

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 Committee to Elect Bernice Barnett, Bernice Barnett,) Final Order
Candidate, Eileen Wilkinson, Treasurer, for the Post-Election)
for the May 18, 2004, Primary Election) Case No. L7798

January 13, 2005

Committee to Elect Bernice Barnett (003491)
Bernice Barnett, Candidate / Eileen Wilkinson, Treasurer
PO Box 441
Depoe Bay, OR 97341-0441

Dear Ms. Barnett:

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

On November 22, 2004, the secretary notified Committee to Elect Bernice Barnett (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 220), applicable during the reporting period, was filed with the secretary on December 10, 2003. The statement reported Eileen Wilkinson as the treasurer and PO Box 441, Depoe Bay, OR 97341-0441 as the mailing address for both candidate and committee correspondence.
2. The committee was required to file a post-election report with the secretary on June 17, 2004.
3. The secretary received the report on June 18, 2004, which is one business day after the date on which the report was due.

4. The committee reported total contributions of \$319.00 and total expenditures of \$808.26 during the accounting period for the report.
5. On November 22, 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 \$50.00 and allowed the committee 20 days to request a hearing. The notice sent by certified mail was received and signed for by Melinda Herford on December 1, 2004.
6. On December 6, 2004, the secretary received a notarized letter from Eileen K. Wilkinson in lieu of a public hearing.
7. The letter—attached as Exhibit A—was reviewed, considered, and made part of the record.
8. The secretary has record of one previous late filing during the two-year period beginning September 15, 2003.

ULTIMATE FINDINGS OF FACT

Bernice Barnett, Candidate, and Eileen Wilkinson, Treasurer, failed to file a timely post-election contribution and expenditure report for the May 18, 2004, Primary Election.

CONCLUSIONS OF LAW

Candidate Bernice Barnett's and Treasurer Eileen Wilkinson's failure to file a timely post-election contribution and expenditure report for the May 18, 2004, Primary Election violated ORS 260.058.

OPINION

The Committee to Elect Bernice Barnett's post-election contribution and expenditure report, filed on June 18, 2004, was late. It was due by 5:00 p.m., June 17, 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 adequately mitigates the failure to file a report by the deadline. Ms. Wilkinson explains that she personally mailed the post-election report via express-overnight delivery at the U. S. Post Office in Lincoln City, OR, on June 16, 2004. Along with her notarized testimony, Ms. Wilkinson included the supporting documents showing purchase of

the overnight service and proof of delivery in Salem. As guaranteed, the report was received and signed for by Michelle Nieuwendorp at the Department of Administrative Services in Salem on June 17, 2004. The report, however, was not delivered to the Elections Division until the next day, June 18, 2004, although it was addressed correctly to Secretary of State, Elections Division, 141 State Capitol, Salem, OR 97310-0722. Ms. Wilkinson requests that the penalties be waived and the case be dismissed due to the fact that the report was delivered and signed for in Salem by the deadline.

A reduction or waiver of the penalty will be considered only if one of five clearly defined mitigating circumstances is present. These mitigating circumstances are defined on page 97 of the *2004 Campaign Finance Manual* and in the proposed penalty notice. The burden rests with the party requesting the waiver of the proposed civil penalty to demonstrate that one of the listed circumstances applies and caused the lateness of the report. One of these circumstances is failure of a professional delivery service, as stated in the manual: "The lateness or insufficiency of a report is the direct result of failure of a professional delivery service to deliver documents in the time guaranteed for delivery by written receipt of the service provider ..."

In conclusion, the hearings officer finds that failure of a professional delivery service is clearly established and is a valid mitigating circumstance justifying waiver of the penalty assessed against Committee to Elect Bernice Barnett.

ORDER

It is ordered that no penalty be assessed because the mitigating circumstance of failure of a professional delivery service is established. The case is now considered closed.

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: Eileen Wilkinson, Treasurer
PO Box 441
Depoe Bay, OR 97341-0441