

KATE BROWN  
SECRETARY OF STATE



ELECTIONS DIVISION  
BRENDA BAYES  
ACTING DIRECTOR  
255 CAPITOL STREET NE, SUITE 501  
SALEM, OREGON 97310  
ELECTIONS—(503) 986-1518

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IN THE MATTER OF A VIOLATION OF )  
 OREGON ELECTION LAW BY TRENA ) FINAL ORDER  
 MCMANUS FOR FAILING TO TIMELY ) CASE NO. 08-2978  
 PROCESS A CONSTITUTIONAL RULING AND )  
 BALLOT TITLE FOR AN INITIATIVE PETITION )

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DATE OF HEARING REQUEST: March 25, 2009

DATE OF HEARING: April 22, 2009

DATE OF PROPOSED ORDER: March 17, 2009

DATE OF FINAL ORDER: June 17, 2009

PLACE OF HEARING: Salem, Oregon

ADMINISTRATIVE LAW JUDGE: Ray Myers

PETITIONER'S REPRESENTATIVE: E. Andrew Jordan

DIVISION'S REPRESENTATIVE: Lynn Rosik  
Assistant Attorney General

On March 17, 2009, the Secretary of State, Elections Division (Secretary) notified Trena McManus, pursuant to ORS 183.415 and ORS 260.995, she had violated ORS 250.270, proposing a civil penalty of \$75.00. The notice informed Ms. McManus of the right to request a hearing. An opportunity to request a hearing was provided in the notice. Petitioner filed a timely request for hearing. A hearing before the Secretary was held on April 22, 2009 and the record closed on May 6, 2009, before Administrative Law Judge Ray Myers. Trena McManus was represented by E. Andrew Jordan. Lynn Rosik, Assistant Attorney General, represented the Secretary. Carla Corbin testified for the Secretary. After considering the records and files of the Secretary regarding this matter, the secretary is entering the following Order, with respect to Ms. McManus.

Exhibits A through M and 1 were admitted into the record.

**ISSUE**

The issue is whether Ms. McManus violated ORS 250.270 by failing to determine if the text of a proposed initiative met the one subject requirement of the Oregon Constitution not later than five business days after the proposed petition was filed.

### FINDINGS OF FACT

1. In July 2008 Trena McManus was the elections official for the City of Lafayette.
2. On July 15, 2008 Darrell Flood filed a proposed initiative petition with the City of Lafayette.
3. On July 22, 2008, the fifth business day after the petition's filing, Ms. McManus corresponded with E. Andrew Jordan, the City Attorney, indicating she found the petition violated the one subject requirement. Mr. Jordan reviewed the correspondence and the petition and notified Ms. McManus she had a conflict of interest.
4. Ms. McManus had at least a potential conflict of interest because the petition proposed to reduce her salary.
5. On July 23, 2008 Ms. McManus wrote a letter to Mr. Flood indicating she could not render a decision on the petition because of a conflict of interest. On the same date, she notified the City Council of her conflict of interest.
6. Mr. Flood filed a complaint with the Elections Division alleging Ms. McManus violated Oregon election law when she failed to timely process the proposed initiative.
7. On March 17, 2009 the Secretary issued a Proposed Penalty Notice concluding Ms. McManus violated ORS 250.270. The Secretary imposed a \$75.00 civil penalty.

### CONCLUSIONS OF LAW

ORS 250.270 requires the city elections officer, not later than the fifth business day after receiving a prospective petition for an initiative measure, to determine in writing whether the initiative measure meets the requirements of section 1 (2)(d) and (5), Article IV of the Oregon Constitution.

### OPINION

Here, in this Final Order and as explained during Carla Corbin's testimony, the Secretary found Ms. McManus failed to meet the five business day requirement of ORS 250.270. This statute is very clear and does not include any option for the elections officer but to make a determination.

Ms. McManus contends the Secretary imposed a penalty against her for complying with ethics statute. She contends she should be excused from complying with ORS 250.270, because, under ethics statutes, she was forbidden from so complying.

The hearing officer determined Ms. McManus was not forbidden by ethics statute from complying with the requirements of ORS 250.270. Therefore, Ms. McManus could have timely complied with both the ethics and elections law requirements concurrently.

The hearing officer agreed and the Secretary finds Trena McManus violated ORS 250.270. Under the Secretary's matrix, the appropriate penalty is \$75.00.

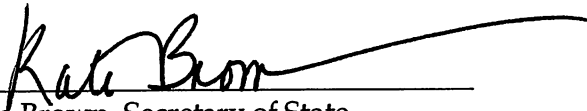
**FINAL ORDER**

The Secretary has fully considered the record in this proceeding. No exceptions were filed to the proposed order issued by hearing officer Ray Myers. It is determined the petitioner violated ORS 250.270 for failing to determine if the text of a proposed initiative met the one subject requirement of the Oregon Constitution not later than five business days after the proposed petition was filed.

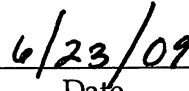
Pursuant to ORS 260.995(1), Trena McManus is assessed a penalty in the amount of \$75.00.

**RIGHT TO JUDICIAL REVIEW**

Trena McManus has the right to appeal this Order to the Oregon Court of Appeals pursuant to ORS 183.482. To appeal, she must file a petition for judicial review with the Court of Appeals within 60 days from the day this order was served. Because this Order was mailed, the date of service is the day it was *mailed*, not the day it is received by Ms. McManus. If a petition for judicial review is not filed within the 60-day time period, Ms. McManus will lose her right to appeal.



Kate Brown, Secretary of State



Date

Date of Service: 6/23/09

c: Darrell Flood