

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 AGC Committee for Action, Fred H. Williams, Treasurer,) Final Order
for the Second Supplement to the Second Pre-Election for the)
November 7, 2006, General Election) Case No. L9144

July 27, 2007

AGC Committee for Action (000004)
Fred H. Williams, Treasurer
c/o Perkins & Co. PC
1211 SW 5th Ave Ste 1000
Portland, OR 97204

Dear Mr. Williams:

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 November 7, 2006, General Election.

On May 16, 2007, the secretary notified AGC Committee for Action (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, Kathy Schamp, 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 February 4, 2004. The statement reported Fred H. Williams as the treasurer and c/o Perkins & Co. PC, 1211 SW 5th Ave Ste 1000, Portland, OR 97204 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 November 3, 2006.
3. The secretary received the report on November 8, 2006, which is three business days after the date on which the report was due.
4. The committee reported no contributions and total expenditures of \$29,000 on the report.

5. On May 16, 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 \$870.00 and allowed the committee 20 days to request a hearing. The notice sent by certified mail was received and signed for by Jackie Means on May 17, 2007.
6. On May 31, 2007, the secretary received a notarized letter from Fred Williams in lieu of a public hearing.
7. The letter—attached as Exhibit A—was reviewed, considered, and made part of the record.
8. The secretary has record of no previous late filings during the two-year period beginning September 15, 2005.

ULTIMATE FINDINGS OF FACT

Fred H. Williams, Treasurer, failed to file a timely second supplement to the second pre-election contribution and expenditure report for the November 7, 2006, General Election.

CONCLUSIONS OF LAW

Treasurer Fred H. Williams's failure to file a timely second supplement to the second pre-election contribution and expenditure report for the November 7, 2006, General Election violated ORS 260.073.

OPINION

AGC Committee for Action's second supplement to the second pre-election contribution and expenditure report, filed on November 8, 2006, was late. It was due by 5:00 p.m., November 3, 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 committee attempted to fax the report on the filing deadline day. However, the fax lines were busy and the transmission failed. Attached to the testimony is a copy of the fax "communication failure report" dated November 3, 2006, 11:46 AM. The treasurer requests a waiver of the civil penalty because the committee made a "good faith effort to comply with the regulation."

On page 7 of the 2006 Campaign Finance Manual, it states "The Elections Division's fax machine is extremely busy on the final filing day so do not rely on the fax machine to file in a timely manner on the deadline day." While it is true that the fax machine is busy on filing deadline day, this does not explain why the report was not received until three business days later. It appears that after the morning of November 3, 2006, the committee did not attempt to fax the report again until November 8, 2006. Regardless, failure of the fax machine does not constitute 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 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.

ORDER

It is ordered that a penalty of \$870.00 ($\$29,000 \times 1\% \times 3 \text{ days}$) 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 L9144 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.

Kathy Schamp, Compliance Specialist

DATE of Service: _____