

FINDINGS OF FACT

1. The second supplement to the second pre-election report was due on October 29, 2004. (Ex. I.)
2. Expenditures greater than \$1,000 made during the period October 25, through October 28, 2004 were required to be reported on the second supplement to the second pre-election report. ORS 260.268.
3. In its post-election report, received by the Elections Division on December 2, 2004, the committee reported that on October 26, 2004, it contributed \$1,500 to the Friends of Jim Buck, \$1,500 to the Friends of Judy Stiegler and \$1,500 to the Committee to Elect Arnie B Roblan. (Ex, C-5.) These expenditures were not reported in the second supplement to the second pre-election report. (Ex. F.)
3. The greater of total contributions and total expenditures reported late is \$4,500. This late filing was a first violation. (Ex. D.)

CONCLUSIONS OF LAW

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 accounting period for the statement required by this paragraph begins on the 46th day before the date of the election and ends on the 16th day before the date of the election.

“(c) Supplements to the second preelection statement showing contributions received and expenditures made as described in this paragraph by or on behalf of the political committee. A supplement shall be filed if, during a period described in this paragraph, the aggregate amount of contributions, including loans, whether repaid or not, received from a single political committee or other person exceeds \$500, or the aggregate amount of expenditures made by or on behalf of the political committee to a single payee exceeds \$1,000. A first supplement shall be filed not later than the eighth day before the date of the election for the accounting period beginning on the 15th day before the date of the election and ending on the ninth day before the date of the election. A second supplement shall be filed not later than the fourth day before the date of the election for the accounting period beginning on the eighth day before the date of the election and ending on the fifth day before the date of the election. The supplements shall be filed on forms prescribed by the Secretary of State by rule. A treasurer of a political committee

who filed a certificate under ORS 260.112 shall file supplements under this paragraph if the aggregate amount of contributions received or expenditures made exceeds \$2,000 because of contributions received or expenditures made during a period described in this paragraph.”

The Elections Division as the party asserting the position that the filing was late bears the burden of presenting evidence. ORS 183.450(2). The Elections Division has provided evidence in the form of the documentary record that convincingly establishes that the second supplement to the second pre-election report was due on October 29, 2005. The evidence establishes that this report contains no references to contributions to any of the three political committees. The evidence establishes that the committee reported this expenditure on December 2, 2004, which was 22 business days late. Finally, the evidence establishes that this was a first violation.

The Secretary has adopted the *2004 Campaign Finance Manual* as the procedures and guidelines to be used for compliance with Oregon campaign finance regulations. OAR 165-012-0005. The Penalty Matrix adopted by the Elections Division in the *2004 Campaign Finance Manual* specifies that the penalty for a first violation is calculated by determining the greater of total expenditures or total contributions multiplied by one percent multiplied by the number of days late. In this case, the greater of contributions and expenditures is \$4,500 and the report was 22 business days late. This is a first violation. Therefore, the penalty of \$990 is correct under the matrix.

The Committee contends, however, that it had previously reported these expenditures in its first supplement to the second pre-election report. The Committee did, in fact, report pledges made to the three campaigns on October 20, 2004. (Ex. C-4.) The Committee argues that by also requiring a report when the committee fulfills the pledge, the Elections Division is effectively requiring double reporting of the same expenditure. The Committee also argues that the instructions accompanying the form required to report second supplements to the second pre-election report are not clear in specifying that both pledges and payments fulfilling pledges must be reported. Finally, the Committee argues that requiring “double-reporting” without clearly notifying committees of this requirement is a violation of due process.

The term “expenditure” is defined in ORS 260.005(6):

“Except as provided in ORS 260.007, “expend” or “ expenditure” includes the payment or furnishing of money or anything of value or **the incurring or repayment of indebtedness or obligation by or on behalf of a candidate**, political committee or person in consideration for any services, supplies, equipment or other thing of value performed or furnished for any reason, including support of or opposition to a candidate, political committee or measure, or for reducing the debt of a candidate for nomination or election to public office. “Expenditure” also includes contributions made by a candidate or political committee to or on behalf of any other candidate or political committee.” (emphasis added.)

The Committee does not contend that the exceptions in ORS 260.007 apply. I find that none of these exceptions apply. Under the plain meaning of the statute, both incurring and repayment of indebtedness or obligations are expenditures. Consequently, without reference to the administrative rules or the *Campaign Finance Manual*, I conclude that under the statute, the committee was required to report both the pledges and the fulfillment of those pledges in a timely manner. I also find that the statute itself provides sufficient notice to apprise the Committee of this obligation. Accordingly, I reject the contention that the Committee's right to due process of law was violated by failure to give specific notice of this requirement in the *Campaign Finance Manual*.

I note also that the Manual contains a complete copy of the relevant statutes. Furthermore, the Manual defines expenditures in the same terms as the statute. *2004 Campaign Finance Manual* at 33. Thus, the Committee also had notice of the requirement of reporting both the pledges and the fulfillment of those pledges in the Manual. I reject the Committee's contention that failing to set forth these requirements in the form itself deprives the Committee of sufficient notice. Both the statute and the Manual give sufficient notice of the requirements.

FINAL ORDER

The Friends of Greg Macpherson is assessed a civil penalty of \$990 for late filing of required information in its supplement to the second pre-election statement.

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

1/11/06
Date

CERTIFICATE OF SERVICE

I certify that on January 12, 2006, I served the attached Final Order by mailing in a sealed envelop, with first class postage prepaid, a copy of thereof address as follows:

FRIENDS OF GREG MACPHERSON
GREG MACPHERSON, CANDIDATE/ BRUCE FREED, TREASURER
322 SECOND ST
LAKE OSWEGO, OR 97034