

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 Matt Shirtcliff for Baker County District Attorney, Matt ) Final Order  
Shirtcliff, Candidate, Anthony Bailey, Treasurer, for the )  
Supplemental of 2004 ) Case No. L7897  
)

March 16, 2005

Matt Shirtcliff for Baker County District Attorney (003529)  
Matt Shirtcliff, Candidate / Anthony Bailey, Treasurer  
2710 Main St  
Baker City, OR 97814

Dear Mr. Shirtcliff:

This is a Final Order issued by the Secretary of State (secretary) for your failure to file a timely supplemental contribution and expenditure report for 2004.

On January 21, 2005, the secretary notified Matt Shirtcliff for Baker County District Attorney (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 October 28, 2003. The mailing address provided on the Statement of Organization for the candidate was 2710 Main St, Baker City, OR 97814. The statement reported Anthony Bailey as the treasurer and 17959 Koehler Ln, Baker City, OR 97814 as the address to which all committee correspondence was to be sent.
2. The committee was required to file a supplemental report with the secretary on September 10, 2004.
3. The secretary sent the committee a notice that it had failed to file a timely report on September 13, 2004. The notice was sent by first class mail to the candidate and treasurer at the above-referenced addresses.

4. The secretary received the report on September 16, 2004, which is four business days after the date on which the report was due.
5. The committee reported no contributions or expenditures during the accounting period for the report.
6. On January 21, 2005, 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 and was sent by first class mail to the treasurer at the above-referenced addresses. The notice proposed no civil penalty and allowed the committee 20 days to request a hearing. The notice sent by certified mail was received and signed for by Matt Shirtcliff on January 25, 2005.
7. On February 4, 2005, the secretary received a notarized letter from Anthony Bailey in lieu of a public hearing.
8. The letter—attached as Exhibit A—was reviewed, considered, and made part of the record.
9. The secretary has record of previous late filings during the two-year period beginning September 15, 2003.

#### ULTIMATE FINDINGS OF FACT

Matt Shirtcliff, Candidate, and Anthony Bailey, Treasurer, failed to file a timely supplemental contribution and expenditure report for 2004.

#### CONCLUSIONS OF LAW

Candidate Matt Shirtcliff's and Treasurer Anthony Bailey's failure to file a timely supplemental contribution and expenditure report for 2004 violated ORS 260.058.

#### OPINION

Matt Shirtcliff for Baker County District Attorney's supplemental contribution and expenditure report, filed on September 16, 2004, was late. It was due by 5:00 p.m., September 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 no 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. Anthony Bailey, Treasurer, explains in his testimony that he spoke with someone in the elections office on August 25, 2004, but was unable to provide the name of the person providing the information, stating no report needed to be filed. Since this information cannot be verified this does not meet the mitigating circumstance of calamitous event or filing officer error. While misinformation problems are unfortunate, the hearings officer does not concur that this meets the definition of "filing officer error." In this case, the secretary cannot reduce or waive the civil penalty.

Because the committee reported no activity during the accounting period for the late report, no civil penalty will be assessed.

#### ORDER

It is ordered that no penalty be assessed.

#### 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: \_\_\_\_\_

c: Anthony Bailey, Treasurer  
17959 Koehler Ln  
Baker City, OR 97814