

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 Citizen Action by Public Employees, Gina Santacroce, )  
Treasurer, for the First Pre-Election for the May 18, 2004, ) Case No. L7607  
Primary Election )

August 4, 2004

Citizen Action by Public Employees (000033)  
Gina Santacroce, Treasurer  
PO Box 12159  
Salem, OR 97309

Dear Ms. Santacroce:

This is a Final Order issued by the Secretary of State (secretary) for your failure to file a timely first pre-election contribution and expenditure report for the May 18, 2004, Primary Election.

On June 10, 2004, the secretary notified Citizen Action by Public Employees (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 committee's Statement of Organization (SEL 221), applicable during the reporting period, was filed with the secretary on December 22, 2003. The statement reported Gina Santacroce as the treasurer and PO Box 12159, Salem, OR 97309 as the address to which all committee correspondence was to be sent.
2. The committee was required to file a first pre-election report with the secretary on April 12, 2004.
3. The secretary sent the committee a notice that it had failed to file a timely report on April 13, 2004. The notice was sent by first class mail to the treasurer at the above-referenced address.

4. The secretary received the report on April 14, 2004, which is two business days after the date on which the report was due.
5. The committee reported total contributions of \$262,163.60 and total expenditures of \$90,771.17 during the accounting period for the report.
6. 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 \$5,243.28 and allowed the committee 20 days to request a hearing. The notice sent by certified mail was received and signed for by Doug Hilfiker on June 14, 2004.
7. On June 29, 2004, the secretary received a notarized letter from Gina Santacroce in lieu of 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 late filings during the two-year period beginning September 15, 2003.

#### ULTIMATE FINDINGS OF FACT

Gina Santacroce, Treasurer, failed to file a timely first pre-election contribution and expenditure report for the May 18, 2004, Primary Election.

#### CONCLUSIONS OF LAW

Treasurer Gina Santacroce's failure to file a timely first pre-election contribution and expenditure report for the May 18, 2004, Primary Election violated ORS 260.063.

#### OPINION

Citizen Action by Public Employees's first pre-election contribution and expenditure report, filed on April 14, 2004, was late. It was due by 5:00 p.m., April 12, 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 technical difficulties with the software for filing electronically and with the software vendor responsible for the computer program used for preparation and submission of the report resulted in the delay of the filing of the report. The reports were completed on the filing deadline day; however, they were not correct, so the software vendor was contacted. The vendor was unable to provide the necessary support because he lost power

on his internet equipment that day and could not troubleshoot and correct the problems until after the filing deadline.

Ms. Santacroce states her opinion that this meets the mitigating circumstance of a calamitous event, as this could not have been reasonably prevented or avoided. While computer/technical problems are unfortunate, the secretary does not concur that this meets the definition of "calamitous event." A calamitous event is a phenomenon of exceptional character, such as fire or flood, which results in the physical destruction of committee records. In this case, the records were not destroyed, but were temporarily inaccessible to the software vendor during a power outage. While it is understandable that the committee could not have foreseen technical problems on the filing deadline day, it is unfortunate that the committee waited on the final day to file the report as the statute provides an eleven day period for filing a first pre-election report. The PC 1 Summary Statement of Contributions and Expenditures (paper copy) was filed timely as pointed out by Ms. Santacroce; however, Oregon election law prohibits the Elections Division from accepting a report required to be filed electronically in any form other than an electronic format. The paper filing of the PC 1 fulfilled the requirement under OAR 165-012-0230(11) to submit a PC 1 form containing the treasurer's signature.

In conclusion, the hearings officer finds that this is not a mitigating circumstance in which the secretary can reduce or waive the civil penalty.

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.

#### ORDER

It is ordered that a penalty of \$5,243.28 ( $\$262,163.60 \times 1\% \times 2$  days) is assessed. If your payment is not received within 60 days from the date of service noted below, this Order will be sent to our accounting division for collection and may be subsequently sent to the Oregon Department of Revenue.

Please refer to case number L7607 when mailing your payment.

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

