

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 American Council of Engineering Companies -) Final Order
Oregon PAC, Gregg Scholz, Treasurer, for the First)
Pre-Election for the November 7, 2006, General Election) Case No. L8958

June 8, 2007

American Council of Engineering Companies - Oregon PAC (004016)
Gregg Scholz, Treasurer
89358 Cranberry Ln
Bandon, OR 97411

Dear Mr. Scholz:

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 March 23, 2007, the secretary notified the American Council of Engineering Companies - Oregon PAC (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 221), applicable during the reporting period, was filed with the secretary on December 13, 2005. The statement reported Gregg Scholz as the treasurer and 89358 Cranberry Ln, Bandon, OR 97411 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 electronic report on October 3, 2006. The notice was sent by first class mail to the treasurer at the above-referenced address.

4. The secretary received the electronic filing 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 \$2,380.00 and total expenditures of \$11,764.08 during the accounting period for the report.
6. On March 23, 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 treasurer at the above-referenced address. The notice proposed a civil penalty of \$29.41 and allowed the committee 20 days to request a hearing. The notice sent by certified mail was received and signed for by Dannielle Monger on March 24, 2007.
7. On March 28, 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 no previous late filings during the two-year period beginning September 15, 2005.

ULTIMATE FINDINGS OF FACT

Gregg Scholz, Treasurer, failed to file a timely first pre-election contribution and expenditure report for the November 7, 2006, General Election.

CONCLUSIONS OF LAW

Treasurer Gregg Scholz's failure to file a timely first pre-election contribution and expenditure report for the November 7, 2006, General Election violated ORS 260.073 and ORS 260.159.

OPINION

The American Council of Engineering Companies - Oregon PAC's first pre-election contribution and expenditure report, filed 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.

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 explains that the electronic filing of the report was sent to the secretary by email on time as required. Attached to the testimony are several email transmission documents showing dates and times sent from Carol Russell's email to the Elections Division electronic filing email address, elecfile.sos@state.or.us. These transmissions are for various committees' contribution and expenditure reports that were electronically filed from Ms. Russell's email at approximately the same time as the report for this committee. Attached to some of the email

transmissions are responses from our office, including one automatically generated from our mail system on September 30, 2006, which showed another committee's report as undeliverable. Ms. Russell attempted to rectify this situation by sending her clients' reports again by email and by faxing the hard copies on October 1, 2006. She was informed on October 3, 2006, that this committee's report had not been electronically received, so she forwarded her previous email, which was received and the electronic report filed. Ms. Russell asks that no fine be imposed on this committee, since the electronic filing was sent by the deadline.

Although Ms. Russell may have sent the email containing the committee's report timely from her computer, it was not received in the electronic filing email inbox by the deadline. Email transmission documents are not proof that the email was successfully delivered to the inbox or that an electronic report was successfully filed. While this is an unfortunate incident, email transmission problems are not a mitigating circumstance in which the secretary would reduce or waive the civil penalty.

Under the penalty matrix, the maximum statutory penalty of \$10,000 is reduced to one-quarter of 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 treasurer and a paper copy of the report was provided by the deadline.

The calculated penalty for the late report is \$29.41 ($\$11,764.08 \times 1\% \times 1 \text{ day} \times 25\%$). 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: _____