

KATE BROWN
SECRETARY OF STATE



STEPHEN N. TROUT
DIRECTOR

255 CAPITOL ST NE, STE 501
SALEM, OREGON 97310

ELECTIONS — (503) 986-1518

In the matter of Converting Campaign Funds for Personal)	Notice of Proposed Civil
Use and Failure to Retain Records by the Friends of Sid)	Penalty; Opportunity to
Leiken, Sid Leiken, Candidate, Dean Kortge, Treasurer)	Request Hearing
)	

November 16, 2009

Case Number: 09-C&E-15

Friends of Sid Leiken (12786)
Sid Leiken, Candidate / Dean Kortge, Treasurer
1782 5th St
Springfield, Oregon 97477

Dear Mayor Leiken:

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 of your failure to retain records relating to a poll the committee paid to have conducted in February 2009, a violation of ORS 260.055, and converting campaign funds for personal use, a violation of ORS 260.407.

Background

On June 22, 2009, a complaint was filed with this office alleging a violation of Oregon election law. The complaint alleged that there were discrepancies in transactions filed relating to (1) voters' pamphlet expenditures and (2) expenditures by the Friends of Sid Leiken (12786) to SWL Consulting, Inc., and P&G Marketing and Research, owned by Glenda Leiken, the mother of Sid Leiken. SWL Consulting, Inc., previously registered as a domestic business corporation in Oregon, was administratively dissolved on October 30, 2009. P&G Marketing and Research is not a business registered in the State of Oregon.

A copy of the complaint was mailed to you on June 23, 2009. Our investigation has determined the following:

1. Expenditures for Voters' Pamphlet Statements

On March 11, 2009, SWL Consulting made an expenditure to the Secretary of State, on behalf of the committee, for \$300, check No. 1017 (transaction no. 568865), for a statement in the voters' pamphlet. This transaction was reported correctly.

On May 5, 2009, the Friends of Sid Leiken reimbursed SWL Consulting, check no. 504, for the expenditure. This was initially reported as transaction no. 309247. The committee then amended the transaction on May 26, 2009, changing the subtype cash expenditure to personal expenditure for reimbursement. This is reported as transaction no. 568867. On

June 4, 2009, the committee amended the transaction again, changing the subtype personal expenditure for reimbursement to cash expenditure to reflect the correct subtype for this type of transaction. The transaction due date was May 12, 2009, thus potentially making these amendments subject to civil penalty. Penalties for late and insufficient transactions will be issued under a separate notice from ORESTAR.

2. Failure to Retain Records

On March 4, 2009, the committee reported a personal expenditure for reimbursement transaction (572330) in the amount of \$2,000 for the purpose of surveys and polls. The payee was shown as P&G Marketing and Research. On March 11, 2009, the committee reported a cash expenditure transaction (572329) in the amount of \$2,000 to reimburse SWL Consulting, Inc., for payment to P&G Marketing and Research for poll data.

On June 24, July 22, September 16 and October 14, 2009, letters of inquiry were sent by the Elections Division to Glenda Leiken, P&G Marketing and Research, requesting copies of all records relating to the poll conducted on behalf of the Friends of Sid Leiken. The requested items included copies of invoices, bank statements, contracts or agreements to provide the service, tally records, phone records and other documentation to substantiate that the poll was conducted. The only documentation submitted was a copy of a receipt, No. 174554, from SWL Consulting's petty cash box showing a \$2,000 cash payment to P&G Marketing and Research, and the front copy of a check, No. 523, from the Friends of Sid Leiken to SWL Consulting, Inc. Both Sid Leiken and Glenda Leiken stated in their responses that she did not keep any records and no other records relating to the poll were provided by the committee.

ORS 260.055(3) states "Accounts kept by a candidate or treasurer shall be preserved by the candidate or treasurer for at least two years after the date of the election to which the accounts refer or at least two years after the date the last statement is filed under ORS 260.057, whichever is later."

Based on responses from Sid Leiken and Glenda Leiken, the investigation revealed a violation of ORS 260.055 in that the committee did not keep records to substantiate an expenditure made for a poll conducted in February 2009 relating to a City of Springfield fuel tax increase.

