

BILL BRADBURY
SECRETARY OF STATE



ELECTIONS DIVISION
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 the Friends of Mark Hass, Mark Hass, Candidate /) Final Order
Treasurer, for the First Pre-Election for the May 16, 2006,)
Primary Election) Case No. L8689
)

August 14, 2006

Friends of Mark Hass (003523)
Mark Hass, Candidate/Treasurer
6505 SW 90th Ave
Portland, OR 97223-7173

Dear Representative Hass:

This is a Final Order issued by the Secretary of State (secretary) for your failure to file a timely first pre-election contribution and expenditure report for the May 16, 2006, Primary Election.

On July 10, 2006, the secretary notified the Friends of Mark Hass (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 August 12, 2005. The statement reported Mark Hass, the candidate, as the treasurer and 6505 SW 90th Ave, Portland, OR 97223-7173 as the address to which all committee correspondence was to be sent.
2. The committee was required to file a first pre-election report with the secretary on April 10, 2006.
3. The secretary sent the committee a notice that it had failed to file a timely report on April 11, 2006. The notice was sent by first class mail to the candidate/treasurer at the above-referenced address.

4. The secretary received the report on April 13, 2006, which is three business days after the date on which the report was due.
5. The committee reported no contributions and total expenditures of \$9,233.71 during the accounting period for the report.
6. On July 10, 2006, 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 \$276.72 and allowed the committee 20 days to request a hearing. The notice sent by certified mail was received and signed for by Doa Day on July 11, 2006.
7. On July 14, 2006, the secretary received a notarized letter from Representative Mark Hass in lieu of a public hearing.
8. The letter—attached as Exhibit A—was reviewed, considered, and made part of the record.
9. The secretary has record of no previous late filings during the two-year period beginning September 15, 2005.

ULTIMATE FINDINGS OF FACT

Mark Hass, Candidate/Treasurer, failed to file a timely first pre-election contribution and expenditure report for the May 16, 2006, Primary Election.

CONCLUSIONS OF LAW

Candidate/Treasurer Mark Hass's failure to file a timely first pre-election contribution and expenditure report for the May 16, 2006, Primary Election violated ORS 260.058.

OPINION

The Friends of Mark Hass's first pre-election contribution and expenditure report, filed on April 13, 2006, was late. It was due by 5:00 p.m., April 10, 2006.

By statute, a maximum \$10,000 civil penalty may be imposed for this violation. The *2006 Campaign Finance Manual*, which contains a penalty calculation matrix on pages 104–106, 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.

The testimony submitted by Representative Hass stated that he confirmed with his "accounting service" and with the State Elections office that he did not need to file reports for the 2006 election. He also stated that he was not a candidate and did not participate in the election, and that his name was not printed on the ballot, nor did he file a candidate's statement for inclusion in the voters' pamphlet. Additionally, he points out that the committee received no contributions and "there wasn't much activity."

Under ORS 260.005(1) "Candidate" means in part: (A) An individual whose name is printed on a ballot, for whom a declaration of candidacy, nominating petition or certificate of nomination to public office has been filed or whose name is expected to be or has been presented, with the individual's consent, for nomination or election to public office;

(B) An individual who has solicited or received and accepted a contribution, made an expenditure, or given consent to an individual, organization, political party or political committee to solicit or receive and accept a contribution or make an expenditure on the individual's behalf to secure nomination or election to any public office at any time, whether or not the office for which the individual will seek nomination or election is known when the solicitation is made, the contribution is received and retained or the expenditure is made, and whether or not the name of the individual is printed on a ballot.

Representative Hass filed a Declaration of Candidacy for the office of State Representative District 27 on August 9, 2005. He withdrew his filing of candidacy on December 7, 2005. For the purpose of filing campaign finance reports the statutory definition of candidate includes a person who has withdrawn their candidacy ("whether or not the name of the individual is printed on a ballot".)

While it is unfortunate that Representative Hass received advice from his accounting service that reports were not required to be filed for the 2006 Primary Election, this does not constitute a mitigating circumstance (as adopted by OAR 165-012-0005, *2006 Campaign Finance Manual*, page 102) in which the penalty would be reduced or waived.

Representative Hass also states that he received erroneous advice from a staff member of the Elections Division. One can conclude that Representative Hass is alleging that because he received the wrong advice from an Elections Division staff member, that the reason he filed the report late was the direct result of filing officer error. Representative Hass did not name the individual he spoke to from the Elections Division, and provided no evidence or record of the conversation he engaged. He did not name the staff member that he spoke to, or provide details of the contents of the conversation. Therefore it is impossible to know how accurately the situation was described to the staff member at the Division, or of what, exactly, the representation consisted. Therefore Representative Hass has not satisfied his burden of proving that the substance of the advice provided is a mitigating circumstance (filing officer error) causing him to file the first pre-election contribution and expenditure report three business days after the deadline for filing the report.

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.

ORDER

It is ordered that a penalty of \$276.72 ($\$9,233.71 \times 1\% \times 3$ days) 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 L8689 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.

Jennifer Hertel, Compliance Specialist

DATE of Service: _____