

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 Friends of Billy Dalto, Billy Dalto, Candidate, ) Final Order  
Donna Butler, Treasurer, for the First Supplement to the )  
Second Pre-Election for the November 7, 2006, General ) Case No. L9157  
Election )

July 27, 2007

Friends of Billy Dalto (004238)  
Billy Dalto, Candidate / Donna Butler, Treasurer  
PO Box 943  
Salem, OR 97308

Dear Mr. Dalto:

This is a Final Order issued by the Secretary of State (secretary) for your failure to file a complete first supplement to the second pre-election contribution and expenditure report for the November 7, 2006, General Election.

On May 16, 2007, the secretary notified Friends of Billy Dalto (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 220), applicable during the reporting period, was filed with the secretary on December 12, 2005. The mailing address provided on the Statement of Organization for the candidate was PO Box 943, Salem, OR 97308. The statement reported Donna Butler as the treasurer and PO Box 1304, Silverton, OR 97381 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 with the secretary on October 30, 2006, listing an expenditure to Valley Mailing Service on October 27, 2006, for \$7,675.09.
3. On December 7, 2006, the committee filed its post-election report, and reported this expenditure as \$7,624.31, for a difference of \$50.78, making this portion of the report 26 business days late. (The proposed penalty notice incorrectly listed this difference as \$44.20).

4. 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 candidate and was sent by first class mail to the treasurer at the above-referenced addresses. The notice proposed a civil penalty of \$50.00 and allowed the committee 20 days to request a hearing. The notice sent by certified mail was received and signed for by Billy Dalto on May 17, 2007.
5. On June 1, 2007, the secretary received a notarized letter from Donna L. Butler 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 one previous late filing during the two-year period beginning September 15, 2005.

#### ULTIMATE FINDINGS OF FACT

Billy Dalto, Candidate, and Donna Butler, Treasurer, failed to file a complete first supplement to the second pre-election contribution and expenditure report for the November 7, 2006, General Election.

#### CONCLUSIONS OF LAW

Candidate Billy Dalto's and Treasurer Donna Butler's failure to file a complete first supplement to the second pre-election contribution and expenditure report for the November 7, 2006, General Election violated ORS 206.068.

#### OPINION

Friends of Billy Dalto's first supplement to the second pre-election contribution and expenditure report, filed on December 7, 2006, was late. It was due by 5:00 p.m., October 30, 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 Mr. Dalto wrote the check the Friday, October 27, 2006, and when the report was due on Monday, October 30, 2006, Valley Mailing was unable to tell him the amount of the check. The check did not clear the bank until after the first supplement to the second pre-election report was filed; the amount reported was the best information the committee could reconstruct at the time. The testimony states the penalty is "inappropriate and excessive and should be removed."

Pages 104-105 of the *2006 Campaign Finance Manual* state that when changes are made in amounts of previously reported contributions or expenditures on a supplement to the second pre-election report, the amount of the change is considered late from the day the report was due

to the day the contributions or expenditures are first disclosed. While it is unfortunate that the committee did not have the correct information at the time of filing the second supplement to the second pre-election report, it 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 3% of the total contributions or total expenditures—whichever is greater—for each business day the report was late as this is the second late violation by the candidate.

Although the calculated penalty for the late report is \$39.52 ( $\$50.78 \times 3\% \times 26$  days), the penalty matrix sets a minimum penalty of \$50.00 for a candidate's or treasurer's second late violation.

#### ORDER

It is ordered that a penalty of \$50.00 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 L9157 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.

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Kathy Schamp, Compliance Specialist

DATE of Service: \_\_\_\_\_

c: Donna Butler, Treasurer  
PO Box 1304  
Silverton, OR 97381