

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 Magana for Issue-Driven Leadership, Mario Magana,) Final Order
Candidate, Albrecht Jander, Treasurer, for the Second)
Supplement to the Second Pre-Election for the) Case No. L9177
November 7, 2006, General Election)

July 27, 2007

Magana for Issue-Driven Leadership (005367)
Mario Magana, Candidate / Albrecht Jander, Treasurer
3640 NW Witham Hill Dr
Corvallis, OR 97330

Dear Mr. Magana:

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 the Magana for Issue-Driven Leadership (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 April 26, 2006. The mailing address provided on the Statement of Organization for the candidate was 3640 NW Witham Hill Dr, Corvallis, OR 97330. The statement reported Albrecht Jander as the treasurer and 2780 NW Skyline Dr, Corvallis, OR 97330 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 December 7, 2006, which is 22 business days after the date on which the report was due.
4. The committee reported no contributions and total expenditures of \$2,612.90 during the accounting period for 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 candidate and was sent by first class mail to the treasurer at the above-referenced addresses. The notice proposed a civil penalty of \$574.86 and allowed the committee 20 days to request a hearing. The notice sent by certified mail was received and signed for by the committee on May 17, 2007.
6. On May 31, 2007, the secretary received a notarized letter from Mario E. Magana 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

Mario Magana, Candidate, and Albrecht Jander, 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 Mario Magana's and Treasurer Albrecht Jander'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

The Magana for Issue-Driven Leadership'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 explanation provided in the notarized testimony does not adequately mitigate the failure to file a report by the deadline. The testimony submitted by Mr. Magana stated that he had never been a candidate before and the treasurer had never prepared contribution and expenditure reports and that they now recognize their error. Mr. Magana stated that he felt that the proposed fine was unfair due to those circumstances. While it is unfortunate that Mr. Magana and the committee treasurer did not fully understand the campaign finance reporting requirements this circumstance is not a mitigating circumstance that the Secretary can waive or reduce the 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 candidate.

ORDER

It is ordered that a penalty of \$574.86 ($\$2,612.90 \times 1\% \times 22$ 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 L9177 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: Albrecht Jander, Treasurer
2780 NW Skyline Dr
Corvallis, OR 97330