



Biennial Report of the Alaska Public Offices Commission

Covering Calendar Years 2008 and 2009

Dated: March 2, 2010

Commissioners

Elizabeth J. Hickerson, Chair
Kathleen Frederick, Vice Chair
Shirley Dean, Commissioner
Kathleen Ballenger, Commissioner
Kathleen King, Commissioner

Holly R. Hill, Executive Director

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ACTIVITIES OF THE COMMISSION:

The mission of the Alaska Public Offices Commission is to encourage the public's confidence in their elected and appointed public officials by administering Alaska's disclosure statutes and publishing financial information regarding the activities of election campaigns, public officials, lobbyists and lobbyist employers.

Core Services

- Disclose information to aid Alaskans in making informed decisions.
- Administer laws upholding the public's right to know the financial affairs of lobbyists and their employers, public officials, political groups, and candidates for state and municipal office.
- Interpret the disclosure laws and assist persons in complying, conduct training seminars, provide reporting forms and manuals of instruction for candidates, groups, lobbyists and their employers, and public officials.
- Examine and compare reports for possible violations of the disclosure laws, and enforce the laws through compelling the filing of required reports, civil penalty assessments, and complaint investigations.

The Laws Administered by APOC

The Alaska Public Offices Commission administers four disclosure laws. These laws require the disclosure of information that enables citizens to trace the influence of private interests on public decision-making.

1 The Campaign Disclosure Law (AS 15.13) requires state and municipal candidates, and political groups, to file periodic, detailed reports disclosing all campaign contribution and expenditure activities. The campaign disclosure law directly limits the influence of contributors on candidates by limiting the size of campaign contributions.

2 The Regulation of Lobbying Law (AS 24.45) requires lobbyists to register with APOC, and to file monthly reports of income from lobbying and lobbying expenditures during any month in which the legislature is in session, including special session. If the legislature is not in session, lobbyists file quarterly reports. Employers of lobbyists are required to file quarterly reports of lobbying payments and expenditures.

3 The Legislative Financial Disclosure Law (AS 24.60.200 - 260) requires legislators, legislative directors, and the members of the Select Committee on Legislative Ethics, to file personal financial disclosure statements, listing business relationships, sources of income (and for legislators the amount of income), and indebtedness.

4 The Public Official Financial Disclosure Law (AS 39.50) requires all state and many municipal candidates, elected officials, and many appointed state and local officials, to file personal financial disclosure statements, listing business relationships, the source of all income, and indebtedness.

EFFECTIVENESS OF APOC LAWS:

Major Accomplishments in Calendar Year 2008

- HB 281 increases statute of limitations and requires more detailed disclosure, also provided funding for one additional investigator.
- HB 305 amends campaign disclosure law and legislative finance laws affecting regulation during session.
- HB 368 amends legislative ethics and lobbyist gift laws.
- New Executive Director hired in May 2008.
- Complaints: 17 total; 14 CD (campaign disclosure), 2 POFD (public official financial disclosure), 1 LOB (lobbyist)
- Advisory Opinions: 4 LOB, 4 CD
- Commission held 25 days of meetings including selecting a new executive director, and the normal business of the Commission involving policy development, advisory opinions, civil penalty assessments, and complaint related issues. 18 days of the 25 meeting days involved hearings related to complaint investigations and adjudicatory decision making.
- Intense election year- municipal elections in 32 municipalities, state primary and general elections.
- Ethics and compliance training developed and delivered (either in person or web based) by APOC staff for all lobbyists and employers of lobbyists (FY 08: 445 lobbyist/employers were trained; 99 of them in person).
- Special legislative sessions for the Alaska Gasline Inducement Act (AGIA) with 500 additional lobbyist reports filed and a significant increase in civil penalty assessments and appeals for late reports.
- Deployment of APOC's electronic filing system (Insight) required significant staff time and resource during this initial phase.
- Over 3,000 reports received from lobbyists and employers of lobbyists.
- Over 600 candidates and groups filed to be active in the 2008 elections.
- Over 1,600 financial disclosure statements received in March.
- Over 12,000 phone calls and requests for assistance from filers and the public received between June and December 2008

Major Accomplishments in Calendar year 2009

- Executive Director prepared a Strategic Management Plan to reorganize the agency to model a law office, converting staff to Associate Attorney I/II; Paralegal I/II and Law Office Assistant I/II, in order to capitalize on efficiencies in delegation and allow for more upward mobility within the agency. The agency has 12 full time positions effective December 31, 2009. The Associate Attorney I/II positions perform investigations among other duties. *See Appendix, at page 1.*

- Ethics and compliance training developed and delivered (either in person or web based) by APOC for lobbyists and employers of lobbyists [Conducted in-person lobbyist training in Anchorage: January 7-9 (4 sessions) and in Juneau: January 20-21 (4 sessions)].
- Over 1,600 financial disclosure statements received in March.
- Over 2,500 filings from lobbyists and employers of lobbyists.
- Over 3,500 campaign disclosure filings from 340 candidates and 140 groups for multiple elections and reporting deadlines.
- Anchorage municipal election in April, runoff election in May, multiple filer and public questions.
- October municipal elections in 31 municipalities, Fairbanks runoff election, multiple filer and public questions.
- Lobbyist Module of the Insight computer filing project is deployed after significant staff time and resources developing and testing the module.
- Complaints: 10 total, 8 CD, 1 LFD, 1 LOB.
- Advisory Opinions: 7 POFD (1 later withdrawn), 6 CD, 2 LOB.
- Over 3,000 reports received from lobbyists and employers of lobbyists annually.
- Commission held 28 days of meetings including development of the mitigation criteria for civil penalty assessment, development of the Request for Proposal for regulations development, and the normal business of the Commission involving policy development, advisory opinions, civil penalty assessments, and complaint related issues. 14 days of the 28 meeting days involved hearings related to complaint investigations and adjudicatory decision making.

