

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 Julia Philbrook for Circuit Court Judge,) Final Order
Julia Philbrook, Candidate, Sharon Kelly, Treasurer, for the)
Post-Election for the May 16, 2006, Primary Election) Case No. L8847
)

March 13, 2007

Julia Philbrook for Circuit Court Judge (005313)
Julia Philbrook, Candidate / Sharon Kelly, Treasurer
7695 SW 82nd Ave
Portland, OR 97223

Dear Ms. Philbrook:

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 11, 2006, the secretary notified the Julia Philbrook for Circuit Court 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 April 5, 2006. The mailing address provided on the Statement of Organization for the candidate was 7695 SW 82nd Ave, Portland, OR 97223. The statement reported Sharon Kelly as the treasurer and PO Box 8915, Portland, OR 97207 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 candidate and treasurer at the above-referenced addresses.

4. The secretary received the report on June 19, 2006, which is 2 business days after the date on which the report was due.
5. The committee reported total contributions of \$1,950.00 and total expenditures of \$2,020.00 during the accounting period for the report.
6. On July 3, 2006, the committee filed an amendment to the post-election report. The committee now reported total contributions of \$2,075.00 and total expenditures of \$2,145.00
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 candidate and was sent by first class mail to the treasurer at the above-referenced addresses. The notice proposed a civil penalty of \$257.40 and allowed the committee 20 days to request a hearing. The notice sent by certified mail was received and signed for by the committee on December 15, 2006.
8. On December 29, 2006, the secretary received a request for a public hearing from Sharon Kelley.
9. On January 25, 2007, the secretary received notarized testimony from Sharon Kelly in lieu of a public hearing.
10. The letter—attached as Exhibit A—was reviewed, considered, and made part of the record.
11. The secretary has record of no previous late filings during the two-year period beginning September 15, 2005.

ULTIMATE FINDINGS OF FACT

Julia Philbrook, Candidate, and Sharon Kelly, Treasurer, failed to file a timely post-election contribution and expenditure report for the May 16, 2006, Primary Election.

CONCLUSIONS OF LAW

Candidate Julia Philbrook's and Treasurer Sharon Kelly's failure to file a timely post-election contribution and expenditure report for the May 16, 2006, Primary Election violated ORS 260.058.

OPINION

The Julia Philbrook for Circuit Court Judge's post-election contribution and expenditure report, filed on June 19, 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.

A reduction or waiver of the penalty may 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. One of these circumstances is a valid personal emergency such as a serious personal illness or death in the immediate family of the candidate or treasurer, which caused the report to be late.

Sharon Kelly submitted notarized testimony stating the post-election report was filed due to a valid personal emergency, however, she did not provide independent written verification substantiating the personal emergency. Ms. Kelly also states that the report was filed on June 19, 2006, and reported total contributions of \$550.00. We concur that the proposed penalty notice erroneously stated that the post-election report was filed on July 3, 2006, it was received on June 19, 2006. However we disagree with Ms. Kelly's figure regarding the total contributions reported by the committee. The post-election report was amended on July 3, 2006; the total contributions on the amended report were \$2,075.00 and the total expenditures were \$2,145.00.

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 an amended summary statement is filed the penalty is calculated using the total contributions or total expenditures reported on the amended summary statement.

The calculated penalty for the late report is \$42.90 ($\$2,145.00 \times 1\% \times 2$ days). Because the appropriate penalty is under \$50, no penalty will be assessed.

ORDER

It is ordered that no penalty be assessed.

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: _____