

BILL BRADBURY  
SECRETARY OF STATE



ELECTIONS DIVISION  
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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 the Committee to Elect Ben Westlund, Ben Westlund, ) Final Order by Default  
Candidate/Treasurer, for the Second Supplement to the )  
Second Pre-Election for the May 18, 2004, Primary Election ) Case No. L7863  
)

November 15, 2004

Committee to Elect Ben Westlund (002392)  
Ben Westlund, Candidate/Treasurer  
20590 Arrowhead Dr  
Bend, OR 97701

Dear Senator Westlund:

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 the Committee to Elect Ben Westlund (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 September 16, 2003. The statement reported Ben Westlund, the candidate, as the treasurer and 20590 Arrowhead Dr, Bend, OR 97701 as the address to which all candidate correspondence was to be sent.
2. The committee submitted a timely second supplement to the second pre-election report on May 14, 2004. However, additional expenditures (\$5,722.40 and \$966.00 to Ben Westlund on May 12, 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 15, 2004, making this portion of the report 25 business days late.

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 \$1,000.00 and allowed the committee 20 days to request a hearing. The notice sent by certified mail was received and signed for by Ben Westlund 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 one previous late filing during the two-year period beginning September 15, 2003.

#### ULTIMATE FINDINGS OF FACT

Ben Westlund, 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 Ben Westlund'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 \$2,809.12 ( $\$6,688.40 \times 3\% \times 25$  days), the penalty matrix sets a maximum penalty of \$1,000.00 when the total contributions or total expenditures—whichever is greater—is between \$2,000.01 and \$10,000.

#### ORDER

Payment of the proposed civil penalty of \$1,000.00 was received in the office of the Secretary of State on September 24, 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.

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Jennifer Hertel, Compliance Specialist

DATE of Service: \_\_\_\_\_