

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 Oregon Republican Party, Charles Oakes, Treasurer,) Final Order
for the Post-Election for the May 16, 2006, Primary Election)
) Case No. L8821
)

April 2, 2007

Oregon Republican Party (000379)
Charles Oakes, Treasurer
PO Box 789
Salem, OR 97308-0789

Dear Mr. Oakes:

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

On December 6, 2006, the secretary notified the Oregon Republican Party (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. The Elections Division designates the committee's written testimony and the Division's file as the record in this matter. 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 221), applicable during the reporting period, was filed with the secretary on May 15, 2006. The statement reported Charles Oakes as the treasurer and PO Box 789, Salem, OR 97308-0789 as the address to which all committee correspondence was to be sent.
2. The committee was required to file a post-election report with the secretary on June 15, 2006.
3. The secretary sent the committee a notice that it had failed to file a timely report on June 16, 2006. The notice was sent by first class mail to the treasurer at the above-referenced address.

4. On June 30, 2006, the secretary sent a letter to the committee informing them that their report had still not been received.
5. The secretary received the report on July 18, 2006, which is 22 business days after the date on which the report was due.
6. The committee reported total contributions of \$30,985.00 and total expenditures of \$4,360.35 during the accounting period for the report.
7. On December 11, 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 treasurer at the above-referenced address. The notice proposed a civil penalty of \$10,000.00 and allowed the committee 20 days to request a hearing. The notice sent by certified mail was received and signed for by Amy E. Langdon on December 14, 2006.
8. On January 3, 2007, the secretary received a notarized letter from Amy E. Langdon in lieu of a public hearing.
9. The letter—attached as Exhibit A—was reviewed, considered, and made part of the record.
10. The secretary has record of one previous late filing during the two-year period beginning September 15, 2005.

ULTIMATE FINDINGS OF FACT

Charles Oakes, Treasurer, failed to file a timely post-election contribution and expenditure report for the May 16, 2006, Primary Election.

CONCLUSIONS OF LAW

Treasurer Charles Oakes's failure to file a timely post-election contribution and expenditure report for the May 16, 2006, Primary Election violated ORS 260.063.

OPINION

The Oregon Republican Party's post-election contribution and expenditure report, filed on July 18, 2006, was late. It was due by 5:00 p.m., June 15, 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.

Ms. Langdon explains in her testimony that the committee tried to electronically file the post-election report on 12:18 pm, Thursday, June 15, 2006. The committee was informed that the "data seemed garbled or corrupt" and that the file did not post to the database. Ms. Langdon also states that the committee continued to attempt sending the electronic file "but the SOS Elecfile Server continued to reject subsequent emails." The committee infers from this that the Elections Division's email system "was not working" and that this constitutes the mitigating circumstance of "filing officer error."

However, apart from the committee's inability to file its report, there is no evidence suggesting problems with the Elections Division's email system during the relevant period. The responsibility for successfully filing a report lies with the committee. The *2006 Campaign Finance Manual* states on page 23 that a treasurer is responsible for filing accurate and timely contribution and expenditure reports. It also states that "Treasurers are personally responsible for carrying out their duties and should understand those responsibilities, as well as their personal liability for fulfilling them." The manual is reproduced to explain contribution and expenditure reporting requirements, and instructs committee treasurers on fulfilling those requirements. The manual has information about the electronic filing requirements in several different sections. It informs committees on pages 50-51, that "reports not corresponding to the required format are not considered filed." It also informs a committee that an electronic file may be submitted on a 3/12" high density MS DOS-formatted diskette, on a PC readable CD or sent by e-mail as an attachment to elecfile.sos@state.or.us.

The only evidence in the record regarding email system problems actually implicates the *committee's* system. When the report was received electronically on July 18, 2006, the email sent with the attached file stated that "we have been having issues with our emails not going through because our server had incorrect settings-and sometimes the email goes through but the attachment is corrupt." That email is included in the record and for ease of reference is attached as exhibit 1.

The testimony asserts that the Elections Division did not communicate to the committee that the committee could file a paper copy of the report to reduce in part any civil penalty that may be imposed, and because of this failure to alert the committee of this option, the mitigating circumstance for failure to file the report by the deadline is filing officer error.

The lack of special notification of the paper filing option is not a mitigating circumstance. The availability of this option is plainly set out in the late penalty matrix on page 105 of the *2006 Campaign Finance Manual*, which states that "If a report is required to be filed electronically and is not received in the approved electronic file format by the deadline, it is late until it is successfully filed electronically. If a paper copy of the report is provided to the filing officer prior to the electronic copy, the penalty is calculated above for a late report is reduced by 75%, beginning with the day a paper copy of the report is received."

Moreover, the record reveals that the Elections Division did directly inform the committee of this option well in advance of the committee's ultimately successful filing on July 18, 2006. The Elections Division mailed a second notice to the treasurer of the committee on June 30, 2006. That notice informed the committee that the report was still delinquent and that "if a paper copy of the report is provided to the Secretary of State, Elections Division, prior to the electronic filing, the penalty is reduced by 75 percent, beginning with the day a paper copy of the report is submitted." That notice is included in the record in this case and for ease of referenced is attached as exhibit 2.

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 pages 102-103 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. Based on the testimony and case documentation the hearings officer does not find that the late report was caused by filing officer error.

Under the penalty matrix, the maximum statutory penalty of \$10,000 is reduced to 3% of the total contributions or total expenditures—whichever is greater—for each business day the report was late as this is the second late violation by the treasurer.

Although the calculated penalty for the late report is \$20,450.10 ($\$30,985.00 \times 3\% \times 22$ days), the penalty matrix sets a maximum penalty of \$10,000 when the total contributions or total expenditures—whichever is greater—is over \$10,000.

ORDER

It is ordered that a penalty of \$10,000 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 L8821 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: _____