ENFORCEMENT BY THE ATTORNEY GENERAL'S OFFICE:

The Attorney General's Office represents APOC staff in the complaint process. A person who believes a violation has occurred under the laws APOC administers can file an administrative complaint with the Commission. A Summary of the complaint history of APOC is found in the charts accompanying this report. *See* Appendix, at page 2. A total of 17 complaints were accepted in CY 2008, and 10 complaints were accepted in CY 2009. In CY 2008, 2 complaints were rejected as not meeting the requirements of AS 15.13.380 and 3 were rejected in CY 2009. At the end of calendar year 2009 there were 4 open complaints. In calendar year 2009 six complaints were referred and assigned to the Office of Administrative Hearings for assignment to an Administrative Law Judge (ALJ). At the end of calendar year 2009, three of these complaints referred to the ALJ, were still in open status. The Attorney General's Office filed many procedural documents on behalf of the staff in each of these cases as well as reviewing the Staff Reports. Also in 2008, the Commission referred a lobbying case to the Attorney General's Office for consideration of criminal charges, per AS 24.45.151. The criminal section of the Attorney General's Office prosecuted the filer for multiple violations of the lobbyist reporting requirements.

The Attorney General's Office also assisted the Commission in developing a comprehensive set of written procedures to collect debts owed to APOC. Through a

process begun in 2008, the new collections process defines staff procedures and filer notification guidelines. The policy approach to collections was adopted by the Commission in a signed order on March 17, 2009. A copy of that Collection Policy accompanies this report. *See Appendix*, at pages 10 to 18. The Commission also adopted the Civil Penalty Assessment Mitigation Criteria in November 2009 that accompanies this report as part of the overall civil penalty assessment process. *See Appendix* at pages 19 to 21. Civil penalties can be assessed by the Commission for late filings under all of the laws APOC administers. A listing of the totals of civil penalty assessments accompanies this report. *See Appendix* at pages 3 to 4.

The Attorney General's Office also assists in the issuance of Advisory Opinions. Under APOC statutes (AS 15.13.374), an individual or group may ask the Commission to issue a formal letter of advice regarding the propriety of specific activities under the law. In consultation with the Attorney General's Office the staff proposes a written advisory opinion for Commission consideration. An affirmative vote of four Commission members is required to approve the advisory opinion. Following an affirmative vote, staff prepares a final letter of advice, and the opinion is placed in the Commission's records and published on the agency's website. During calendar year 2008, staff received 8 requests for advisory opinions, and during calendar year 2009, staff received 15 requests for advisory opinions. In addition the Attorney General's Office assists in the review of numerous informal requests for information from APOC staff. A summary of the Advisory Opinions for 2008-2009 accompanies this report. *See Appendix*, at pages 5 to 9.

CHALLENGES, RECOMMENDATIONS, AND PROPOSALS FOR CHANGE:

Staffing:

In FY 08 and FY 09, APOC was understaffed, both due to turnover and a shortage of full time staff. HB 109 and HB 281 each provided an additional staff member for APOC. However, the hiring freeze in FY 09 and further staff turnover delayed the filling of positions. The agency was fully staffed by the end of the second quarter of FY 10. However, due to the time necessary for staff to be trained and working at full performance, it is anticipated that the lag from the initial turnover to the time new staff are working at the full performance level, will impact productivity during FY 10 and the early part of FY 11. During 2009, APOC staff utilized volunteer externs from the Career Academy to perform data entry and other administrative tasks. The organization chart for APOC for FY 11 accompanies this report. *See Appendix*, at page 1. At this time, no additional staffing is recommended unless legislation is enacted which impacts fiscal notes attached to currently pending legislation.

Insight Project:

The legislature provided for mandatory electronic filing of all disclosure reports required by the statutes administered by APOC. This mandate became fully effective on January 1, 2009. Currently it is possible for reports to be submitted to the agency electronically; however, the public and filers envision a more robust functionality, and APOC is

working with the Department of Administration to provide for improved functioning of the agency business processes by developing a new electronic filing program, called Insight. The Insight project will enable all filers subject to APOC financial disclosure laws to file disclosures electronically, to track disclosures electronically, and to provide them in a viewable format to the public electronically.

The Insight project envisioned three modules: Lobbyist, Public Official and Legislative Official Financial Disclosure (POFD/LFD), and Campaign Disclosure (CD) modules. The Lobbyist Module is largely complete and is in a maintenance mode. The remaining modules of Insight, the POFD/LFD and CD Modules, will be delivered in two fiscal years. There is a capital request for \$600,000 in the FY 11 budget.

APOC Website and Information Searchable by the Public:

APOC is working closely with staff from the Department of Administration- Enterprise Technology Services (ETS) to explore more efficient ways to post information for the public on line via the APOC website. Although Insight is intended to serve this function, the Commission is mindful of the need for information to be available during the interim period until the other modules are developed. Making Commission orders, advisory opinions, reports, and disclosures available to the public remains a very high priority of the Commission. APOC staff and ETS personnel have continued efforts to upgrade the APOC website to provide information for filers and the public under each of the laws administered by the Commission. One particular effort is to provide for information that is searchable by the website users. This effort is expanding searchable documents from the current limited advisory opinions, campaign disclosures, and select POFD filings. PDF images of many of the Commission documents are slated to appear on the APOC website to provide greater government transparency and easier public access.

Regulation Development:

The Commission will be developing regulations in multiple phases, covering both FY 10 and FY 11. Regulations have not been modified for many years and alignment is necessary with recent statutory changes enacted in FY 08 as well as to effect necessary changes exemplified by recent Commission decisions and/or to align regulations with statutory intent. This multi-phase regulation project will involve a Request for Proposal and is expected to take at least 18 months to complete, extending through FY 11. RFP 2010-0200-9167 was issued on December 23, 2009 seeking proposals from qualified individuals to provide regulation reviewing, drafting, and revising services to the Alaska Public Offices Commission. A contract has been awarded and the contractor is beginning work on the project.

