

BILL BRADBURY  
SECRETARY OF STATE



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ELECTIONS — (503) 986-1518

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

IN THE MATTER OF ) **FINAL ORDER**  
)  
CITIZENS FOR ALAN BROWN )  
FOR STATE REPRESENTATIVE )  
(002868) )  
) **Case No. L9086**

**HISTORY OF THE CASE**

On November 30, 2006, the Elections Division of the Office of the Secretary of State (Elections Division) issued Notice of Proposed Civil Penalty to the Citizens for Alan Brown for State Representative (the Committee) alleging late filing of an expenditure that should have been reported on the first supplement to the second pre-election contribution and expenditure report (C & E report) (Ex E). On December 21, 2006, the Committee's Treasurer, Donna Butler, 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 January 19, 2007 in Salem, Oregon. The Elections Division was represented by Assistant Attorney General Steve Wolf. Nancy Ferry, compliance specialist, and Brenda Bayes, Deputy Director, Elections Division, were present on behalf of the Elections Division. Donna Butler represented the committee and testified on its behalf. Ms. Ferry testified on behalf of the Elections Division.

**ISSUE**

The issue is whether the expenditure at issue should have been reported on the first supplement to the second pre-election C & E report and, if so, whether the Elections Division properly assessed a civil penalty of \$675.00 against the Committee for the late filing.

**EVIDENTIARY RULINGS**

Exhibits A through H and 1 through 9 were admitted into evidence without objection.

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## FINDINGS OF FACT

1. Expenditures greater than \$1,000 to a single payee made during the period May 1, 2006 through May 7, 2006 were required to be reported on the first supplement to the second pre-election C & E report (Ex H). The first supplement to the second pre-election C & E report was due on May 8, 2006.
2. The first supplement to the second pre-election C & E report was filed on May 8, 2006 (Ex D). The supplement did not contain an entry for a payment to CF Strategies for \$2,500 for Management Services (Ex D).
3. In its post-election report, the committee reported that on May 1, 2006, it issued a check for \$2,500 to CF Strategies for Management Services (Ex C).
4. Check number 7831, written to CF Strategies for \$2,500 was dated May 1, 2006 (Exs 3-2, 8).
5. CF Strategies billed the Committee \$2,500 for consulting fees in May on May 27, 2006 (Ex 2). Check number 7831 was issued as payment for the May consulting fees. The payment was actually made on May 30, June 1 or June 2, 2006. (Testimony of Ms. Butler.)
6. Check number 7831 was processed by the Committee's bank on June 8, 2006 (Ex 3).

## ULTIMATE FINDING OF FACT

The expenditure of \$2,500 for management services made to CF Strategies was made after the reporting period for the first supplement to the second pre-election report. Therefore, the ensuing inclusion of the expenditure to CF Strategies in the post-election report was not late.

## CONCLUSIONS OF LAW

ORS 260.058 requires that "a supplement shall be filed if, during the period beginning on the 15th day before the date of the election and ending on the fifth day before the date of the election, the aggregate amount of contributions, including loans, whether repaid or not, received from a single political committee or other person exceeds \$500, or the aggregate amount of **expenditures made** by or on behalf of the candidate or the candidate's principal campaign committee to a single payee exceeds \$1,000." (Emphasis added).

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 provided evidence in the form of the documentary record that establishes a prima facie case that the first supplement to the second pre-election report was late. This report contains no references to expenditures to CF Strategies for \$2,500 made during the relevant reporting period. The post-election report does, however, report that on May 1, 2006 the committee paid \$2,500 to CF Strategies. Thus, based on its

submissions, the Elections Division has made a prima facie case supporting its finding of a late report.

The committee has submitted sufficient documentary evidence and testimony to overcome the Election Division's prima facie case. The statute requires reporting only "expenditures made" during the relevant period. Although the post-election report and the check indicate the payment was made on May 1, 2006, Ms. Butler's testimony and the other records submitted by the committee convince me that the expenditure was not made until at least May 31, 2006.

ORS 260.005(7) defines expenditure as including "the payment or furnishing of money or anything of value or the incurring or repayment of indebtedness or obligation by or on behalf of a candidate, political committee or person in consideration for any services, supplies, equipment or other thing of value performed or furnished for any reason, including support of or opposition to a candidate, political committee or measure, or for reducing the debt of a candidate for nomination or election to public office. "Expenditure" also includes contributions made by a candidate or political committee to or on behalf of any other candidate or political committee." In this case, the committee did not pay or furnish anything of value during the relevant period because the actual payment was made later. Consequently, no expenditure was made to CF Strategies during the relevant period.

Based on my observation of Ms. Butler's demeanor at hearing as well as on the substance of her testimony, I find that she testified credibly. She testified that the committee uses Quickbooks to track and report contributions and expenditures. Quickbooks automatically reports contributions and expenditures to the C & E reports. Because check number 7831 was given an erroneous date, it was erroneously reported on the post-election report as having been made during the reporting period for the first supplement to the second pre-election C & E report. In fact, the expenditure was not made until, at the earliest, May 30, 2006. Consequently, it could not have been reported on the first supplement to the second pre-election C & E report. Therefore, that report was not late. No penalty is due.

### **PROPOSED ORDER**

The Notice of Proposed Civil Penalty is dismissed.

**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.

Bill Bradbury, Secretary of State /

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Date

ISSUANCE AND MAILING DATE: April 16, 2007