

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 Al Pearn for Senate, Al Pearn, Candidate/Treasurer, for) Final Order by Default
the Second Supplement to the Second Pre-Election for the)
May 18, 2004, Primary Election) Case No. L7849
)

November 15, 2004

Al Pearn for Senate (004862)
Al Pearn, Candidate/Treasurer
6561 Mercer Lake Rd
Florence, OR 97439

Dear Mr. Pearn:

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 Al Pearn for Senate (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 April 29, 2004. The statement reported Al Pearn, the candidate, as the treasurer and 6561 Mercer Lake Rd, Florence, OR 97439 as the address to which all candidate correspondence was to be sent and PO Box 3082, Salem, OR 97302-0082 as the address for all committee correspondence.
2. The committee submitted a timely second supplement to the second pre-election report on May 14, 2004. However, additional expenditures (\$714.64 and \$500.00 for an aggregate total of \$1,214.64 to Wells C&E Services on May 10, 2004) should have been included on the report.

3. The committee first reported the expenditures required to be included on the second supplement to the second pre-election report on its post-election report filed on June 16, 2004, making this portion of the report 23 days late.
4. The committee reported no contributions and total expenditures of \$1,214.64 during the accounting period for the report.
5. 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 Audrey Pearn on August 20, 2004.
6. The committee submit notarized testimony on September 10, 2004. The 20-day period during which a hearing can be requested begins on the day a recipient signs for the certified mail notice of the proposed penalty. The deadline to submit notarized testimony in this particular case was September 9, 2004. Even if the testimony had been received timely, the explanation provided does not adequately mitigate the failure to file the report by the statutory deadline.
7. The secretary has record of one previous late filing during the two-year period beginning September 15, 2003.

ULTIMATE FINDINGS OF FACT

Al Pearn, Candidate/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

Candidate/Treasurer Al Pearn'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 260.058.

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 3% of the total contributions or total expenditures—whichever is greater—for each business day the report was late as this is the second late violation by the candidate.

Although the calculated penalty for the late report is \$801.68 ($\$1,214.64 \times 3\% \times 22$ 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 September 17, 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: _____