OFFICE OF THE SECRETARY OF STATE

BILL BRADBURY
SECRETARY OF STATE

ELECTIONS DIVISION

JOHN LINDBACK
DIRECTOR

141 STATE CAPITOL
SALEM, OREGON 97310-0722

ELECTIONS — (503) 986-1518

In the matter of a Late Contribution and Expenditure Report by Friends of Brad Berry for District Attorney, Brad Berry, Candidate, R. Leroy Benham, Treasurer, for the Second Pre-Election for the May 18, 2004, Primary Election	))))	Notice of Proposed Civil Penalty; Opportunity to Request Hearing

June 10, 2004 Case Number: L7711

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 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 late filing of your second pre-election contribution and expenditure report (see ORS 260.058). This report was due in the office of the Secretary of State, Elections Division, not later than 5:00 pm, May 6, 2004. Your report was filed on June 1, 2004, making it 17 business days late.

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 *2004 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 penalties for late reports. This matrix reduces the maximum statutory civil penalty to an amount not to exceed a percentage of the total contributions or total expenditures—whichever is greater—for each business day the report was late. The percentage is based upon whether the candidate has committed any previous late violations since September 15, 2003, as follows:

- First Violation: One percent
- Second Violation: Three percent
- Third or Subsequent Violation: Five percent

Additionally, the matrix sets minimum penalties based on the number of previous late violations and maximum penalties based on the type of report and the activity level of the committee during the accounting period of the late report.

Proposed Civil Penalty:

The Secretary is proposing no civil penalty because the committee reported no activity during the accounting period for the late report.

Waiver of Violation:

The violation will be waived only if the lateness of the report was a direct result of an error by the elections filing officer. It is your responsibility to show that an error by the elections filing officer occurred and that it caused the late filing 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 an error by the elections filing officer (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 an error by the elections filing officer (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 timely report will be considered a violation of Oregon election law. However, no penalty will be assessed.

(* 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 Nancy Ferry at 503-986-1518.

Sincerely,

Jennifer Hertel
Compliance Specialist

enclosures
certified mail
return receipt requested
c: uncertified

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