

BILL BRADBURY
SECRETARY OF STATE

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 Scott Bruun for State Representative, Lorentz Scott Bruun,)
Candidate, Stan W. Baumhofer, Treasurer, for the Second) Case No. L8045
Pre-Election for the November 2, 2004, General Election)

October 28, 2005

Scott Bruun for State Representative (004897)
Lorentz Scott Bruun, Candidate / Stan W. Baumhofer, Treasurer
23069 Bland Circle
West Linn, OR 97068

Dear Representative Bruun:

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

On September 30, 2005, the secretary notified Scott Bruun for State Representative (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 March 26, 2004. The statement reported Stan W. Baumhofer as the treasurer and 333 S. State St., V229, Lake Oswego, OR 97034 as the mailing address for both candidate and committee correspondence.
2. The committee was required to file a second pre-election report with the secretary on October 21, 2004.
3. The secretary received the report on October 22, 2004, which is one business day after the date on which the report was due.

4. The committee reported total contributions of \$49,374.75 and total expenditures of \$41,821.22 during the accounting period for the report.
5. On January 31, 2005, the committee filed an amended Statement of Organization, updating the mailing address for the candidate to 23069 Bland Circle, West Linn, OR 97068, and the mailing address for the treasurer to PO Box 8556, Portland, OR 97207.
6. On August 19, 2005, the secretary sent the committee a Notice of Proposed Civil Penalty. The notice was inadvertently sent by both certified and first class mail to the candidate and was sent by first class mail to the treasurer at the address at 333 S. State St., V229, Lake Oswego, OR 97034. The notice proposed a civil penalty of \$493.75 and allowed the committee 20 days to request a hearing. Each copy of the notice was returned by the post office as undeliverable.
7. On September 30, 2005, the secretary sent the committee the Notice of Proposed Civil Penalty. The notice was sent by both certified and first class mail to the candidate at 23069 Bland Circle, West Linn, OR 97068 and was sent by first class mail to the treasurer at PO Box 8556, Portland, OR 97207. The notice sent by certified mail was received and signed for by Alison Bruun on October 1, 2005.
8. On October 18, 2005, the secretary received a notarized letter from Stan W. Baumhofer in lieu of a public hearing.
9. The letter—attached as Exhibit A—was reviewed, considered, and made part of the record.
10. The secretary has record of no previous late filings during the two-year period beginning September 15, 2003.

ULTIMATE FINDINGS OF FACT

Lorentz Scott Bruun, Candidate, and Stan W. Baumhofer, Treasurer, failed to file a timely second pre-election contribution and expenditure report for the November 2, 2004, General Election.

CONCLUSIONS OF LAW

Candidate Lorentz Scott Bruun's and Treasurer Stan W. Baumhofer's failure to file a timely second pre-election contribution and expenditure report for the November 2, 2004, General Election violated ORS 260.068.

OPINION

Scott Bruun for State Representative's second pre-election contribution and expenditure report, filed on October 22, 2004, was late. It was due by 5:00 p.m., October 21, 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 testimony explains that the committee electronically transmitted the second pre-election report to the Elections Division at 1:45 pm on October 21, 2004, the deadline for filing the report. The testimony further explains that the Campaign's electronic filing agent (Darryl Howard and Associates) filed a signed Summary Statement of Contributions and Expenditures (form PC 1) in the office of Elections Division at 4:03 p.m. that day, and noted that the identification number field of the PC 1 was transposed on the form; the correct identification number was hand-written.

The Elections Division was unable to post the electronic report to the Division database because the committee used the wrong filer identification number in the header records of the electronic report and in the subject line of the email sent by the committee's electronic filing agent. An email was sent to the committee at 4:06 p.m., notifying the committee that the identification number in the electronic file was for Jim Welsh, who was not a candidate filing reports for the 2004 General Election.

The testimony asserts that because the agent was physically in the Elections Division office at the time (approximately 50 minutes before the deadline) the Division sent the email informing the committee that the electronic report did not post to the database, there was not sufficient time to correct the file and resend the electronic report to the Division. The agent was unaware that there was a problem with the electronic report and did not get the message until returning to her office, at which time she corrected and resubmitted the electronic report, which was received at the Elections Division after 5 p.m. The testimony also states that there was no intent to ignore the deadline, or omit or alter any information, and the report was later deemed satisfactory on the exam letter.

While it is an unfortunate set of circumstances that the agent was not recognized at the Elections Division counter and did not get a personal message that the electronic report was not able to load into the Division database, we cannot hypothetically determine that the corrected electronic report would have been filed by the deadline. Nor does the fact that the second pre-election report was deemed satisfactory on the exam letter change the fact that the report was filed after 5 p.m. on the filing deadline day. None of this constitutes a mitigating circumstance in which the secretary would reduce or waive the penalty. The mitigating circumstances are listed on the proposed penalty notice and in the *2004 Campaign Finance Manual* on page 97. Absent one of these mitigating circumstances, the civil penalty is assessed based on the late matrix in the manual.

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 candidate.

ORDER

It is ordered that a penalty of \$493.75 ($\$49,374.75 \times 1\% \times 1 \text{ day}$) 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 L8045 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: _____

c: Stan W. Baumhofer, Treasurer
PO Box 8556
Portland, OR 97207