

SECRETARY OF STATE FOR THE STATE OF OREGON

In the matter of: Violation of state election laws regarding the timely reporting of campaign contributions and expenditures by Committee to Elect Loretta Smith (14377)	ELECTION LAW COMPLAINT AGAINST COMMITTEE TO ELECT LORETTA SMITH
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Complainant Seth Alan Woolley alleges that the Committee to Elect Loretta Smith (14377) [hereinafter "CELS"] has violated several provisions of Oregon law requiring timely and accurate reporting of campaign contributions and expenditures.

Complainant alleges:

1. Complainant Seth Alan Woolley is an elector of Oregon who resides at 3403 N.E. Stanton Street in Portland, Multnomah County, Oregon.
2. The Secretary of State has jurisdiction to consider this Complaint pursuant to ORS 260.345.

VIOLATIONS OF STATE ELECTION LAWS

LATE FILING OF \$6,000 OF CONTRIBUTIONS

3. On July 15, 2020, CELS filed a contribution dated April 21, 2020, for \$6000 with Transaction ID 3510675 as an "Anonymous Contribution."
4. Oregon law requires that contributions received during the final 42 days before a primary or general election be reported within 7 days of receipt.
5. The CELS filing was 78 days late.
6. The Secretary's penalty matrix calls for a fine of 10% of the late-filed amount.

FALSE FILING STATING THAT \$6,000 WAS RECEIVED FROM ANONYMOUS DONORS

7. The \$6,000 reported by CELS did not consist of anonymous contributions. The CELS manager reported to the press that those funds were received from named contributors in the form of cash stuffed into envelopes. The campaign took the cash but allegedly lost the envelopes and thus could not identify the contributors. Exhibit 1.
8. The reporting of contributions received from named individuals or entities as having been received from "anonymous" is a knowing false statement by CELS regarding the origin of the contributions.
9. Knowingly submitting false information about a transaction is a violation of ORS 260.715 and is a Class C felony under ORS 260.993. A Class C felony is punishable by a maximum of five years in prison, a fine of as much as \$125,000, or both.
10. The Secretary should investigate this false filing and also refer it as a criminal matter to the Attorney General.

FRAUDULENT FILING TO CONCEAL TRUE SOURCE OF \$6,000

11. The CELS description of the events leading to the alleged \$6,000 in anonymous contributions is not remotely plausible and requires investigation by the Secretary.
12. It is not plausible that CELS received \$6,000 in cash "approximately 25" envelopes and then lost the envelopes and all information about the donors.
13. That explanation would require that the average cash contribution per envelope was \$240. I have worked with and on candidate and ballot measure campaigns in Oregon for over 16 years. I have never seen even a single cash donation that large. Cash donations are almost always \$20 or less. The notion that a campaign for City Commissioner would suddenly attract \$6,000 in cash contributions in envelopes is wildly implausible.

14. The CELS explanation would require the conclusion that CELS was monumentally incompetent (or dishonest) in accounting for contributions. Other grassroots campaigns I have been involved with have used numbered carbon paper and kept track of gaps in donation slips. Another set of campaigns take pictures of any cash with exposed serial numbers next to their donations slip for record-keeping, before the cash is deposited and reported.
15. The amount reported, \$6,000, is a remarkably round number. The probability that "approximately 25 envelopes" with cash added up to \$6,000 is not remotely plausible. In fact, there is only one chance in 1,000 that a number of separate amounts would add up to a number that lands exactly at the "000" boundary.
16. It is not plausible that any candidate campaign would lose track of the names of its largest contributors. Under the Portland Open and Accountable Elections public funding system, CELS was prohibited from accepting any contribution in excess of \$250. Thus, the "approximately 25" contributors would have been among the top contributors to the campaign.
17. The facts known to date suggest that this \$6,000 came from some other source(s) that CELS wishes to conceal.
18. Knowingly submitting fraudulent information about a transaction is a violation of ORS 260.715 and is a Class C felony under ORS 260.993. A Class C felony is punishable by a maximum of five years in prison, a fine of as much as \$125,000, or both.
19. The Secretary should investigate this false filing and also refer it as a criminal matter to the Attorney General.

Please direct all correspondence in this matter to Seth Alan Woolley at seth@s-woolley.org.

A handwritten signature in black ink, appearing to read 'Saw', with a long, sweeping horizontal stroke extending to the right.

Seth Alan Woolley
3403 N.E. Stanton Street
Portland, OR 97212-2744
503-953-3943
seth@swoolley.org

EXHIBIT 1

From: Loretta Smith <info@voteloretta-smith.com>
Subject: Re: checking on a campaign contribution
Date: July 16, 2020 at 2:14:32 PM PDT
To: [Reporter]

Hi [Reporter],

This is Jerome. The contributions were cash contributions in donation envelopes. The cash and envelopes are separated at the time of drop off. The envelope with the cash was found, but the associated envelopes were not. In this case, state law requires that the donation be logged as anonymous and the funds be donated to a nonprofit. We checked in with OAE and the state and proceeded as directed.

Sent from my iPhone

On Jul 16, 2020, at 2:05 PM, [Reporter] wrote:

Thank you for that explanation but I'm a little confused.

Are you saying the contributions were in cash? Otherwise you'd have the name of the donor on the check?

Please clarify. And is this Jerome or Commissioner Smith I'm communicating with?

Thanks.

On Jul 16, 2020, at 2:01 PM, Loretta Smith <info@voteloretta-smith.com> wrote:

Hi [Reporter],

Thanks for your email. The contribution in question is actually a group of individual contributions where the donation envelopes were lost before they could be logged, so ultimately they couldn't be attributed to the individuals who made the donation. With all of the changes to how things got

processed during this time period in light of shut downs for COVID-19, the batch of envelopes (approximately 25) were unable to be located.

State law requires those types of instances to be listed as an anonymous donation and for the money to be donated to a nonprofit organization. The issue was discovered during the course of reconciling campaign finance activities from the primary ahead of the July 3rd OAE deadline. Once discovered by C&E Systems, we consulted with OAE and the Secretary of State's Office and were told how to proceed in order to be in compliance with both local and state campaign finance law. It should also be noted that the funds were never a part of the campaign's cash balance and were not matched through the Open and Accountable Elections Program.

The contribution was logged and a check for the aggregate amount was cut to be sent to the Oregon Food Bank. It was cut last week and will show up in Orestar either later today or tomorrow as required for 7-day reporting.

On Thu, Jul 16, 2020 at 12:55 PM [Reporter] wrote:

Hi Folks,

Can you explain this contribution, please?

1. It's bigger than the \$5,000 limit for Open and Accountable elections
2. It's anonymous, which in 10 years of looking at ORESTAR, I've never seen before (and I don't think is allowed under election law)
3. It was made in April but not disclosed until 7/15, which is obviously well beyond the reporting period.

Thanks!

OFFICE OF THE SECRETARY OF STATE

BEV CLARNO
SECRETARY OF STATE



ELECTIONS DIVISION

STEPHEN N. TROUT
DIRECTOR

255 CAPITOL STREET NE, SUITE 501
SALEM, OREGON 97310-0722

(503) 986-1518

July 22, 2020

Sent Via USPS and Email To: seth@swoolley.org

Seth Woolley
3403 NE Stanton St.
Portland, OR 97212

Re: Elections Division Case No. 20-064

Dear Seth Woolley:

This is to acknowledge receipt of your complaint alleging possible election law violations by Loretta Smith, Committee to Elect Loretta Smith (14377). Your complaint relates to the possible violation of election law for possibly knowingly making a false statement, oath or affidavit required under election law. The complaint was received in our office on July 21, 2020.