APPENDIX

APOC Organization Chart for FY 11 page 1

APOC Complaint History Summary 1974 to 2009 page 2

APOC Civil Penalty Assessment Information 2008-2009 pages 3 to 4

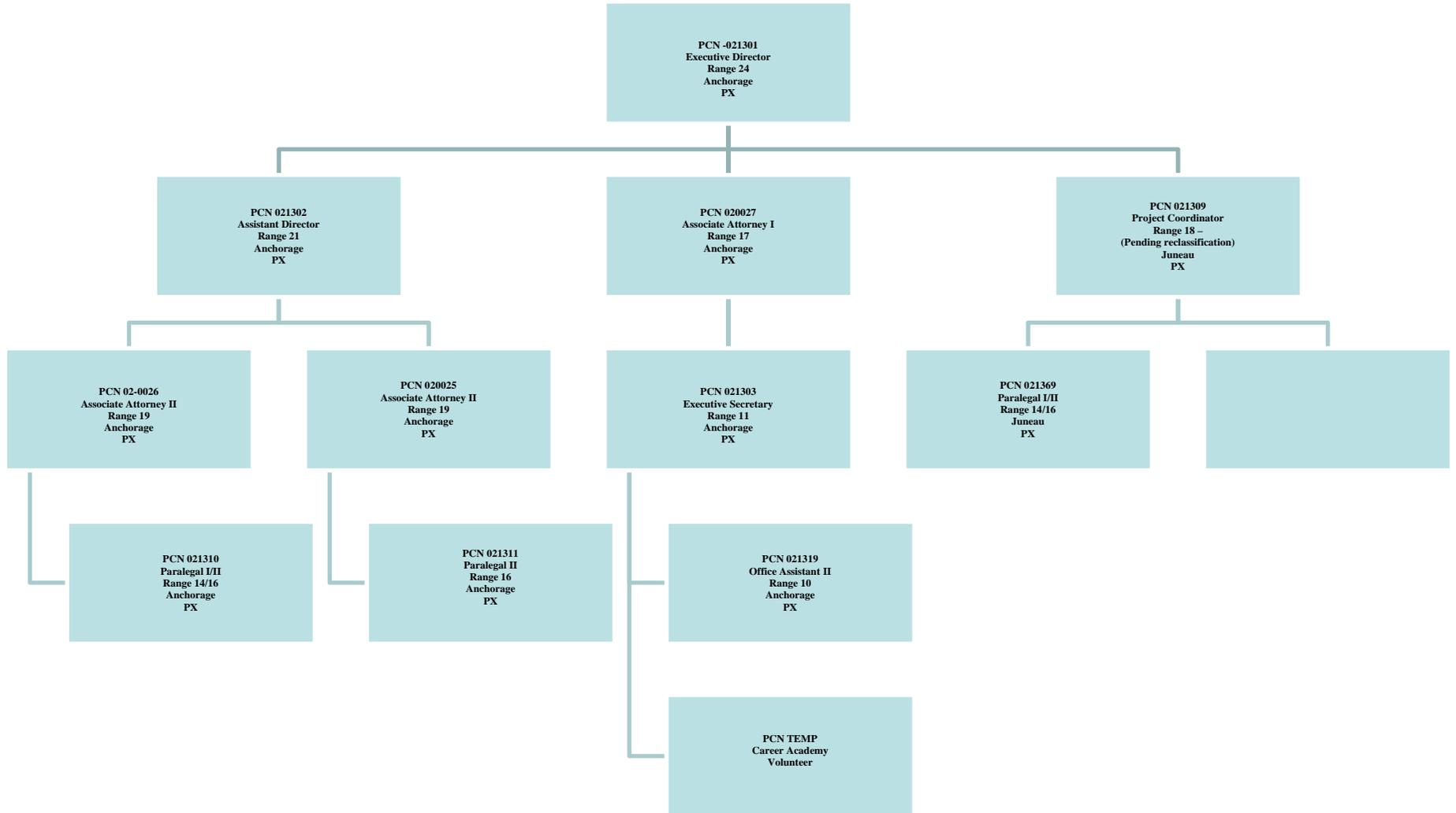
APOC Advisory Opinions 2008-2009 pages 5 to 9

Collections Policy pages 10 to 18

Civil Penalty Assessment Mitigation Criteria – November 2009..... pages 19 to 21

APOC Org Chart

dated 1/31/10



YEAR	TOTAL	CD	POFD	LFD	LOB	COMMENTS
2009	10	8		1	1	Six 6 CD complaints referred to Administrative Law Judge.
2008	17	14	2		1	Highest number of complaints since 2002. Second highest in 20 years. Fourth highest in CD complaints (tied with 1994, 1978). Legislature votes to increase statute of limitations to 5 years, eff. 1/1/09, require CD records be retained for 6 years.
2007	3	1		2		Comprehensive Ethics Act passes unanimously, strengthening campaign, finance, disclosure and lobbying laws. 7/9/2007: Gov. Palin signs ethics act into law at APOC office. New budget restores funding for APOC investigator.
2006	7	5		2		FBI corruption investigation becomes public. First federal indictment 12/7/06, followed by more cases in 2007-08.
2005	9	6		3		
2004	7	6	1			
2003	5	5				Statute of limitations cut to 1 yr. Investigator position not funded 2003-2006.
2002	24	22	1		1	Highest number of CD complaints in APOC history. Second highest total complaints.
2001	2	1	1			
2000	11	9	1		1	Public Official Financial Disclosure law replaces Conflict of Interest law.
1999	5	4	1			AK Supreme Court upholds 1996 campaign disclosure reforms, including ban on corporate contrib. (ACLU v. SOA)
1998	16	12	3		1	Multiple complaints against gubernatorial candidate John Lindauer.
1997	7	7				New campaign disclosure requirements go into effect.
1996	10	9	1			Campaign law reform enacted by legislature; effective 1/1/1997. New limits on political contributions.
1995	9	4	2		3	
1994	15	14	1			
1993	6	1	5			First separate Legislative Financial Disclosure statements. Legislators and public officials were all under Conflict of Interest law.
1992	8	6	2			Alaska Legislative Ethics Act passed; effective 1/11/1993.
1991	4	2	1		1	
1990	16	9	7			
1989	7	5	2			
1988	23	16	4		3	AK Supreme Court upholds constitutionality of APOC disclosure requirements in challenge by VECO.
1987	17	10	7			
1986	18	9	8		1	State legislator removed from ballot for non-compliance with disclosure requirements in unprecedented case.
1985	20	13	4		3	
1984	29	19	9		1	Highest total number of complaints in APOC history.
1983	7	7				
1982	7	6	1			
1981	11	8	1		2	
1980	13	11			2	
1979	11	7	3		1	APOC assigned to the Department of Administration.
1978	15	14	1			Complaints tend to increase in (even-numbered) state election years, though there are exceptions.
1977	7	7				AK Supreme Court (Falcon v. APOC) rejected public official's challenge to disclosure requirements and upheld APOC disclosure laws to promote ethical government, preserve integrity and fairness in political process.
1976	8	7	1			Lobbying law revised, assigned to APOC. (Lobbying regulation dates back to territorial days.)
1975	11	9	2			Original Alaska Election Campaign Commission is renamed as the Alaska Public Offices Commission.
1974	7	7				APOC created by voter initiative. YES: 57,100. NO: 23,150. Established campaign finance limits. Required financial disclosures.

