

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) Final Order
by the Klamath County Republican Central Committee,)
James Du Bois, Treasurer, for the Second Supplement to the) Case No. L7839
Second Pre-Election for the May 18, 2004, Primary Election)

November 15, 2004

Klamath County Republican Central Committee (000321)
James Du Bois, Treasurer
5193 Round Lake RD
Klamath Falls, OR 97601

Dear Mr. Du Bois:

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

On August 19, 2004, the secretary notified the Klamath County Republican Central Committee (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 221), applicable during the reporting period, was filed with the secretary on May 8, 2003. The statement reported James Du Bois as the treasurer and 5193 Round Lake RD, Klamath Falls, OR 97601 as the address to which all committee correspondence was to be sent.
2. The committee was required to file a second supplement to the second pre-election report with the secretary on May 14, 2004, because it made an expenditure exceeding \$1,000 to a single payee between May 10 and May 13, 2004.

3. The committee reported the expenditure required to be on the second supplement to the second pre-election report (\$3,620.00 to Reames Country Club on May 13, 2004) on its post-election report filed on June 16, 2004, which is 22 business days after the second 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 treasurer at the above-referenced address. The notice proposed a civil penalty of \$796.40 and allowed the committee 20 days to request a hearing. The notice sent by certified mail was received and signed for by James B. Du Bois on August 27, 2004.
5. On September 15, 2004, the secretary received a notarized letter from James Du Bois in lieu of a public hearing.
6. The letter—attached as Exhibit A—was reviewed, considered, and made part of the record.
7. The secretary has record of no previous late filings during the two-year period beginning September 15, 2003.

ULTIMATE FINDINGS OF FACT

James Du Bois, Treasurer, failed to file a timely second supplement to the second pre-election contribution and expenditure report for the May 18, 2004, Primary Election.

CONCLUSIONS OF LAW

Treasurer James Du Bois's failure to file a timely second supplement to the second pre-election contribution and expenditure report for the May 18, 2004, Primary Election violated ORS 260.063.

OPINION

The Klamath County Republican Central Committee's second supplement to the second pre-election contribution and expenditure report, filed on June 16, 2004, was late. It was due by 5:00 p.m., May 14, 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.

In his notarized testimony, Mr. Du Bois states that he had “absolutely no idea” of the supplement filing requirements, that he would never knowingly break the rules and that he made an honest mistake. For these reasons, he asks that the penalty be waived. It is unfortunate that the treasurer did not know that a second supplement to the second pre-election report was required to be filed, but it is the treasurer’s responsibility to be aware of all filing deadlines. Additionally, while the treasurer did not intentionally fail to file the report, the statute and penalty matrix do not separate deliberate from non-deliberate errors. None of the issues raised are mitigating circumstances in which the secretary would consider in reducing or waiving a penalty. However, flexible payment arrangements can be made by calling this office within 60 days of this letter.

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 treasurer.

ORDER

It is ordered that a penalty of \$796.40 ($\$3,620.00 \times 1\% \times 22$ days) 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 L7839 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.

Jennifer Hertel, Compliance Specialist

DATE of Service: _____