

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 Oregon Medical PAC, David B. Coutin, Treasurer, for the) Final Order
Second Supplement to the Second Pre-Election for the)
May 16, 2006, Primary Election) Case No. L9067
)

March 16, 2007

Oregon Medical PAC (000171)
David B. Coutin, Treasurer
5210 SW Corbett Ave
Portland, OR 97239-3897

Dear Dr. Coutin:

This is a Final Order issued by the Secretary of State (secretary) for your failure to file a timely second supplement to the second pre-election contribution and expenditure report for the May 16, 2006, Primary Election.

On November 30, 2006, the secretary notified the Oregon Medical 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 16, 2005. The statement reported David B. Coutin as the treasurer and 5210 SW Corbett Ave, Portland, OR 97239-3897 as the address to which all committee correspondence was to be sent.
2. The committee was required to file a second supplement to the second pre-election report with the secretary on May 12, 2006, disclosing contributions exceeding an aggregate of \$500 from a single source and expenditures exceeding an aggregate of \$1,000.00 to a single payee between May 1 and May 11, 2006.

3. The committee submitted a timely second supplement to the second pre-election report on May 12, 2006. However, an additional expenditure (\$650.00 to American Medical Political Action Committee on May 8, 2006) should have been included on the report.
4. The committee first reported the expenditure required to be included on the second supplement to the second pre-election report on its post-election report filed on June 14, 2006, making this portion of the report 22 business days late.
5. On November 30, 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 treasurer at the above-referenced address. The notice proposed a civil penalty of \$143.00 and allowed the committee 20 days to request a hearing. The notice sent by certified mail was received and signed for by Beth Cherry on December 4, 2006.
6. On December 11, 2006, the secretary received a notarized letter from C. Scott Gallant in lieu of a public hearing.
7. The letter—attached as Exhibit A—was reviewed, considered, and made part of the record.
8. The proposed penalty notice was reviewed and it was determined that the civil penalty should have been \$100.00 the maximum penalty imposed when the greater of total contributions or total expenditures during the accounting period is between \$0 - \$2,000.
9. The secretary has record of no previous late filings during the two-year period beginning September 15, 2005.

ULTIMATE FINDINGS OF FACT

David B. Coutin, Treasurer, failed to file a timely second supplement to the second pre-election contribution and expenditure report for the May 16, 2006, Primary Election.

CONCLUSIONS OF LAW

Treasurer David B. Coutin's failure to file a timely second supplement to the second pre-election contribution and expenditure report for the May 16, 2006, Primary Election violated ORS 260.063.

OPINION

The Oregon Medical PAC's second supplement to the second pre-election contribution and expenditure report, filed on June 14, 2006, was late. It was due by 5:00 p.m., May 12, 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.

A reduction or waiver of the penalty may will be considered only if one of five clearly defined mitigating circumstances is present. These mitigating circumstances are defined on pages 102-103 of the *2006 Campaign Finance Manual* and in the proposed penalty notice. The burden rests with the party requesting the waiver of the proposed civil penalty to demonstrate that one of the listed circumstances applies and caused the lateness of the report.

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. Mr. Gallant explains the expenditure to American Medical Political Action Committee was made from one of two accounts the committee maintains for contributions from its individual and corporate members and did not believe the expenditure was required to be reported because it was under \$1,000. The committee is required to maintain a single exclusive campaign account under ORS 260.054. Even though the \$650 expenditure was made from a different account than the expenditure of \$1,150 (which was reported by the deadline), both accounts are assets of the committee, therefore the \$650 expenditure was also required to be disclosed.

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 treasurer.

Although the calculated penalty for the late report is \$143.00 ($\$650.00 \times 1\% \times 22$ days), the penalty matrix sets a maximum penalty of \$100.00 when the total contributions or total expenditures—whichever is greater—is between \$0 and \$2,000.

ORDER

It is ordered that a penalty of \$100.00 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 L9067 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.

Jennifer Hertel, Compliance Specialist

DATE of Service: _____