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**CONFIDENTIAL report regarding
Ethics Complaint pursuant to
Alaska Statute 39.52.340**

July 21, 2009

VIA EMAIL

Debra English, Chair
Alaska Personnel Board
9787 Middlerock Road
Anchorage, Alaska 99507

Re: Andree McLeod Ethics Complaint Dated July 14, 2009

Dear Ms. English:

You have asked me to serve as independent counsel pursuant to AS 39.52.310(c), to address the ethics complaint filed by Andree McLeod dated July 14, 2009. Under the Ethics Act, my first obligation is to review the complaint "to determine whether it is properly completed and contains allegations which, if true, would constitute conduct in violation of [the Executive Branch Ethics Act]." AS 39.52.310(d).

Nature of the complaint

Ms. McLeod's complaint alleges that Governor Sarah Palin continued to receive her \$125,000 annual state salary while she was "off duty" in the fall of 2008, traveling around the United States as the Republican vice presidential candidate. The complaint alleges that Governor Palin signed a travel authorization dated August 27, 2008,¹ which states "Conclusion of State Business." Then on November 7, 2008, the governor signed a travel authorization that states, under the heading "Purpose," "return to duty status." That travel authorization also states under the cost category, by the date 11/7/2008, "return to duty in Anchorage, meet with staff, interviews." The complaint states that these travel documents show that the governor "had full

¹ The travel authorization that Ms. McLeod included with her complaint is actually dated August 21, 2008.

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knowledge, intent, and a willingness to forego her duties as governor of Alaska in order to travel Outside on the national campaign trail as the Republican VP candidate." Yet Governor Palin accepted her full state-funded salary during this period. (Copies of the governor's payroll register forms showing that she was paid her salary during the fall campaign, are enclosed with the complaint.) In addition, the complaint alleges that the governor had a staffer "by her side during the campaign."

Ms. McLeod's complaint alleges that these facts establish that Governor Palin violated AS 39.52.120(a) prohibiting a public officer from using her position for personal gain. In addition, the complaint alleges that the governor violated AS 39.52.120(b)(4) and (6) which prohibit a public officer from (4) taking or withholding official action in order to effect a matter in which the public officer has a personal or financial interest, and (6) using state funds, facilities, equipment, services, or another government asset or resource for partisan political purposes.

Finally, the complaint alleges that the governor violated the Alaska Constitution, Article 3, Section 9, providing that "in case of the temporary absence of the governor from office, the lieutenant governor shall serve as acting governor." The complaint alleges that Governor Palin failed to temporarily assign her duties to the lieutenant governor during her absence from the state while campaigning for vice president.

Analysis

Alaska Statute 39.20.010 provides that "the annual salary of the governor is \$125,000." In addition, AS 39.20.050 provides, "the compensation fixed by law for the governor and lieutenant governor is in full for all services rendered by each of them in any official capacity or employment whatsoever during their respective terms of office, and shall be paid throughout their respective terms of office unless the office becomes vacant." In short, the salary of the governor and lieutenant governor is compensation for their services while in office, not the amount of time they spend performing those services.

This concept – payment of a fixed salary regardless of the hours worked – is a familiar one in wage and hour law. One of the statutory requirements for exempt employees, i.e., employees who are exempt from overtime pay, is that they must be paid on a "salary basis."² An exempt employee must be compensated for "his full salary for any week in which he performs any work without regard to the number of days or hours worked." 29 C.F.R. §541.118(a). Thus, an exempt employee is not entitled to overtime pay when he works more than 40 hours in a week. Conversely, an exempt employee is entitled to his full pay, even if he only works one hour in each day of the week. *See generally*, The Fair Labor Standards Act 187-189 (Ellen C. Kearns,

² See, for example, the three major classifications of exempt employees – executive, administrative, and professional. In addition to a requirement that they perform certain duties, they also must be compensated on a salary basis. See AS 23.10.055(c)(1) and 29 U.S.C. § 201-219.

Editor-in-Chief, 1999). In sum, an exempt salaried employee is paid for the performance of the job, not the number of hours that they work.

This concept is reinforced by AS 39.20.060, which provides that "the governor and lieutenant governor are not considered employees of the state for the purpose of state personnel laws relating to hours of employment, annual leave, sick leave, overtime, compensatory time, and travel allowances." This provision, when read in combination with the provision regarding the governor's compensation, means that the governor is entitled to receive her full salary without regard to how many hours she works or how much leave she takes. So long as she is serving as governor, she is entitled to the full compensation established for the office of governor.

One additional statute is relevant here. AS 39.25.160(e) states that an "employee in the classified, partially exempt, or exempt service who seeks nomination or becomes a candidate for state or national political office, shall immediately resign any position held in the state service." However, that section goes on to state that it does not apply to the governor or the lieutenant governor. AS 39.25.160(e)(2). In other words, unlike other state employees, the governor and the lieutenant governor are not required to resign their office if they become a candidate for state or national elective political office.