3. Personal Use of Campaign Funds

The violation arises from a cash expenditure made out of a petty cash fund maintained by Mr. Leiken's company, SWL Consulting, Inc., to P&G Marketing and Research, a company owned by Mr. Leiken's mother Glenda, in the amount of \$2,000, to conduct a poll in February 2009 relating to a City of Springfield fuel tax increase. The Friends of Sid Leiken then reported an expenditure transaction (572329) in the amount of \$2,000 to reimburse SWL Consulting, Inc., for the expenditure. The investigation established no evidence that a poll was ever conducted. Ms. Leiken was unable to supply any documentation to show that

an actual poll was conducted. When asked how the poll was conducted Ms. Leiken responded that it was conducted with a cell phone of which she had no receipts for, no phone records for, and for which she could not even tell the name of the phone carrier. The Elections Division sent four letters of inquiry to obtain records concerning the conducting of the poll, yet Ms. Leiken was unable to provide any records or other evidence. It is clear that the committee did not keep records to substantiate that a poll had been conducted, and in fact it does not appear that a poll was ever conducted. There is also no evidence that P&G Marketing and Research received payment for conducting the poll. On August 26, 2009, the committee reported a refund transaction (602367) from Debbie Leiken in the amount of \$2,000.

The trail of transactions among family members, combined with a lack of evidence that a poll was conducted has led to the conclusion that the funds were converted to personal use.

ORS 260.407(2)(a) states "Notwithstanding subsection (1) of this section, amounts received as contributions by a candidate for public office that are in excess of any amount necessary to defray campaign expenditures and other funds donated to a holder of public office may not be:

(a) Converted by any person to any personal use other than to defray any expenses incurred in connection with the person's duties as a holder of public office or to repay to a candidate any loan the proceeds of which were used in connection with the candidate's campaign."

The lack of records to support that a poll had been conducted together with a series of expenditure transactions between SWL Consulting, Inc., Glenda Leiken, P&G Marketing and Research, the Friends of Sid Leiken (12786), and the refund transaction from Debbie Leiken, personally, establishes conversion of campaign funds to personal use, and therefore a violation of ORS 260.407.

Authority for Civil Penalty:

The Secretary of State has the authority to impose civil penalties in accordance with ORS 260.995 and the 2008 *Campaign Finance Manual*, OAR 165-012-0005. The penalty is imposed against the candidate and the treasurer of record at the time of the violation.

Explanation of the Penalty Matrix:

Enclosed is the penalty matrix (Exhibit A) used in calculating penalties for failure to preserve records and penalties for converting campaign funds to personal use.

There is no penalty for a first offense for failure to preserve records.

The matrix sets the penalty for converting campaign funds to personal use at \$250 plus the amount of the monies wrongfully converted.

Proposed Civil Penalty:

The Secretary is proposing a civil penalty of \$2,250. The penalty calculation is \$250 plus \$2,000, the amount of campaign funds converted to personal use.

Opportunity to Request a Hearing:

You have 20 days* from the date you receive this certified letter to take one of the following actions:

Action	Result
Request a hearing to be conducted by an independent Administrative Law Judge with the Office of Administrative Hearings to present evidence of mitigating circumstances (public hearing). This hearing will be held by telephone unless you request that it be a personal appearance hearing held in Salem.	A public hearing will be scheduled within 30 days and you will be notified of the date and time. You may choose to submit written notarized testimony or other evidence in lieu of a public hearing. <i>Those documents must be received not later than three business days before the day of the hearing.</i>
Submit notarized written testimony explaining the evidence of mitigating circumstances (letter hearing). This is in lieu of a public hearing referenced above.	No public hearing will be scheduled. The agency will refer the testimony to an independent Administrative Law Judge with the Office of Administrative Hearings. A proposed order will be issued based on the written testimony and the hearing record (which is the agency file for this committee).
Do not take any action.	Your failure to file timely or sufficient transactions will be considered a violation of Oregon election law. A penalty will be assessed based on available information.

(*If the certified letter is refused or left unclaimed at the post office, the 20-day period begins on the day the post office indicates it has given first notice of a certified letter.)

