

BILL BRADBURY
SECRETARY OF STATE



ELECTIONS DIVISION
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ELECTIONS — (503) 986-1518

**BEFORE THE ELECTIONS DIVISION
OFFICE OF THE SECRETARY OF STATE
STATE OF OREGON**

IN THE MATTER OF) **FINAL ORDER**
)
FRIENDS OF SAM CHASE)
(005256))
) Case No. L8924
)

HISTORY OF THE CASE

On March 9, 2007, the Elections Division of the Office of the Secretary of State (Elections Division) issued a Notice of Proposed Civil Penalty to Friends of Sam Chase (the Committee) for the alleged late filing of the supplemental contribution and expenditure report due September 11, 2006. The Notice alleged that the Committee filed its report 76 days late. (Ex. F.) On April 2, 2007, Mr. Chase, the candidate, requested a hearing. (Ex. G.) The Notice proposed a civil penalty totaling \$1,000. The Elections Division referred the matter to Ray Myers, Hearings Officer, to hold a hearing and to issue a Proposed Order.

Hearing convened April 30, 2007, in Salem, Oregon. The Elections Division was represented by Assistant Attorney General Steve Wolf. Brenda Bayes of the Elections Division was also present. Jennifer Hertel and Nancy Ferry, of the Elections Division, testified on behalf of the Elections Division. Brian Posewitz, an attorney, appeared on behalf of the Committee. Mr. Chase testified on behalf of the Committee. The record closed on April 30, 2007.

Following the contested case hearing conducted in this matter, Hearings Officer Ray Myers issued a Proposed Order dated May 24, 2007, which the Elections Division served on petitioner under cover letter dated May 25, 2007. Petitioner did not file exceptions to the proposed order in the time provided.

Having reviewed the record in this case, the Secretary of State issues this Final Order, assessing a civil penalty of \$1,000.00 against the Committee. This Final Order withdraws, supercedes and replaces that Proposed Order.

ISSUE

The issue is whether the Elections Division properly assessed a civil penalty of \$1,000 against the Committee for the late filing of the supplemental contribution and expenditure report that was due on September 11, 2006. The Elections Division contends that the Committee was 76 days late in filing its report. The Committee concedes it filed the report two days late. It contends, however, that the report was filed effective September 13, 2006.

EVIDENTIARY RULINGS

Exhibits A through J were admitted into evidence without objection.

FINDINGS OF FACT

1. The 2006 supplemental contribution and expenditure report was due on September 11, 2006. The Committee was required to file its reports electronically. (Agreement of the parties.)
2. The Committee attempted to electronically file the report after 5 PM on September 12, 2006. (Concession of Committee). The report was ASCII character set, was readable by an operating system compatible with Windows 95 or higher, and records ended with a carriage return ASCII character (CR) followed by a line feed ASCII character (LF). (Testimony of Ms. Ferry and Ms. Hertel.)
3. On September 12, 2006, the Elections Division sent the Committee a Notice that its report was late. (Ex. C.) This Notice was sent in response to the Committee's failure to file its report on September 11, 2006, not because the electronic report sent on September 12, 2006, failed to load into the Elections Division's system. (Testimony of Ms. Ferry and Ms. Hertel.)
4. On September 12, 2006 at 5:18 PM, the Elections Division sent an email to the Committee stating "[y]our filing has been received." (Ex. D-1.)
5. On September 13, 2006, the Elections Division sent an email to the Committee stating that the filing would not load. It stated that there were extra carriage returns in the detail records in the PC 2 and PC 3. It suggested that the Committee contact the vendor that provided the software. (Ex. D-2.) The Elections Division and the Committee continued to exchange emails over the loading problem on September 13, 2006. (Ex. D.) On September 28, 2006 the Elections Division sent one more email to the Committee stating that the file would still not load. It explained that carriage returns should only be at the end of fields for each line.
6. The Committee electronically sent the C & E report to the Elections Division on December 29, 2006. The report was successfully loaded on that date. (Ex. F; testimony of Mr. Chase.)

CONCLUSIONS OF LAW

OAR 165-012-0230(11) provides that a report that must be filed electronically is not considered filed until it is successfully filed electronically. The Committee's supplemental report, initially submitted after 5 PM on September 12, 2006, failed to load into the electronic reporting data system. Consequently, the Committee's supplemental report, due September 11, 2006, was not successfully filed until December 29, 2006, making it 76 days late.

