

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 Malmay for State Representative (Carol), Carol Malmay, )  
Candidate/Treasurer, for the First Supplement to the Second ) Case No. L7841  
Pre-Election for the May 18, 2004, Primary Election )

November 15, 2004

Malmay for State Representative (Carol) (004899)  
Carol Malmay, Candidate/Treasurer  
PO Box 953  
Canyonville, OR 97417

Dear Ms. Malmay:

This is a Final Order 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 Malmay for State Representative (Carol) (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 March 15, 2004. The statement reported Carol Malmay, the candidate, as the treasurer and PO Box 953, Canyonville, OR 97417 as the address to which all committee correspondence was to be sent.
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 made an expenditure exceeding \$1,000 to a single payee between May 3 and May 9, 2004.

3. The committee reported the expenditures required to be on the first supplement to the second pre-election report (\$1,112.00 to EDMS on May 4, 2004) on its post-election report filed on June 16, 2004, which is 26 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/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 received and signed for by Carol Malmay on August 20, 2004.
5. On September 7, 2004, the secretary received a notarized letter from Carol Malmay 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

Carol Malmay, Candidate/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/Treasurer Carol Malmay'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.

#### OPINION

The Malmay for State Representative (Carol)'s first 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 10, 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 her notarized testimony, Ms. Malmay states that Richard Mitchell, who assisted in preparing campaign finance reports, had possession of the committee's Finance book, but either didn't know of the reporting requirement or didn't notice there was an expenditure over \$1,000. She further states the late report was an oversight and not intentional. While it is unfortunate that the candidate and person assisting in the preparation of the reports did not realize that a first supplement to the second pre-election report was required, it is the responsibility of the candidate to be aware of all filing deadlines. Additionally, while the candidate did not intentionally fail to file the report by the deadline, the statute and penalty matrix do not separate deliberate from non-deliberate errors. Neither of the issues raised are mitigating circumstances in which the secretary would consider in reducing or waiving the penalty.

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 \$289.12 ( $\$1,112.00 \times 1\% \times 26$  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

It is ordered that a penalty of \$100.00 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 L7841 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: \_\_\_\_\_