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

Sincerely,



Kathy Schamp
Compliance Specialist

enclosures
certified mail
return receipt requested
c: uncertified

Dean Kortge, Treasurer
1782 5th St
Springfield OR 97477

Trent Lutz, Executive Director
Democratic Party of Oregon
232 NE 9th Ave
Portland OR 97232

Appendix A, OAR 165-013-0010, Penalty Matrix for Campaign Finance Civil Penalty Election Law Violations

ORS	Description of election law	1 st time	2 nd time	More than 2 times
260.035 (1)	Political committee and candidate must appoint a treasurer within three business days of receiving a contribution or making expenditure.	None	\$75	\$250
260.039 (1) 260.054	A candidate committee shall file dedicated account information with filing officer within three business days of first receiving a contribution or making an expenditure.	\$250	\$250	\$250
260.039 (3)	Any change to a statement of organization for a candidate must be submitted to filing officer within 10 days.	None	\$75	\$250
260.041 (1) & (2)	A candidate may only designate one principal campaign committee, and a principal campaign committee may not serve more than one candidate.	None	\$75	\$250
260.042 (1) 260.054	A political committee shall file dedicated account information with filing officer within three business days of first receiving a contribution or making an expenditure.	\$250	\$250	\$250
260.042 (2)	Any change to a statement of organization for a political committee must be submitted to the filing officer within 10 days.	None	\$75	\$250
260.045	A candidate or treasurer receiving a contribution of more than \$100 from an out-of-state political committee must provide a copy of the out-of-state committee's contribution and expenditure report or an affidavit (form PC 13) with the filing officer, if requested by the Secretary of State.	None	\$75	\$250
260.052	Political committee identification number must be included with each contribution made by a political committee.	None	\$75	\$250
260.055 (1) & (3)	Detailed accounts of contributions and expenditures must be kept current as of not later than the 7th day after transaction. Must keep occupation of anyone contributing more than \$100. Records must be preserved two years after the election or last supplemental.	None	\$75	\$250
260.118	A chief petitioner shall file a statement of organization for chief petitioner committee within three business days of first receiving a contribution or making an expenditure.	None	\$75	\$250
260.407	A candidate may not use excess campaign funds for personal use, other than to defray any expenses as a public office holder, or to repay a personal campaign loan.	\$250 Plus amount converted	\$500 Plus amount converted	\$1000 Plus amount converted
260.409	A candidate committee shall not compensate candidate for professional services performed by the candidate.	\$250	\$250	\$250
260.735	A slate mailer organization must file a statement of organization with the filing officer of each candidate and measure that appears in the organization's slate mailer.	None	\$75	\$250

Notice of Contested Case Rights and Procedures

This is information you should read to prepare for a hearing.

1. **Time and place of hearing.** The hearing is not yet scheduled. If you request a personal appearance hearing, you will receive notice from the Office of Administrative Hearings of the time, date and place of the hearing once the hearing is scheduled. The hearing will be held by telephone unless you request to appear in person.
2. **Issues to be considered at hearing.** The issues to be considered at hearing are set forth in the accompanying notice and those issues related to the notice that is properly before the presiding officer to this proceeding.
3. **Law that applies.** The matter set for hearing (by the accompanying notice) is a contested case. The hearing will be conducted as provided in chapter 183, 260.232 and 260.995 (Election violations) of the Oregon Revised Statutes and the administrative rules of the Secretary of State.
4. **Right to attorney.** The Secretary of State will be represented by an attorney. Other parties are not ordinarily and customarily represented by attorneys. However, you have a right to be represented by an attorney. If you choose to represent yourself but determine in the course of the hearing that an attorney is necessary, you may request a recess to secure the services of an attorney.

Agencies, corporations and unincorporated associations must be represented by an attorney licensed in Oregon. Individuals, including treasurers and candidates, may represent themselves, or may choose to be represented by an attorney. Political committees may be represented by any individual identified as the candidate, treasurer, alternate transaction filer, individual designated as the correspondence recipient or director in the most recent statement of organization on file with the filing officer. Legal aid organizations may be able to assist a party with limited financial resources.

5. **Subpoenas.** You may subpoena witnesses. The Secretary of State issues subpoenas upon request and upon a showing of reasonable scope and general relevance of the evidence sought. If you are represented by an attorney, your attorney may issue subpoenas. Payment of witness and mileage fees to a witness you subpoena is your responsibility.
6. **Presiding Officer.** The person presiding at a personal appearance or notarized testimony hearing is an administrative law judge with the Office of Administrative Hearings. The administrative law judge will rule on all matters that arise at the hearing.
7. **Order of evidence.** A hearing is similar to a court proceeding but is less formal. Its general purpose is to gather facts. The order of presentation of evidence is normally as follows:
 - a. Statement and evidence of the Secretary of State in support of its action.
 - b. Statement and evidence of the party disputing the Secretary of State's action.
 - c. Rebuttal.