TOTAL	402	300	72	8	22	Table reflects formal complaints only. Complaints resolved informally not included. APOC does not accept anonymous complaints. Percentages rounded. POFD-LFD % combined. Public officials & legislators covered under single Conflict of Interest law until 1993.
Percent of total		74 %	20 %		6 %	

2008 – 2009 Civil Penalty Assessment (CPA) Data for Biennial Report

Lobbying Law

Data Effective Through 3/1/2010

2008:

Total Number of Late Reports Resulting in CPA's = **207** (91 Employers, 116 Lobbyists)

Total Number of CPA Appeals = **102** (52 Employers, 50 Lobbyists)

Total Amount Ordered/Paid Based on Commission Decisions on Appeals:

Employers =	\$10,185.00
Lobbyists =	<u>\$13,215.00</u>
	\$23,400.00

2009:

Total Number of Late Reports Resulting in CPA's = **259** (192 Employers, 67 Lobbyists)

Total Number of CPA Appeals = **81** (72 Employers, 9 Lobbyists)

Total Amount Paid to Date:	Employers =	\$30,930.00
	Lobbyists =	<u>\$ 7,000.00</u>
		\$37,930.00

Total Outstanding/Pending (In Process):	Employers =	\$61,230.00
	Lobbyists =	<u>\$ 720.00</u>
		\$61,950.00

Final Total to be Paid for 2009 Late Reports:	Employers =	\$92,160.00
	Lobbyists =	<u>\$ 7,720.00</u>
		\$99,880.00

2008- 2009 CPA Data - for Biennial Report

Prepared by Vullnet Grevu

2008: Campaign Disclosure

Data received from Fox Pro Database.

- **Total Late Reports 159**
 - 102 Groups; 57 Candidates
- **Total Waived Reports 38**
- **Total CPA's heard by the Commission**
 - 7 Groups; 1 Candidate
- **Total Amount Paid: 35,632.00*** this amount has to be filtered and is the total amount of Civil Penalty Fines received in 2008. Prior to the current staff, data was not tracked separately by law or type of payment. It was lumped into a "Civil Penalty Fines" column. The 35,632.00 figure includes penalties received from civil penalties of all laws and complaint violations.

2009: Campaign Disclosure

Data received from Fox Pro Database.

- **Total Late Reports 36**
 - 29 Groups; 7 Candidates
- **Total Waived Reports 8**
- **Total CPA's heard by the Commission**
 - 4 Groups - 0 Candidates
- **Total Amount Paid: \$6,186.00** (Candidates and Groups)

2008: Public Official Financial Disclosure

- **Total Amount Received: 35,632.00*** this amount has to be filtered and is the total amount of Civil Penalty Fines received in 2008. Prior to the current staff, data was not tracked separately by law or type of payment. It was lumped into a "Civil Penalty Fines" column. The 35,632.00 figure includes penalties received from civil penalties of all laws and complaint violations.

2009: Public Official Financial Disclosure

- Total penalties received: 58
- Total Amount: \$7,472.25

2009 Pending Payment:

- POFD – Under payment plan
 - Total Original Amount Assessed: \$1,775.00
 - Total Paid: \$700.00
 - Total Due: \$1,005.00 (Currently making monthly payments on time)

2009 COMPLAINT VIOLATIONS TOTAL AMOUNT RECEIVED: \$24,920.00

Commission Advisory Opinions Issued in 2008-2009

Under Alaska Public Offices Commission regulations (2 AAC 50.905), an individual or group may submit a request in writing to the Commission asking for a formal letter of advice regarding the propriety of specific activities under the law. The listing below summarizes the advisory opinions issued in 2008-2009 by order in which the opinions were issued, followed by the Commission's decision. The full text of each advisory opinion may also be found on the Commission's web site at <http://doa.alaska.gov/apoc/Advisory/> or by contacting either the Anchorage or Juneau APOC office.

KEY: CD- Campaign Disclosure Law (AS 15.13); LOB- Regulation of Lobbying Law (AS 24.45); POFD- Public Official Financial Disclosure Law (AS 39.50)

AO 09-14-CD Request for an Advisory Opinion on whether or not Senator Dyson can use leftover 2008 campaign funds to pay a 2008 campaign bill (debt) and how to report the activity on his APOC campaign disclosure report.

DECISION: On November 19, 2009, the Alaska Public Offices Commission heard and approved this AO request by a vote of 5 to 0, with minor editorial changes that did not affect the result.

AO 09-13-LOB Request for Advisory Opinion on 1) If a lobbyist who registers and then terminates decides to re-activate the original registration in order to lobby in the same calendar year, will this result in the lobbyist incurring civil penalties for unfiled reports? 2) May a person who registers as a lobbyist and then terminates the registration lobby during the same calendar year for less than 10 hours in a 30 day period without registering or reporting to APOC?

