

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 Phil Yount for State Representative, Philip R. Yount, ) Final Order  
Candidate, Marion Pettis, Treasurer, for the Post-Election for )  
the May 18, 2004, Primary Election ) Case No. L7810  
)

January 13, 2004

Phil Yount for State Representative (004829)  
Philip R. Yount, Candidate / Marion Pettis, Treasurer  
11222 SW Cottonwood Ln  
Tigard, OR 97223-4226

Dear Mr. Yount:

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 Phil Yount for State Representative (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 February 13, 2004. The mailing address provided on the Statement of Organization for the candidate was 11222 SW Cottonwood Ln, Tigard, OR 97223-4226. The statement reported Marion Pettis as the treasurer and 12700 SW North Dakota St, Ste 180 PMB 173, Tigard, OR 97223 as the address to which all committee correspondence was to be sent.
2. The committee was required to file a post-election report with the secretary on June 17, 2004. This report was required to be filed electronically. A paper copy of the report was provided to the secretary on June 18, 2004.

3. The secretary sent the committee a notice that it had failed to file a timely report on June 18, 2004. The notice was sent by first class mail to the candidate and treasurer at the above-referenced addresses.
4. On July 2, 2004, the secretary sent a letter to the committee informing them that their report had still not been received.
5. The secretary received the electronic filing of the report on July 7, 2004, which is 13 business days after the date on which the report was due.
6. The committee reported total contributions of \$1,370.00 and total expenditures of \$6,403.38 during the accounting period for the report.
7. 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 addresses. The notice proposed a civil penalty of \$256.12 and allowed the committee 20 days to request a hearing. The notice sent by certified mail was received and signed for by Philip R. Yount on November 23, 2004.
8. On December 3, 2004, the secretary received a notarized letter from Philip R. Yount and Marion Pettis in lieu of a public hearing.
9. The letter—attached as Exhibit A—was reviewed, considered, and made part of the record.
10. The secretary has record of no previous late filings during the two-year period beginning September 15, 2003.

#### ULTIMATE FINDINGS OF FACT

Philip R. Yount, Candidate, and Marion Pettis, Treasurer, failed to file a timely post-election contribution and expenditure report for the May 18, 2004, Primary Election.

#### CONCLUSIONS OF LAW

Candidate Philip R. Yount's and Treasurer Marion Pettis's failure to file a timely post-election contribution and expenditure report for the May 18, 2004, Primary Election violated ORS 260.058 and ORS 260.159.

#### OPINION

Phil Yount for State Representative's post-election contribution and expenditure report, filed on July 7, 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 does not adequately mitigate the failure to file a report by the deadline.

The testimony explains that the committee submitted a paper filing for the first pre-election report. During the second pre-election accounting period, the committee received electronic filing reporting software from Majority 2004, and used the software to electronically file its second pre-election report.

Ms. Pettis encountered difficulties in emailing the second pre-election report, therefore she decided to fax the post-election report rather than "email" it. After receiving a phone call from the Elections Division, in which the committee was notified that the report must be filed electronically, Ms. Pettis called a colleague to email the required report. The colleague believes that she emailed the report the very day Ms. Pettis contacted her.

After receiving a second notice from the secretary, notifying the committee that the report still had not been received, Ms. Pettis contacted the Elections Division by phone to confirm that the report had not been received. The testimony further states that Ms. Pettis emailed the report several times before the report successfully posted to the Elections Division database.

The testimony also states that the committee was not required to file electronically, because the committee never exceeded the \$50,000 threshold of total contributions and expenditures, nor did the committee know that once it started filing electronically, that it must continue to file the contribution and expenditure reports electronically. Lastly, the testimony also states that the committee never intended to file the report late.

The information regarding the electronic filing requirement is clearly stated in ORS 260.159(3) and is disseminated in not only the *2004 Campaign Finance Manual* (see OAR 165-012-0230(3)), but also on the Elections Division website within the Campaign Finance page, Electronic Filing of Campaign Finance Reports. Further, it is the responsibility of the candidate and treasurer to know the regulations regarding the reporting of contributions and expenditures, including the electronic filing requirement and ramifications for failure to file electronically. While it is unfortunate that the committee did not know that once it started filing electronically, that it must continue to file all reports electronically, lack of knowledge is not one of the five adopted mitigating circumstances considered in reducing or waiving the penalty. See page 97 and 98 of the *2004 Campaign Finance Manual*.

Under the penalty matrix, the maximum statutory penalty of \$10,000 is reduced to one-quarter of 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 and a paper copy of the report was provided one business day after the deadline.

#### ORDER

It is ordered that a penalty of \$256.12 ( $\$6,403.38 \times 1\% \times 1\text{day}$ ) + ( $\$6,403.38 \times 1\% \times 12\text{days} \times 25\%$ ) is assessed. If your payment is not received within 60 days from the date of service noted below, this Order will be sent to our accounting division for collection and may be subsequently sent to the Oregon Department of Revenue.

Please refer to case number L7810 when mailing your payment.

### 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.

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Jennifer Hertel, Compliance Specialist

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

c: Marion Pettis, Treasurer  
12700 SW North Dakota St  
Ste 180 PMB 173  
Tigard, OR 97223