OPINION

ORS 260.058(2) states:

“A candidate or a candidate's principal campaign committee shall file a supplemental statement of contributions received and expenditures made by or on behalf of the candidate or the candidate's principal campaign committee, if the post-election statement required by subsection (1)(d) of this section shows an unexpended balance of contributions or an expenditure deficit. A supplemental statement shall be filed annually not later than September 10, until a statement is filed containing no balance or no deficit. The accounting period for the statement required by this subsection begins on the day following the last day of the accounting period for the previous statement filed and ends on September 1.”

Because September 10, 2006 fell on a Sunday, the supplemental report was due on September 11, 2006. The Committee concedes that the electronic filing was not even attempted until after 5 PM on September 12, 2006. This means that the filing was at least two days late.

The significant issue in this case is whether the Elections Division is correct in its assertion that the electronic report was not *filed* until December 29, 2006, when the report was finally sent in a format that would load into the Elections Division's data system.

ORS 260.159(4) states:

(4) Statements filed electronically under this section shall conform to the technical specifications for electronic filing prescribed by the Secretary of State by rule.

OAR 165-012-0230(5) contains the Elections Division's rule setting forth the technical requirements for electronic filing. It states:

“(5) Candidates and committees filing electronically must have their own software that they use to enter data. The software must be capable of generating final data for detailed contribution and expenditure reports, including forms PC 1, PC 2, PC 3, PC 4A, PC 4B, PC 5, PC 6, and PC 9. The information provided on the forms must fully comply with ORS Chapter 260 and the current Campaign Finance Manual. To file reports electronically, the committee or candidate must export the data of the final contribution and expenditure report generated in its software into an ASCII tab-delimited file that is formatted with the following file format specifications. Reports not corresponding to the required file format will not be considered filed.

“(a) All reports must correspond to the required file format. (Attachment 1 to this rule);

“(b) The character set must be ASCII.

“(c) Files must have been created by or be readable by an operating system that is compatible with Microsoft Windows 95 or higher.

“(d) Records must end with a carriage return ASCII character (CR) followed by a line feed ASCII character (LF).”

The attachment to the rule contains additional File Format specifications. (Ex. J.) If the report is not filed with the proper file format specifications, it will not load successfully into the Elections Division electronic filing system.

OAR 165-012-0230(11) states:

Unless the committee or candidate required to file electronically is excused by the Secretary of State under subsection (3), a report is *not considered filed* until it is *successfully filed electronically*. Attachment 1 contains the required file format specifications for electronic filing. (Emphasis added.)¹

¹ In addition to OAR 165-012-0230, the Secretary of State has adopted the *2006 Campaign Finance Manual* by rule as the procedures and guidelines to be used for compliance with Oregon campaign finance regulations. OAR 165-012-0005. The *Manual* discusses electronic filing on pages 50-51 and 97.

As stated in the facts above, the Elections Division notified the committee by email on September 13, 2006, and again on September 28, 2006, that the report had not successfully loaded into the electronic system. The latter email stated that the carriage returns should only be at the end of the field information for each line and not in the middle of the data fields. The committee did not respond to this email and did not attempt to file again until December 29, 2006. The responsibility for correctly and timely filing a contribution and expenditure report lies with the filer. At this point, the committee did not take the steps to determine what prevented the report from successfully filing in September 2006, and did not make another attempt until three months later. Per OAR 165-012-0230(11), an electronic report is not considered filed until it will successfully load into the Elections Division's data system. Consequently, by operation of the rule, the Committee's supplemental report is considered filed effective December 29, 2006, making the report 76 days late. In accordance with the Elections Division's penalty matrix, the Division correctly assessed a penalty of \$1,000.00.

ORDER

The Friends of Sam Chase is assessed a civil penalty of \$1,000.00 for filing the 2006 supplemental contribution and expenditure report late.

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.

Bill Bradbury, Secretary of State

Date

CERTIFICATE OF SERVICE

I certify that on July 25, 2007, I served the attached Final Order by mailing in a sealed envelope, with first class postage prepaid, a copy thereof addressed as follows:

FRIENDS OF SAM CHASE (005256)
SAM CHASE, CANDIDATE/TREASURER
2276 NW JOHNSON
PORTLAND, OR 97210