

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

IN THE MATTER OF) **FINAL ORDER**
)
 DESCHUTES COUNTY REPUBLICAN)
) Case No. L7998
 CENTRAL COMMITTEE (000618))

HISTORY OF THE CASE

On February 7, 2005, the Elections Division of the Office of the Secretary of State (Elections Division) issued Notice of Proposed Civil Penalty to the Deschutes County Republican Central Committee (the Committee) for late filing of a second pre-election contribution and expense report. (Ex. F) On February 28, 2005, Christen Brown, Treasurer of the Committee, requested a hearing. (Ex. G-4.) The Elections Division referred the matter to Ray Myers, Hearings Officer, to hold a hearing and to issue a Proposed Order.

Hearing convened April 5, 2005, in Salem, Oregon. The Elections Division was represented by Assistant Attorney General Steve Wolf. Mr. Brown appeared on behalf of the Committee. Nancy Ferry, Compliance Specialist with the Elections Division, testified on behalf of the Elections Division. Mr. Brown testified on behalf of the Committee.

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 \$335.65 against the Committee for the alleged late filing of the second pre-election report.

EVIDENTIARY RULINGS

Exhibits A through I and 1 and 2 were admitted into evidence without objection.

FINDINGS OF FACT

1. The Committee's first pre-election report with the Secretary of State exceeded \$50,000 in contributions and expenditures; therefore, the Committee was required to file the second pre-election report electronically. (Test. Ms. Ferry, Mr. Brown.)
2. The second pre-election report was due on October 21, 2004. (Test. Ms. Ferry.)
3. The electronic copy of the second pre-election report was received by the Elections Division on November 5, 2004. (Test. Ms. Ferry.) A hard copy of the report was received by the Elections Division on October 26, 2004. (Ex. D-2.)
4. The greater of total contributions and total expenditures in the second pre-election report is \$6,713.16. (Ex. E-1.) This is Mr. Brown's first violation as treasurer. (Ex. E-2.)

CONCLUSIONS OF LAW

The Elections Division properly assessed a civil penalty of \$335.65 against the Committee for late filing of the second pre-election report.

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:

* * * * *

(b) A second pre-election statement of contributions received and expenditures made by or on behalf of the political committee, not sooner than the 15th day and not later than the 12th day before the date of the election. The accounting period for the statement required by this paragraph begins on the 46th day before the date of the election and ends on the 16th day before the date of the election.

The Elections Division as the party asserting the position 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 electronically filed on November 5, 2004. (Test. Ms. Ferry.) 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 Manual provides that if a committee is required to file electronically, it continues to be late until it is actually filed electronically; however if a paper copy is filed before the electronic copy, the penalty is

reduced by 75 percent beginning the day the paper copy is filed. *Campaign Finance Manual 2004* at 101. In this case, the Committee filed the paper copy on October 26, 2004. Thus, under the matrix, \$6713.61 (the greater of contributions and expenditures) is multiplied by one percent for the first 3 days and by .25 percent for the last 8 days resulting in a civil penalty of \$335.65. This appears to be a correct calculation of the penalty based on the matrix.

The Committee 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. Similarly, ORS 260.232 states that the Secretary “may impose a civil penalty” for failing to file a report. The Committee argues that the language gives the Secretary discretion whether to assess a civil penalty for such violations. While it is true that the Secretary has such discretion, he has limited that discretion by stating in the manual that mitigating circumstances are limited to five types. *Id* at 97. Absent one of the specified mitigating circumstances, the civil penalty will be assessed based on the matrices found in the Manual. Accordingly, unless the Committee 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 Committee does not contend that any of the mitigating circumstances applies in this case. Rather, it contends that its late electronic filing was the fault of a contractor who was supposed to be assisting with the electronic filing, but did not. But even if substantiated by the evidence, this explanation for the late filing does not fall within any of the five categories of mitigating circumstances the Secretary has established by rule, and consequently does not provide a basis for reducing the proposed penalty.

ORDER

The Deschutes County Republican Central Committee is assessed a civil penalty of \$335.65 for filing its second pre-election statement 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 June __, 2005, I served the attached Final Order by mailing in a sealed envelope, with first class postage prepaid, a copy thereof addressed as follows:

DESCHUTES COUNTY REPUBLICAN CENTRAL COMMITTEE (000618)
CHRISTEN M. BROWN, TREASURER
20950 KNOTT RD
BEND, OR 97702