

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 Committee to Elect Ames Curtright for Oregon,) Final Order
W. Ames Curtright, Candidate/Treasurer, for the)
First Supplement to the Second Pre-Election for the) Case No. L9092
May 16, 2006, Primary Election)

March 9, 2007

Committee to Elect Ames Curtright for Oregon (005274)
W. Ames Curtright, Candidate/Treasurer
PO Box 1350
Jefferson, OR 97352

Dear Mr. Curtright:

This is a Final Order issued by the Secretary of State (secretary) for your failure to file a timely first 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 Committee to Elect Ames Curtright for Oregon (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 220), applicable during the reporting period, was filed with the secretary on February 7, 2006. The statement reported W. Ames Curtright, the candidate, as the treasurer and PO Box 1350, Jefferson, OR 97352 as the address to which all committee correspondence was to be sent.
2. The committee submitted a timely first supplement to the second pre-election report on May 8, 2006. However, an additional expenditure (\$5,833.46 to Dialing Services, LLC, on May 3, 2006) should have been included on the report.
3. The committee first reported the expenditure required to be included on the first supplement to the second pre-election report on its post-election report filed on June 14, 2006, making this portion of the report 26 business days late.

4. 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 candidate/treasurer at the above-referenced address. The notice proposed a civil penalty of \$1,000.00 and allowed the committee 20 days to request a hearing. The notice sent by certified mail was received and signed for by Dama Curtright on December 4, 2006.
5. On December 15, 2006, the secretary received a notarized letter from Carol A. Russell in lieu of a public hearing.
6. The letter—attached as Exhibit A—was reviewed, considered, and made part of the record.
7. The secretary has record of no previous late filings during the two-year period beginning September 15, 2005.

ULTIMATE FINDINGS OF FACT

W. Ames Curtright, Candidate/Treasurer, failed to file a timely first supplement to the second pre-election contribution and expenditure report for the May 16, 2006, Primary Election.

CONCLUSIONS OF LAW

Candidate/Treasurer W. Ames Curtright's failure to file a timely first supplement to the second pre-election contribution and expenditure report for the May 16, 2006, Primary Election violated ORS 260.058.

OPINION

The Committee to Elect Ames Curtright for Oregon's first 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 8, 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 Carol Russell, who does the contribution and expenditure reports for Mr. Curtright, received a fax from Dialing Services on May 2, 2006, for an order with a maximum limit of \$3,900. This amount was correctly and timely reported on the first supplement to the second pre-election report filed on May 8, 2006. Mr. Curtright used his American Express credit card and was told on June 1, 2006, that the actual payment would be \$9,733.46, billed in two installments of \$3,733.10 and \$5,960.36. Attached to the testimony are copies of documentation including the phone broadcast order form, copies of the reports, the American Express credit card bill, and the journal entry for Ames Research Laboratory. On the American Express bill, the two installments were posted to the account on May 3, 2006. On page 82 of the *2006 Campaign Finance Manual*, it states that the date of the transaction is the date the

credit card was used, not the date of the credit card statement. (It is also not the date the bill was paid.) Mr. Curtright should have had knowledge that these transactions occurred on May 3, 2006, as they were posted on that date to his credit card and also appeared on his research laboratory journal. The difference between the total billing of \$9,733.46 and the original \$3,900.00 that was timely reported on the first supplement to the second pre-election report is \$5,833.46, which is the portion of the report considered late.

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.

Although the calculated penalty for the late report is \$1,516.58 ($\$5,833.46 \times 1\% \times 26$ days), the penalty matrix sets a maximum penalty of \$1,000.00 when the total contributions or total expenditures—whichever is greater—is between \$2,000.01 and \$10,000.

ORDER

It is ordered that a penalty of \$1,000.00 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 L9092 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: _____

C: Carol Russell
89358 Cranberry Ln
Bandon, OR 97411