

IN THE ALASKA PUBLIC OFFICES COMMISSION

PEBBLE LIMITED PARTNERSHIP,)	
PEBBLE MINES CORP., and)	
RESOURCES DEVELOPMENT)	
COUNCIL,)	
)	
Complainants,)	
)	
vs.)	
)	
RENEWABLE RESOURCES)	
COALITION, INC., AMERICANS FOR)	
JOB SECURITY. ALASKANS FOR)	OAH No.: 09-0231-APO
CLEAN WATER, INC and ROBERT B.)	
GILLAM,)	APOC Case Nos.: 09-01-CD
)	
Respondents.)	

Pursuant to the Commission’s Order of January 25, and the Hearing Officer’s Order of February 16th, APOC Staff hereby submits its brief in support of its position that the penalty in this matter should be \$100,000.

The allegations in this matter are serious, and many of the facts are undisputed. What remains in dispute are the legal consequences of the actions taken by the Respondents. The central remaining allegation is that Robert Gillam violated AS 15.13.074 by making anonymous contributions or contributions in the name of another. He did this by engaging in transactions whereby he transferred large sums of money to an organization called Americans for Job Security (“AJS”), who would then almost immediately thereafter transferred most of the money to Alaskans for Clean Water. Alaskans for Clean Water then waged the campaign in favor Ballot Measure 4. Alaskans for Clean Water, a group registered with APOC, reported that it received funds from AJS who likewise reported to APOC that it had made contributions to AFCW. The fact that

the money originated with Mr. Gillam was not discernable from the reporting. If a member of the public went through APOC records, that person would not be able to discern that majority of the funds expended in support of ballot measure 4 came from Mr. Gillam.

In addition to the transactions with AJS, Mr. Gillam is alleged to have engaged in a similar transaction with the Renewable Resources Coalition (“RRC”). Mr. Gillam gave a large contribution to RRC, and RRC in turn contributed the money to AFCW. This transaction was reported to APOC, by both RRC and AFCW as a contribution from RRC to AFCW. Again, the public had no way of determining that the Mr. Gillam was the original source of the funds.

APOC Staff alleges that RRC gathered and solicited funds to be used in the ballot measure campaign. Doing so required RRC to register as a group and report to APOC as if it were a Group. RRC did not so register and report. Because RRC failed to report as a group, the public was denied information regarding the source of funds that were used in the ballot measure campaign.

The campaign over Ballot Measure 4 in the summer of 2008 was probably the most expensive ballot measure campaign in Alaska’s history. While there is no doubt that persons, including individuals, groups, and corporations, have the right to make unlimited amounts of independent expenditures for or against the passage of a ballot measure, that right comes with the responsibility to accurately disclose and report those expenditures. Indeed, knowledge of the source of funding for a campaign is even more important in a ballot measure campaign where there is no limit on expenditures:

Proper evaluation of the arguments made on either side
can often be assisted by knowing who is backing each

position. We have long recognized in court proceedings the importance of revealing to the decision maker the biases and motives of witnesses. Such information is no less important to an intelligent evaluation of what is being said during an election campaign. Similarly, a ballot issue is often of great importance financially to its proponents or opponents, or both, and multimillion dollar advertising campaigns have been waged. In such circumstances the voter may wish to cast his ballot in accordance with his approval or disapproval of the sources of financial support.

State of Alaska v. Messerli, 626 P.2d 81, 87 (Alaska 1981).

Although AS 15.13.390 sets out a maximum penalty of \$50 per day for each day that a person is out of compliance with the reporting requirements, the Commission has a large degree of discretion when imposing a penalty. The statute lays out a maximum, not a minimum, and does not offer any guidance on what factors should be considered when imposing a penalty. The only guidance on penalties from the Alaska Supreme Court on this issue came in *Veco v. APOC*, 753 P.2d 703 (Alaska 1988). In that case the court upheld a penalty against Veco Corporation over Veco's complaint that the penalty was excessive. The court reviews APOC penalties under a reasonableness standard. And a penalty may not be "so severe and oppressive as to be wholly disproportioned to the offense and obviously unreasonable." *Id.* at 716, quoting *St. Louis Iron Mountain & Southern Ry Co. v. Williams*, 251 U.S. 63, 67, 40 S.Ct. 71, 73, 64 L.Ed. 139, 141 (1919).

The Alaska court also cited with approval a Florida case, *Ferre v. State ex rel. Reno*, 478 So.2d 1077, 1082-83 (Fla.App.1985), in which the court upheld the imposition of a fine in an amount equal to twice the amount of money unlawfully accepted and retained, against a claim that the fine was unconstitutionally excessive. The court found

that increasing fines in direct relation to the amount of money unlawfully accepted was rationally related to the purposes of the statute.

Given these principles, a payment of \$100,000 is appropriate in this case. The Commission must bear in mind that the allegations have not yet been proven, and Respondents have defenses which Staff does not agree with, but which are not frivolous. The outcome of this matter does remain in doubt. Nonetheless the amounts of money involved in the transactions are quite large, nearly \$3 million. Because of this, it is appropriate to require a relatively large payment, of at least \$100,000.

In addition to fines, APOC does have the authority to collect costs and fees from respondents upon the finding of a violation. AS 15.13.090. The costs and fees to APOC have been significant. The \$100,000 payment will largely cover the out of pocket costs to APOC, including staff overtime and the payment of the hearing officer. Even though \$100,000 will not cover all associated costs, including staff and attorney time, the high costs of this case are a function of the complexity of the case, not the intransigence of the Respondents. Respondents have largely cooperated with the discovery process and litigated this matter in good faith. And, although an exact breakdown is not possible, a large percentage of the costs incurred are attributable the complaints filed by APOC staff against Michael Dubke, Art Hackney and Richard Jameson—complaints which were dismissed by the Commission as lacking a sufficient legal basis.

Staff believes that a payment of \$100,000 is necessary to serve the public interest in this case. This payment, coupled with the requirements in the proposed Consent Agreement that require all Respondents to properly report their activities, for RRC to report the sources of its contributions, and subject all Respondents to more severe

sanctions in the future, will adequately inform the public of the expenditures and contributions made in the past, and prevent similar conduct from recurring.

Although not yet proven, the allegations in this case are serious. A payment of \$100,000, plus the \$20,000 already received from AJS, would make for the largest payment in APOC history. This payment, in conjunction with the considerable costs Respondents have incurred in litigating this matter will send the message not only to respondents, but to all persons engaged in election campaigns, that these allegations are taken seriously by APOC. The \$120,000 total is significant enough that in the future persons will not likely conclude that it is easier and cheaper to break the law and simply pay a fine, than it is to properly comply.

Staff does not believe that the \$60,000 figure proposed by Respondents will provide a sufficient deterrent. As stated above, it is appropriate for the Commission to base a fine upon the amount of money involved in the violation. Given the large sums of money involved, a fine of only \$60,000 will not provide sufficient deterrence to these particular respondents, nor will it send a message to the general public that APOC will take similar allegations seriously. \$60,000 is a low enough figure that future participants in the political process may simply be willing to risk the APOC penalty process rather than comply with the law and regulations.

DATED this 22 day of February, 2010, at Anchorage, Alaska.

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