

KATE BROWN
SECRETARY OF STATE



JIM WILLIAMS
DIRECTOR

255 CAPITOL ST NE, STE 501
SALEM, OREGON 97310

ELECTIONS — (503) 986-1518
FAX — (503) 373-7414

In the matter of Late and Insufficient Campaign Finance
Transactions filed by the Committee to Elect David Itzen
Commissioner, David G Itzen, Candidate, in the month of
May 2014

) Notice of Proposed Civil
) Penalty; Opportunity to
) Request Hearing
)

September 19, 2014

Case Number: 2014-0983

Committee to Elect David Itzen Commissioner (14187)
David G Itzen, Candidate
15618 Pedrioli Dr
Brookings, OR 97415

Dear Mr. Itzen:

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 because you have filed late and insufficient campaign finance transactions. Attached are the details of the transactions filed late and insufficient under ORS 260.057, 260.083 and OAR 165-012-0005.

Authority for Civil Penalty:

The Secretary of State has the authority to impose civil penalties in accordance with ORS 260.232 and the *2014 Campaign Finance Manual*, OAR 165-012-0005. The penalty is imposed against the candidate. The applicable penalty matrices are enclosed.

Proposed Civil Penalty:

The Secretary is proposing a civil penalty of \$676.82. See the attached table for detailed penalty calculation information.

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 lateness or insufficiency is the direct result of clearly-established fraud, embezzlement or other criminal activity against the committee, committee treasurer, candidate or independent expenditure filer, 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 lateness or insufficiency is the direct result of fire, flood, utility failure 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 the due care or foresight.

- c) the lateness or insufficiency is 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 lateness or insufficiency is the direct result of an error by the elections filing officer.

One additional mitigating circumstance that will only be considered in a late filing case is:

- e) the lateness is the direct result of a valid personal emergency of the candidate, treasurer or independent expenditure filer. In this case, independent written verification must be provided.

A valid personal emergency is an emergency, such as a personal illness or death in the immediate family of the candidate, treasurer or independent expenditure filer, which caused the transaction to be late. Personal emergency does not include a common cold or flu, or long-term illness where other arrangements could have been made.

It is your responsibility to show that one of the listed circumstances occurred and that it caused the late or insufficient filing of your transaction(s).

Opportunity to Request a Hearing:

You have the right to a hearing before an administrative law judge with the Office of Administrative Hearings. You have 20 days* from the date of service on this letter to take one of the following actions:

Action	Result
Do not take any action.	Your failure to file timely or sufficient transactions will be considered a violation of Oregon election law. A final order by default imposing the civil penalty may be issued against you. The Secretary designates the agency file on this matter as the record for the purpose of proving the prima facie case. OAR 165-001-0025. Payment may be made to the Secretary of State prior to the issuance of a final order by default.
Complete and sign the Hearing Request Form choosing either the personal appearance or telephone hearing option. The hearing will be conducted by an independent Administrative Law Judge with the Office of Administrative Hearings.	A public hearing will be scheduled within 45 days and you will be notified of the date and time by the Office of Administrative Hearings. If, after the hearing is scheduled, you subsequently determine that you do not want to attend the hearing, you may choose to submit written notarized testimony and other evidence in lieu of appearing in person at the hearing. <i>Those documents must be received not later than three business days before the day of the hearing.</i>
Complete and sign the Hearing Request Form and choose the notarized testimony option. By choosing this option you are waiving your right to a personal appearance or telephone hearing.	The agency will refer your testimony and the Division's testimony to an independent Administrative Law Judge with the Office of Administrative Hearings. You have the right to submit rebuttal testimony to the agency not later than five business days from the date of service of the agency's testimony (the date the testimony was emailed or mailed.) OAR 165-001-0034.

(*If the 20th day falls on a Saturday, Sunday or holiday, the deadline to request the hearing is the next business day.)

Active duty servicemembers have a right to postpone proceedings under the federal Servicemembers Civil Relief Act (SCRA) and may contact the Oregon State Bar at (800-452-8250) or the Oregon Military Department (800-452-7500) for more information. Servicemembers may also visit the United States Armed Forces Legal Assistance Legal Services Locator at <http://legalassistance.law.af.mil/content/locator.php> for more assistance.

Committee to Elect David Itzen Commissioner (14187)

David G Itzen, Candidate

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If you have questions about any part of this notice, please contact me at 503-986-1518.

Sincerely,

A handwritten signature in black ink, appearing to read "Lisa Ackerson".

Lisa Ackerson
Compliance Specialist

DATE of Service: September 19, 2014

enclosures:

Proposed Penalty Detail

Penalty Matrices: Late and Insufficient Filings

Notice of Contested Case Rights and Procedures

Hearing Request Form

c: Donald L. Scanlon, Treasurer
PO Box 2036
Harbor, OR 97415