

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 Default
by Friends of Brad Berry for District Attorney, Brad Berry,)
Candidate, R. Leroy Benham, Treasurer, for the Second) Case No. L7711
Pre-Election for the May 18, 2004, Primary Election)

August 4, 2004

Friends of Brad Berry for District Attorney (002210)
Brad Berry, Candidate / R. Leroy Benham, Treasurer
PO Box One
McMinnville, OR 97128

Dear Mr. Berry:

This is a Final Order by Default 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 Friends of Brad Berry for District Attorney (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; however, no request for a hearing was received by the secretary within the time permitted in the notice. Accordingly, after consideration of the records and files of the secretary regarding this matter, the secretary 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 September 22, 1999. The statement reported R. Leroy Benham as the treasurer and PO Box One, McMinnville, OR 97128 as the mailing address for both candidate and committee correspondence.
2. The committee was required to file a second pre-election report with the secretary on May 6, 2004.
3. The secretary sent the committee a notice that it had failed to file a timely report on May 7, 2004. The notice was sent by first class mail to the candidate and treasurer at the above-referenced address.

4. On May 21, 2004, the secretary sent a letter to the committee informing them that their report had still not been received.
5. The secretary received the report on June 1, 2004, which is 17 business days after the date on which the report was due.
6. The committee reported no contributions or expenditures during the accounting period for the report.
7. 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 candidate and was sent by first class mail to the treasurer at the above-referenced address. The notice proposed no civil penalty and allowed the committee 20 days to request a hearing. The notice sent by certified mail was received and signed for by Erma Vasquez on June 21, 2004.
8. The committee did not request a public hearing or submit notarized testimony in lieu of a public hearing.
9. The secretary has record of no previous late filings during the two-year period beginning September 15, 2003.

ULTIMATE FINDINGS OF FACT

Brad Berry, Candidate, and R. Leroy Benham, Treasurer, failed to file a timely second pre-election contribution and expenditure report for the May 18, 2004, Primary Election.

CONCLUSIONS OF LAW

Candidate Brad Berry's and Treasurer R. Leroy Benham's failure to file a timely second pre-election contribution and expenditure report for the May 18, 2004, Primary Election violated ORS 260.058.

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.

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 candidate.

Because the committee reported no activity during the accounting period for the late report, no civil 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.

Jennifer Hertel, Compliance Specialist

DATE of Service: _____

c: R. Leroy Benham, Treasurer
PO Box One
McMinnville, OR 97128