

# Greg Macpherson

*For State Representative*

Friends of Greg Macpherson  
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September 11, 2005

## Via Facsimile

Ms. Jennifer Hertel  
 Office of the Secretary of State  
 141 State Capitol  
 Salem, OR 97310-0722

**Subject: Case Number L8143**

Dear Ms. Hertel:

This is in response to your letter dated August 19, 2005, which I received by certified mail on Monday, August 22. The letter constituted a Notice of Proposed Civil Penalty of \$990 for an alleged failure by the Friends of Greg Macpherson to file a complete second supplement to the second pre-election contribution and expenditure report for the 2004 General Election, as required by ORS 260.068.

For the reasons set out below, I believe the Proposed Civil Penalty is not properly applied. Therefore, I request that you withdraw the Proposed Civil Penalty. In the event the Proposed Civil Penalty is not withdrawn, this letter constitutes a request for a public hearing before an independent hearings officer.

### Facts

On October 20, 2004 I sent letters to the following three political committees: the Friends of Jim Buck; the Judy Stiegler Committee; and the Committee to Elect Arnie Roblan. Each letter set out a pledge by the Friends of Greg Macpherson, the political committee for my candidacy, to pay \$1,500 to each of those three political committees for their campaign mail plans. These pledges were reported as Accounts Payable on the Supplement to Second Pre-Election - Expenditures, a copy of which is enclosed as Exhibit A.

On October 26, 2004, the pledges reported as described above were fulfilled when I sent three checks, each for \$1,500, to the Friends of Jim Buck, the Judy Stiegler Committee, and to Compass Media on behalf of the Committee to Elect Arnie Roblan. These contributions were

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reflected on the Cash Expenditures and Loan Payments form included in the post-election report filed on December 2, 2004. A copy of that form is enclosed as Exhibit B. The Friends of Greg Macpherson had filed a Second Supplement to the Second Pre-Election report on October 29, 2004, but the three \$1,500 contributions were not included on it because they had already been reported as Accounts Payable on the first Supplement to the Second Pre-Election report.

### Discussion

This case presents the following question: is a political committee that pledges to make a contribution to another political committee and later fulfills that pledge required to report two expenditures, one for the pledge and another for the payment fulfilling the pledge? In proposing a Civil Penalty, your office answers this question in the affirmative. As I understand your view, the pledge constituted an expenditure that was properly reported and the payments in fulfillment of the pledge were a second expenditure that was required to be separately reported. Because it was not reported until the post-election report, your office contends that the fulfillment of the pledge was reported late.

ORS 260.068(c) requires a political committee to file a first and second supplement to the second preelection statement on forms prescribed by the Secretary of State by rule. According to your August 19 letter, the Secretary of State has adopted the 2004 Campaign Finance Manual, containing form PC 8B (Supplement to Second Pre-Election - Expenditures), by administrative rule. Therefore, the statutory obligation of a political committee under ORS 260.068(c) is fixed by the published form. That is, a political committee that files in accordance with form PC 8B has satisfied its reporting obligation.

Form PC 8B (Supplement to Second Pre-Election - Expenditures) lists four types of expenditures: "Cash, Loan Payment, Account Payable, and Personal Expenditure". A pledge of a contribution to another committee is not listed as a type of expenditure on the face of the form. Furthermore, the instructions on the reverse side do not say anything about pledges.

Of the four types of expenditures listed on the form, the pledge could only be an Account Payable. This term is defined on page 34 of the Manual as "an amount owed to a creditor for the purchase of goods and services." On October 20 our political committee obligated itself to pay for the purchase of mail plan services provided to each of the three other political committees. On that date it became an Account Payable of our political committee.

There is no indication on form PC 8B (Supplement to Second Pre-Election - Expenditures) that an item reported as an Account Payable must be reported again when it is actually paid. Nor would such an indication be appropriate without a label showing that it duplicates an expenditure reported in the past. Double-reporting of expenditures as an Account Payable at the point the commitment is made and again as a Cash expenditure at the point paid would create a confusing public record, suggesting that twice as much had been expended for the purpose than was actually the case.

If the Secretary of State intends to require a political committee to report contributions to other political committees twice, once when pledged and again when the pledge is fulfilled, it must revise form PC 8B, the Supplement to Second Pre-Election - Expenditures, to reflect that position. Until the form is revised, and the revision adopted by rule, a political committee that fails to report a pledged contribution to another political committee twice cannot be penalized by the Secretary of State.

The purpose of the contribution and expenditure reporting rules should be to enable political committees to make a full and accurate disclosure of campaign finance activity. Informal discussions between the Secretary of State's office and those required to report could help to promote that purpose. Accordingly, I would be happy to discuss this matter with you or others on the Secretary of State's staff.

Sincerely,

Greg Macpherson

cc: Bruce Freed