

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 an Insufficient Contribution and)
Expenditure Report by the Lane County Republican Central) Final Order
Committee, Norm Thomas, Treasurer, for the First)
Pre-Election for the May 18, 2004, Primary Election) Case No. NT8064
)

March 10, 2005

Lane County Republican Central Committee (000325)
Norm Thomas, Treasurer
PO Box 10247
Eugene, OR 97440

Dear Mr. Thomas:

This is a Final Order issued by the Secretary of State (secretary) for your failure to file a sufficient first pre-election contribution and expenditure report for the May 18, 2004, Primary Election.

On November 4, 2004, the secretary notified the Lane County Republican Central Committee (committee) that it had failed to file a sufficient first pre-election contribution and expenditure 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 221), applicable during the reporting period, was filed with the secretary on October 1, 2002. The statement reported Norm Thomas as the treasurer and PO Box 10247, Eugene, OR 97440 as the address to which all committee correspondence was to be sent.
2. The committee filed a first pre-election report with the secretary on April 12, 2004.

3. On April 27, 2004, the secretary sent the committee an exam letter for the report. The exam letter stated that any amendment adding or deleting a contribution or expenditure or changing the amount of a previously reported contribution or expenditure must be submitted by May 10, 2004, to avoid penalties.
4. On July 30, 2004, an amendment to the committee's report was filed. The amendment changed previously reported contributions totaling \$7,957.00 to accounts receivable, and deleted expenditures totaling \$625.25. This amendment was filed 57 business days after the new transaction deadline.
5. A second amendment to the committee's report was filed on November 3, 2004. The second amendment deleted previously reported contributions totaling \$14,200.15, added in-kind contributions totaling \$4,294.95, deleted previously reported expenditures totaling \$400.04 and deleted previously reported accounts receivable totaling \$350.00. The second amendment was filed more than 100 business days after the new transaction deadline.
6. On November 4, 2004, the secretary sent the committee a Notice of Proposed Civil Penalty. The notice was sent by both certified and first class mail to the treasurer at the above-referenced address. The notice proposed a civil penalty of \$10,000.00 and allowed the committee 20 days to request a hearing. The notice sent by certified mail was received and signed for by Hal Reed on November 8, 2004.
7. On November 15, 2004, the secretary received a notarized letter from Hal Reed in lieu of a personal appearance at a public hearing.
8. On November 29, 2004, the secretary received a notarized letter from Bob Avery, the chairman of the Lane County Republican Central Committee in lieu of a personal appearance at a public hearing.
9. The letters—attached as Exhibits A and B—were reviewed, considered, and made part of the record.

ULTIMATE FINDINGS OF FACT

Norm Thomas, Treasurer, failed to file a sufficient first pre-election contribution and expenditure report for the May 18, 2004, Primary Election.

CONCLUSIONS OF LAW

Treasurer Norm Thomas's failure to file a sufficient first pre-election contribution and expenditure report for the May 18, 2004, Primary Election violated ORS 260.063, ORS 260.083 and OAR 165-012-0005.

OPINION

The Lane County Republican Central Committee's (LCRCC) first pre-election contribution and expenditure report, filed on April 12, 2004, was insufficient.

A maximum \$10,000 civil penalty may be imposed for this violation. The *2004 Campaign Finance Manual*, which contains a penalty calculation matrix on page 100, 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 sufficient report.

We will address the testimony (Exhibit A) submitted by Mr. Reed, however we will only address the amendments being contested by the committee for the purpose of calculating the penalty. The first issue raised is that the treasurer named in the proposed penalty notice, Norm Thomas, was not the treasurer of record. According to Mr. Reed's testimony, and minutes taken at the LCRCC's meeting of October 22, 2003, Chairman Bob Avery announced that Norm Thomas submitted his resignation as treasurer of the LCRCC. A new treasurer, Sondra Jameson, was appointed and accepted the position of committee treasurer. ORS 260.0035 and ORS 260.042 state in part that any change in information submitted in a statement of organization shall be indicated in an amended statement of organization filed with the appropriate filing officer within 10 days of the change. The secretary did not receive an updated statement of organization naming Ms. Jameson as the treasurer. The treasurer of record under ORS 260.035 and ORS 260.042 is Norm Thomas.

