

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 )  
by Oregon Council of NECA Chapters, R. Terry Hatch, ) Final Order  
Treasurer, for the Second Pre-Election for the May 18, 2004, )  
Primary Election ) Case No. L7691  
)

August 4, 2004

Oregon Council of NECA Chapters (000135)  
R. Terry Hatch, Treasurer  
1040 Gateway Loop, Ste A  
Springfield, OR 97477

Dear Mr. Hatch:

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 May 18, 2004, Primary Election.

On June 10, 2004, the secretary notified Oregon Council of NECA Chapters (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 January 31, 2002. The statement reported R. Terry Hatch as the treasurer and 1040 Gateway Loop, Ste A, Springfield, OR 97477 as the address to which all committee correspondence was to be sent.
2. The committee was required to file a second pre-election report with the secretary on May 6, 2004.
3. The secretary received the report on May 7, 2004, which is one business day after the date on which the report was due.

4. The committee reported total contributions of \$3,746.41 and total expenditures of \$30,000.00 during the accounting period for the report.
5. 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 \$300.00 and allowed the committee 20 days to request a hearing. The notice sent by certified mail was received and signed for by S. Kanig on June 14, 2004.
6. On June 25, 2004, the secretary received a notarized letter from R. Terry Hatch in lieu of a public hearing.
7. The letter—attached as Exhibit A and B—was reviewed, considered, and made part of the record.
8. The secretary has record of no previous late filings during the two-year period beginning September 15, 2003.

#### ULTIMATE FINDINGS OF FACT

R. Terry Hatch, Treasurer, failed to file a timely second pre-election contribution and expenditure report for the May 18, 2004, Primary Election.

#### CONCLUSIONS OF LAW

Treasurer R. Terry Hatch's failure to file a timely second pre-election contribution and expenditure report for the May 18, 2004, Primary Election violated ORS 260.063.

#### OPINION

The Oregon Council of NECA Chapters's second pre-election contribution and expenditure report, filed on May 7, 2004, was late. It was due by 5:00 p.m., May 6, 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. However, the explanation provided in the notarized testimony does adequately mitigate the failure to file a report by the deadline. The testimony filed by Mr. Hatch explains that the report was mailed on May 5, 2004 via Next Day Express Mail, US Postal Service. There was a guaranteed delivery date by 3:00 pm on May 6, 2004, however the report was not delivered until May 7, 2004.

The secretary may consider reducing in whole or in part, the civil penalty if one or more of the adopted mitigating circumstances caused the late filing. One of the mitigating circumstances adopted by the secretary is the direct result of failure of a professional delivery service to deliver documents in the time guaranteed by written receipt of the service provider. Mr. Hatch also provided a copy of the Postal Service's written guarantee.

A violation will only be waived if the late filing is the direct result of an error by the filing officer. Therefore this is the first late violation by the treasurer, because there was no error by the filing officer.

#### ORDER

It is ordered that no penalty be assessed because of the failure to deliver the report within the time guaranteed by the professional delivery service. However, your failure to file a timely report will be considered a violation of Oregon election law.

#### 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.

---

Jennifer Hertel, Compliance Specialist

DATE of Service: \_\_\_\_\_