

## Hergert Convicted

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Updated: Sat 11:15 AM, Jul 08, 2006



University of Nebraska Regent David Hergert was convicted Friday of manipulating campaign-finance laws during his 2004 campaign and then lying to cover it up.

The state Supreme Court ruling immediately removed Hergert, 66, from office.

"We find that in the primary and general elections, Hergert intentionally manipulated and violated Nebraska's campaign finance laws in a scheme to prevent his opponents from receiving public campaign funds," the court said in an unsigned ruling. "During the campaign and, significantly, after he took office, Hergert intentionally filed false reports of campaign spending in an attempt to cover up his conduct.

"Hergert's various explanations for his actions contradict one another and are not believable when the clear and convincing evidence before this court is considered," the court said.

Hergert was found guilty on two of 10 counts: false reporting and obstructing government operations.

He did not immediately return a call to his office seeking comment.

Among other things, Hergert was accused of waiting until after the primary election to file a document outlining his spending that would have given his opponent, incumbent Regent Don Blank, matching state funds.

Under the law, candidates for state offices have voluntary spending caps. For regents races, the cap is \$25,000 for the primary and \$50,000 overall.

Candidates who agree to abide by the limits qualify for public funds if their opponents exceed the cap.

Candidates who do not abide by the caps must estimate what they will spend and inform the state Accountability and Disclosure Commission when they reach 40 percent of that total in order to trigger the release of matching funds.

Hergert did not agree to the cap and spent \$65,000 in the primary, thus qualifying Blank for \$40,000 in public funds.

Hergert then estimated that he would spend \$40,000 for the general election.

Hergert exceeded the cap but did not notify the commission by the deadline, thus depriving Blank of \$15,000 in matching funds in the closing days of the campaign.

Hergert spent much of his money on advertising that attacked Blank.

Blank, who won the primary by 18 percentage points, lost the general election by 11 percentage points.

After the election, Hergert reported spending nearly \$90,000 on the campaign -- more than twice his estimate.

Hergert's lawyers -- Chris Ferdico and Sean Brennan -- had stressed that he reached a settlement with the accountability commission last year in which he acknowledged accepting an illegal campaign loan and failing to report a late contribution and file two affidavits on time. He agreed to pay more than \$33,000 in fines but not face criminal charges.

They did not immediately return calls seeking comment.

Hergert was impeached by the Legislature in the waning days of the past session. That was after Attorney General Jon Bruning's request for a grand jury investigation was rejected by a judge who ruled that the settlement with the commission precluded more charges being filed. The Supreme Court upheld that ruling without comment.

David Domina, the lawyer hired by the Legislature to prosecute Hergert, hailed the ruling.

"The Legislature had two objectives," he said. "Number one, remove this man from constitutional office. Number two, establish that election fraud will not be tolerated.

"They won on both points," he said.

Governor Dave Heineman will name a replacement for Hergert. He said he would announce details of the process Monday.

The court clarified wording in the state Constitution that says a person can be impeached for committing a misdemeanor in office.

"We are not concerned with whether such conduct could result in criminal conviction or acquittal under the criminal statutes noted in the articles of impeachment," the court said. "Our role as fact finders ... is limited to finding whether the Legislature has shown by clear and convincing evidence that Hergert is guilty of one or more impeachable offenses."

"The phrase 'misdemeanor in office,' as that phrase is used ... is a term of art, and the word 'misdemeanor' in this phrase is not used as it is in a criminal context," the court said. "An officer's conduct need not rise to the level of an indictable offense to be considered an impeachable offense."

"An officer's pre-incumbency conduct is relevant to the extent it bears upon the officer's pattern of conduct and shows the officer's motives and intent as they relate to the officer's conduct while in office," the court said. "Whether Hergert should be impeached does not depend upon whether he could be convicted of violating a criminal statute, but upon whether his alleged conduct is `in its nature or consequences subversive of some fundamental or essential principle of government or highly prejudicial to the public interest.' "

Sen. Chris Beutler Lincoln, who with Sen. Ernie Chambers of Omaha were picked to help with Hergert's trial, said: "It's a great day for the people of the state of Nebraska. The integrity of their election laws has been upheld."

Jim McClurg, chairman of the Board of Regents, said the Hergert case had been "a distraction and a disruption."

"It has tarnished the reputation of the board and the university, and we will work diligently to restore the public's confidence and trust," he said.

The last Nebraska official to be impeached was Attorney General Paul Douglas in 1984 over his conduct in office and his personal dealings with a former officer of the failed Commonwealth Savings Co. of Lincoln. He was acquitted by the Supreme Court but resigned after his law license was suspended.

According to the Legislature's Research Division, Governor David Butler was the last official in Nebraska to be impeached and convicted prior to Dave Hergert. Butler was removed from office in 1871.