DECISION: On December 3, 2009, the Alaska Public Offices Commission heard and approved this AO request by a vote of 5 to 0.

AO-09-12 CD Request for an Advisory Opinion on the legal disbursement of an unanticipated refund check received in 2009 for a 2006 gubernatorial campaign. AO-09-11 POFD AO 09-11-POFD was an advisory opinion request filed in April, 2009. Staff subsequently asked the filer to include additional information relevant to staff's ability to form a response to the request. **The filer declined to pursue the issue; no response was written.**

AO-09-11 POFD AO 09-11-POFD was an advisory opinion request filed in April, 2009. Staff subsequently asked the filer to include additional information relevant to staff's ability to form a response to the request. The filer declined to pursue the issue; no response was written.

Commission Advisory Opinions Issued in 2008-2009

- AO 09-10-
LOB Does a company who loans an employee to a second company have a requirement to report as an employer of a lobbyist if the company has no control over the employee's duties or actions?
- DECISION: On June 17, 2009, the Alaska Public Offices Commission heard and approved this AO request by a vote of 4 to 0.
- AO 09-09-
POFD Request for an Advisory Opinion on applicability of Public Official Financial Disclosure requirements to a Division Operations Manager in the Division of Commercial Fisheries of the Department of Fish and Game PCN 11-1068.
- DECISION: On April 24, 2009, the Alaska Public Offices Commission heard and approved this request by a vote of 4 to 0 with minor editorial changes that did not affect the result.
- AO-09-08
POFD Request for an Advisory Opinion on AGIA Coordinator's requirement to file.
- DECISION: On April 24, 2009, the Alaska Public Offices Commission heard and approved this request by a vote of 4 to 0 with minor editorial changes that did not affect the result.
- AO-09-07-
POFD Request for an Advisory Opinion regarding AOGCC personnel and reporting requirements under public official financial disclosure.
- DECISION: On April 24, 2009, the Alaska Public Offices Commission heard and approved this request by a vote of 4 to 0 with minor editorial changes that did not affect the result.
- AO-09-06
POFD Request for an advisory opinion regarding the reporting of gifts sent to the Governor as a result of her vice-presidential candidacy. AO 09-06-POFD
- DECISION: The Alaska Public Offices Commission disapproved the advice in this request for an advisory opinion, AO 09-06-POFD, by a vote of 4 to 0, on April 24, 2009. The Commission found that the request was not specific enough, under AS 15.13.374, and did not provide a specific transaction or activity that the requesting person is presently engaged in or intends to undertake in the future, including a description of all relevant facts.
- AO-09-05
POFD RE: Request for an advisory opinion regarding the reporting of gifts sent to the Governor as a result of her vice-presidential candidacy.

Commission Advisory Opinions Issued in 2008-2009

DECISION: On April 24, 2009, the Alaska Public Offices Commission heard and approved this request by a vote of 4 to 0 with minor editorial changes that did not affect the result.

AO-09-04
POFD Request for an Advisory Opinion on reporting voluntary, unpaid office held by minor or dependent children in non-profit educational, religious, or service organizations on schedule B on the Public Official Filing Disclosure under provisions of AS 39.50

DECISION: On April 24, 2009, the Alaska Public Offices Commission heard and approved this request by a vote of 4 to 0 with minor editorial changes that did not affect the result.

AO-09-03 CD Request for an Advisory Opinion on whether a mass mailing by a political party in a runoff municipal election would fall under the provisions of AS 15.13.400(4)(B)(iii).

DECISION: On April 24, 2009, the Alaska Public Offices Commission heard and approved this request by a vote of 4 to 0 with minor editorial changes that did not affect the result.

AO-09-02 CD Request for an advisory opinion on the legality of a legislator receiving reimbursement for legal expenses from a political party.

DECISION: On April 29, 2009, the Alaska Public Offices Commission heard and approved this request by a vote of 4 to 0 with minor editorial changes that did not affect the result.

A0-09-01 CD The legality of the Municipality of Anchorage and the Acting Mayor sharing in the cost of an opinion poll.

DECISION: On February 12, 2009, the Alaska Public Offices Commission approved the advice in this letter by an affirmative vote of 4-0. The advice in this opinion applies only to the specific activity for which the advice was requested.

A0-08-09 LOB Is a person required to register as a lobbyist if he performs legal work for a client that doesn't entail influencing legislative or administrative action?

DECISION: On February 12, 2009, the Alaska Public Offices Commission approved the advice in this letter by an affirmative vote of 4-0. The advice in this opinion applies only to the specific activity for which the advice was requested.

Commission Advisory Opinions Issued in 2008-2009

A0-08-07 CD What is the legality of using Alaska Mental Health Trust Funds for advertisements regarding the Trust and Ballot Measure 4?

DECISION: On September 24, 2008, the Alaska Public Offices Commission approved the advice in this letter by an affirmative vote of 4-0. The advice in this opinion applies only to the specific activity for which the advice was requested.

A0-08-06 LOB What are employers of lobbyists required to report and in what level of detail for employees performing duties in support of lobbying but not registered as lobbyists?

DECISION: The Alaska Public Offices Commission approved the advice in this letter by an affirmative vote of 4-0 on September 26, 2008. The advice in this opinion applies only to the specific activity for which the advice was requested.

A0-08-05 CD May the Alaska Mental Health Trust advise Alaskans about the potential impact of Ballot Measure 4 when funds have not been specifically appropriated for this purpose?

DECISION: The Commission approved the advice in this letter by an affirmative vote of 5-0 on August 5, 2008. The advice in this opinion applies only to the specific activity for which the advice was requested.

A0-08-04 CD May a candidate, at a fundraising event paid for with his/her campaign funds, solicit support for and endorse other candidates running for state and federal office?

DECISION: The Commission approved the advice in this letter by an affirmative vote of 5-0 on August 5, 2008. The advice in this opinion applies only to the specific activity for which the advice was requested.

A0-08-03 LOB Must a lobbyist report non-reimbursed expenses and if so, how and in what level of detail? What records must be maintained by lobbyists to comply with the law?

