

BILL BRADBURY  
SECRETARY OF STATE



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

In the matter of a Late Contribution and Expenditure Report )  
by the Committee to Elect Susan Massey State ) Final Order by Default  
Representative, Susan Massey, Candidate, John S. Burles, )  
Treasurer, for the Second Supplement to the Second ) Case No. L8142  
Pre-Election for the November 2, 2004, General Election )

April 27, 2005

Committee to Elect Susan Massey State Representative (004711)  
Susan Massey, Candidate / John S. Burles, Treasurer  
PO Box 5407  
Coos Bay, OR 97420

Dear Ms. Massey:

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

On March 11, 2005, the secretary notified the Committee to Elect Susan Massey 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; however, no request for a hearing was received by the secretary within the time permitted in the notice. Accordingly, after consideration of the records and files of the secretary regarding this matter, the secretary 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 January 22, 2003. The statement reported John S. Burles as the treasurer and PO Box 5407, Coos Bay, OR 97420 as the mailing address for both candidate and committee correspondence.
2. The committee was required to file a second supplement to the second pre-election report with the secretary on October 29, 2004, because it received a contribution exceeding \$500 from a single source between October 25 and October 28, 2004.

3. The committee reported the contribution required to be on the second supplement to the second pre-election report (\$900.00 from Home Builders Association of SW Oregon on October 25, 2004) on its post-election report filed on December 1, 2004, which is 21 business days after the second supplement to the second pre-election report was due.
4. On March 11, 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 and was sent by first class mail to the treasurer at the above-referenced address. The notice proposed a civil penalty of \$100.00 and allowed the committee 20 days to request a hearing. The notice sent by certified mail was received and signed for by Susan Massey on March 21, 2005.
5. The committee did not request a public hearing or submit notarized testimony in lieu of a public hearing.
6. The secretary has record of no previous late filings during the two-year period beginning September 15, 2003.

#### ULTIMATE FINDINGS OF FACT

Susan Massey, Candidate, and John S. Burles, Treasurer, failed to file a timely second supplement to the second pre-election contribution and expenditure report for the November 2, 2004, General Election.

#### CONCLUSIONS OF LAW

Candidate Susan Massey's and Treasurer John S. Burles's failure to file a timely second supplement to the second pre-election contribution and expenditure report for the November 2, 2004, General Election violated ORS 260.068.

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.

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.

Although the calculated penalty for the late report is \$189.00 ( $\$900.00 \times 1\% \times 21$  days), the penalty matrix sets a maximum penalty of \$100.00 when the total contributions or total expenditures—whichever is greater—is between \$0 and \$2,000.

#### ORDER

Payment of the proposed civil penalty of \$100.00 was received in the office of the Secretary of State on March 24, 2005. This Order will serve as your receipt and this matter is now considered closed.

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.

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Jennifer Hertel, Compliance Specialist

DATE of Service: \_\_\_\_\_

c: John S. Burles, Treasurer  
PO Box 5407  
Coos Bay, OR 97420