This office will be reviewing the complaint as soon as possible to determine the appropriate action. Please note that investigations can take time. In the future, if you have additional information or documentation regarding this matter, please send it to our office promptly and note case number 20-064 on all future correspondence.

We will contact you if further information is needed.

Sincerely,

Alma Whalen
Compliance Specialist

BEV CLARNO
SECRETARY OF STATE



STEPHEN N. TROUT
DIRECTOR

255 CAPITOL STREET NE, SUITE 501
SALEM, OREGON 97310-0722

(503) 986-1518

July 22, 2020

Sent Via USPS and Email To: sloretta407@aol.com and j.green@c-esystems.com

Committee to Elect Loretta Smith (14377)
Loretta Smith, Candidate
3818 NE 156th Ave.
Portland, OR 97230

Re: Elections Division Case No. 20-064

Dear Loretta Smith:

This is to notify you that a written complaint has been received by the Secretary of State, Elections Division, alleging possible violations of Oregon election law by you and/or your candidate committee for knowingly making a false statement, oath or affidavit required under election law.

The Secretary of State, Elections Division, is required to notify the subject of a complaint (see ORS 260.345(3)). The complaint was received on July 21, 2020.

Our inquiry into this matter does not mean the Elections Division has determined any provisions of Oregon election law have been violated. The Elections Division will inform you of the outcome of our review and any other actions on this matter.

Please contact me at 503-986-1518 if you have any questions about the contents of this letter.

Sincerely,

Alma Whalen
Compliance Specialist

c: Loretta Smith, Candidate
PO Box 42307
Portland, OR 97242

Jef Green, Treasurer
PO Box 42307
Portland, OR 97242

BEV CLARNO
SECRETARY OF STATE



ELECTIONS DIVISION

STEPHEN N. TROUT
DIRECTOR
255 CAPITOL STREET NE, SUITE 501
SALEM, OREGON 97310-0722
(503) 986-1518

July 27, 2020

Sent Via Email Only To: amy.seely@state.or.us

Oregon Department of Justice
Criminal Justice Division
Amy Seely, Sr. Assistant Attorney General
2250 McGilchrist St. SE, Suite 100
Salem, OR 97302

Re: Elections Division Case 20-064

Dear Ms. Seely:

Per ORS 260.345(3), we request your assistance in investigating whether or not an election law violation has occurred. We received a complaint on July 21, 2020, which alleges that a candidate made a false statement, oath or affidavit when filing campaign finance transactions. A copy of the complaint is attached. We notified the complainant and the subject of the complaint as required by Oregon election law.

We respectfully request that, at the close of the investigation conducted by your office at the request of the Secretary of State's Office, Elections Division, that the Elections Division be informed of your findings.

Sincerely,

Michelle Teed
Deputy Director, Elections Division

BEV CLARNO
SECRETARY OF STATE



STEPHEN N. TROUT
DIRECTOR

255 CAPITOL STREET NE, SUITE 501
SALEM, OREGON 97310-0722

(503) 986-1518

M E M O R A N D U M

TO: File

FROM: Alma Whalen, Compliance Specialist

DATE: July 27, 2020

SUBJECT: Summary of Phone Conversation with Jef Green, Treasurer for Loretta Smith

On the afternoon of July 23, 2020, I spoke with Jef Green from C&E Systems. Mr. Green is treasurer for Loretta Smith's candidate committee, the Committee to Elect Loretta Smith (14377). Tammy Lewis, an employee of C&E Systems was also on the call.

Mr. Green had previously asked for a copy of the complaint which I did not give because the allegations are criminal in nature. At the beginning of the call, Mr. Green stated that he received a copy of the complaint from the Portland Tribune as the complainant had shared it with the media.

Mr. Green stated that he didn't call to discuss the allegation of a false statement, but whether they had correctly reported an anonymous contribution. The candidate was concerned that they had reported it incorrectly because the campaign did have the names of the contributors at one point but lost them before the contributions could be deposited and reported on ORESTAR. Mr. Green said that it was his understanding that when the committee doesn't have the names of contributors, it should report the money as an anonymous contribution and asked if that was correct. I confirmed that this is the only way to report contributions when the name of the contributor is not known.

The candidate's concern, according to Mr. Green, is that the names were known at the time of collecting the contributions, but they were lost at a later point in time. Mr. Green reported as an anonymous contribution because at the time of depositing and reporting the transactions, they didn't know the name of the contributors.

He stated that he would wait for our questions regarding the false statement portion of the complaint.

SECRETARY OF STATE OF THE STATE OF OREGON

In the Matter of: Violations of Oregon Law pertaining to Campaign Contributions	No. _____ COMPLAINT Violations of State Law by Committee to Elect Loretta Smith
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1. This Complaint is filed by Seth Woolley, a resident and elector of Portland and Oregon, pursuant to ORS 260.345.
2. "Committee to Elect Loretta Smith" [hereinafter CELS] is registered on ORESTAR as the principal campaign committee for the campaign of Loretta Smith for Portland City Council.
3. All dates referred to in this complaint are in the year 2020.
4. CELS has violated the campaign contribution reporting requirements and contribution receipt prohibitions of ORS Chapter 260 and has covered up the true source(s) of \$6,000 of funds obtained by CELS.

REPORTING VIOLATIONS

5. On July 15, CELS filed on ORESTAR a contribution dated April 21 for \$6,000 with Transaction ID 3510675 as an "Anonymous Contribution."
6. CELS later explained that the \$6,000 derived from "approximately 24" anonymous contributions. See Exhibits 1 and 2.
7. April 21 was within the 42 days prior to the primary election, during which time committees must report transactions within 7 days. Thus, the due date for the \$6,000 transaction was April 28.
8. By itself, the July 15 filing was late by 78 days, which requires a penalty of \$600.
9. The State Campaign Finance Manual (p. 29) states:

If a committee cannot identify a contributor, the contribution must be donated to an organization that can accept anonymous contributions. A committee is not required to

report the receipt of the contribution if the committee has not deposited the contribution into the campaign account, and the contribution is disbursed within seven calendar days of receipt.

If the committee has kept the anonymous contribution for more than seven calendar days or has deposited it in the campaign account, the committee must disclose the receipt of the anonymous contribution as a cash contribution. When the committee donates the anonymous contribution it should report the donation as a cash expenditure.

10. CELS was required to report the anonymous contributions to ORESTAR, because CELS did not disburse the contributions to an acceptable recipient (or any recipient) within 7 calendar days of its receipt. CELS disbursed the contributions approximately 73 days after their receipt on or before April 21.
11. CELS failure to timely report each of the 24 anonymous contributions constitutes a separate violation.

RECEIPT OF ILLEGAL CONTRIBUTIONS

12. It is illegal for a committee to accept anonymous contributions. The State Campaign Finance Manual (p. 29) states:

Prohibited Contributions Anonymous Contributions

Warning: No committee or person associated with a committee shall accept anonymous contributions. This includes "passing a hat," a "collection plate," or setting out a "jar" to collect contributions.