DECISION: The Commission approved the advice in this letter by an affirmative vote of 5-0 on June 11, 2008. The advice in this opinion applies only to the specific activity for which the advice was requested.

A0-08-02 CD Request for advisory opinion regarding activities of Renewable Resources Coalition

DECISION: The Commission approved the advice in this letter by an

Commission Advisory Opinions Issued in 2008-2009

affirmative vote of 5-0. The advice in this opinion applies only to the specific activity for which the advice was requested.

A0-08-01 LOB Request for advisory opinion on costs connected with media campaign and reporting under the Lobbying Law (AS 24.45)

DECISION: The Commission approved the advice in this letter by an affirmative vote of 4-0 on February 6, 2008. The advice in this opinion applies only to the specific activity for which the advice was requested.

MEMORANDUM

State of Alaska
Department of Law

To: Alaska Public Offices Commission Date: January 29, 2009
Thru: Jan DeYoung File No.: 661-08-0360
 Chief Assistant Attorney General
 Labor and State Affairs
From: Krista Stearns, Assistant Attorney General Subject: APOC Penalty Collection by
 Jean Clarkin, Litigation Assistant the Labor and State Affairs
 Labor and State Affairs Section

1.0. INTRODUCTION

- 1.1.** This memorandum sets out the procedure for collecting penalties assessed by the Alaska Public Offices Commission. Commission staff initiates the process by issuing a notice of the assessment of penalty and of a right to an appeal and hearing. If the filer does not pay the penalty or make payment arrangements, the penalty will be confirmed by a Final Order of the Commission.
- 1.2.** After APOC issues a Final Order assessing a penalty, the Labor and State Affairs Section (L&SA) of the Alaska Attorney General’s Office (AGO) undertakes legal action to obtain a judgment to collect any penalty that has not been paid voluntarily by the filer. After L&SA obtains a judgment, it will refer the matter to the AGO’s Collections Unit for collection in the normal course of business.
- 1.3** This memorandum applies to collection of penalties for delinquent and missing disclosure statements or reports (referred to here as “reports”) from the following: candidates, groups and non-group entities in state election campaigns; lobbyists and employers of lobbyists, legislators; municipal officials, judicial officers, and state public officials, including members of certain boards and commissions.

2.0. APOC PROCEDURES

2.1. Missing Reports

- 2.1.1. If filer has missed a reporting deadline, staff sends **Exhibit A-1**, which is a letter informing the filer that a report is missing and includes a notice of assessment stating that APOC will assess a penalty by order of the Commission unless the filer appeals. The filer is invited to contact APOC staff to work out a payment plan. **Exhibit A-1** includes all information required by state law and regulation. See AS 39.50.135 and 2 AAC 50.115 (public officials, not municipal, certain commissions and boards), 2 AAC 50.120 (judicial officers), and 2 AAC 50.135 (municipal officers); AS 15.13.390 and 2 AAC 50.399 (candidates/groups/non-group entities in state election campaigns— *for this group notification must be served by registered or certified mail under AS 15.13.030(6)*); AS 24.45.141 and 2 AAC 50.507 (lobbyists); AS 24.60.240 and 2 AAC 50.795 and 2 AAC 50.805 (incumbent candidate).

In the case of public officials, staff may be required to send this letter multiple times. (2 AAC 50.115(a) - (c), 2 AAC 50.120(a) - (c).

- 2.1.2. Staff encloses an APOC appeal form, **Exhibit D-1**, with **Exhibit A-1**.
- 2.1.3. If the filer contacts APOC to establish a payment plan, skip to section 2.3, below.
- 2.1.4. If the filer appeals, skip to section 2.4, below.
- 2.1.5. If the filer does not respond, skip to section 2.5, below.

2.2. Late Reports

- 2.2.1. Staff sends filer **Exhibit B-1** if a filer files a report late but prior to action under section 2.1, above. **Exhibit B-1** is a letter informing the filer that a report was late and includes a notice of

assessment stating that APOC will assess a penalty by order of the Commission unless the filer appeals. The filer is invited to contact APOC staff to work out a payment plan. **Exhibit B-1** includes all information required by state law and regulation. See AS 39.50.135 and 2 AAC 50.115 (public officials, not municipal, certain commissions and boards), 2 AAC 50.120 (judicial officers), and 2 AAC 50.135 (municipal officers); AS 15.13.390 and 2 AAC 50.399 (candidates/groups/non-group entities in state election campaigns-- *the second notice is not required to be served by registered or certified mail*); AS 24.45.141 and 2 AAC 50.507 (lobbyists); AS 24.60.240 and 2 AAC 50.795 and 2 AAC 50.805 (incumbent candidate).

- 2.2.2. Staff encloses an APOC appeal form, **Exhibit D-1**, with **Exhibit B-1**.
- 2.2.3. If the filer contacts APOC to establish a payment plan, skip to section 2.3, below.
- 2.2.4. If the filer appeals, skip to section 2.4, below.
- 2.2.5. If the filer does not respond, skip to section 2.5, below.

2.3. Payment Plan Procedures

- 2.3.1. If the filer expresses an interest in a payment plan, staff will negotiate the plan by telephone or in person. All payment plans will be in the form of a Confession of Judgment Without Action (COJ), **Exhibit C-1**. *APOC will not enter into a payment plan unless the filer files the report.* Staff may discuss this option with a filer who has not filed a report. Until APOC receives the report, staff will not forward a payment plan to the filer.
- 2.3.2. *Negotiations for a payment plan do not toll any appeal period.* A filer should file an appeal to preserve the appeal right if they may want to contest the penalty in the event there is no payment agreement, even as payment negotiations continue. **Exhibits A-1 and B-1** inform the filer that negotiations do not toll the appeal period. If the filer and APOC do reach agreement, the filer may

withdraw the appeal in writing. Whether or not an appeal is pending, the Commission may cancel its consideration of a Final Order if filer and staff reach an agreement beforehand.

