

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 Ames Curtright for Oregon,) Final Order
W. Ames Curtright, Candidate/Treasurer, for the)
Supplemental of 2006) Case No. L8925

June 8, 2007

Committee to Elect Ames Curtright for Oregon (005274)
W. Ames Curtright, Candidate/Treasurer
PO Box 1350
Jefferson, OR 97352

Dear Mr. Curtright:

This is a Final Order issued by the Secretary of State (secretary) for your failure to file a timely supplemental contribution and expenditure report for 2006.

On March 9, 2007, the secretary notified the Committee to Elect Ames Curtright for Oregon (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 7, 2006. The statement reported W. Ames Curtright, the candidate, as the treasurer and PO Box 1350, Jefferson, OR 97352 as the address to which all committee correspondence was to be sent.
2. The committee was required to file a supplemental report with the secretary on September 11, 2006.
3. The secretary sent the committee a notice that it had failed to file a timely report on September 12, 2006. The notice was sent by first class mail to the candidate/treasurer at the above-referenced address.
4. The secretary received the report on September 15, 2006, which is four business days after the date on which the report was due.

5. The committee reported no contributions and total expenditures of \$20,519.40 during the accounting period for the report.
6. On March 9, 2007, 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/treasurer at the above-referenced address. The notice proposed a civil penalty of \$2,462.32 and allowed the committee 20 days to request a hearing. The notice sent by certified mail was received and signed for by Dama Curtright on March 12, 2007. The notice proposed the actual calculated penalty and failed to take into account that the maximum penalty for a September supplemental report is \$1,000.00. The proposed penalty is now revised to \$1,000.00.
7. On March 15, 2007, the secretary received a notarized letter from Carol Russell in lieu of a public hearing.
8. The letter—attached as Exhibit A—was reviewed, considered, and made part of the record.
9. The secretary has record of one previous late filing during the two-year period beginning September 15, 2005.

ULTIMATE FINDINGS OF FACT

W. Ames Curtright, Candidate/Treasurer, failed to file a timely supplemental contribution and expenditure report for 2006.

CONCLUSIONS OF LAW

Candidate/Treasurer W. Ames Curtright's failure to file a timely supplemental contribution and expenditure report for 2006 violated ORS 260.058.

OPINION

The Committee to Elect Ames Curtright for Oregon's supplemental contribution and expenditure report, filed on September 15, 2006, was late. It was due by 5:00 p.m., September 11, 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. The testimony was filed by Carol Russell, who does contribution and expenditure reporting for many candidates, including Mr. Curtright. She explained that this was the only candidate she reported for who lost in a primary election. She had expected that Mr. Curtright would be active in the general election and had begun to prepare his first pre-election report. The *2006 Campaign Finance Manual* states that a committee that is active in both the primary and general election cycles does not need to file a September supplemental report for that year. What Ms. Russell did not realize is that a major party candidate who loses in the primary

election is then **not** active in the general election and **is** therefore required to file a September supplemental report. She explained that this was an error on her part and asked that no penalty be imposed on Mr. Curtright. While this is an unfortunate incident, it is not a mitigating circumstance in which the secretary would reduce or waive the penalty.

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 candidate.

Although the calculated penalty for the late report is \$2,462.32 ($\$20,519.40 \times 3\% \times 4$ days), the penalty matrix sets a maximum penalty of \$1,000.00 for the late filing of a September supplemental report.

ORDER

Payment of the proposed civil penalty of \$1,000.00 was received in the office of the Secretary of State on May 25, 2007. This Order will serve as your receipt and this matter 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: Carol Russell
89358 Cranberry Ln
Bandon, OR 97411