

BILL BRADBURY
SECRETARY OF STATE



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 Bev Ficek, Bev Ficek, Candidate, Jim Swanson,)
Treasurer, for the First Supplement to the Second) Case No. L7833
Pre-Election for the May 18, 2004, Primary Election)

November 15, 2004

Friends of Bev Ficek (004915)
Bev Ficek, Candidate / Jim Swanson, Treasurer
PO Box 231
Junction City, OR 97448

Dear Ms. Ficek:

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

On August 19, 2004, the secretary notified Friends of Bev Ficek (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 18, 2004. The statement reported Jim Swanson as the treasurer and PO Box 231, Junction City, OR 97448 as the mailing address for both candidate and committee correspondence.
2. The committee was required to file a first supplement to the second pre-election report with the secretary on May 10, 2004, because it received a contribution exceeding \$500 from a single source between May 3 and May 9, 2004.

3. The committee reported the contribution required to be on the first supplement to the second pre-election report (\$1,000 from Merkley Campaign Committee on May 4, 2004) on its post-election report filed on June 14, 2004, which is 24 business days after the date on which the first supplement to the second pre-election report was due.
4. On August 19, 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 \$100.00 and allowed the committee 20 days to request a hearing. The notice sent by certified mail was signed for by B. A. Ficek.
5. The committee did not request a public hearing or submit notarized testimony in lieu of a public hearing.
6. The secretary has record of no previous late filings during the two-year period beginning September 15, 2003.

ULTIMATE FINDINGS OF FACT

Bev Ficek, Candidate, and Jim Swanson, Treasurer, failed to file a timely first supplement to the second pre-election contribution and expenditure report for the May 18, 2004, Primary Election.

CONCLUSIONS OF LAW

Candidate Bev Ficek's and Treasurer Jim Swanson's failure to file a timely first supplement to the 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.

Although the calculated penalty for the late report is \$240.00 ($\$1,000.00 \times 1\% \times 24$ days), the penalty matrix sets a maximum penalty of \$100.00 when the total contributions or total expenditures—whichever is greater—is between \$0 and \$2,000.

ORDER

Payment of the proposed civil penalty of \$100.00 was received in the office of the Secretary of State on September 1, 2004. This Order will serve as your receipt and this matter 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: Jim Swanson, Treasurer
PO Box 231
Junction City, OR 97448