- 2.3.3. Staff will proceed under sections 2.4 or 2.5, as appropriate, while negotiating a payment plan unless otherwise directed by the Executive Director. Staff are encouraged to contact L&SA if changes to **Exhibit C-1** are considered. Staff may contact the Executive Director if staff believe that it might be useful to continue an appeal hearing or the Commission's consideration of a Final Order to where further negotiation might be useful and could avoid the need for a hearing or meeting.
- 2.3.4. After determining proposed terms of a payment agreement (installment payment, frequency of payment, dates of payment, etcetera) staff will forward a proposed payment plan using the COJ forms to the filer by mail or meet with the filer in person. **Exhibit C-2** is a sample cover letter that staff may use to forward a COJ to a filer by mail. *APOC does not sign the COJ until after signature by the filer.*
- 2.3.5. Staff retains the originals of all executed documents signed by the filer and APOC. Staff will send a copy of the COJ agreement to the filer.
- 2.3.6. If the filer defaults on the COJ, the Executive Director will refer the matter to L&SA for action under section 3.0, below.
- 2.3.7. If the filer completes the payment plan, staff will return the original COJ documents to the filer indicating on their face that the filer paid the penalty. Staff will also make all appropriate entries reflecting payment in APOC's computer system.

2.4. Appeal

- 2.4.1. If the filer appeals, staff will schedule a hearing date and issue a notice of hearing to the filer (**Exhibit D-2**). Service may be by regular mail.
- 2.4.2. Staff will calendar a public hearing before the Commission at its next meeting (in the case of lobbyists, the hearing need only be at any meeting of the Commission). The Commission will conduct the hearing under its normal procedures.
- 2.4.3. At the Commission meeting, staff will present the Commission with a draft Final Order for its consideration, a sample of which is found at **Exhibit D-3**. The Commission may adopt the draft with or without amendment, or take other action permissible under its procedures.
- 2.4.4. The Final Order informs the filer of the amount of the penalty and of their right to appeal to the superior court. It also gives the filer information about the due date for payment.
- 2.4.5. Staff will send a copy of the Final Order, **Exhibit D-3**, along with a cover letter to the filer, **Exhibit D-4**. The cover letter may re-iterate the appeal right as well as provide additional detail regarding payment arrangements. Service may be by regular mail.
- 2.4.5. If payment is not made by the due date shown on the Final Order, or if the filer does not make other payment arrangements satisfactory to APOC before that date, the Executive Director will refer the matter to L&SA, section 3.0, below.

2.5. Non-Contested Penalties

- 2.5.1. Where No Report Is Filed: If a filer who has not filed a report (2.1, above) fails to respond meaningfully to a notice of assessment, (**Exhibit A-1**), staff sends the filer **Exhibit A-2**. **Exhibit A-2** is a letter informing the filer that, because the filer

did not respond within 30 days, the filer waived the filer's right to appeal the assessment of penalty and the late report will be referred to the Commission for entry of a Final Order. **Exhibit A-1** will include all information required by state law and regulation. AS 39.50.135 and 2 AAC 50.135 (public officials, judicial and municipal officers, certain commissions and boards); AS 15.13.390 and 2 AAC 50.399 (candidates/groups/non-group entities in state election campaigns; for this group notification must be served by registered or certified mail under AS 15.13.030(6)); AS 24.45.141 and 2 AAC 50.507 (lobbyists); AS 24.60.240 and 2 AAC 50.795, 50.805 (incumbent candidate).

- 2.5.2. Where Report is Filed Late: If a filer who filed a late report (2.2, above), fails to respond meaningfully to a notice of assessment, (**Exhibit B-1**), staff sends the filer **Exhibit B-2**. **Exhibit B-2** is a letter informing the filer that, because the filer did not respond within 30 days, the filer waived the filer's right to appeal the assessment of penalty and the late report will be referred to the Commission for entry of a Final Order. **Exhibit B-2** will include all information required by state law and regulation. AS 39.50.135 and 2 AAC 50.135 (public officials, judicial and municipal officers, certain commissions and boards); AS 15.13.390 and 2 AAC 50.399 (candidates/groups/non-group entities in state election campaigns; for this group notification must be served by registered or certified mail under AS 15.13.030(6)); AS 24.45.141 and 2 AAC 50.507 (lobbyists); AS 24.60.240 and 2 AAC 50.795, 50.805 (incumbent candidate).
- 2.5.3. **Exhibits A-2 and B-2** each inform the filer that the filer may still pay the penalty or contact staff to discuss a payment plan prior to the date of the Commission's meeting at which it will enter its Final Order. If the filer expresses interest in a payment agreement, staff may negotiate an agreement using the process under section 2.3, above.
- 2.5.4. At the Commission meeting, staff will present the Commission with a draft Final Order for its consideration. An example is found at **Exhibit D-5**. The Commission may adopt the draft with or without amendment or take other action permissible under its procedures.

- 2.5.5. The Final Order informs the filer of the amount of the penalty and of the right of appeal to the superior court. It also gives the filer the due date for payment.
- 2.5.6. Staff will send a copy of the Final Order to the filer. Service may be by regular mail.
- 2.5.7. If payment is not made by the due date shown on the Final Order, or if the filer does not make other payment arrangements satisfactory to APOC before that time, the Executive Director will refer the matter to L&SA, section 3.0, below.

2.6. Referral to AGO

- 2.6.1. Staff will seek approval from the Executive Director before referring matters to the AGO.
- 2.6.2. Staff will prepare file materials to transmit to the AGO. Staff should not typically transmit original documents to the AGO with the exception of original, signed COJs, **Exhibit C-1**. Staff should make copies of all notices of assessment (including enclosures), evidence of mailing, other written correspondence between APOC and the filer, the Final Order signed by the Commission, as well as any payment history made toward the debt. L&SA can contact APOC if more information is needed.
- 2.6.2. *Once a matter is referred to the AGO, APOC will cease further collection efforts.* If the filer later contacts APOC to resume making payments or to resolve the matter, staff will refer the filer to the AGO.