13. On July 20, CELS filed on ORESTAR a cash expenditure of \$6,000 occurring on July 10 to the Oregon Food Bank. CELS explained this transaction to the press (Exhibits 1 and 2) as a donation of the \$6,000, because:
 - (a) CELS had actually received the \$6,000 in approximately 24 envelopes stuffed with an average of \$240 in cash each; and

- (b) CELS had kept the cash but had somehow lost all of the envelopes, which displayed information about the donors.
14. The fact that CELS sent \$6,000 to the Oregon Food Bank at least 73 days after having received the 24 anonymous contributions does not remove the liability of CELS for having received illegal anonymous contributions.

FRAUD IN COVERING UP THE TRUE SOURCES OF THE \$6,000; REPORTING OF CONTRIBUTIONS IN FALSE NAME

15. The CELS description of the events leading to the alleged \$6,000 in contributions is not remotely plausible and requires investigation by the Secretary of State to determine the true source(s) of the funds.
16. It is not plausible that CELS received \$6,000 in cash "approximately 25" envelopes and then lost the envelopes and all information about the donors.
17. That explanation would require that the average cash contribution per envelope was \$240. I have worked with and on candidate and ballot measure campaigns in Oregon for over 16 years. I have never seen even a single cash donation that large. Cash donations are almost always \$20 or less. The notion that a campaign for City Commissioner would suddenly attract \$6,000 in cash contributions in "approximately 25" envelopes is wildly implausible.
18. The CELS explanation would require the conclusion that CELS was monumentally incompetent (or dishonest) in accounting for contributions. Other grassroots campaigns I have been involved with have used numbered carbon paper and kept track of gaps in donation slips. Another set of campaigns take pictures of any cash with exposed serial numbers next to their donations slip for record-keeping, before the cash is deposited and reported.
19. The amount reported, \$6,000, is a remarkably round number. The probability that "approximately 25 envelopes" with cash added up to \$6,000 is not remotely plausible. In fact, there is only one chance in 1,000 that a number of separate amounts would add up to a number that lands exactly at the "000" boundary.

20. It is not plausible that any candidate campaign would lose track of the names of its largest contributors. Under the Portland Open and Accountable Elections public funding system, CELS was prohibited from accepting any contribution in excess of \$250. Thus, the "approximately 25" contributors would have been among the top contributors to the campaign.
21. The facts known to date strongly indicate that this \$6,000 came from some other source(s) that CELS wishes to conceal. Concealing the true source(s) of the contributions violates ORS 260.055, ORS 260.057, ORS 260.083, ORS 260.085, and the rules adopted in the form of the State Campaign Finance Manual.
22. Reporting contributions from known sources as "anonymous" also violates ORS 260.402:
 - (1) A person may not directly or indirectly reimburse a person for making a contribution or donation, or make a contribution or donation in any name other than that of the person that in truth provides the contribution or donation, to:
 - (a) Any other person, relating to a nomination or election of any candidate or the support of or opposition to any measure;
 - (b) Any political committee; * * *
 - (2) Except as provided in subsection (3) of this section, a person, political committee, covered organization or petition committee may not knowingly receive a contribution or donation prohibited under subsection (1) of this section or enter or cause the contribution or donation to be entered in accounts or records in another name than that of the person who actually provided the contribution or donation.
23. CELS personnel know that the \$6,000 in contributions did not come from anonymous sources. They reported to the press that the contributions came from known sources (written on the cash-filled envelopes) that the CELs personnel then allegedly lost. Recklessly or deliberately

"losing" the names of the donors does not excuse the violation of ORS 260.402.

24. Violation of ORS 260.402 is a Class C felony, punishable by fine of up to \$125,000 or 5 years in prison or both. Each of the "approximately 24" falsely-identified contributions constitutes a separate violation.
25. The filing of each of the "approximately 24" contributions as having been anonymous constitutes false swearings under ORS 162.075, a Class A misdemeanor punishable by a fine of up to \$6,250 or 364 days in jail or both.
26. Complainant requests that the Secretary of State:
 - (a) Find that CELS is in violation of the Oregon campaign finance reporting requirements and the campaign contribution prohibitions;
 - (b) Impose the lawfully-required penalties for these violation upon CELS;
 - (c) Refer this matter to the Attorney General for investigation of criminal violations, including but not limited to ORS 260.402 and ORS 162.075.

Please direct all correspondence in this matter to Seth Alan Woolley at seth@honest-elections.com.



From: Loretta Smith <info@votelorettasmith.com>
Subject: Re: checking on a campaign contribution
Date: July 16, 2020 at 2:14:32 PM PDT
To: [Reporter]

Hi [Reporter],

This is Jerome. The contributions were cash contributions in donation envelopes. The cash and envelopes are separated at the time of drop off. The envelope with the cash was found, but the associated envelopes were not. In this case, state law requires that the donation be logged as anonymous and the funds be donated to a nonprofit. We checked in with OAE and the state and proceeded as directed.

Sent from my iPhone

On Jul 16, 2020, at 2:05 PM, [Reporter] wrote:

Thank you for that explanation but I'm a little confused.

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Thanks.

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Hi [Reporter],

Thanks for your email. The contribution in question is actually a group of individual contributions where the donation envelopes were lost before they could be logged, so ultimately they couldn't be attributed to the individuals who made the donation. With all of the changes to how things got processed during this time period in light of shut downs for COVID-19, the batch of envelopes (approximately 25) were unable to be located.

State law requires those types of instances to be listed as an anonymous donation and for the money to be donated to a nonprofit organization. The issue was discovered during the course of reconciling campaign finance activities from the primary ahead of the July 3rd OAE deadline. Once discovered by C&E Systems, we consulted with OAE and the Secretary of

State's Office and were told how to proceed in order to be in compliance with both local and state campaign finance law. It should also be noted that the funds were never a part of the campaign's cash balance and were not matched through the Open and Accountable Elections Program.

The contribution was logged and a check for the aggregate amount was cut to be sent to the Oregon Food Bank. It was cut last week and will show up in Orestar either later today or tomorrow as required for 7-day reporting.

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Hi Folks,

Can you explain this contribution, please?

1. It's bigger than the \$5,000 limit for Open and Accountable elections
2. It's anonymous, which in 10 years of looking at ORESTAR, I've never seen before (and I don't think is allowed under election law)
3. It was made in April but not disclosed until 7/15, which is obviously well beyond the reporting period.

Thanks!

Willamette Week July 17 & 19, 2020

City Council Candidate Loretta Smith's Campaign Makes a Highly Unusual Contribution Disclosure

Running on public financing that limits contributions to \$250, Smith reported a \$6,000 contribution from “anonymous.”

By Nigel Jaquiss | Published July 17 at 6:14 PM Updated July 19 at 8:34 PM

Former Multnomah County Commissioner Loretta Smith and Dan Ryan, onetime executive director of the educational nonprofit All Hands Raised, face each other in a Aug. 11 special election runoff to replace the late City Commissioner Nick Fish.

First, its size. Smith and Ryan are both participating in the city of Portland's Open and Accountable Elections program, which matches campaign contributions up to 6 to 1 but limits them to \$250 each. Obviously, the transaction violated that limit.

Second, the timing of the contribution was odd. The filing listed a transaction date of April 21, but the contribution was not disclosed until July 15. At that stage of the election cycle, candidates are required to disclose contributions within seven days of receipt. So Smith's filing violated that rule, as well.

