

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 Second)
Supplement to Second Pre-Election for the November 7,) Case No. L9290
2006, General Election)

October 18, 2007

Committee to Elect Jim Torrey (4676)
James D. Torrey, Candidate / Tricia Duncan, Treasurer
3593 River Pointe Dr
Eugene, OR 97440

Dear Mr. Torrey:

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

On July 27, 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, 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 September 13, 2005. The mailing address provided on the Statement of Organization for the candidate was 3593 River Pointe Dr, Eugene, OR 97440. 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 second supplement to the second pre-election report on November 3, 2006; however, one additional in-kind contribution should have been included on the report. The in-kind contribution that was required to be included on the second supplement to the second pre-election report (\$5,208.86 from The Leadership Fund on November 1, 2006) was first disclosed on your post-election reported filed on December 5,

2006. This portion of the second supplement to the second pre-election report is considered filed on December 5, 2005, making it 20 business days late.

3. On July 27, 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 T. Bjornstad on July 28, 2007.
4. On August 14, 2007, the secretary received a notarized letter from Tricia Duncan in lieu of a public hearing.
5. The letter—attached as Exhibit A—was reviewed, considered, and made part of the record.
6. 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, failed to file a timely second supplement to 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 failure to file a timely second supplement to second pre-election contribution and expenditure report for the November 7, 2006, General Election violated ORS 260.068.

OPINION

The Committee to Elect Jim Torrey's second supplement to second pre-election contribution and expenditure report, filed on December 5, 2005, 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. Duncan states the committee received a notification from The Leadership Fund on November 1, 2006, instructing the committee to use October 27, 2006, as the contribution date for an in-kind contribution in the amount of \$5,208.86. The contribution should have been reported on the first supplement to the second pre-election report due October 30, 2006. She called the Elections Division and was told to include the information on the post-election report.

A proposed penalty notice was issued for the first supplement to the second pre-election report stating the in-kind contribution was not reported timely. Ms. Duncan again called the Elections Division and was instructed to amend the post-election report to show the contribution date of November 1, 2006, the date the committee first had knowledge of the contribution. The proposed penalty notice for the first supplement to the second pre-election report was withdrawn because the contribution no longer was within the accounting period for that report.

Ms. Duncan states that she relied upon an Elections Division employee who told her to include the information on the post-election report. Ms. Duncan did not provide the name of the employee or any specific details of the conversation. While this is an unfortunate situation, it is not a mitigating circumstance in which the Secretary would reduce the penalty, as the alleged filing officer error has not been substantiated in this case.

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 \$3,017.40 ($\$5,028.86 \times 3\% \times 20$ days), the penalty matrix sets a maximum penalty of \$1,000.00 when the total contributions or total expenditures—whichever is greater—is between \$2,000.01 and \$10,000.

ORDER

It is ordered that a penalty of \$1,000.00 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 L9290 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: Tricia Duncan, Treasurer
PO Box 10086
Eugene, OR 97440

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