

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 Joan Draper, Joan Draper, Candidate,) Final Order
Donna L. Butler, Treasurer, for the Second Supplement to)
the Second Pre-Election for the November 7, 2006, General) Case No. L9159
Election)

July 27, 2007

Friends of Joan Draper (005336)
Joan Draper, Candidate / Donna L. Butler, Treasurer
1783 NW 143rd Ave #21
Portland, OR 97229

Dear Ms. Draper:

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 Friends of Joan Draper (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 March 7, 2006. The mailing address provided on the Statement of Organization for the candidate was 1783 NW 143rd Ave #21, Portland, OR 97229. The statement reported Donna L. 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 second supplement to the second pre-election report with the secretary on November 3, 2006, listing an in-kind contribution from Majority 2006 in the amount of \$664.00.
3. On its post-election report filed on December 7, 2006, the committee reported the contribution as \$542.27, for a difference of \$121.73, making this portion of the second supplement to the second pre-election report 22 business days late.

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 \$26.84 and allowed the committee 20 days to request a hearing. The notice sent by certified mail was received and signed for by Joan Draper 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 no previous late filings during the two-year period beginning September 15, 2005.

ULTIMATE FINDINGS OF FACT

Joan Draper, Candidate, and Donna L. Butler, 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

Candidate Joan Draper's and Treasurer Donna L. Butler'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 260.068.

OPINION

Friends of Joan Draper's second 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., 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 testimony provided by Ms. Butler states that fair market value by definition is generally an "estimate" of value, and she filed the in-kind contribution on the second supplement to the second pre-election report using a proposed invoice from the vendor. Ms. Butler also states that she reported the actual cost on the post-election report, reducing the amount that was previously reported on the second supplement to the second pre-election report.

It is the responsibility of both the candidate and treasurer to keep a committee's records up-to-date and to file accurate reports by the deadline. The explanation provided in the notarized testimony does not adequately mitigate the failure to file a report by the deadline and does not constitute a mitigating circumstance in which the secretary would reduce or waive the civil penalty.

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. Ms. Butler does not dispute that the amount of the in-kind contribution reported was changed, but she does not believe that a penalty should be imposed for using the only information available at the time the second supplement to the second pre-election report was filed.

Page 114 of the *2006 Campaign Finance Manual* defines fair market value as “the dollar amount goods or services would bring if offered for sale by a person who desired, but was not obliged, to sell and purchased by one who is willing, but not obliged, to buy”. A treasurer may apply this definition to determine the value of an in-kind contribution for reporting purposes. “In-kind” is defined on page 115 of the *2006 Campaign Finance Manual* as a good or service, other than money, having monetary value. In this particular case, there was an invoice received by the committee, so there was no need for the committee to determine the fair market value.

The testimony included the invoice which was dated October 30, 2006; the invoice listed the amounts incurred for the in-kind contribution made by Majority 2006. The invoice indicates that a credit was applied to the balance and there was also a handwritten note on the bottom of the that said that the “source of the credit was not known and therefore not used for computing FMV for supplement.” The treasurer should have contacted the vendor to determine the source of the credit for reporting purposes. While this is an unfortunate situation, it is not a mitigating circumstance allowed under the Secretary of State’s rules.

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.

The calculated penalty for the late report is \$26.84 ($\$121.73 \times 1\% \times 22$ days). Because the appropriate penalty is under \$50, no penalty will be assessed.

ORDER

It is ordered that no penalty be assessed.

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: _____

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