3.0. AGO ACTION--LABOR AND STATE AFFAIRS

After the Commission issues a Final Order, and after referral to the AGO, L&SA will use the following procedures to proceed to judgment to collect the penalty assessed:

3.1. Legal Process--Defaulted Payment Plan

- 3.1.1. If the filer signed a COJ but defaulted in the payment plan, L&SA will typically file a lawsuit and request the court to enter judgment. APOC staff will work with the AGO to gather any additional documents it needs and to draft any affidavit documenting the payment history of the filer.
- 3.1.2. **Exhibit C-3** is a sample form affidavit used to support entry of judgment under a COJ.

3.2. Legal Process—No Payment Plan

- 3.2.1. L&SA will evaluate the documentation from APOC, work with APOC staff to gather any additional documents it needs, and file a complaint with the court to request entry of judgment. If there is not sufficient documentation to support filing a complaint, L&SA will contact APOC's Executive Director to discuss the agency's options and suggest a course of action.
- 3.2.2. L&SA will handle the lawsuit under the court rules and in the normal course of business. If the filer does not respond to the complaint, L&SA will typically file a request for a default judgment against the filer. If the filer answers, then L&SA may need to "prove up" the penalty by demonstrating that APOC followed its process and that the penalty is due.
- 3.2.4. L&SA may attempt to resolve the matter with the filer.

3.3. Judgment

- 3.3.1. The goal of the legal process is to obtain a judgment for the payment of money owed to the State for the penalty, interest, and the costs of collection. After the court issues a judgment, L&SA will obtain a certified copy and file the judgment with the recorder's office for the district(s) in which the filer (now a judgment-debtor) resides and/or owns real property.
- 3.3.2. Next, L&SA will refer the matter to the AGO Collections Unit to collect the judgment. Upon referral to the Collections Unit, L&SA will return any remaining original APOC documents

(original COJs are filed with the court) to APOC for preservation under APOC's records retention policy. L&SA will then close its file.

4.0. AGO ACTION--COLLECTIONS UNIT

The Collections Unit will use its normal collection process to attempt to recover the monies due under the judgment. This process can include obtaining a writ of execution to entitle the State to sweep bank accounts and to seize the Permanent Fund dividend of the judgment-debtor.

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MITIGATION CRITERIA (ALL LAWS)
Public Official Financial Disclosure Law - AS 39.50
Legislative Financial Disclosure Law - AS 24.60.200 – 260
Regulation of Lobbying Law - AS 24.45
Campaign Disclosure Law – AS 15.13

Staff Recommendations: When reviewing civil penalty appeals, staff will consider the mitigation criteria described below. Staff's recommendation to the Commission will also take into account any aggravating factors identified in that review.

I. GENERAL CONSIDERATIONS. The staff will consider the affiant's length of experience, filing statements or reports, and the affiant's filing history when reviewing civil penalty appeals.

II. CRITERIA FOR A WAIVER (Up to 100% Reduction) May be used in conjunction with Part III below.

1. **Personal emergency or incapacitating illness.** The appellant, or a member of the appellant's immediate family or household, experiences a personal emergency or incapacitating illness that prevents timely filing. An appellant that is a corporate entity may not use this criterion to request a waiver since the definition of filer refers to the entity, not an employee or volunteer for the entity. Personal emergency includes emergency call out for military service, a natural disaster, or a civil disturbance.
2. **Staff error.** The late filing is due to an APOC staff error (*e.g.*, failing to mail the reporting materials in sufficient time for filing by the due date, mailing or stating incorrect information to filers, mailing deficiencies resulting in some filers receiving notices later than others), or confirmed technical problems with APOC equipment, including the electronic filing program.
3. **Administrative costs (groups only).** Group reports that contain only administrative costs.
4. No **significant harm** to the public AND no aggravating factors.
5. The maximum civil penalty assessment is significantly greater and out of proportion to the degree of harm to the public for not having the information.
6. Unique circumstances.

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III. CRITERIA FOR UP TO 50 % REDUCTION OF MAXIMUM CIVIL PENALTY

Refer to the definitions section for any criterion listed below in **bold** font.

1. **Good filing history** AND zero report
2. **Inexperienced filer**
3. Potential technical error at APOC (communication, fax machine, computer program etc.)
4. Meets the *de minimus* threshold.
5. Meets the marginal threshold combined with other factors such as potential technical error or self-reporting.
6. Unique circumstances.

IV. CRITERIA FOR UPHOLDING MAXIMUM PENALTY (0% Reduction): Appeals that do not meet the criteria for either a waiver or a 50% reduction are recommended for the full civil penalty assessment. Staff should not consider any of the following reasons as compelling rationales for a penalty reduction recommendation, barring unique circumstances:

1. relying on another person or mailroom to timely mail, postmark, or submit the statement
2. forgetting to file
3. claiming volunteer status
4. alleging no change in data from previous statements on file
5. relying on filer's own staff to remind filer of the filing deadline
6. asserting being too busy to file
7. claiming staff turnover, unless there are extreme examples of turmoil in the filer's office that warrant a determination of unique circumstances
8. being out of town, unless the travel was unplanned or unavoidable (*i.e.*, personal emergency, weather related travel problems, *etc.*)

V. DEFINITIONS

Dollar Amount Thresholds:

De Minimus: Unreported or mistakenly reported information valued up to and including \$100.

Marginal: Unreported or mistakenly reported information valued at more than \$100 and up to and including \$1000.

Substantial: Unreported or mistakenly reported information valued at more than \$1000.

Filer: The entity who has the responsibility to file, not an employee of or a volunteer for the entity.

Good Filing History: A filer with no late filings in the previous consecutive five years.

Inexperienced Filer: Any entity or filer in their first year of filing disclosures.

Aggravating Factors: Includes poor reporting history, evidence of deliberate non-reporting or failure to cooperate with staff.

No Significant Harm to the Public: The error creates no significant harm to the public when there are no aggravating factors and:

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1. the dollar amount missing from a form or disclosure is *de minimus*;
2. the dollar amount of the information missing from a form or disclosure is marginal and the filer self-reported the error; or
3. the missing or incomplete information is readily available to the public through another forum.