8. **Burden of presenting evidence.** The Secretary of State has the burden of presenting evidence to support a fact or a position alleged by the Secretary of State. You have the burden of presenting evidence to support a fact or position alleged by you. You have the right to respond to all issues properly before the administrative law judge and to present evidence and witnesses on those issues. You should be prepared to present evidence which will support your position and facts concerning mitigating circumstances, if any. You have the burden of presenting evidence to support a fact or position alleged by you. Discovery is usually conducted through informal means. If you desire information from the agency to prepare for the hearing, please contact the Elections Division.
9. **Witnesses.** All witnesses will testify under oath or affirmation to tell the truth. All witnesses may be cross-examined by the agency, the party disputing the action or the administrative law judge.
10. **Admissible evidence.** Evidence that may be admitted at the hearing is that which is commonly relied upon by reasonably prudent persons in the conduct of their serious affairs.

Four kinds of evidence may be admitted:

- a. Knowledge of the agency. The agency or administrative law judge may take "official notice" of commonly known facts and of facts and conclusions developed from experience in the specialized field of activity. You will be informed at the hearing if the agency takes "official notice" of any fact so that you may contest those facts.
 - b. Testimony of witnesses. This includes your own testimony.
 - c. Writings. This includes letters, maps, diagrams and other written material offered as evidence.
 - d. Photographs, experiments, demonstrations and similar means used to prove a fact.
11. **Objections to evidence.** Evidence may be objected to on any of the following grounds:
 - a. Irrelevant. The evidence has no tendency to prove or disprove any issue involved in the hearing.
 - b. Immaterial. The evidence is offered to prove a proposition which is not a matter in issue at the hearing.
 - c. Unduly repetitious. The evidence is merely repetitive of what has already been offered and admitted.
 12. **Telephone hearing.** If a hearing or a portion of a hearing is held by telephone, then each party must provide copies of documents sought to be introduced as evidence to the administrative law judge, all parties, and the agency not later than five business days prior to the hearing. If this timeline is not met, the party or agency must show that the documents meet admissibility standards and are needed to conduct a full and fair hearing in order for the administrative law judge to receive the documents into evidence.
 13. **Submitting written testimony or evidence in lieu of appearing at a scheduled personal appearance hearing.**
 - a. The person against whom a penalty may be assessed need not appear in person at a hearing under ORS 260.232 and 260.995, but instead may submit written testimony and other evidence, sworn to before a notary public, to the Secretary of State for entry in the record.

- b. Such documents must be received by the Secretary of State not later than three business days prior to the hearing.
 - c. If written testimony is submitted in lieu of appearing at the personal appearance hearing, the Elections Division will forward the testimony to the administrative law judge assigned the case. The administrative law judge will issue a proposed order based on its review of the Division's record and the submitted testimony or evidence.
14. **Continuances.** There are normally no continuances granted at the end of the hearing. However, if you can show that the record should remain open for additional evidence, the administrative law judge may grant you additional time to submit such evidence.
15. **Record.** An audio record will be made of the entire personal appearance hearing to preserve the testimony and other evidence for appeal. Ordinarily the record will not be transcribed unless you appeal to the Court of Appeals. If you appeal, you will not have to pay for the cost of transcribing the record, unless the petition is frivolous. If you do not appeal, a copy of the record will be made available to you upon payment of the cost of making it.
16. **Informal Disposition.** Unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order or default.
17. **Proposed and final order.** After the hearing, the administrative law judge will recommend to you and the Elections Division a decision in the form of a proposed order. If the administrative law judge's proposed order recommends a decision favorable to you and the Elections Division intends to reject that recommendation, the Elections Division will issue an amended proposed order. You will be given an opportunity to make written exceptions (objections) to the proposed order and any amended proposed order if applicable. You will be notified when and with whom in the Elections Division the exceptions must be filed. The Secretary of State will then issue a final order.
18. **Appeal.** If you wish to appeal the final order, you must file a petition for review with the Oregon Court of Appeals within 60 days after the final order is served upon you. See Oregon Revised Statutes 183.480 through 183.497.