Finally, there is the anonymous nature of the contribution. That is extraordinarily rare—for good reason.

"Anonymous contributions are prohibited," says Laura Fosmire, the spokesperson for Oregon's top — elections officer, Secretary of State Bev Clarno.

So what gives?

Jerome Brooks, Smith's campaign manager, says the answer to the mystery is simple: Smith's campaign lost track of contributions made in cash.

"The contribution in question is actually a group of individual contributions where the donation envelopes were lost before they could be logged, so ultimately they couldn't be attributed to the individuals who made the donation," Brooks says. "With all of the changes to how things got processed during this time period in light of shutdowns for COVID-19, the batch of envelopes (approximately 25) were unable to be located."

During her two terms at Multnomah County from 2011 to 2019, Smith handled her office budget differently from other commissioners, and sometimes in ways that drew criticism.

Related: Spending Time County Commissioner Loretta Smith uses her office budget to benefit constituents—and her own ambitions.

Susan Mottet, director of Open and Accountable Elections, says shoddy bookkeeping will now cost Smith's City Council campaign dearly.

Because the campaign failed to account for the contributions properly, it was ineligible for matching funding for the 25 donations, which could have yielded \$7,500 in city matching funds. (The city would have matched the first \$50 of each donation 6 to 1: 25 times \$300, or \$7,500.)

To compound the pain, the Smith campaign must also forfeit the contributions.

"If the campaign wishes to keep the cash, they must collect proper documentation," Mottet says. "Since the collector of the cash did not, the campaign may not keep it. It is being remedied according to state rules."

Seth Woolley, who also ran for City Council in May and has long advocated campaign finance reform, says in addition to forfeiting the money, Smith could now face fines by both the city and the secretary of state for improper and late disclosure.

But there is a silver lining: Because state election law requires candidates to disgorge anonymous donations, Smith is sending the \$6,000 to the Oregon Food Bank.

That contribution was reported July 16.

BEV CLARNO
SECRETARY OF STATE



STEPHEN N. TROUT
DIRECTOR

255 CAPITOL STREET NE, SUITE 501
SALEM, OREGON 97310-0722

(503) 986-1518

August 11, 2020

Sent Via USPS and Email To: sloretta407@aol.com and j.green@c-esystems.com

Committee to Elect Loretta Smith (14377)
Loretta Smith, Candidate
3818 NE 156th Ave.
Portland, OR 97230

Re: Elections Division Case No. 20-064

Dear Loretta Smith:

This is to notify you that additional information was received by the Secretary of State, Elections Division, alleging that you and/or your candidate committee violated ORS 260.402 which relates to contributions in a false name.

Because the allegations were not previously included in the complaint, we are notifying you pursuant to ORS 260.345(3). The additional allegations were received on August 7, 2020.

Our inquiry into this matter does not mean the Elections Division has determined any provisions of Oregon election law have been violated. The Elections Division will inform you of the outcome of our review and any other actions on this matter.

Please contact me at 503-986-1518 if you have any questions about the contents of this letter.

Sincerely,

Alma Whalen
Compliance Specialist

c: Loretta Smith, Candidate
PO Box 42307
Portland, OR 97242

Jef Green, Treasurer
PO Box 42307
Portland, OR 97242



DEPARTMENT OF JUSTICE
CRIMINAL JUSTICE DIVISION

October 14, 2020

Michelle Teed
Deputy Director
Office of the Secretary of State
Elections Division
255 Capitol St NE, Suite 501
Salem, OR 97310

Re: Committee to Elect Loretta Smith
Elections Division Case: 20-064
DOJ Case: CJD0424-20

Dear Ms. Teed:

On or about July 27, 2020, the Criminal Justice Division received your request for our assistance to investigate a possible election law violation, specifically:

Whether the Committee to Elect Loretta Smith violated ORS 260.715, False Statement, Oath, or Affidavit when Filing Campaign Finance Transactions.

During our review of the documents provided by your office, we determined there was insufficient evidence to prove beyond a reasonable doubt that the subject committed the crime of False Statement, Oath, or Affidavit when Filing Campaign Finance Transactions. We are closing our file on this matter, and referring it back to your Division to determine whether any additional civil or administrative enforcement is appropriate.

Please do not hesitate to contact me if you have any questions or wish to discuss this matter further.

Sincerely,

/s/Amy Seely
Amy Seely
Sr. Assistant Attorney General

SHEMIA FAGAN
SECRETARY OF STATE
CHERYL MYERS
DEPUTY SECRETARY OF STATE



BRENDA BAYES
INTERIM DIRECTOR
255 CAPITOL STREET NE, SUITE 501
SALEM, OREGON 97310-0722
(503) 986-1518

January 28, 2021

Sent Via Email To: sloretta407@aol.com and j.green@c-esystems.com

Committee to Elect Loretta Smith (14377)
Loretta Smith, Candidate
PO Box 42307
Portland, OR 97242

Re: Elections Division Case Number 20-064

Dear Loretta Smith:

On July 22, 2020, you were informed that the Elections Division had received a written complaint alleging possible violations of Oregon election law. The complaint relates to the possible violation by you and/or your candidate committee for reporting campaign contributions in a false name and knowingly making a false statement, oath or affidavit required under election law.

In order for us to make a determination regarding these allegations, you are requested to provide any information pertinent to this investigation and respond in writing to the questions and/or information requests, below. You may also wish to forward a copy of this inquiry letter to any other appropriate person(s) for response.

After you have provided your response to the information requests, please sign and date your response. By signing and dating your response, you are indicating that your responses are complete, true, and accurate to the best of your knowledge

1. The Committee to Elect Loretta Smith (14377) ("the Committee") filed an anonymous contribution (transaction ID number 3510675). The transaction date reported was April 21, 2020. According to ORS 260.057 and page 21 of the *2020 Campaign Finance Manual*, this transaction should have been filed not later than April 28, 2020. It was not filed until July 15, 2020. Please explain why the transaction was filed 78 days after the due date.
 - a. Please provide supporting documentation for transaction ID 3510675. Supporting documents include but are not limited to deposit slips and bank statements.

- b. Do you know the names of the contributors that were made up the anonymous contribution? Please describe the circumstances surrounding the receipt of this contribution(s).

2. Did the committee disburse the anonymous contributions as required by page 29 of the *2020 Campaign Finance Manual*. If yes, please provide the ORESTAR transaction ID number and any supporting documentation for the expenditure(s).

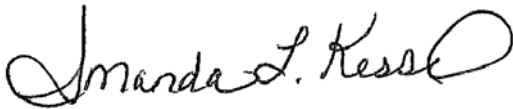
Signature

Signature Date

Please include any additional written comments or materials you may have. Your response may be: emailed to orestar-support.sos@oregon.gov, mailed to 255 Capitol St. NE, Suite 501, Salem, OR 97310; or faxed to (503) 373-7414. **Please submit this information to us by 5:00 p.m. on February 11, 2021.** Please include case number 20-064 on all correspondence.

Our inquiry into this matter does not mean the Elections Division has determined any provisions of Oregon election law have been violated. The Elections Division will inform you of the outcome of our review and any other actions on this matter.

