

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 Re-Elect Arnie Roblan, Arnold Lee Roblan, Candidate,) Final Order
Kathleen Murray, Treasurer, for the Second Supplement to the)
Second Pre-Election for the November 7, 2006, General Election) Case No. L9202

October 18, 2007

Re-Elect Arnie Roblan (004726)
Arnold Lee Roblan, Candidate / Kathleen Murray, Treasurer
PO Box 1410
Coos Bay, OR 97420

Dear Representative Roblan:

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 July 11, 2007, the secretary notified the Re-Elect Arnie Roblan (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 December 7, 2005. The statement reported Kathleen Murray as the treasurer and PO Box 1410, Coos Bay, OR 97420 as the mailing address for both candidate and committee correspondence.
2. The committee filed a timely second supplement to the second pre-election report on November 3, 2006. However, an additional expenditure (\$2,600.00 to Future PAC on October 30, 2006) should have been included on the report.
3. The committee first reported the expenditure that was required to be included on the second supplement to the second pre-election report on its post-election report filed on November 28, 2006, this making portion of the report 15 business days late.

4. On July 11, 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 address. The notice proposed a civil penalty of \$390.00 and allowed the committee 20 days to request a hearing. The notice sent by certified mail was received and signed for by Gina Sutherland on July 17, 2007.
5. On August 6, 2007, the secretary received a notarized letter from Kathleen Murray 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

Arnold Lee Roblan, Candidate, and Kathleen Murray, 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 Arnold Lee Roblan's and Treasurer Kathleen Murray'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 Re-Elect Arnie Roblan's second supplement to the second pre-election contribution and expenditure report, filed on November 28, 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. Ms. Murray indicated that the vendor filing software indicated the transaction was posted correctly and should have been filed timely. She could find no explanation for the reporting disparity. ORS 246.021(1) provides that election documents which must be filed with the Secretary of State or other filing officer must be "delivered to and actually received at the office of the designated officer" not later than 5p.m. of the day the document is due. A vendor's software program confirmation is not a sufficient reason to excuse a late filing. It is the responsibility of the treasurer and candidate to ensure the report is filed timely.

The letter also explains the late report may have been due in part to a bona fide personal emergency; the terminal illness and subsequent death of Ms. Murray's mother in March. The term "emergency" cannot reasonably be expanded to include ongoing, long-term health problems. In order for a personal emergency to excuse a late filing, it must be the cause of filing the report late. In this case the committee filed a timely report, however this transaction was not included.

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 \$390.00 ($\$2,600.00 \times 1\% \times 15$ 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 L9202 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: September 11, 2007

c: Kathleen Murray, Treasurer
PO Box 1410
Coos Bay, OR 97420