

BILL BRADBURY  
SECRETARY OF STATE

JOHN LINDBACK  
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 Doug Whitsett, Douglas K. Whitsett, ) Final Order  
Candidate, Gail D. Whitsett, Treasurer, for the First )  
Supplement to the Second Pre-Election for the ) Case No. L8177  
November 2, 2004, General Election )

October 28, 2005

Friends of Doug Whitsett (004821)  
Douglas K. Whitsett, D.V.M., Candidate / Gail D. Whitsett, Treasurer  
23131 North Poe Valley Rd  
Klamath Falls, OR 97603

Dear Senator Whitsett:

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

On August 19, 2005, the secretary notified Friends of Doug Whitsett (committee), pursuant to ORS 260.232(2), that it had failed to file the 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 9, 2004. The statement reported Gail D. Whitsett as the treasurer and 23131 North Poe Valley Rd, Klamath Falls, OR 97603 as the mailing address for both candidate and committee correspondence.
2. The committee submitted a timely first supplement to the second pre-election report on October 25, 2004. However, an additional contribution (\$2,000.00 received from Kroger Foods on October 24, 2004) should have been included on the report.
3. The committee first reported the contribution required to be included on the first supplement to the second pre-election report on its post-election report filed on December 2, 2004, making this portion of the report 26 business days late.

4. On August 19, 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 and was sent by first class mail to the treasurer at the above-referenced addresses. The notice proposed a civil penalty of \$100.00 and allowed the committee 20 days to request a hearing. The notice sent by certified mail was received and signed for by Douglas K. Whitsett on August 23, 2005.
5. On August 30, 2005, the secretary received a notarized letter from Gail Whitsett in lieu of a public hearing.
6. The letter—attached as Exhibit A—was reviewed, considered, and made part of the record.
7. The secretary has record of no previous late filings during the two-year period beginning September 15, 2003.

#### ULTIMATE FINDINGS OF FACT

Douglas K. Whitsett, Candidate, and Gail D. Whitsett, Treasurer, failed to file a timely first supplement to the second pre-election contribution and expenditure report for the November 2, 2004, General Election.

#### CONCLUSIONS OF LAW

Candidate Douglas K. Whitsett's and Treasurer Gail D. Whitsett's failure to file a timely first supplement to the second pre-election contribution and expenditure report for the November 2, 2004, General Election violated ORS 260.068.

#### OPINION

The Friends of Doug Whitsett's first supplement to the second pre-election contribution and expenditure report, filed on December 2, 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.

Ms. Whitsett explained that the contribution received from Kroger Foods was recorded in a campaign log book on the date it was received, and was reported within the reporting timeframe. The check was placed back in the envelope in which it was received and was found at a later time then deposited into the campaign account. Ms. Whitsett also stated she had major hip replacement surgery at the end of 2004.

While it is unfortunate that Ms. Whitsett had hip replacement during this period of time, in order for an illness to excuse a late filing, you must provide independent, written verification from someone such as a doctor, and the written verification must establish the illness as a personal emergency during October, the time the report was due. Additionally, it is the responsibility of both the candidate and treasurer to keep committee records up-to-date and to file accurate reports by the deadline.

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 report is \$520.00 ( $\$3,000.00 \times 1\% \times 26$  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 L8177 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: October 28, 2005

c: Gail D. Whitsett, Treasurer  
23131 North Poe Valley Rd  
Klamath Falls, OR 97603

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Douglas K. Whitsett, Candidate / Gail D. Whitsett, Treasurer  
page 4