Sincerely,



Amanda Kessel
Compliance Specialist

c:

Jef Green, Treasurer
PO Box 42307
Portland, OR 97242



Case 20-064

1. **The Committee to Elect Loretta Smith (14377) ("the Committee") filed an anonymous contribution (transaction ID number 3510675). The transaction date reported was April 1, 2020. According to ORS 260.057 and page 21 of the 2020 Campaign Finance Manual, this transaction should have been file not later April 28, 2020. It was not filed until July 15, 2020. Please explain why transaction was 78 days after the due date.**

Committee to Elect Loretta Smith Response: Due to the risks of COVID-19, C&E Systems amended their hours of operation and preferred delivery donations sometime in late March or early April 2020. The new preferred method of delivering donations was by mail. Normally, the campaign would drop off envelopes with money in them. The \$6,000 cash contribution was logged as an Anonymous Contribution due to donation envelopes with donor information being missing because of a C&E initiated changes in the processing of donations to protect individuals from being vulnerable to COVID-19.

Excerpt from C&E Message to clients-

"Please note-we are still open, but are restricting in-office visits to reduce COVID-19 risks. If you find it necessary to visit the office, please call first, to be sure that someone will be here to assist. However, instead of visiting us, we encourage you to mail any donations to PO Box 42307, Portland, OR 97242. Thanks for your consideration take care. Take care!"

To my knowledge, the donations in question, instead of delivering via mail or delaying the cash deposit in the bank, the campaign delivered the donation envelopes to C&E Systems and deposited the corresponding cash deposit at Columbia Bank. The lapse in closing out the communication on the deposit with C&E was due to a medical emergency that required the committee's campaign manager (Jerome Brooks) to return home to Atlanta on April 24, 2020.

The deposit was unnoticed until mid-June because that was the first point in time after the April deposit that C&E Systems performed reconciliation on our bank account, at which point the campaign was notified that the deposit envelopes with the donor information were missing. I was informed by C&E Systems that they initiated a search for the envelopes, and they were not recovered. The campaign also had no additional record of individual donor information related to the contributions. At this point the campaign manager, Jerome Brooks, and the campaign treasurer, Jef Green independently reached out and informed the Open and Accountable Elections Program Director.

It is my understanding, campaign treasurer, Jef Green, immediately called the Oregon Secretary of States's office for guidance, at which time it was determined that state law required the money to be identified as anonymous and donated to a local non-profit.

- a. Please provide supporting documentation for (transaction ID 3510675). Supporting documents include but are not limited to deposit slips and bank statements.

Committee to Elect Loretta Smith Response: Attached is the Oregon Food Bank check sent by Jef Green, President of C&E Systems and Campaign Treasurer for the Committee to Elect Loretta Smith on 07/10/2020 and the check cleared on 7/27/2020.

- b. Do you know the names of the contributors that were made up the anonymous contribution? Please describe the circumstances surrounding the receipt of this contribution(s).

Committee to Elect Loretta Smith Response: Unfortunately, the campaign had no additional record of individual contributors from the deposit.

- 2 Did the committee disburse the anonymous contributions as required by page 29 of the 2020 Campaign Finance Manual? If yes, please provide the ORESTAR transaction ID number and supporting documentation for the expenditures(s).

Committee to Elect Loretta Smith Response: I don't recall the above manual being mentioned. When it was determined that the donor information could not be retrieved, C&E after consulting with State Elections office and OAE staff, Jef Green, the President of C&E Systems and Campaign Treasurer for the Committee to Elect Loretta Smith informed the campaign of the procedure for reporting the funds without donor info and the requirement to donate corresponding funds to a non-profit. At the time, I was told it was in accordance with state regulations, a check for \$6,000 was cut and mailed to the Oregon Food Bank on 7/10/20 and it cleared on 7/27/20. The deposited funds and corresponding donation were then reported to ORESTAR. The ORESTAR transaction ID number is 3514255. See attachment.



August 5, 2020

Committee to Elect Loretta Smith
20 N Sumner Street
Portland, OR 97217

DELIVERED ELECTRONICALLY

Sloretta407@aol.com
j.green@e-csystems.com

Dear Loretta Smith:

On July 22, 2020, the City of Portland's Open & Accountable Elections program received a complaint alleging violations of Open & Accountable Elections campaign finance regulations by your campaign. Specifically, the complaint alleges the campaign reported a \$6,000 contribution from an anonymous donor, which, if it represented one or more cash contributions that exceeded the \$250 limit, would violate Open & Accountable Election rules about contribution limits. It also alleges that the contribution was received on April 21, 2020 but not reported until 78 days later, outside of Open & Accountable Elections reporting requirements.

Prior to receiving the complaint, the Open & Accountable Elections Director received communication from the campaign's Treasurer that the campaign received many cash contributions but lost the remit envelopes associated with them. In losing the remit envelopes, the campaign lost the data about the size of each individual contribution and the donor information. The Open & Accountable Elections Director was informed by the Treasurer that the Secretary of State's office advised him to report this as a lump sum from an anonymous donor to ORESTAR (since the exact amounts and donor information was not retained) and to donate the funds to a charity, in order to stay in compliance with state law. The Treasurer asked if this would pose any compliance problems with Open & Accountable Elections rules. State law overrules City law, and as such, the Open & Accountable Elections program aligns itself as much as possible with state law, therefore handling the contribution in the manner prescribed by the state does not pose a problem with Open & Accountable Elections requirements.

The complaint offers no evidence that the contribution limits were exceeded. The investigation that followed the complaint yielded no evidence that the campaign exceeded the contribution limits. The Secretary of State's office confirmed that they direct campaigns to report many cash contributions as one lump sum from an anonymous donor when data about the exact amounts and the names of the individual donors have been lost (see page 29 of the Campaign Finance Manual).

The campaign did not submit the contributions for public match. The campaign proactively disclosed the problem once it was known to the Treasurer. The campaign followed state and local law its handling.

The determination is that there is no evidence of violating contribution limits by the campaign. The campaign took appropriate and legally required actions to correct the error of losing remit envelopes by reporting the contributions as directed and donating them to a charity.

The only error that was incurable at the time that the situation was made known to the Treasurer and disclosed to the Open & Accountable Elections Director was reporting the contributions in a timely manner to the Open & Accountable Elections program. A contribution reported this late is considered a "fully omitted contribution" under Open & Accountable Elections rules:

E. Fully Omitted Contributions and Expenditures.

- 1. A fully omitted filing of a contribution or expenditure is one that is not remedied before the subsequent reporting deadline.*



2. The penalty for a fully omitted filing of a contribution or expenditure, is one (1) percent of the transaction amount(s) per calendar day, subject to a cap of fifty (50) percent of the transaction amount.

The report of the \$6,000 was due on May 2, 2020. It was reported to the Open & Accountable Elections program on July 22, 2020. For this, the Open & Accountable Elections Administrative Rules recommends a penalty of 50% of the amount, which is \$3,000 in this case.

The Open & Accountable Elections Administrative Rules penalty section states that:

The purpose of this section is to discourage and deter the intentional or negligent violation of Program requirements or prohibitions, ensure the proper stewardship of public funds, and encourage accurate reporting of contributions and expenditures for the purpose of public transparency in campaign finance. It is not the intent of this section to discourage participating in the Program through excessive penalties for mistakes that do not harm the purpose of this section or the purpose of the Program.

I have no reason to believe that this violation was intentional or negligent, that it prevents the proper stewardship of public funds, that it violates the principles of public transparency in campaign finance, nor that it harms the purpose of the Open and Accountable Elections program. I believe this violation was a simple error that occurs in the course of carrying out a campaign.

