

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)
by the Oregon Nurseries Political Action Committee,) Final Order by Default
Mark Simmons, Treasurer, for the Second Supplement to the)
Second Pre-Election for the November 2, 2004, General) Case No. L8179
Election)

April 27, 2005

Oregon Nurseries Political Action Committee (000175)
Mark Simmons, Treasurer
29751 SW Town Center Loop W
Wilsonville, OR 97070

Dear Mr. Simmons:

This is a Final Order by Default issued by the Secretary of State (secretary) for your failure to file a timely second supplement to the second pre-election contribution and expenditure report for the November 2, 2004, General Election.

On March 11, 2005, the secretary notified the Oregon Nurseries 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; however, no request for a hearing was received by the secretary within the time permitted in the notice. Accordingly, after consideration of the records and files of the secretary regarding this matter, the secretary 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 December 18, 2003. The statement reported Mark Simmons as the treasurer and 29751 SW Town Center Loop W, Wilsonville, OR 97070 as the address to which all committee correspondence was to be sent.
2. The committee was required to file a second supplement to the second pre-election report with the secretary on October 29, 2004, because it made an expenditure exceeding \$1,000 to a single payee between October 25 and October 28, 2004.

3. The committee reported the expenditure required to be on the second supplement to the second pre-election report (\$2,500.00 to Friends of Karen Minnis on October 28, 2004) on its post-election report filed on December 2, 2004, which is 22 business days after the second supplement to the second pre-election report was due.
4. On March 11, 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 treasurer at the above-referenced address. The notice proposed a civil penalty of \$550.00 and allowed the committee 20 days to request a hearing. The notice sent by certified mail was received and signed for by Krista Jeli on March 14, 2005.
5. The committee did not request a public hearing or submit notarized testimony in lieu of a public hearing.
6. The secretary has record of no previous late filings during the two-year period beginning September 15, 2003.

ULTIMATE FINDINGS OF FACT

Mark Simmons, Treasurer, failed to file a timely second supplement to the second pre-election contribution and expenditure report for the November 2, 2004, General Election.

CONCLUSIONS OF LAW

Treasurer Mark Simmons's failure to file a timely second supplement to the second pre-election contribution and expenditure report for the November 2, 2004, General Election violated ORS 260.073.

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.

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.

ORDER

It is ordered that a penalty of \$550.00 ($\$2,500.00 \times 1\% \times 22 \text{ days}$) 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 L8179 when mailing your payment.

Oregon Nurseries Political Action Committee (000175)

Mark Simmons, Treasurer

page 3

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: _____