

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 a Late Contribution and Expenditure Report) Final Order
by the IUOE Local 701 Misc Political Action Committee,)
Mark Holliday, Treasurer, for the Second Pre-Election for the) Case No. L7715
May 18, 2004, Primary Election)

August 4, 2004

IUOE Local 701 Misc Political Action Committee (002452)
Mark Holliday, Treasurer
555 East First ST
Gladstone, OR 97027

Dear Mr. Holliday:

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

On June 10, 2004, the secretary notified the IUOE Local 701 Misc Political Action Committee (committee), pursuant to ORS 260.232(2), that it had failed to file the 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 September 9, 1999. The statement reported Mark Holliday as the treasurer and 555 East First ST, Gladstone, OR 97027 as the address to which all committee correspondence was to be sent.
2. The committee was required to file a second pre-election report with the secretary on May 6, 2004.
3. The secretary sent the committee a notice that it had failed to file a timely report on May 7, 2004. The notice was sent by first class mail to the treasurer at the above-referenced address.

4. The secretary received the report on May 10, 2004, which is two business days after the date on which the report was due.
5. The committee reported no contributions or expenditures during the accounting period for the report.
6. On June 10, 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 no civil penalty and allowed the committee 20 days to request a hearing. The notice sent by certified mail was received and signed for by Suzanne Mann on June 14, 2004.
7. On June 17, 2004, the secretary received a notarized letter from Mark Holliday in lieu of a public hearing.
8. The letter—attached as Exhibit A—was reviewed, considered, and made part of the record.
9. The secretary has record of no previous late filings during the two-year period beginning September 15, 2003.

ULTIMATE FINDINGS OF FACT

Mark Holliday, Treasurer, failed to file a timely second pre-election contribution and expenditure report for the May 18, 2004, Primary Election.

CONCLUSIONS OF LAW

Treasurer Mark Holliday's failure to file a timely second pre-election contribution and expenditure report for the May 18, 2004, Primary Election violated ORS 206.063.

OPINION

The IUOE Local 701 Misc Political Action Committee's second pre-election contribution and expenditure report, filed on May 10, 2004, was late. It was due by 5:00 p.m., May 6, 2004.

By statute, a maximum \$10,000 civil penalty may be imposed for this violation. The *2004 Campaign Finance Manual*, which contains a penalty calculation matrix on pages 101 and 102, 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 report by the deadline.

In his testimony, Mr. Holliday explains that his bookkeeper was on vacation from April 29, 2004 until May 6, 2004, and while on vacation there was a medical emergency in her family that kept her out of town until May 10, 2004. Once his bookkeeper returned, she phoned the Elections Division and filed the second pre-election report immediately. Based on these circumstances, Mr. Holliday requests a waiver of the violation. Unfortunately, the only time a violation may be waived is when the lateness of the report is a direct result of an error by the filing officer. That is not the case in this instance.

Under the penalty matrix, the maximum statutory penalty of \$10,000 is reduced to 1% of the total contributions or total expenditures—whichever is greater—for each business day the report was late as this is the first late violation by the treasurer.

Because the committee reported no activity during the accounting period for the late report, no civil penalty will be assessed.

ORDER

It is ordered that no penalty be assessed.

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: _____