

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

**IN THE MATTER OF** ) **FINAL ORDER**  
 )  
**FRIENDS OF KIM THATCHER (004871)** ) **Case No. L8182**  
 )

**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 Kim Thatcher (the Committee) for 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 8, 2005, the committee requested a hearing. (Ex. F.) The Elections Division referred the matter to Ray Myers, Hearings Officer, to hold a hearing and to issue a Proposed Order.

Hearing convened October 10, 2005, in Salem, Oregon. The Elections Division was represented by Assistant Attorney General Steve Wolf. Stacey Jackson and Jennifer Hertel were also present on behalf of the Elections Division. Ms. Jackson testified on behalf of the Elections Division. Representative Thatcher presented the case on behalf of the Committee. She was assisted by Michael Kelly. Representative Thatcher, Karl Thatcher and Mr. Kelly all testified on behalf of the committee.

**ISSUE**

The sole issue is whether the Elections Division properly assessed a civil penalty of \$811.21 against the Committee for the alleged late filing.

**EVIDENTIARY RULINGS**

Exhibits A through F and 1 and 2 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. That report was received timely on October 25, 2004. (Test. Ms. Jackson.)
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. Jackson.)
3. In its post-election report, received by the Elections Division on November 29, 2004, the committee reported that on October 19, 2004, it expended \$3,527 to Gateway Communications for literature, brochures and printing. (Ex, C-12.) That expenditure was not reported in the first supplement to the second pre-election report. (Ex. B; testimony of Ms. Jackson.)
4. For purposes of a penalty calculation, this is the committee's first violation. (Testimony of Ms. Jackson.)

## **CONCLUSIONS OF LAW**

The Elections Division properly assessed a civil penalty of \$811.21 against the Committee for late filing of the required information in the first supplement to the second pre-election report.

## **OPINION**

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 pre-election 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 pre-election 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. Jackson 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 Gateway Communications for \$3,527. The evidence establishes that the committee reported this expenditure on November 29, 2004, which was 23 business days late. Finally, the evidence establishes that this was a first violation.

The Committee contends that the \$3,527 reported to have been sent to Gateway was not an expenditure because at the time the payment was made, Gateway had not performed the services for which it had contracted. The committee argues, therefore, that the check for \$3,527 should be treated as an asset at the time it was issued because no services had been provided. In essence, it argues that only a right to have the work performed or to recover the amount expended existed at that time. The committee further argues that the amount of the expenditure was \$3,082.08 based on an invoice received from Gateway on October 19, 2004. According to the testimony of Mr. Kelly, the balance of the \$3,527 was not recovered from Gateway, but was applied for other expenses. He did not identify what those expenses were.

By administrative rule, OAR 165-012-0005, the Secretary of State designated the 2004 Campaign Finance Manual and associated forms as the procedures and guidelines to be used for compliance with Oregon campaign finance regulations. The Manual defines expenditures to include: "payment or furnishing of money or furnishing any other thing of value." 2004 Campaign Finance Manual at 33. Plainly, the committee paid \$3,527 to Gateway on October 19, 2004. That is an expenditure under the definition in the manual. Consequently, the committee was required to report it in the first supplement to the second pre-election report.

The committee argues, finally, that the amount of the penalty should be mitigated pursuant to the 2004 Campaign Finance Manual page 97. In particular, the committee argues that the following mitigating circumstance applies:

"The lateness or insufficiency of a report is the direct result of failure of a professional delivery service to deliver documents in the time guaranteed for delivery by written receipt of the service provider...."

The committee contends that the lateness of its reporting was due to the lateness of a final invoice from Gateway. This excuse does not fit into the particular mitigating circumstance allowed by the Secretary. It is not due to failure of a professional delivery service, which provided a written guarantee of delivery. Consequently, the committee has failed to prove a mitigating circumstance.

The Committee does not contend that any other mitigating circumstance applies in this case. Rather, it contends that it made a good faith effort to make comply with the rules. It argues that its good faith effort to make a timely filing should be considered in setting the amount of the penalty. The 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 that discretion by stating in the manual that mitigating circumstances are limited to five types. *Id* at 97. Consequently, 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. Because the Committee has not done so, there is no basis for reducing the penalty.

### **FINAL ORDER**

Payment of the proposed civil penalty of \$811.21 was received in the office of the Secretary of State on November 16, 2005. This Order will serve as your receipt and this matter is now considered closed.

## 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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Bill Bradbury, Secretary of Stat

## CERTIFICATE OF SERVICE

I certify that on December \_\_\_\_, 2005, I served the attached Final Order by mailing in a sealed envelope, with first class postage prepaid, a copy thereof address as follows:

FRIENDS OF KIM THATCHER  
KIM THATCHER, CANDIDATE / JIM MORRIS, TREASURER  
PO BOX 9111  
SALEM, OR 97305