

BILL BRADBURY
SECRETARY OF STATE



ELECTIONS DIVISION
JOHN LINDBACK
DIRECTOR
141 STATE CAPITOL
SALEM, OREGON 97310-0722
ELECTIONS — (503) 986-1518

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

IN THE MATTER OF) **FINAL ORDER**
)
DESCHUTES COUNTY DEMOCRATIC)
) Case No. L8936
CENTRAL COMMITTEE (000304))

HISTORY OF THE CASE

On March 23, 2007, the Elections Division of the Office of the Secretary of State (Elections Division) issued a Notice of Proposed Civil Penalty to the Deschutes County Democratic Central Committee (the Committee) for the late filing of the first pre-election contribution and expenditure report for the November 7, 2006, General Election. (Ex E). On April 16, 2007, David E. Paulson, current treasurer of the Committee, requested a hearing. (Ex F). The Elections Division referred the matter to Ray Myers, Hearings Officer, to hold a hearing and to issue a Proposed Order.

Hearing convened May 16, 2007, in Salem, Oregon. The Elections Division was represented by Assistant Attorney General Steve Wolf. Nancy Ferry, compliance specialist with the Elections Division, testified on behalf of the Elections Division. Mr. Paulson appeared by telephone on behalf of the Committee. The record closed on May 16, 2007.

ISSUE

The issue is whether the Elections Division correctly concluded that the Committee was one day late filing its the first pre-election report and, if so, whether the Committee should be assessed a civil penalty of \$47.09.

EVIDENTIARY RULINGS

Exhibits A through H were admitted into evidence without objection.

FINDINGS OF FACT

1. The Committee’s first pre-election report was due on October 2, 2006. (Ex H).
2. The first pre-election report was filed on October 3, 2006. (Test. Ms. Ferry).

CONCLUSIONS OF LAW

The Elections Division properly concluded that the Committee was one day late filing the first pre-election report.

OPINION

ORS 260.073 states in relevant part:

“(1) Except as otherwise provided in ORS 260.112, each political committee, other than a candidate's principal campaign committee, supporting or opposing one or more candidates or measures at the general election shall file the following with each appropriate filing officer:

“(a) A first preelection statement of contributions received and expenditures made by or on behalf of the political committee, not sooner than the 46th day and not later than the 36th day before the date of the election. For a political committee that supported or opposed one or more candidates or measures at the primary election, the accounting period for the statement required by this paragraph begins on the 21st day after the primary election. Otherwise, the accounting period for the statement begins on the date that the name of a treasurer is certified to the filing officer under ORS 260.035 unless a political committee has filed a post-election or supplemental statement of contributions and expenditures showing an unexpended balance of contributions or an expenditure deficit for a previous election. If such a post-election or supplemental statement is filed, the accounting period begins on the day following the last day of the accounting period for the statement filed for the previous election. If a political committee has filed a post-election or supplemental statement of contributions and expenditures for a previous election showing no balance or no deficit, the accounting period begins on the day that political committee next receives a contribution or makes an expenditure. If the statement for a previous election shows an unexpended balance of contributions or an expenditure deficit, the beginning balance on the statement required by this paragraph shall be the amount of the unexpended balance of contributions or expenditure deficit. The accounting period for the statement required by this paragraph ends on the 47th day before the date of the election.”

The Elections Division as the party asserting the position that the filing was late bears the burden of presenting evidence. ORS 183.450(2). The Elections Division has submitted evidence that the report was filed on October 3, 2006, one day late. (Test. Ms. Ferry). There is no evidence to the contrary. Consequently, the Elections Division has proven that the Committee was one day late in filing the first pre-election report.

The facts prove that the Committee was one day late in filing this report. Furthermore, the Committee appears to concede that it was late in filing its report. It contends, however, that

there is nothing in the notice that indicates that the Elections Division is seeking to establish a violation. Therefore, it argues, a violation cannot be determined in these proceedings.

The Notice plainly states that it is issued as a result of the late filing of the first pre-election report. It plainly contends that the report was one day late. It also predicates its authority to impose a penalty on the existence of a violation. Thus, in order to decide whether a penalty is appropriate, the hearing must necessarily decide whether there was any violation upon which the penalty may be based.

The Committee points out that the *2006 Campaign Finance Manual* states that if a penalty is less than \$50, it will not be assessed. (Ex G). It argues, therefore, that the penalty cannot be assessed. By administrative rule OAR 165-012-0005 the Secretary of State designated the *2006 Campaign Finance Manual* and associated forms as the procedures and guidelines to be used for compliance with Oregon campaign finance regulations. It states that “If the penalty is less than \$50, a violation is found but the penalty is not assessed.” (Ex G-2). Thus, under the *Manual*, it is clear that not only the civil penalty, but the underlying question of fact, whether there was a violation, is in issue. The Elections Division conceded at hearing that the proposed penalty will not be assessed as it is under \$50.

ORDER

The Deschutes County Democratic Central Committee violated ORS 260.073(1)(a) by filing its first pre-election report one day late. Because the appropriate penalty is under \$50, 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.

Jean Straight, Deputy Secretary of State

Date

CERTIFICATE OF SERVICE

I certify that on August 13, 2007, I served the attached Final Order by mailing in a sealed envelope, with first class postage prepaid, a copy thereof addressed as follows:

Deschutes County Democratic Central Committee (000304)
Carolyn Scalise, Treasurer
PO Box 1601
Bend, OR 97701