

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 Insufficient Contribution and Expenditure	)	
Reports by <u>Jim Bernard for Clackamas County</u>	)	Notice of Proposed Civil
<u>Commissioner</u> , Jim Bernard, Candidate/Joe Keizur,	)	Penalty; Opportunity to
Treasurer, for the Primary and General Elections of 2004	)	Request Hearing
	)	

April 4, 2006

Case Numbers: NT8643,  
NT8644, NT8645, NT8646,  
NT8647, NT8648

Jim Bernard for Clackamas County Commissioner (005245)  
Jim Bernard, Candidate / Joe Keizur, Treasurer  
12255 SE 41<sup>st</sup> Ct  
Milwaukie OR 97222

Dear Mr. Bernard:

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 filings of your first pre-election, second pre-election and post-election contribution and expenditure reports for the 2004 Primary and General Elections (see ORS 260.058, ORS 260.068, ORS 260.083 and OAR 165-012-0005).

In a June 28, 2005, letter to you, the Elections Division determined that you had failed to report the in-kind value of the contribution for use of a commercial billboard on property on SE McLoughlin Blvd. owned by Mr. Howard Dietrich or a business entity under his control. The Elections Division directed that you amend your 2004 Primary and General Election detailed contribution and expenditure reports to reflect this in-kind contribution from the 6710 LLC, apportioned appropriately between the applicable accounting periods, at the rate of \$1,500 a month (\$50 per day), beginning March 1 and ending November 2, 2004. We informed you that doing so would create six "New Transactions," subject to civil penalty under the New Transaction Penalty Matrix on page 106 of the 2004 Campaign Finance Manual. We further informed you that, if you did not file amendments with the Clackamas County Elections office by July 8, 2005, the Elections Division would ascribe this fair market value to the in-kind contribution in your stead, and would issue proposed penalty notices to you accordingly.

You have not amended your 2004 reports to include this in-kind contribution. Therefore, in accordance with the notice provided in our June 28, 2005 letter, we hereby treat the fair market value of the in-kind contributions as amendments to the appropriate reports effective this date, and issue this notice of the six proposed civil penalties arising from the resulting 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 candidate and 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. As of the date of our June 28, 2005, notification letter to you, more than 100 days had elapsed since the deadline for filing amendments with new transaction to any of your committee's Primary or General Election reports for 2004.

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 \$12,800.00.

Election/Report Type	Case No.	Accounting Period	Number of days in accounting period	Proposed Penalty Amount
Primary 2004 First Pre-Election Report	NT8643	March 1, 2004 to April 1, 2004	32 days	\$1,600.00
Primary 2004 Second Pre-Election Report	NT8644	April 2, 2004 to May 2, 2004	31 days	\$1,000.00 (maximum)
Primary 2004 Post Election Report	NT8645	May 3, 2004 to June 7, 2004	36 days	\$1,800.00

Election/Report Type	Case No.	Accounting Period	Number of days in accounting period	Proposed Penalty Amount
General 2004 First Pre-Election Report	NT8646	June 8, 2004 to Sept. 16, 2004	101 days	\$5,050.00
General 2004 Second Pre-Election Report	NT8647	Sept. 17, 2004 to Oct. 17, 2004	31 days	\$1,550.00
General 2004 Post Election Report	NT8648	Oct. 18, 2004 to Nov. 22, 2004	36 days	\$1,800.00

**Reduction or Waiver of Penalty:**

A reduction or waiver of the penalty will be considered only 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 <b>notarized</b> testimony or other evidence in lieu of a public hearing. <i>Those documents must be received not later than three business days before the day of the hearing.</i>
Submit a <b>notarized</b> 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,

Jennifer Hertel  
Compliance Specialist

enclosures  
certified mail  
return receipt requested  
c: uncertified

Joe Keizur, Treasurer  
7555 SE Hacienda #4  
Hillsboro OR 97123

Bill Kennemer

Ralph Hatley

Clackamas County Elections