

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 Committee to Elect Jim Torrey, James D. Torrey,) Final Order
Candidate, Tricia Duncan, Treasurer, for the First Supplement)
to the Second Pre-Election for the November 7, 2006, General) Case No. L9210
Election)

July 27, 2007

Committee to Elect Jim Torrey (004676)
James D. Torrey, Candidate / Tricia Duncan, Treasurer
3593 River Pointe Dr.
Eugene, OR 97408

Dear Mr. Torrey:

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 the Committee to Elect Jim Torrey (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 September 13, 2005. The mailing address provided on the Statement of Organization for the candidate was 3593 River Pointe Dr., Eugene, OR 97408. The statement reported Tricia Duncan as the treasurer and PO Box 10086, Eugene, OR 97440 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 on October 30, 2006. However, one additional in-kind contribution (\$5,208.86 from The Leadership Fund on October 27, 2006) should have been included on the report.
3. The committee first reported the in-kind contribution that was required to be included on the first supplement to the second pre-election report on its post-election report filed on December 5, 2006, making it 24 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 \$1,000.00 and allowed the committee 20 days to request a hearing. The notice sent by certified mail was received and signed for by Kathy Torrey on May 17, 2007.
5. On May 31, 2007, the secretary received a notarized letter from Tricia Duncan in lieu of a public hearing.
6. The letter—attached as Exhibit A—was reviewed, considered, and made part of the record.
7. On June 7, 2007, the secretary received an amended post-election report changing the contribution date of the in-kind contribution to November 1, 2006, which falls into the accounting period for the second supplement to the second pre-election report.
8. The secretary has record of one previous late filing during the two-year period beginning September 15, 2005.

ULTIMATE FINDINGS OF FACT

James D. Torrey, Candidate, and Tricia Duncan, Treasurer, filed a complete first supplement to the second pre-election contribution and expenditure report for the November 7, 2006, General Election.

CONCLUSIONS OF LAW

Candidate James D. Torrey's and Treasurer Tricia Duncan's filing of a complete first supplement to the second pre-election contribution and expenditure report for the November 7, 2006, General Election did not violate ORS 260.068.

OPINION

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 no violation of Oregon election law. Ms. Duncan explained that the in-kind notification from the contributor was received November 1, 2006. The contributor's letter indicated that the committee should use the date of October 27, 2006 when reporting the contribution. Ms. Duncan contacted the Elections Division after receiving the notice and was instructed that the date of the in-kind contribution is the date that the committee became aware of the in-kind contribution, which in this case was the date the letter was received. The committee filed an amended post-election report on June 7, 2007, amending the contribution date to November 1, 2006, and therefore the contribution was received in the second supplement to the second pre-election accounting period.

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.

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: July 27, 2007

c: Tricia Duncan, Treasurer
PO Box 10086
Eugene, OR 97440