The Open & Accountable Elections Administrative Rules penalty section permits the Director to reduce a penalty when it relates to multiple contributions of like circumstances in the same reporting period:

Multiple like instances in one reporting period of de minimis impact may be combined when calculating the penalty at the discretion of the Director.

The multiple cash contributions which were reported late will be combined and treated as one \$250 contribution that was reported late, therefore the penalty issued will be \$125, which is 50% of \$250. The penalty is due to be paid within seven days of being made final, which is seven days from the date of this letter, unless a Request for Reconsideration is filed.

The campaign manager proactively disclosed to the Open & Accountable Elections Director prior to the filing of a complaint or the reporting of the contributions that he had to take a leave of absence due to an illness and, as a result, was not able to report some contributions to the Treasurer so that the Treasurer could report them in a timely manner. If this is the reason this report was made late, the campaign may be able to get relief from the penalty by submitting a Request for Reconsideration form using the Open & Accountable Elections program's Administrative Rule 16: Mitigating Circumstances and Personal Emergencies.

If the campaign disagrees with this determination for any reason, it may submit a Request for Reconsideration within seven calendar days of the date of this letter. The Request for Reconsideration form can be found on the program website at <https://www.portlandoregon.gov/oe/article/738057>.

Sincerely,

Susan Mottet
Director, Open & Accountable Elections
City of Portland
susan.mottet@portlandoregon.gov
502.823.4345

SHEMIA FAGAN
SECRETARY OF STATE
CHERYL MYERS
DEPUTY SECRETARY OF STATE



BRENDA BAYES
INTERIM DIRECTOR
255 CAPITOL STREET NE, SUITE 501
SALEM, OREGON 97310-0722
(503) 986-1518

January 28, 2021

Sent Via Email To: sloretta407@aol.com and j.green@c-esystems.com

Committee to Elect Loretta Smith (14377)
Loretta Smith, Candidate
PO Box 42307
Portland, OR 97242

Re: Elections Division Case Number 20-064

Dear Loretta Smith:

On July 22, 2020, you were informed that the Elections Division had received a written complaint alleging possible violations of Oregon election law. The complaint relates to the possible violation by you and/or your candidate committee for reporting campaign contributions in a false name and knowingly making a false statement, oath or affidavit required under election law.

In order for us to make a determination regarding these allegations, you are requested to provide any information pertinent to this investigation and respond in writing to the questions and/or information requests, below. You may also wish to forward a copy of this inquiry letter to any other appropriate person(s) for response.

After you have provided your response to the information requests, please sign and date your response. By signing and dating your response, you are indicating that your responses are complete, true, and accurate to the best of your knowledge

1. The Committee to Elect Loretta Smith (14377) ("the Committee") filed an anonymous contribution (transaction ID number 3510675). The transaction date reported was April 21, 2020. According to ORS 260.057 and page 21 of the *2020 Campaign Finance Manual*, this transaction should have been filed not later than April 28, 2020. It was not filed until July 15, 2020. Please explain why the transaction was filed 78 days after the due date.
 - a. Please provide supporting documentation for transaction ID 3510675. Supporting documents include but are not limited to deposit slips and bank statements.

- b. Do you know the names of the contributors that were made up the anonymous contribution? Please describe the circumstances surrounding the receipt of this contribution(s).

2. Did the committee disburse the anonymous contributions as required by page 29 of the *2020 Campaign Finance Manual*. If yes, please provide the ORESTAR transaction ID number and any supporting documentation for the expenditure(s).

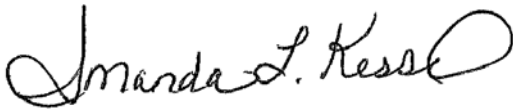
Signature

Signature Date

Please include any additional written comments or materials you may have. Your response may be: emailed to orestar-support.sos@oregon.gov, mailed to 255 Capitol St. NE, Suite 501, Salem, OR 97310; or faxed to (503) 373-7414. **Please submit this information to us by 5:00 p.m. on February 11, 2021.** Please include case number 20-064 on all correspondence.

Our inquiry into this matter does not mean the Elections Division has determined any provisions of Oregon election law have been violated. The Elections Division will inform you of the outcome of our review and any other actions on this matter.

Sincerely,



Amanda Kessel
Compliance Specialist

c:

Jef Green, Treasurer
PO Box 42307
Portland, OR 97242

Committee to Elect Loretta Smith (14377)

Transaction History

[Return to Transaction](#)

Note: Only versions of this transaction that are public record will display.

Tran ID	Status	Tran Date	Filed Date	Tran Subtype	Contributor/Payee	Filed By	Amount
3510694 🔍	Original	07/10/2020	07/16/2020 02:04 PM	Miscellaneous Other Disbursement	Oregon Food Bank	Jef A Green	\$6,000.00
3514255 🔍	Amended	07/10/2020	07/20/2020 04:55 PM	Cash Expenditure	Oregon Food Bank	Jef A Green	\$6,000.00

COMMITTEE TO ELECT LORETTA SMITH

PO BOX 42307
PORTLAND, OR 97242
COMMITTEE ID: 14377

1574

34-827/1251

7/10/2020

PAY TO THE
ORDER OF

Oregon Food Bank

\$ 6,000.00

SIX THOUSAND AND 00/100*****

DOLLARS

Oregon Food Bank
7900 NE 33rd Drive
Portland, OR 97211

MEMO:

AUTHORIZED SIGNATURE

SHEMIA FAGAN
SECRETARY OF STATE
CHERYL MYERS
DEPUTY SECRETARY OF STATE



DEBORAH SCROGGIN
DIRECTOR
255 CAPITOL STREET NE, SUITE 501
SALEM, OREGON 97310-0722
(503) 986-1518

May 4, 2021

Sent via USPS and Email to: seth@swoolley.org

Seth Woolley
3403 NE Stanton St.
Portland, OR 97212

Re: Elections Division Case No. 20-064

Dear Seth Woolley:

Complaint

On July 21, 2020 the Elections Division received your complaint in which you alleged possible violations of Oregon election law by Loretta Smith, Committee to Elect Loretta Smith (14377). Specifically, you alleged that Ms. Smith knowingly made a false statement, oath or affidavit required under election law and filed late campaign finance transactions. On August 7, 2020, additional information was received in which you alleged that Ms. Smith knowingly received contributions in a false name by filing a campaign finance transaction indicating that the contribution was anonymous.

Investigative Authority

Pursuant to ORS 260.205(3) and ORS 260.345(1), the Elections Division opened an investigation into the allegations in the complaint. Because the complaint alleged possible criminal activity, the Elections Division requested assistance from the Oregon Attorney General's office to examine the complaint as to whether a violation of election law or rule had occurred.

The Attorney General's office determined that there was "insufficient evidence to prove beyond a reasonable doubt that [Ms. Smith] committed the crime of False Statement, Oath, or Affidavit when Filing Campaign Finance Transactions." The Attorney General referred the case back to the Elections Division to determine whether any additional civil or administrative enforcement is appropriate.

Response to Complaint

The Elections Division emailed Ms. Smith an inquiry requesting a response to the questions set out in the letter. In response to the inquiry, Ms. Smith stated that "[t]he \$6,000 cash contribution was logged as an Anonymous Contribution due to donation envelopes with donor information

missing because ... C&E initiated changes in the processing of donations to protect individuals from being vulnerable to COVID-19.”

