OFFICE OF THE SECRETARY OF STATE

BILL BRADBURY
SECRETARY OF STATE

ELECTIONS DIVISION

JOHN LINDBACK
DIRECTOR

141 STATE CAPITOL
SALEM, OREGON 97310-0722

ELECTIONS — (503) 986-1518

In the matter of an Insufficient Contribution and Expenditure Report by Citizens for Common Sense, Candace McNall, Treasurer, for the Post-Election for the November 2, 2004, Local Election	)))))	Notice of Proposed Civil Penalty; Opportunity to Request Hearing

April 4, 2006 Case Number: NT8637

Citizens for Common Sense (005236)
Candace McNall, Treasurer
8600 SW St Helens Dr, #100
Wilsonville, OR 97070

Dear Ms. McNall:

This letter constitutes a Notice of Proposed Civil Penalty. Please read the information below carefully and contact our office if you have any questions about its contents or necessary actions on your part.

Reason for Notice:

This notice is being sent to you as a result of the insufficient filing of your post-election contribution and expenditure report (see ORS 260.073, ORS 260.083 and OAR 165-012-0005).

Based upon our examination of your report, we determined that you voluntarily submitted new transactions or deleted or corrected previously reported transactions after the December 30, 2004, new transaction deadline. Specifically, you filed an amendment to the committee's post-election report that added a contribution of $1,000.00 from Amalgamated Transit Union Division 757 PAC and deleted an account payable of $28,307.05 for Communication Stategies. The amendment was filed on December 19, 2005, which was 244 business days after the deadline for new transactions.

Authority for Civil Penalty:

The Secretary of State has the authority to impose civil penalties in accordance with ORS 260.232 and has adopted the *2004 Campaign Finance Manual* by administrative rule. The penalty is imposed against the treasurer of record at the time of the violation.

Explanation of the Penalty Matrix:

Enclosed is the penalty matrix used in calculating penalties for new transactions. This matrix reduces the maximum statutory civil penalty to an amount not to exceed one percent (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 business days.

Additionally, the matrix sets maximum penalties based on the activity level of the committee during the accounting period of the insufficient report.

Proposed Civil Penalty:

The Secretary is proposing a civil penalty of $10,000.00. The actual calculated penalty would be $29,307.05—$29,307.05 X 1% X 100 days—which exceeds the maximum penalty of $10,000.00. The maximum penalty is imposed when the total contributions or total expenditures during the accounting period for the report—whichever is greater—is over $10,000.

Reduction or Waiver of Penalty:

A reduction or waiver of the penalty will be considered <u>only</u> if one of the following mitigating circumstances is present:

a) The insufficiency was the direct result of clearly-established fraud, embezzlement or other criminal activity against the committee, committee treasurer or candidate, as determined in a criminal or civil action in a court of law or independently corroborated by a report of a law enforcement agency or insurer or the sworn testimony or affidavit of an accountant or bookkeeper or the person who actually engaged in the criminal activity;

b) The insufficiency was the direct result of fire, flood or other calamitous event, resulting in physical destruction of, or inaccessibility to, committee records. [Calamitous event means a phenomenon of an exceptional character, the effects of which could not have been reasonably prevented or avoided by the exercise of due care or foresight.];

c) The insufficiency was the direct result of failure of a professional delivery service to deliver documents in the time guaranteed for delivery by written receipt of the service provider (this does not include delivery by fax); or

d) The insufficiency was the direct result of an error by the elections filing officer.

It is your responsibility to show that one of the listed circumstances occurred and that it caused the insufficiency of your report.

Opportunity to Request a Hearing:

You have 20 days* from the date you received this certified letter to take one of the following actions:

Action	Result
Request a hearing to be conducted by an independent hearings officer to present evidence of mitigating circumstances (public hearing). This hearing will be held by telephone unless you request that it be a personal appearance hearing held in Salem.	A public hearing will be scheduled within 30 days and you will be notified of the date and time. You may choose to submit written **notarized** testimony or other evidence in lieu of a public hearing. *Those documents must be received not later than three business days before the day of the hearing.*
Submit a **notarized** written explanation providing evidence of mitigating circumstances (letter hearing).	No public hearing will be scheduled and an order will be issued based on the written testimony and the hearing record (which is the agency file for this committee).
Do not take any action.	A penalty will be assessed based on available information.

(* If the certified letter is refused or left unclaimed at the post office, the 20-day period begins on the day the post office indicates it has given first notice of a certified letter.)

If you have questions about any part of this notice, please contact me at 503-986-1518.

Sincerely,

Jan Flowers
Compliance Specialist

enclosures
certified mail
return receipt requested
c: uncertified
Clackamas County Elections
Larry Harvey, Communication Strategies