

BILL BRADBURY
SECRETARY OF STATE

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 Edwards for State Treasurer) Final Order
Committee (Randall), Randall Edwards,)
Candidate/Treasurer, for the Post-Election) Case No. NT8318
for the May 18, 2004, Primary Election)

October 27, 2005

Edwards for State Treasurer Committee (Randall) (002252)
Randall Edwards, Candidate/Treasurer
6666 SE Yamhill
Portland, OR 97215

Dear Mr. Edwards:

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

On July 28, 2005, the secretary notified Edwards for State Treasurer Committee (Randall) (committee) that it had failed to file a sufficient post-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 220), applicable during the reporting period, was filed with the secretary on March 5, 2004. The statement reported Randall Edwards, the candidate, as the treasurer and 6666 SE Yamhill, Portland, OR 97215 as the address to which all committee correspondence was to be sent.
2. The committee filed a post-election report with the secretary on June 10, 2004.

3. On July 2, 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 July 15, 2004, to avoid penalties.
4. On December 28, 2004, an amendment to the committee's report was filed. The amendment deleted two contributions totaling \$10,500.00, added two expenditures totaling \$173.00, deleted three accounts receivables totaling \$11,000.00, and deleted an accounts payable of \$90.00. This amendment was filed more than 100 business days after the new transaction deadline.
5. On July 28, 2005, 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/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 the committee on July 29, 2005.
6. On August 16, 2005, the secretary received a notarized letter from Randall Edwards in lieu of a personal appearance at a public hearing.
7. The letter—attached as Exhibit A—was reviewed, considered, and made part of the record.

ULTIMATE FINDINGS OF FACT

Randall Edwards, Candidate/Treasurer, failed to file a sufficient post-election contribution and expenditure report for the May 18, 2004, Primary Election.

CONCLUSIONS OF LAW

Candidate/Treasurer Randall Edwards's failure to file a sufficient post-election contribution and expenditure report for the May 18, 2004, Primary Election violated ORS 260.058, ORS 260.083 and OAR 165-012-0005.

OPINION

Edwards for State Treasurer Committee (Randall)'s post-election contribution and expenditure report, filed on June 10, 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. The testimony explains the three deleted account receivable pledges totaling \$11,000 were not reported on the General 2004 first pre-election report filed on September 26, 2004, (actually September 27, 2004), as it was determined that they were not going to be collected. The committee subsequently filed an amendment to the Primary 2004 post-election report on December 28, 2004, which deleted the same accounts receivable pledges.

The testimony implies that, because the committee deemed the receivables as uncollectable during the General Election cycle, they were required to also delete the entries from the prior report in which they were originally disclosed. A committee that deems a pledge as uncollectable simply ceases reporting the pledge on all subsequent reports. Deleting them from the previous report changes the summary totals of that report and creates a new transaction.

The testimony also refers to a notation attached to the December 2004, amendment for a detailed explanation of the \$10,000 contribution error. The secretary does not have record of any type of notation filed with the amendment, however, after reviewing the reports, the hearings officer recalls a conversation in which a representative of the committee explained that the committee erroneously entered into their electronic filing database the receipt date (June 1, 2004) of the contribution which caused the contribution to be reported on a 2004 Primary Election post-election amendment filed on July 14, 2004.

The contribution was then reported on the 2004 General Election first pre-election report with the receipt date of July 1, 2004. It wasn't until later in the General Election cycle that the committee determined that the contribution and expenditure report cash balance was different than the committee bank balance. After a review of the contribution and expenditure reports and the bank statements, the committee determined that the contribution had been double-reported.

The testimony does not refer to any of the four mitigating circumstances listed in the *2004 Campaign Finance Manual* on page 97 and also on the proposed penalty notice. Although it is an unfortunate circumstance that these errors in reporting occurred, thereby causing the committee the maximum penalty, absent one of the mitigating circumstances, the secretary cannot waive or reduce the penalty.

The maximum penalty of \$10,000 is reduced to 1% of the amount of the change of each transaction multiplied by the number of business days the amendment was filed late, up to 100 days.

ORDER

It is ordered that a penalty of \$10,000.00 is assessed because the calculated penalty exceeds the maximum penalty provided by statute. 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 NT8318 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: _____