Further, Ms. Smith said that to her knowledge,

[T]he donations in question, instead of [being delivered] via mail or delaying the cash deposit in the bank, the campaign delivered the donation envelopes to C&E Systems and deposited the corresponding cash deposit at Columbia Bank. The lapse in closing out the communication on the deposit with C&E was due to a medical emergency that required the committee’s campaign manager ... to return home to Atlanta on April 24, 2020.

Ms. Smith stated that

The deposit was unnoticed until mid-June because that was the first point in time after the April deposit that C&E Systems performed reconciliation on [the] bank account, at which point the campaign was notified that the deposit envelopes [sic] with the donor information were missing ... C&E Systems ... initiated a search for the envelopes, and they were not recovered.

The response also stated that the campaign, “had no additional record of individual donor information related to the contributions” and that the committee contacted the Elections Division for guidance on how to report the activity.

Ms. Smith provided documentation to support that on July 10, 2020, the committee wrote a check to donate the anonymous contribution to the Oregon Food Bank (transaction ID number 3514255).

Legal Framework and Analysis

Campaign Finance Transaction Filing Deadlines

ORS 260.057 requires all committees to file campaign finance transactions electronically using the ORESTAR system unless specifically exempted by statute. Further, it sets forth the deadlines by which transactions must be filed. Generally, a transaction is due not later than 30 calendar days after the date of the transaction. For committees active in an election, transactions that occur prior to the 42nd day before the election and have not been filed by the 43rd day before the election are due not later than 30 calendar days after the date of the transaction or by the 35th day before the election, whichever occurs first. Transactions that occur between the 42nd day before the election and election day are due no later than seven calendar days after the date of the transaction. The *2020 Campaign Finance Manual* (“CFM”) which is adopted by Oregon Administrative Rule 165-012-0005 outlines these deadlines in detail on page 21. Transactions that are filed after the transaction due date are subject to civil penalties as outlined on pages 68-69 of the CFM.

The transaction date reported for the anonymous contribution was April 21, 2020 (transaction ID number 3510675). According to ORS 260.057(3) and page 21 of the CFM, this transaction must have been filed not later than April 28, 2020. The committee filed the transaction on July 15, 2020, 54 days late.

The civil penalty for filing late transactions is ½% of the amount of the transaction multiplied by the number of business days late with a maximum penalty of 10% of the amount of the transaction. Late and insufficient violations are processed by calendar month. If the total calculated penalty for late and/or insufficient transactions filed in the calendar month is \$50.00 or more, a Notice of Proposed Civil Penalty for filing the late transactions is issued approximately three months after the end of the month in which the transactions are filed. The Committee to Elect Loretta Smith (14377) was issued a Notice of Proposed Civil Penalty on November 17, 2020, for late campaign finance transactions filed in the month of July 2020. The notice included a \$600.00 penalty for the late filed anonymous contribution.¹

Anonymous Contributions

ORS 260.083 regulates the content required to be listed on contribution and expenditure transactions. It states in relevant part that a committee must report:

- (A) The name, occupation, and address of each person... that contributed an aggregate amount of more than \$100 in a calendar year on behalf of a candidate or to a political committee or petition committee and the total amount contributed by that person or committee; * * * * *

Page 29 of the CFM states that “[n]o committee or person associated with a committee shall accept anonymous contributions.” However, the CFM takes into account that there may be times when a committee receives an anonymous contribution and outlines the remedy to be taken. Page 29 of the CFM states that

if a committee cannot identify a contributor, the contribution must be donated to an organization that can accept anonymous contributions ... [T]he committee must disclose the receipt of the anonymous contribution as a cash contribution. When the committee donates the anonymous contribution, it should report the donation as a cash expenditure.

In this case it doesn’t appear that the committee accepted anonymous contributions, but that the contributions became anonymous at some point after they were received and prior to being reported on ORESTAR. Thus, the committee was correctly advised by the Elections Division to report the contributions as anonymous and to donate the monies to an organization that can accept anonymous donations.

Contributions in a False Name

ORS 260.402(1) states that “[a] person may not directly or indirectly reimburse a person for making a contribution or donation, or make a contribution or a donation in any name other than that of the person that in truth provides the contribution or donation[.]” * * * * *

Page 29 of CFM clearly states that

it is a criminal offense to make a contribution or donation or to directly or indirectly reimburse a person for making a contribution or donation relating to a candidate, measure, political committee, or petition committee in any name other than the person

¹ This violation was included in case number 2020-1344. That case was closed on March 23, 2021, after receipt of payment from the committee.

that provides the contribution (i.e., a contribution in a false name). Likewise, it is illegal to knowingly receive a contribution or donation in a false name or enter it into a committee's account.

There is insufficient evidence in this case to find that Ms. Smith or her committee received a contribution in a false name.

False Statement, Oath or Affidavit

ORS 260.715(1) states that "[a] person may not knowingly make a false statement, oath or affidavit when a statement, oath or affidavit is required under the election laws." Consistent with the determination made by the Oregon Attorney General's office, the Elections Division does not find that Ms. Smith committed a violation of ORS 260.715(1).

Authority for Civil Penalty

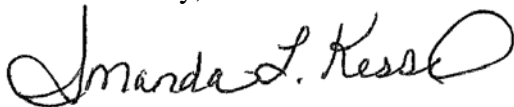
ORS 260.232 provides in relevant part, that the Secretary of State may impose a civil penalty for failure to file campaign finance transactions by the deadlines provided in ORS 260.057. Page 68 of the CFM includes a matrix that applies to late filed campaign finance transactions.

Determination

The Committee to Elect Loretta Smith (14377) filed an anonymous contribution following the guidelines set forth on page 29 of the CFM. After disclosing the anonymous contribution, the committee filed a cash expenditure showing that the monies were donated to the Oregon Food Bank.

Based on the facts of this case and the information obtained and reviewed, the Elections Division determines that there is insufficient evidence to find a violation of Oregon election law by Ms. Smith apart from a violation of ORS 260.057 for failing to file timely campaign finance transactions. Because a penalty has already been assessed for the untimely filed transaction, the Elections Division is concluding the investigation into the complaint. Please contact me at 503-986-1518 if you have any questions about the content of this letter.

Sincerely,

A handwritten signature in black ink that reads "Amanda L. Kessel". The signature is fluid and cursive, with the first name "Amanda" being more prominent than the last name "Kessel".

Amanda Kessel
Compliance Specialist

SHEMIA FAGAN
SECRETARY OF STATE
CHERYL MYERS
DEPUTY SECRETARY OF STATE



DEBORAH SCROGGIN
DIRECTOR
255 CAPITOL STREET NE, SUITE 501
SALEM, OREGON 97310-0722
(503) 986-1518

May 4, 2021

Sent via USPS and Email to: sloretta407@aol.com and j.green@c-systems.com

Committee to Elect Loretta Smith (14377)
Loretta Smith, Candidate
PO Box 42307
Portland, OR 97242

Re: Elections Division Case No. 20-064

Dear Loretta Smith:

Complaint

On July 21, 2020 the Elections Division received a complaint which alleged possible violations of Oregon election law by you and/or your candidate committee, Committee to Elect Loretta Smith (14377). Specifically, the complaint alleged that you knowingly made a false statement, oath or affidavit required under election law and filed late campaign finance transactions. On August 7, 2020, additional information was received which alleged that you knowingly received contributions in a false name by filing a campaign finance transaction indicating that the contribution was anonymous.

