

BILL BRADBURY  
SECRETARY OF STATE



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ELECTIONS — (503) 986-1518

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

IN THE MATTER OF ) **FINAL ORDER**  
 )  
 )  
**FRIENDS OF DAVE HUNT (004247)** )  
 ) Case No. L8162  
 )  
 )

**HISTORY OF THE CASE**

On August 19, 2005, the Elections Division of the Office of the Secretary of State (Elections Division) issued Notice of Proposed Civil Penalty to the Friends of Dave Hunt (the Committee) alleged late filing of an expenditure that should have been reported on the first supplement to the second pre-election contribution and expense report. (Ex. D) On September 16, 2005, the candidate, Dave Hunt, requested a hearing. (Ex. C.) The Elections Division referred the matter to Ray Myers, Hearings Officer, to hold a hearing and to issue a Proposed Order.

Hearing convened October 17, 2005 in Salem, Oregon. This matter was consolidated for hearing with case numbers L7950, L8092 and L8163. A separate proposed order was issued in each of those matters, and separate final orders are being issued accordingly. The Elections Division was represented by Assistant Attorney General Steve Wolf. Jan Flowers, compliance specialist with the Elections Division testified on behalf of the Elections Division. Fred Neal and Nancy Ferry were also present on behalf of the Elections Division. Representative Hunt represented the committee and testified on its behalf.

A proposed order was issued in this matter on November 4, 2005. The Committee filed no exceptions to the proposed order. The Elections Division therefore adopts the Hearings Officer's statement of the Issue, Evidentiary Rulings, Findings of Fact and Final Order as set out fully below, and adopts the Hearings Officer's Conclusions of Law as amended below.

**ISSUE**

The sole issue is whether the Elections Division properly assessed a civil penalty of \$1,000.00 against the Committee for the alleged late filing.



## EVIDENTIARY RULINGS

Exhibits A through H and I were admitted into evidence without objection.

## FINDINGS OF FACT

1. The first supplement to the second pre-election report was due on October 25, 2004. (Test. Ms. Flowers.)
2. Expenditures greater than \$1,000 made during the period October 18, through October 24, 2004 were required to be reported on the first supplement to the second pre-election report. (Test. Ms. Flowers.)
3. In its post-election report, received by the Elections Division on December 3, 2004, the committee reported that on October 22, 2004, it expended \$5,000 to Future PAC. (Ex. E-2.) That expenditure was not reported in the first supplement to the second pre-election report. (Ex. F; testimony of Ms. Flowers.)
3. The greater of total contributions and total expenditures reported late is \$5,000. (Ex. F.) This late filing was a second violation. (Test. Ms. Flowers.)

## 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 as well as the testimony of Ms. Flowers that convincingly establishes that the first supplement to the second pre-election report was due on October 25, 2005. The evidence establishes that this report contains no reference to an expenditure to Future PAC for \$5,000. The evidence establishes that the committee reported this expenditure on December 2, 2004, which was 27 business days late. Finally, the evidence establishes that this was a second 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 second violation is calculated by determining the greater of total expenditures or total contributions multiplied by three percent multiplied by the number of days late. In this case, the greater of contributions and expenditures is \$5,000 and the report was 27 business days late. This is a second violation because the order issued in case L7950 reflects that the committee committed a violation in a filing earlier than this one. Accordingly the civil penalty is calculated as \$4,050.00. The matrix provides, however, that for late filings in supplemental reports that are between \$2,000.01 and \$10,000.00 the maximum penalty is \$1,000.

The Committee has conceded that it committed this violation. It contends, however, that a \$1,000 civil penalty is punitively high where, as here, the error was apparently made because the Committee had made more than one \$5,000 contribution to Future PAC.

The *2004 Campaign Finance Manual* states, “the Secretary of State...may impose civil penalties for failure to file a timely...report.” *Campaign Finance Manual 2004* at 95. Similarly, ORS 260.232 states that the Secretary “may impose a civil penalty” for failing to file a report. This language gives the Secretary discretion whether to assess a civil penalty for such violations; however, the Secretary has limited his own discretion by stating in the manual that mitigating circumstances are limited to five types. *Id* at 97. The Elections Division interprets this to mean that absent one of the specified mitigating circumstances, the civil penalty will be assessed based on the matrices found in the Manual. Accordingly, unless the Committee establishes one of the mitigating circumstances outlined in the Manual, a civil penalty must be assessed based on the matrix found in the Manual. Here, the

Committee makes no assertion that any of the mitigating circumstances allowed by the Manual apply here. Consequently, there is no basis upon which to eliminate or reduce the proposed penalty.

### **FINAL ORDER**

The Friends of Dave Hunt is assessed a civil penalty of \$1,000.00 late filing of required information in its 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

\_\_\_\_\_  
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 DAVE HUNT  
DAVE HUNT, CANDIDATE/ LAWRENCE A. MARTIN, TREASURER  
PO BOX 68445  
MILWAUKIE, OR 97268