

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 Committee to Elect Charlie Bailey for Judge,) Final Order
Dale "Charlie" Bailey, Candidate, Beth Roberts, Treasurer,)
for the Second Pre-Election for the May 16, 2006, Primary) Case No. L8807
Election)

October 25, 2006

Committee to Elect Charlie Bailey for Judge (005268)
Dale "Charlie" Bailey, Candidate / Beth Roberts, Treasurer
PO Box 223
Hillsboro, OR 97123

Dear Mr. Bailey:

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

On August 14, 2006, the secretary notified the Committee to Elect Charlie Bailey for Judge (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 1, 2006. The statement reported Beth Roberts as the treasurer and PO Box 223, Hillsboro, OR 97123 as the mailing address for both candidate and committee correspondence.
2. The committee was required to file a second pre-election report with the secretary on May 4, 2006.
3. The secretary received the report on May 5, 2006, which is one business day after the date on which the report was due.

4. The committee reported total contributions of \$15,186.50 and total expenditures of \$10,272.90 during the accounting period for the report.
5. On August 14, 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 \$151.87 and allowed the committee 20 days to request a hearing. The notice sent by certified mail was received and signed for by Beth Roberts on August 24, 2006.
6. On August 31, 2006, the secretary received a letter from the committee requesting a public hearing. On September 14, 2006, Beth Roberts, Treasurer, submitted a notarized letter in lieu of a public hearing.
7. The letter—attached as Exhibit A—was reviewed, considered, and made part of the record.
8. The secretary has record of no previous late filings during the two-year period beginning September 15, 2005.

ULTIMATE FINDINGS OF FACT

Dale "Charlie" Bailey, Candidate, and Beth Roberts, Treasurer, failed to file a timely second pre-election contribution and expenditure report for the May 16, 2006, Primary Election.

CONCLUSIONS OF LAW

Candidate Dale "Charlie" Bailey's and Treasurer Beth Roberts's failure to file a timely second pre-election contribution and expenditure report for the May 16, 2006, Primary Election violated ORS 260.058.

OPINION

The Committee to Elect Charlie Bailey for Judge's second pre-election contribution and expenditure report, filed on May 5, 2006, was late. It was due by 5:00 p.m., May 4, 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 adequately mitigates the failure to file the report by the deadline. The testimony explains that the report was sent May 3, 2006, from the Hillsboro post office by certified mail. The item was delivered on May 4, 2006, in Salem, OR and signed for by T. McGinnis.

In addition to the notarized testimony, Ms. Roberts included copies of supporting documentation – the certified mail receipt, the cash register transaction and the track and confirm search results showing the status of the delivered item. The report was timely received and signed for at the Department of Administrative Services in Salem; however, it was not received in the office of the Elections Division for processing until May 5, 2006, which is why it was recorded as one day late.

A reduction or waiver of the penalty will be considered only if one of five clearly defined mitigating circumstances is present. These mitigating circumstances are defined on page 102 of the *2006 Campaign Finance Manual* and in the proposed penalty notice. The burden rests with the party requesting the waiver of the proposed civil penalty to demonstrate that one of the listed circumstances applies and caused the lateness of the report. One of these circumstances is failure of a professional delivery service, as stated in the manual: "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 ..."

In conclusion, the hearings officer finds that failure of a professional delivery service is clearly established and is a valid mitigating circumstance justifying waiver of the penalty assessed against the Committee to Elect Charlie Bailey for Judge.

ORDER

It is ordered that no penalty be assessed because the mitigating circumstance of failure of a professional delivery service is established. The case 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.

Jennifer Hertel, Compliance Specialist

DATE of Service: _____

c: Beth Roberts, Treasurer
PO Box 223
Hillsboro, OR 97123