

**BEFORE THE ELECTIONS DIVISION
OFFICE OF THE SECRETARY OF STATE
STATE OF OREGON**

IN THE MATTER OF) **FINAL ORDER**
)
THE CONSTITUTION PARTY)
OF OREGON (003934)) **Case No. L7945**

HISTORY OF THE CASE

On January 28, 2005, the Elections Division of the Office of the Secretary of State (Elections Division) issued Notice of Proposed Civil Penalty to the Constitution Party of Oregon for late filing of a first pre-election contribution and expense report. (Exhibit E) On February 3, 2005, Carole Winegarden, Treasurer of the Constitution Party of Oregon, requested a hearing. (Exhibit F) The Elections Division referred the matter to Ray Myers, Hearings Officer, to hold a hearing and to issue a Proposed Order.

Hearing convened March 14, 2005, in Salem, Oregon. The Elections Division was represented by Assistant Attorney General Steve Wolf. Ms. Winegarden appeared by telephone on behalf of the Constitution Party of Oregon. Nancy Ferry, Compliance Specialist with the Elections Division, testified on behalf of the Elections Division. Ms. Winegarden testified on behalf of the Constitution Party of Oregon.

Following the hearing, the Hearings Officer issued a proposed order. Petitioner did not file exceptions to the proposed order. The Secretary of State has reviewed the proposed order and the record and issues the following final order.

ISSUE

The sole issue is whether the Elections Division properly assessed a civil penalty of \$137.26 against the Constitution Party of Oregon for the alleged late filing of the first pre-election report.

EVIDENTIARY RULINGS

Exhibits A through H were admitted into evidence without objection.

FINDINGS OF FACT

1. The Constitution Party filed its first pre-election report with the Secretary of State on September 28, 2004. (Exhibit D)
2. September 27, 2004, was 36 days before the general election. (Official Notice.)
3. The greater of total contributions and total expenditures in the first pre-election report is \$6,862.96. (Exhibit C)

CONCLUSIONS OF LAW

The Elections Division properly assessed a civil penalty against the Constitution Party of Oregon for late filing of the first pre-election report. The appropriate penalty is \$68.63.

OPINION

ORS 260.073 states in relevant part:

“(1) Except as otherwise provided in ORS 260.112, each political committee, other than a candidate's principal campaign committee, supporting or opposing one or more candidates or measures at the general election shall file the following with each appropriate filing officer:

“(a) A first preelection statement of contributions received and expenditures made by or on behalf of the political committee, not sooner than the 46th day and not later than the 36th day before the date of the election....”

The Elections Division, as the party asserting that the filing was late, bears the burden of presenting evidence. ORS 183.450(2). The Elections Division has submitted evidence that the report was filed on September 28, 2004. (Exhibit D) Under this statute, the Constitution Party of Oregon was one day late in filing its first pre-election statement. The Hearings Officer has taken notice of the fact that the 36th day before the November 2, 2004, General Election was September 27, 2004. Originally, the Elections Division concluded that the Constitution Party of Oregon was two days late in filing its first pre-election statement based on the date the report was received in the Elections Division (September 29, 2004). However, at hearing, the Elections Division conceded that the report was received in the Audits Division of the Secretary of State on September 28, 2004. Therefore, the Elections Division has proven that the Constitution Party of Oregon was one day late in filing its first pre-election statement rather than the two days upon which the penalty was originally based.

By administrative rule OAR 165-012-0005 the Secretary of State designated the *2004 Campaign Finance Manual* and associated forms as the procedures and guidelines to be used for compliance with Oregon campaign finance regulations.

The Constitution Party of Oregon argues that under the following statement, the Elections Division has discretion whether to assess a penalty: “The Secretary of State...may impose civil penalties for failure to file a timely...report.” *Campaign Finance Manual 2004* at 95. However, the Manual states that mitigating circumstances are limited to five types. *Id* at 97. The Elections Division interprets this to mean that absent one of the specified mitigating circumstances, the civil penalty will be assessed based on the matrices found in the Manual. Accordingly, unless the Constitution Party establishes one of the mitigating circumstances outlined in the Manual, a civil penalty must be assessed based on the matrix found in the Manual.

The Constitution Party raises only one potentially mitigating circumstance. Ms. Winegarden testified that she placed the report in the mail on September 24, 2004. The clerk at the post office informed her that it would reach the Secretary of State’s office by September 27, 2004. The mitigating circumstance in the Manual is:

“The lateness...is the direct result of failure of a professional delivery service to deliver documents in the time guaranteed for delivery by written receipt of the service provider....” *Campaign Finance Manual 2004* at 97.

In this case, the postal service did not guarantee delivery by written receipt. Therefore, this mitigating factor does not apply here. Thus, even though Ms. Winegarden mailed the report having a good faith belief that it would be received on time, it was received late and there are no mitigating circumstances that would allow reducing or eliminating a civil penalty. Therefore, the full amount of the penalty under the matrix must be assessed.

The matrix provides that for a first violation the penalty shall be 1% of the greater of total contributions or total expenditures times the number of days late. *Campaign Finance Manual* at 101. The greater amount is \$6,862.96. One percent of that times one day equals \$68.63, which is the appropriate civil penalty for the late filing of the first pre-election report.

ORDER

The Constitution Party of Oregon is assessed a civil penalty of \$68.63 for filing its first pre-election statement one day late.

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.

Bill Bradbury, Secretary of State

Date

CERTIFICATE OF SERVICE

I certify that on May __, 2005, I served the attached Final Order by mailing in a sealed envelope, with first class postage prepaid, a copy thereof addressed as follows:

CONSTITUTION PARTY OF OREGON
CAROLE DIANNA WINEGARDEN, TREASURER
107 JEFFERSON ST
OREGON CITY, OREGON 97045-2500