

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) Final Order by Default
Report by Friends of Jim Gilbert, Jim Gilbert, Candidate,)
Victoria A. Wertgen, Treasurer, for the Second Pre-Election) Case No. L7760
for the May 18, 2004, Primary Election)

August 4, 2004

Friends of Jim Gilbert (004909)
Jim Gilbert, Candidate / Victoria A. Wertgen, Treasurer
28696 S Cramer RD
Molalla, OR 97038

Dear Mr. Gilbert:

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 the Friends of Jim Gilbert (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 March 16, 2004. The statement reported Victoria A. Wertgen as the treasurer and 28696 S Cramer RD, Molalla, OR 97038 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. The secretary received the report on May 10, 2004, which is two business days after the date on which the report was due.
5. The committee reported total contributions of \$1,795.00 and total expenditures of \$300.00 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 candidate and was sent by first class mail to the treasurer at the above-referenced address. The notice proposed a civil penalty of \$35.90 and allowed the committee 20 days to request a hearing. The notice sent by certified mail was delivered to the committee on June 14, 2004, as confirmed by the Postal Service's tracking service.
7. The committee did not request a public hearing or submit notarized testimony in lieu of a public hearing.
8. The secretary has record of no previous late filings during the two-year period beginning September 15, 2003.

ULTIMATE FINDINGS OF FACT

Jim Gilbert, Candidate, and Victoria A. Wertgen, Treasurer, failed to file a timely second pre-election contribution and expenditure report for the May 18, 2004, Primary Election.

CONCLUSIONS OF LAW

Candidate Jim Gilbert's and Treasurer Victoria A. Wertgen'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.

The calculated penalty for the late report is \$35.90 ($\$1,795.00 \times 1\% \times 2$ 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.

Jennifer Hertel, Compliance Specialist

DATE of Service: _____

c: Victoria A. Wertgen, Treasurer
28696 S Cramer RD
Molalla, OR 97038