. The committee was required to file the report with the secretary on January 22, 2004.
2. The committee reported total contributions of \$240.00 and total expenditures of \$349.90 during the accounting period for the report.

3. The secretary subsequently contacted the treasurer to inform her that an amended Statement of Organization (SEL 221) designating activity at the Special Election was required to be filed. The committee's SEL 221, applicable during the reporting period, was filed with the secretary on February 20, 2004. The statement reported Eileen Gray as the treasurer and 1913 West Park Dr, Florence, OR 97439-9735 as the address to which all committee correspondence was to be sent.
4. On June 10, 2004, the secretary sent the committee a Notice of Proposed Civil Penalty. The notice was sent by both certified and first class mail to the treasurer at the above-referenced address. The notice proposed a civil penalty of \$45.50 and allowed the committee 20 days to request a hearing. The notice sent by certified mail was received and signed for by Eileen Gray on June 12, 2004.
5. On June 14, 2004, the secretary received a notarized letter from Eileen Gray in lieu of a public hearing.
6. The letter—attached as Exhibit A—was reviewed, considered, and made part of the record.
7. The secretary has record of no previous late filings during the two-year period beginning September 15, 2003.

#### ULTIMATE FINDINGS OF FACT

Eileen Gray, Treasurer, failed to file a timely second pre-election contribution and expenditure report for the February 3, 2004, Special Election.

#### CONCLUSIONS OF LAW

Treasurer Eileen Gray's failure to file a timely second pre-election contribution and expenditure report for the February 3, 2004, Special Election violated ORS 260.063.

#### OPINION

The Florence Area Democratic Club's second pre-election contribution and expenditure report, filed on February 10, 2004, was late. It was due by 5:00 p.m., January 22, 2004.

By statute, 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 101 and 102, 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 report by the deadline. The testimony explains that Ms. Gray had eye surgery on December 30, 2003, thereby missing the January 3, 2004, meeting of the democratic club. Another member of the club, Mr. Patterson, arranged for the printing of ads in the local newspaper, supporting Measure 30.

These expenditures were made during the second pre-election accounting period. Mr. Patterson did not inform Ms. Gray that in her absence the club decided to make expenditures to support Measure 30. She also states that she did not receive the schedule of accounting periods and filing deadlines until after Feb. 7, 2004. (Notices were mailed on December 5, 2003, informing all state PACs that if a PAC was going to solicit contributions or make expenditures to support or oppose Measure 30 that an amended SEL 221 and contribution and expenditure reports were required to be filed for the election.) By this time, it was too late to file a certificate, so Ms. Gray filed a detailed second pre-election report, which was 13 business days late.

Although this is an unfortunate situation, it is not a mitigating circumstance in which the secretary would reduce or waive the civil penalty. Ms. Gray's surgery was planned well in advance to make arrangements for the filing of reports by another committee member had she known they were going to be active at the election; however, she was not informed and no one else took on the responsibility in her absence.

Under the penalty matrix, the maximum statutory penalty of \$10,000 is reduced to 1% of the total contributions or total expenditures—whichever is greater—for each business day the report was late as this is the first late violation by the treasurer.

The calculated penalty for the late report is \$45.50 ( $\$349.90 \times 1\% \times 13$  days). Because the appropriate penalty is under \$50, no penalty will be assessed.

#### ORDER

It is ordered that no penalty be assessed.

#### 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: \_\_\_\_\_