

**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. L8022**

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 Constitution Party of Oregon for late filing of a second pre-election contribution and expense report. (Exhibit D) On February 10, 2005, Carole Winegarden, Treasurer of the Constitution Party of Oregon, requested a hearing. (Exhibit E) 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 \$50 against the Constitution Party of Oregon for the alleged late filing of the second pre-election report.

EVIDENTIARY RULINGS

Exhibits A through G were admitted into evidence without objection.

FINDINGS OF FACT

1. The Constitution Party filed its second pre-election report with the Secretary of State on October 27 2004. (Exhibit C)
2. October 21, 2004, was 12 days before the general election. (Official Notice.)
3. The greater of total contributions and total expenditures in the second pre-election report is \$375. (Exhibit C)

CONCLUSIONS OF LAW

The Elections Division properly assessed a civil penalty against the Constitution Party of Oregon for late filing of the second pre-election report. The appropriate penalty is \$50.

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 preelection 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 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 October 27, 2004. (ExhibitC) Under this statute, the Constitution Party of Oregon was late in filing its second pre-election statement. The Hearings Officer has taken notice of the fact that the 12th day before the November 2, 2004, General Election was October 21, 2004. Therefore, the Elections Division has proven that the Constitution Party of Oregon was four business days late in filing its second pre-election statement.

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 no mitigating circumstances in this case. It argues simply that Ms. Winegarden had recently taken over as treasurer of the party and that she is doing her best to comply with laws and rules. She argues that a penalty is a deterrent to citizen involvement in the elections process. But because this argument does not bear on any of the exclusive mitigating factors set out in the penalty matrix, it may not be considered in assessing the penalty.

The matrix provides that for a second violation the penalty shall be 3% of the greater of total contributions or total expenditures times the number of days late. *Campaign Finance Manual* at 101. However, where the penalty calculated under this method is less than a minimum, the penalty for a second violation is \$50. *Campaign Finance Manual* at 101. In this case, because the greater amount is \$375, the penalty based on the calculation method is less than \$50. Therefore, the appropriate penalty is \$50.

ORDER

The Constitution Party of Oregon is assessed a civil penalty of \$50 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 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