

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 Bruce Starr for State Senate Committee, Bruce Starr, ) Final Order  
Candidate, Nancy Stout, Treasurer, for the First Pre-Election )  
for the November 7, 2006, General Election ) Case No. L8950  
)

March 9, 2007

Bruce Starr for State Senate Committee (002752)  
Bruce Starr, Candidate / Nancy Stout, Treasurer  
22115 NW Imbrie Dr #290  
Hillsboro, OR 97124

Dear Senator Starr:

This is a Final Order issued by the Secretary of State (secretary) for your failure to file a timely first pre-election contribution and expenditure report for the November 7, 2006, General Election.

On December 7, 2006, the secretary notified the Bruce Starr for State Senate Committee (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; however, no request for a hearing was received by the secretary within the time permitted in the notice. Accordingly, after consideration of the records and files of the secretary regarding this matter, the secretary 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 March 13, 2006. The mailing address provided on the Statement of Organization for the candidate was 22115 NW Imbrie Dr #290, Hillsboro, OR 97124. The statement reported Nancy Stout as the treasurer and 4888 NW Bethany Blvd, Ste K5 #367, Portland, OR 97229 as the address to which all committee correspondence was to be sent.
2. The committee was required to file a first pre-election report with the secretary on October 2, 2006. This report was required to be filed electronically. A paper copy of the report was provided to the secretary on October 2, 2006.
3. The secretary sent the committee a notice that it had failed to file a timely report on October 3, 2006. The notice was sent by first class mail to the candidate and treasurer at the above-referenced addresses.

4. The secretary received the electronic file of the report on October 3, 2006, which is one business day after the date on which the report was due.
5. The committee reported total contributions of \$40,368.00 and total expenditures of \$16,129.48 during the accounting period for the report.
6. On December 7, 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 \$403.68 and allowed the committee 20 days to request a hearing. The notice sent by certified mail was received and signed for by David Chiafulio on December 9, 2006.
7. The notice should have proposed a civil penalty of \$100.92 ( $\$40,368.00 \times 1\% \times 25\%$ ) because a paper copy of the report was received timely.
8. On December 27, 2006, the secretary received notarized testimony from Nancy Stout in lieu of a public hearing. The letter—attached as Exhibit A—was reviewed, considered, and made part of the record.
9. The secretary has record of no previous late filings during the two-year period beginning September 15, 2005.

#### ULTIMATE FINDINGS OF FACT

Bruce Starr, Candidate, and Nancy Stout, Treasurer, failed to file a timely first pre-election contribution and expenditure report electronically for the November 7, 2006, General Election.

#### CONCLUSIONS OF LAW

Candidate Bruce Starr's and Treasurer Nancy Stout's failure to file a timely first pre-election contribution and expenditure report electronically for the November 7, 2006, General Election violated ORS 260.068.

#### OPINION

The Bruce Starr for State Senate Committee's first pre-election contribution and expenditure report, filed electronically on October 3, 2006, was late. It was due by 5:00 p.m., October 2, 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.

The committee submitted notarized testimony. The letter indicated the committee was using vendor provided software and on the vendor's homepage a message stated that the Elections Division's email system was down. This message was posted for the four days proceeding the filing deadline date. Ms. Stout indicated when she received notice from the Election's office on October 3, 2006, that the report was late she called the Election's office. Ms. Stout was told that the electronic filing system was not down and was receiving reports on the filing deadline date. The electronic report was successfully filed October 3, 2006.

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. ORS 246.021 provides that election documents which must be filed with the Secretary of State or other filing officer must be "delivered to and actually received at the office of the designated officer" not later than 5 p.m. of the day the document is due. While it is unfortunate that the vendor's website did not provide accurate data, the explanation provided in the notarized testimony does not adequately mitigate the failure to file a report by the deadline.

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.

#### ORDER

It is ordered that a penalty of \$100.92 ( $\$40,368.00 \times 1\% \times 1 \text{ day} \times 25\%$ ) 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 L8950 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.

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Stacey Jackson, Compliance Specialist

DATE of Service: March 9, 2007

c: Nancy Stout, Treasurer  
4888 NW Bethany Blvd, Ste K5 #367  
Portland, OR 97229