Investigative Authority

Pursuant to ORS 260.205(3) and ORS 260.345(1), the Elections Division opened an investigation into the allegations in the complaint. Because the complaint alleged possible criminal activity, the Elections Division requested assistance from the Oregon Attorney General's office to examine the complaint as to whether a violation of election law or rule had occurred.

The Attorney General's office determined that there was "insufficient evidence to prove beyond a reasonable doubt that [you] committed the crime of False Statement, Oath, or Affidavit when Filing Campaign Finance Transactions." The Attorney General referred the case back to the Elections Division to determine whether any additional civil or administrative enforcement is appropriate.

Response to Complaint

The Elections Division emailed you an inquiry requesting a response to the questions set out in the letter. In response to the inquiry, you stated that "[t]he \$6,000 cash contribution was logged as an Anonymous Contribution due to donation envelopes with donor information missing

because ... C&E initiated changes in the processing of donations to protect individuals from being vulnerable to COVID-19.”

Further, you said that to your knowledge,

[T]he donations in question, instead of [being delivered] via mail or delaying the cash deposit in the bank, the campaign delivered the donation envelopes to C&E Systems and deposited the corresponding cash deposit at Columbia Bank. The lapse in closing out the communication on the deposit with C&E was due to a medical emergency that required the committee’s campaign manager ... to return home to Atlanta on April 24, 2020.

You stated that

The deposit was unnoticed until mid-June because that was the first point in time after the April deposit that C&E Systems performed reconciliation on [the] bank account, at which point the campaign was notified that the deposit envelopes [sic] with the donor information were missing ... C&E Systems ... initiated a search for the envelopes, and they were not recovered.

The response also stated that the campaign, “had no additional record of individual donor information related to the contributions” and that the committee contacted the Elections Division for guidance on how to report the activity.

You provided documentation to support that on July 10, 2020, the committee wrote a check to donate the anonymous contribution to the Oregon Food Bank (transaction ID number 3514255).

Legal Framework and Analysis

Campaign Finance Transaction Filing Deadlines

ORS 260.057 requires all committees to file campaign finance transactions electronically using the ORESTAR system unless specifically exempted by statute. Further, it sets forth the deadlines by which transactions must be filed. Generally, a transaction is due not later than 30 calendar days after the date of the transaction. For committees active in an election, transactions that occur prior to the 42nd day before the election and have not been filed by the 43rd day before the election are due not later than 30 calendar days after the date of the transaction or by the 35th day before the election, whichever occurs first. Transactions that occur between the 42nd day before the election and election day are due no later than seven calendar days after the date of the transaction. The *2020 Campaign Finance Manual* (“CFM”) which is adopted by Oregon Administrative Rule 165-012-0005 outlines these deadlines in detail on page 21. Transactions that are filed after the transaction due date are subject to civil penalties as outlined on pages 68-69 of the CFM.

The transaction date reported for the anonymous contribution was April 21, 2020 (transaction ID number 3510675). According to ORS 260.057(3) and page 21 of the CFM, this transaction must have been filed not later than April 28, 2020. The committee filed the transaction on July 15, 2020, 54 days late.

The civil penalty for filing late transactions is ½% of the amount of the transaction multiplied by the number of business days late with a maximum penalty of 10% of the amount of the transaction. Late and insufficient violations are processed by calendar month. If the total

calculated penalty for late and/or insufficient transactions filed in the calendar month is \$50.00 or more, a Notice of Proposed Civil Penalty for filing the late transactions is issued approximately three months after the end of the month in which the transactions are filed. Your committee, the Committee to Elect Loretta Smith (14377) was issued a Notice of Proposed Civil Penalty on November 17, 2020, for late campaign finance transactions filed in the month of July 2020. The notice included a \$600.00 penalty for the late filed anonymous contribution.¹

Anonymous Contributions

ORS 260.083 regulates the content required to be listed on contribution and expenditure transactions. It states in relevant part that a committee must report:

- (A) The name, occupation, and address of each person... that contributed an aggregate amount of more than \$100 in a calendar year on behalf of a candidate or to a political committee or petition committee and the total amount contributed by that person or committee; * * * * *

Page 29 of the CFM states that “[n]o committee or person associated with a committee shall accept anonymous contributions.” However, the CFM takes into account that there may be times when a committee receives an anonymous contribution and outlines the remedy to be taken. Page 29 of the CFM states that

if a committee cannot identify a contributor, the contribution must be donated to an organization that can accept anonymous contributions ... [T]he committee must disclose the receipt of the anonymous contribution as a cash contribution. When the committee donates the anonymous contribution, it should report the donation as a cash expenditure.

In this case it doesn’t appear that the committee accepted anonymous contributions, but that the contributions became anonymous at some point after they were received and prior to being reported on ORESTAR. Thus, the committee was correctly advised by the Elections Division to report the contributions as anonymous and to donate the monies to an organization that can accept anonymous donations.

Contributions in a False Name

ORS 260.402(1) states that “[a] person may not directly or indirectly reimburse a person for making a contribution or donation, or make a contribution or a donation in any name other than that of the person that in truth provides the contribution or donation[.]” * * * * *

Page 29 of CFM clearly states that

It is a criminal offense to make a contribution or donation or to directly or indirectly reimburse a person for making a contribution or donation relating to a candidate, measure, political committee, or petition committee in any name other than the person that provides the contribution (i.e., a contribution in a false name). Likewise, it is illegal to knowingly receive a contribution or donation in a false name or enter it into a committee’s account.

¹ This violation was included in case number 2020-1344. That case was closed on March 23, 2021, after receipt of payment from the committee.

There is insufficient evidence in this case to find that you or your committee received a contribution in a false name.

False Statement, Oath or Affidavit

ORS 260.715(1) states that “[a] person may not knowingly make a false statement, oath or affidavit when a statement, oath or affidavit is required under the election laws.” Consistent with the determination made by the Oregon Attorney General’s office, the Elections Division does not find that you committed a violation of ORS 260.715(1).

Authority for Civil Penalty

ORS 260.232 provides in relevant part, that the Secretary of State may impose a civil penalty for failure to file campaign finance transactions by the deadlines provided in ORS 260.057. Page 68 of the CFM includes a matrix that applies to late filed campaign finance transactions.

Determination

Your committee, the Committee to Elect Loretta Smith (14377) filed an anonymous contribution following the guidelines set forth on page 29 of the CFM. After disclosing the anonymous contribution, your committee filed a cash expenditure showing that the monies were donated to the Oregon Food Bank.

Based on the facts of this case and the information obtained and reviewed, the Elections Division determines that there is insufficient evidence to find a violation of Oregon election law by you apart from a violation of ORS 260.057 for failing to file timely campaign finance transactions. Because a penalty has already been assessed for the untimely filed transaction, the Elections Division is concluding the investigation into the complaint. Please contact me at 503-986-1518 if you have any questions about the content of this letter.

Sincerely,

A handwritten signature in black ink, reading "Amanda L. Kessel". The signature is fluid and cursive, with the first name "Amanda" being more prominent and the last name "Kessel" following in a similar style.

Amanda Kessel
Compliance Specialist