

BILL BRADBURY
SECRETARY OF STATE



ELECTIONS DIVISION
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SALEM, OREGON 97310-0722
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BEFORE THE SECRETARY OF STATE
OF THE
STATE OF OREGON

In the matter of a Late Contribution and Expenditure Report)
by Owner Operators of Oregon Political Action Committee,) Final Order by Default
Alex Schwindt, Treasurer, for the Second Supplement to the)
Second Pre-Election for the May 18, 2004, Primary Election) Case No. L7847
)

November 15, 2004

Owner Operators of Oregon Political Action Committee (004507)
Alex Schwindt, Treasurer
PO Box 844
Salem, OR 97308

Dear Mr. Schwindt:

This is a Final Order by Default 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 Owner Operators of Oregon Political Action 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; 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 221), applicable during the reporting period, was filed with the secretary on April 9, 2004. The statement reported Alex Schwindt as the treasurer and PO Box 844, Salem, OR 97308 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 received a contribution exceeding \$500 from a single source between May 10 and May 13, 2004.

3. The committee reported the contribution required to be on the second supplement to the second pre-election report (\$759.69 from M-D Sanders Restaurants on May 10, 2004) on its post-election report file 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 \$100.00 and allowed the committee 20 days to request a hearing. The notice sent by certified mail was received and signed for by Betty Perry on August 23, 2004.
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

Alex Schwindt, 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 Alex Schwindt'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.

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 treasurer.

Although the calculated penalty for the late report is \$167.13 ($\$759.69 \times 1\% \times 22$ 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 August 26, 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: _____