

BILL BRADBURY  
SECRETARY OF STATE



ELECTIONS DIVISION  
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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 Friends of Al Shannon, Al Shannon, Candidate/Treasurer, ) Final Order  
for the First Supplement to the Second Pre-Election for the )  
November 2, 2004, General Election ) Case No. L8170  
)

April 27, 2005

Friends of Al Shannon (004830)  
Al Shannon, Candidate/Treasurer  
7955 Portland Rd NE  
Brooks, OR 97305-9401

Dear Mr. Shannon:

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

On March 11, 2005, the secretary notified Friends of Al Shannon (committee), pursuant to ORS 260.232(2), that it had failed to file the complete 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 220), applicable during the reporting period, was filed with the secretary on February 23, 2004. The statement reported Al Shannon, the candidate, as the treasurer and 7955 Portland Rd NE, Brooks, OR 97305-9401 as the address to which all committee correspondence was to be sent.
2. The committee submitted a timely first supplement to the second pre-election report on October 25, 2004. However, an additional contribution (\$2,400 from Highway Specialties on October 20, 2004) and three expenditures (\$276.00 on October 18, 2004, \$276.00 on October 19, 2004 and \$631.40 on October 21, 2004 to Valley Mail Services) should have been included on the report. The committee first reported the contribution and expenditures required to be included on the first supplement to the second pre-election report on its

post-election report filed on November 26, 2004, making this portion of the report 22 business days late.

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/treasurer at the above-referenced address. The notice proposed a civil penalty of \$528.00 and allowed the committee 20 days to request a hearing. The notice sent by certified mail was received and signed for by Al Shannon on March 12, 2005.
5. On March 14, 2005, the secretary received a PC 2 amendment for the post-election report, correcting the date of the \$2,400.00 in-kind contribution from Highway Specialties to October 30, 2004.
6. On March 14, 2005, the secretary received a notarized letter from Al Shannon in lieu of a public hearing.
7. The letter—attached as Exhibit A—was reviewed, considered, and made part of the record.
8. The secretary has record of no previous late filings during the two-year period beginning September 15, 2003.

#### ULTIMATE FINDINGS OF FACT

Al Shannon, Candidate/Treasurer, failed to file a complete first supplement to the second pre-election contribution and expenditure report for the November 2, 2004, General Election.

#### CONCLUSIONS OF LAW

Candidate/Treasurer Al Shannon's failure to file a complete first supplement to the second pre-election contribution and expenditure report for the November 2, 2004, General Election violated ORS 260.068.

#### OPINION

A portion of Friends of Al Shannon's first supplement to the second pre-election contribution and expenditure report, filed on November 26, 2004, was late. It was due by 5:00 p.m., October 25, 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 explanation provided in the notarized testimony does not adequately mitigate the failure to file a report by the deadline.

On the original post-election report, the in-kind contribution was reported as being received on October 20, 2004. Mr. Shannon's testimony states that the letter notifying him of the in-kind contribution was dated October 29, 2004, and that he didn't receive the letter until a few days later. The secretary received a post-election amendment on March 14, 2005, correcting the date of the in-kind contribution from Highway Specialist to October 30, 2004, outside of the first supplement to the second pre-election accounting period.

Mr. Shannon admits that the three expenditures to Valley Mail (totaling \$1,183.40) were not included on the timely first supplement to the second pre-election report because he did not understand the reporting threshold for disclosing the expenditures. While this is unfortunate, it is not a mitigating circumstance that may be considered in reducing the penalty. However, because the in-kind contribution was not required to be disclosed on the first supplement to the second pre-election report, the penalty will be adjusted accordingly.

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 portion of the report is \$260.26 ( $\$1,183.40 \times 1\% \times 22$  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

It is ordered that a penalty of \$100.00 is assessed. If your payment is not received within 60 days from the date of service noted below, this Order will be sent to our accounting division for collection and may be subsequently sent to the Oregon Department of Revenue.

Please refer to case number L8170 when mailing your payment.

#### 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: April 27, 2005