

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)
by Don Gist for House District #16, Don Gist,) Final Order
Candidate/Treasurer, for the Second Pre-Election for the)
November 2, 2004, General Election) Case No. L8056
)

April 1, 2005

Don Gist for House District #16 (005026)
Don Gist, Candidate/Treasurer
PO Box 1284
Philomath, OR 97370

Dear Mr. Gist:

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 February 7, 2005, the secretary notified Don Gist for House District #16 (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 September 13, 2004. The statement reported Don Gist, the candidate, as the treasurer and PO Box 1284, Philomath, OR 97370 as the address to which all committee correspondence was to be sent.
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 \$2,205.00 and total expenditures of \$2,295.25 during the accounting period for the report.
5. On February 7, 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 candidate/treasurer at the above-referenced address. The notice proposed a civil penalty of \$22.95 and allowed the committee 20 days to request a hearing. The notice sent by certified mail was received and signed for by Don Gist on February 14, 2005.
6. On March 2, 2005, the secretary received a notarized letter from Don Gist 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

Don Gist, Candidate/Treasurer, failed to file a timely second pre-election contribution and expenditure report for the November 2, 2004, General Election.

CONCLUSIONS OF LAW

Candidate/Treasurer Don Gist'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

Don Gist for House District #16'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. Mr. Gist explains that he discovered the day following the filing deadline, that only five or six pages of the 11 page report successfully transmitted to the Elections Division. He also states that immediately after discovering that the entire report was not fully transmitted, that he faxed all 11 pages of the report. While it is unfortunate that the report did not successfully transmit as Mr. Gist assumed, this is not a valid mitigating circumstance which the hearings officer may consider in reducing the penalty or waiving the violation.

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.

The calculated penalty for the late report is \$22.95 ($\$2,295.25 \times 1\% \times 1 \text{ day}$). Because the appropriate penalty is under \$50, no penalty will be assessed.

ORDER

It is ordered that no penalty be assessed.

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: _____