

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) Final Order
by Firstvote PAC, Paulette Pyle, Treasurer, for the First)
Pre-Election for the November 2, 2004, General Election) Case No. L7951

March 16, 2005

Firstvote PAC (004311)
Paulette Pyle, Treasurer
3415 Commercial St Ste 100
Salem, OR 97302

Dear Ms. Pyle:

This is a Final Order issued by the Secretary of State (secretary) for your failure to file a timely first pre-election contribution and expenditure report for the November 2, 2004, General Election.

On January 28, 2005, the secretary notified Firstvote PAC (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 221), applicable during the reporting period, was filed with the secretary on February 26, 2002. The statement reported Paulette Pyle as the treasurer and 3415 Commercial St Ste 100, Salem, OR 97302 as the address to which all committee correspondence was to be sent.
2. The committee was required to file a first pre-election report with the secretary on September 27, 2004.
3. The secretary received the report on September 28, 2004, which is one business day after the date on which the report was due.
4. The committee reported total contributions of \$5,000.00 and total expenditures of \$20,550.00 during the accounting period for the report.

5. On January 28, 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 treasurer at the above-referenced address. The notice proposed a civil penalty of \$205.50 and allowed the committee 20 days to request a hearing. The notice sent by certified mail was received and signed for by A. Cracknell on January 31, 2005.
6. On February 14, 2005, the secretary received a notarized letter from Paulette Pyle in lieu of a public hearing.
7. The letter—attached as Exhibit A—was reviewed, considered, and made part of the record.
8. The secretary has record of no previous late filings during the two-year period beginning September 15, 2003.

ULTIMATE FINDINGS OF FACT

Paulette Pyle, Treasurer, failed to file a timely first pre-election contribution and expenditure report for the November 2, 2004, General Election.

CONCLUSIONS OF LAW

Treasurer Paulette Pyle's failure to file a timely first pre-election contribution and expenditure report for the November 2, 2004, General Election violated ORS 260.073.

OPINION

Firstvote PAC's first pre-election contribution and expenditure report, filed on September 28, 2004, was late. It was due by 5:00 p.m., September 27, 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 a 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. The notarized testimony explains that the treasurer's assistant faxed the report to the secretary after 5:00 pm on September 27, 2004, the deadline for receiving the report. She had attempted to fax the report earlier in the day but the fax line was busy, and when she realized that the report had not yet been transmitted, it was after 5:00 pm.

The Elections Division makes every attempt to notify committees that the fax machine is extremely busy on filing deadline days (see page 5 of the *2004 Campaign Finance Manual*.) While it is unfortunate that the fax machine was busy and the report did not reach the secretary until after 5:00 pm, it does not constitute a mitigating circumstance in which the secretary would reduce or waive the civil penalty.

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.

ORDER

It is ordered that a penalty of \$205.50 ($\$20,550.00 \times 1\% \times 1 \text{ day}$) is assessed. If your payment is not received within 60 days from the date of service noted below, this Order will be sent to our accounting division for collection and may be subsequently sent to the Oregon Department of Revenue.

Please refer to case number L7951 when mailing your payment.

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: _____