

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 the Religious Response Network, Lucy McIver, Treasurer,) Final Order
for the Post-Election for the November 2, 2004, General)
Election) Case No. L8088
)

April 27, 2005

Religious Response Network (003914)
Lucy McIver, Treasurer
86140 Garden Valley Rd
Eugene, OR 97405

Dear Ms. McIver:

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

On March 25, 2005, the secretary notified the Religious Response Network (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 September 7, 2004 . The statement reported Lucy McIver as the treasurer and 86140 Garden Valley Rd, Eugene, OR 97405 as the address to which all committee correspondence was to be sent.
2. The committee was required to file a post-election report with the secretary on December 2, 2004.
3. The secretary sent the committee a notice that it had failed to file a timely report on December 3, 2004. The notice was sent by first class mail to the treasurer at the above-referenced address.

4. The secretary received the report on December 6, 2004, which is two business days after the date on which the report was due.
5. The committee reported total contributions of \$1,454.12 and total expenditures of \$5,893.39 during the accounting period for the report.
6. On March 25, 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 \$353.60 and allowed the committee 20 days to request a hearing. The notice sent by certified mail was received and signed for by Lucy McIver on March 28, 2005.
7. On March 30, 2005, the secretary received a notarized letter from Lucy McIver in lieu of a public hearing.
8. The letter—attached as Exhibit A—was reviewed, considered, and made part of the record.
9. The secretary has record of one previous late filing during the two-year period beginning September 15, 2003.

ULTIMATE FINDINGS OF FACT

Lucy McIver, Treasurer, failed to file a timely post-election contribution and expenditure report for the November 2, 2004, General Election.

CONCLUSIONS OF LAW

Treasurer Lucy McIver's failure to file a timely post-election contribution and expenditure report for the November 2, 2004, General Election violated ORS 260.073.

OPINION

The Religious Response Network's post-election contribution and expenditure report, filed on December 6, 2004, was late. It was due by 5:00 p.m., December 2, 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 testimony described in the notarized testimony does adequately mitigate the failure to file a post-election report.

Ms. McIver submitted detailed testimony regarding a family illness which has disrupted her work as treasurer for the committee. On October 14, 2004, she received news that her son's wife was diagnosed with Stage IV metastatic breast cancer. She flew to Washington DC on October 15, 2004 to care for her grandchild while initial treatment was undertaken by her daughter-in-law, and returned to Eugene on October 18, 2004. During the period between

October 18 and October 30, 2004, she turned over the committee's checkbook to Irwin Noparstak who deposited and wrote checks for Religious Response Network. She resumed the treasurer's responsibilities on November 13, 2004.

The testimony, states that the post-election report was carefully prepared and faxed to the secretary on November 27, 2004. After receiving our notice dated December 3, 2004, notifying the committee that the post-election report had not been received in our office by the deadline of December 2, 2004, Ms. McIver contacted our office and spoke to Jan, who confirmed the report had not been received. Ms. McIver re-faxed the post-election report, which was filed in our office on December 6, 2004.

Included with the testimony were copies of correspondence, credit card statements, and e-mails supporting the medical emergency and independent written verification of the serious personal illness that affected her ability to perform the duties as treasurer. This mitigation waives the penalty, but the secretary does find a violation of ORS 260.073.

It is the responsibility of the treasurer to ensure the report is received by the filing officer by 5:00 p.m. on the deadline day. A transmittal report from the sending fax machine does not guarantee that the report was successfully transmitted. However, Ms. McIver's testimony and supporting documentation established a valid personal emergency which caused the failure to file the post-election report.

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: April 27, 2005