

BILL BRADBURY
SECRETARY OF STATE



ELECTIONS DIVISION
JOHN LINDBACK
DIRECTOR
141 STATE CAPITOL
SALEM, OREGON 97310-0722
ELECTIONS — (503) 986-1518

**BEFORE THE ELECTIONS DIVISION
OFFICE OF THE SECRETARY OF STATE
STATE OF OREGON**

IN THE MATTER OF) **FINAL ORDER**
)
DESCHUTES COUNTY DEMOCRATIC)
) Case No. L9158
CENTRAL COMMITTEE (000304))

HISTORY OF THE CASE

On May 16, 2007, the Elections Division of the Office of the Secretary of State (Elections Division) issued a Notice of Proposed Civil Penalty to the Deschutes County Democratic Central Committee (the Committee) for failure to file a timely first supplement to the second pre-election contribution and expenditure report for the November 7, 2006, General Election. (Ex. D) On June 8, 2007, David E. Paulson, current treasurer of the Committee, requested a hearing. (Ex. E.) The Elections Division referred the matter to Ray Myers, Hearings Officer, to hold a hearing and to issue a Proposed Order.

Hearing convened June 25, 2007, in Salem, Oregon. The Elections Division was represented by Assistant Attorney General Steve Wolf. Nancy Ferry, compliance specialist with the Elections Division, testified on behalf of the Elections Division. Mr. Paulson appeared by telephone on behalf of the Committee. The record closed on June 25, 2007.

ISSUE

The issue is whether the Committee had aggregate expenditures of more than \$1,000 to a single source between October 23, 2006 and November 2, 2006, and if so, whether the Committee should be assessed a civil penalty of \$100 for failing to report that expenditure until December 7, 2006.

EVIDENTIARY RULINGS

Exhibits A through G were admitted into evidence without objection.

FINDINGS OF FACT

1. The Committee expended \$1,692.55 to Pat Ackley for office supplies on October 23, 2006. (Ex. C.)
2. The first disclosure of the expenditure was in the post-election report, which was filed on December 7, 2006. (Ex. D; Test. Ms. Ferry.)
3. This violation is the second late report in a two year period. (Test. Ms. Ferry.)

CONCLUSIONS OF LAW

The Committee had aggregate expenditures of more than \$1,000 to a single source during the period between October 23, 2006 and November 2, 2006. This expenditure should have been reported on a first supplement to the second pre-election contribution and expenditure report that was due October 30, 2006. The Committee did not report this expenditure until December 7, 2006.

OPINION

ORS 260.073(1)(c) requires that if a political committee, other than a candidate's chief political committee, expends more than \$1,000 to a single payee during the period between 15 days before the election and 9 days before the election, the committee is required to file a first supplement to the second pre-election report 8 days before the election. For the 2006 General Election, the due date for this report was October 30, 2006.

The Elections Division as the party asserting the position that the filing was late bears the burden of presenting evidence. ORS 183.450(2). The Elections Division has submitted evidence that the committee did not notify the Elections Division of an October 23 expenditure to one payee that exceeded \$1,000 until December 7, 2006. (Test. Ms. Ferry.) There is no evidence to the contrary. Consequently, the Elections Division has proven that the Committee was 26 days late in reporting this expenditure.

Ms. Ferry testified that this is the second late report in a two year period. By administrative rule OAR 165-012-0005 the Secretary of State designated the *2006 Campaign Finance Manual* and associated forms as the procedures and guidelines to be used for compliance with Oregon campaign finance regulations. The *Manual* contains a matrix for assessing civil penalties. The penalty was correctly calculated under the matrix; however the penalty under the matrix exceeds the maximum for late reporting of expenditures between \$0-\$2,000. The maximum penalty is \$100 and is the amount assessed.

The committee argues that there is no indication that the failure to report this expenditure was anything but an inadvertent mistake. Consequently, it argues that the penalty should be reduced to \$50.

The *Manual* does allow for mitigating circumstances to reduce penalties. However, the mitigating circumstances are quite limited. The *Manual* restricts mitigating factors to those specifically listed. None of the listed mitigating factors allows for mitigating a penalty because the late report was inadvertent. Consequently, the penalty will not be reduced.

ORDER

The Deschutes County Democratic Central Committee violated ORS 260.073(1)(c) by failing to file a timely first supplement to the second pre-election report on October 30, 2006, when it had expended more than \$1,000 to a single payee between October 23 and November 2, 2006. Consequently, it is ordered that a civil penalty of \$100 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 L9158 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.

Jean Straight, Deputy Secretary of State

Date

CERTIFICATE OF SERVICE

I certify that on August 13, 2007, I served the attached Final Order by mailing in a sealed envelope, with first class postage prepaid, a copy thereof addressed as follows:

Deschutes County Democratic Central Committee (000304)
Carolyn Scalise, Treasurer
PO Box 1601
Bend, OR 97701