The LCRCC files its contribution and expenditure reports electronically. Members of the LCRCC subsequently discovered (based on exam letters sent to the committee regarding the sufficiency of the late second pre- and post-election reports) that its contribution and expenditure report cash balance did not come close to the balance of the committee's bank account balance. It was determined by the committee that cash contribution entries reported on the original first pre-election filing were credit card transactions which had not been processed, therefore those entries should have been reported as accounts receivable. Mr. Reed explains that the electronic reporting software required the LCRCC to delete the contributions and report them as new transactions (accounts receivable) in the same accounting period the original transaction occurred. This is the appropriate action whether a committee is filing its reports electronically or filing paper reports.

Mr. Reed also explains that the first amendment which deleted an expenditure previously reported should not be factored into the penalty. The check was "voided" during the first pre-election accounting period, but was erroneously reported as an expenditure. Mr. Reed states that the LCRCC should not have deleted this expenditure, but instead reported the transaction as an other receipt (on form PC 4A) on its first pre-election report for the 2004 General Election. This is not true; if the check was never mailed, it should not have been reported as an expenditure. The *2004 Campaign Finance Manual* states on page 74, "Do not list voided checks." Thus the committee appropriately deleted the expenditure, as it should not have been included on the original report.

Mr. Reed contests the filing date of the second amendment. The second amendment was emailed to the secretary on August 18, 2004. The secretary notified the committee via email that the file did not successfully post to the database. Mr. Reed states that the committee worked with the software vendor to fix the data, and that the vendor had provided the LCRCC with the corrected file on August 23, 2004 (created on August 20, 2004.) He further states that "The LCRCC was led to believe that the vendor in working closely with your office had provided your office with the August 20, 2004 file."

Upon discovery that the file had not been sent by the vendor to the secretary, the committee submitted the file via email on November 3, 2004. It is not the responsibility of the software vendor to submit electronic reports on behalf of the clients using their software. The treasurer of the committee is the party responsible for the filing of a committee's contribution and expenditure reports, not the software vendor.

Mr. Reed also believes that the committee should not be penalized for reclassifying reported contributions to items sold at fair market value. He points out that the reclassification does not result in any change of the committee's cash balance (line 20 of the Summary Statement of Contributions and Expenditures, form PC 1.) The New Transaction penalty matrix in the *2004 Campaign Finance Manual* (see page 106) defines 'new transaction' as an amendment filed more than 28 days after the new transaction deadline for the report that adds or deletes a contribution or expenditure or changes the amount of a previously reported contribution or expenditure, this also includes changing the type of transaction.

He asks for a waiver of the penalty based on the "direct result of a professional delivery service" (Capitol On Ramp) to deliver a file that allowed for the "correct" reporting of the data and failure to deliver a readable data file. The secretary rejects Mr. Reed's suggestion that the amendments were filed late because of the adopted mitigating circumstance "failure of a professional delivery service." This particular mitigating circumstance pertains only to the delivery of documents in which the provider guarantees delivery by written receipt, such as common carriers, eg., the United States Postal Service, Federal Express, and **does not** include vendors providing electronic filing software.

We have considered the testimony (Exhibit B) submitted by Mr. Avery, but need not address it in detail here. The two issues raised in his testimony, relating to the issue of who was the treasurer of record and the reclassification of previously reported contributions have been addressed above.

The hearings officer does not find any evidence of mitigating circumstances in which the penalty may be reduced or waived.

Although the calculated penalty for the insufficient report is \$24,136.88—[\$8,582.25 X 1% X 57 days] + [\$19,245.14 X 1% X 100 days]— the penalty matrix sets a maximum penalty of \$10,000.00 when the total contributions or total expenditures—whichever is greater—is over \$10,000.

ORDER

It is ordered that a penalty of \$10,000.00 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 NT8064 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: _____