

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) Final Order by Default
by Friends of Vicki Berger, Vicki Berger, Candidate,)
Chuck Swank, Treasurer, for the First Pre-Election for the) Case No. L8695
May 16, 2006, Primary Election)

August 14, 2006

Friends of Vicki Berger (004112)
Vicki Berger, Candidate / Chuck Swank, Treasurer
805 Kingwood Dr NW
Salem, OR 97304

Dear Representative Berger:

This is a Final Order by Default 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 Friends of Vicki Berger (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; however, no request for a hearing was received by the secretary within the time permitted in the notice. Accordingly, after consideration of the records and files of the secretary regarding this matter, the secretary 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 November 30, 2005. The statement reported Chuck Swank as the treasurer and 805 Kingwood Dr NW, Salem, OR 97304 as the mailing address for both candidate and committee correspondence.
2. The committee was required to file a first pre-election report with the secretary on April 10, 2006. This report was required to be filed electronically.
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 and treasurer at the above-referenced address.

4. The secretary received the electronically filed report on April 13, 2006, which is three business days after the date on which the report was due.
5. The committee reported total contributions of \$18,426.09 and total expenditures of \$16,310.00 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 and was sent by first class mail to the treasurer at the above-referenced address. The notice proposed a civil penalty of \$552.78 and allowed the committee 20 days to request a hearing. However, the notice did not take into account that the committee filed a paper copy of the report by the deadline. The proposed civil penalty should have been \$138.20. The notice sent by certified mail was received and signed for by Vicki Berger on July 13, 2006.
7. The committee did not request a public hearing or submit notarized testimony in lieu of a public hearing.
8. The secretary has record of no previous late filings during the two-year period beginning September 15, 2005.

ULTIMATE FINDINGS OF FACT

Vicki Berger, Candidate, and Chuck Swank, Treasurer, failed to file a timely first pre-election contribution and expenditure report electronically for the May 16, 2006, Primary Election.

CONCLUSIONS OF LAW

Candidate Vicki Berger's and Treasurer Chuck Swank's failure to file a timely first pre-election contribution and expenditure report electronically for the May 16, 2006, Primary Election violated ORS 260.058 and ORS 260.159.

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.

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. Additionally, if a paper copy of the report is provided to the filing officer prior to the electronic copy, the penalty is reduced by 75%, beginning with the day a paper copy of the report is submitted.

ORDER

It is ordered that a penalty of \$138.20 ($\$18,426.09 \times 1\% \times 3 \text{ days} \times 25\%$) 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 L8695 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.

Nancy Ferry, Compliance Specialist

DATE of Service: _____

c: Chuck Swank, Treasurer
805 Kingwood Dr NW
Salem, OR 97304