

BILL BRADBURY
SECRETARY OF STATE



ELECTIONS DIVISION
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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 Second Supplement to the Second Pre-Election for the)
November 2, 2004, General Election) Case No. L8171
)

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 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 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 second supplement to the second pre-election report on October 29, 2004. However, two additional expenditures should have been included on the report.

One expenditure that was required to be included on the second supplement to the second pre-election report (\$5,000.00 accounts payable to Adams & Company on October 28, 2004)

was first disclosed on the post-election report filed on November 26, 2004, making this portion of the second supplement to the second pre-election report 18 business days late.

The second expenditure that was required to be included on the second supplement to the second pre-election report (\$655.65 accounts payable to Valley Mail Service on October 28, 2004) was first disclosed on an amended post-election report filed December 29, 2004, making this portion of the second supplement to the second pre-election report 40 business days late.

3. 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 \$1,000.00 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.
4. On March 14, 2005, a PC 6 amendment was submitted to the secretary, amending the date of the account payable owed to Adams & Company to October 30, 2004.
5. On March 14, 2005, the secretary received a notarized letter from Al Shannon in lieu of a public hearing. On March 28, 2005, the secretary received an addendum to the testimony.
6. The letters—attached as Exhibit A—were reviewed, considered, and made part of the record.
7. The secretary has record of one previous late filing during the two-year period beginning September 15, 2003.

ULTIMATE FINDINGS OF FACT

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

CONCLUSIONS OF LAW

Candidate/Treasurer Al Shannon filed a complete second supplement to the second pre-election contribution and expenditure report for the November 2, 2004, General Election, and therefore did not violate ORS 260.068.

OPINION

The Friends of Al Shannon's second supplement to the second pre-election contribution and expenditure report, filed on October 29, 2004, was timely. It was due by 5:00 p.m., October 29, 2004.

By statute, a maximum \$10,000 civil penalty may be imposed for late violations. 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 no violation of Oregon election law.

On the PC 6 amendment for the post-election report filed on December 26, 2004, a new entry for an account payable to Valley Mail Services (VMS) dated October 28, 2004 was reported in the amount of \$655.00. Mr. Shannon's testimony states that the letter notifying him of the expenditure was dated October 28, 2004, marked "past due" and that he didn't receive the letter until after the due date of the post-election report. Mr. Shannon states that he stopped by the office of Valley Mail to discuss the obligation after filing the PC 6 amendment and was informed that the invoice was sent in error and that he did not owe the \$655.65. A note dated February 3, 2005 written on the Valley Mail Services invoice indicates the bill was sent in error.

Mr. Shannon's testimony indicates that the invoice from Adams & Company dated October 27, 2004 was received October 30, 2004 or later. On the day he received the invoice, he was surprised to learn of the obligation. Mr. Shannon states that the consultant would normally obtain written authorization from his campaign prior to a financial commitment. Mr. Shannon does not recall giving authorization to Adams & Company for the purchase of cable television advertising, nor was he aware that the obligation was incurred. On the original post-election report PC 6 form submitted November 26, 2004, an account payable to Adams & Company in the amount of \$5,000.00, dated October 28, 2004, was reported. A post-election PC 6 amendment was received by the secretary on March 14, 2005, changing the date of the account payable for Adams & Company to October 30, 2004, outside the second supplement to the second pre-election accounting period.

Because the account payable to Valley Mail Services was invoiced in error and subsequently reported in error on an amendment to the post-election report and the expenditure to Adams & Company was not required to be disclosed on the first supplement to the second pre-election report, no violation has occurred, and no penalty will be assessed.

ORDER

It is ordered that no penalty be assessed.

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.

Jennifer Hertel, Compliance Specialist

DATE of Service: April 27, 2005

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