In sum, the governor was not required to resign from the office of governor when she became a candidate for vice president of the United States. Nor was the governor required to relinquish her salary, because as long as she held the office of governor, she was entitled to receive the compensation of the office.

Ms. McLeod asserts that the governor's travel authorization forms show that the governor was absent from her duties as governor from August 21, 2008, until November 26, 2008, and thus should not have been paid during this time period. But as explained above, the governor's compensation is for the services she performs for the entire time she holds office. Even if it were true that she performed no duties whatsoever for the state of Alaska for the entire three-month period from August 21, 2008, until November 26, 2008, she would be entitled to receive the compensation fixed by law. The only act that would cause the governor to relinquish her right to compensation during this period would be her resignation from office, but no one contends that Governor Palin resigned from the office of governor when she ran for vice president.

Moreover, there is evidence that the governor did perform duties as governor of Alaska while she was on the campaign trail in the fall of 2008. Another ethics complaint filed by Ms. McLeod alleged that Kristina Perry, Director of the Anchorage Office of the Office of the Governor, violated the Ethics Act by traveling with and assisting Governor Palin with duties unrelated to state business, during the 2008 Presidential campaign. That complaint was dismissed because the investigation by the Attorney General's office revealed that Ms. Perry's duties were not to assist the governor with campaign activities, but rather to assist the governor with state business.

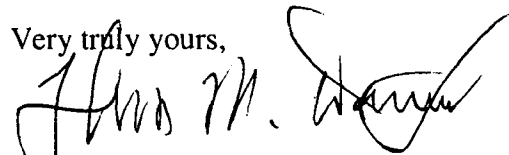
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See Recommendation of Dismissal of Ethics Complaint Against Perry, from Assistant Attorney General Julia Bockmon (June 2, 2009) (copy attached). Ms. Perry traveled with the governor to keep her informed of state business, to assist in communicating with other state officials, and to communicate decisions in a timely and efficient manner. *Id.* If Ms. Perry traveled with the governor on the campaign trail to assist with state business, it follows that the governor was performing some amount of state business while campaigning for vice president. Thus, the assertion that the governor performed no state business from August 21, 2008, until November 26, 2008, is contradicted by the investigation findings of a previous ethics complaint.

The final issue raised in Ms. McLeod's complaint is the assertion that the governor violated Article 3, Section 9, of the Alaska Constitution, which states, "[i]n case of the temporary absence of the governor from office, the lieutenant governor shall serve as acting governor." The question of whether the governor was constitutionally required to temporarily step aside when she ran for vice president does not fall within my jurisdiction as independent counsel for the Personnel Board. The Ethics Act only authorizes independent counsel to address allegations of violations of the Ethics Act, not the Constitution. Accordingly, I express no opinion on this question.

For all of the foregoing reasons, I conclude that there is not probable cause to believe that Governor Palin violated the Ethics Act by accepting her state salary while campaigning for the office of vice president.

Very truly yours,



Thomas M. Daniel

TMD:mlc

Enclosure

June 22, 2009

Attorney General Sullivan
Assistant Attorney General Bockmon
State of Alaska, Department of Law
1031 West 4th Avenue, Suite 200
Anchorage, Alaska 99501

Attorney General Sullivan and Assistant Attorney General Bockmon:

In accordance with AS 39.52.340(c) and 9 AAC 52.160(c), I hereby fully waive the confidentiality protection of AS 39.52.340 regarding the ethics complaint filed against me by Andree McLeod on January 26, 2009.

Sincerely,

A handwritten signature in cursive script that reads "Kristina Perry". The signature is written in black ink and is positioned above the printed name.

Kristina Perry

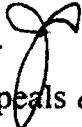
MEMORANDUM

State of Alaska

Department of Law

To: Richard A. Svobodny
Acting Attorney General

Date: June 2, 2009

Thru: Joanne Grace 
Section Chief
Opinions, Appeals & Ethics

File: AN2009100867

From:  Judy Bockmon
Assistant Attorney General

Tel. No.: 269-5216

Subject: Recommendation of
Dismissal of Ethics
Complaint against Perry

CONFIDENTIAL

On January 26, 2009 Andrée McLeod filed an ethics complaint alleging that Kristina Perry, an employee of the Office of the Governor, violated the Executive Branch Ethics Act. Thereafter, Ms. McLeod advised that she intended to submit additional documentation in support of her complaint once she received records requested in various public records requests to the Office of the Governor. We conducted a preliminary investigation of the matter as permitted by 9 AAC 52.140 pending receipt of documents from Ms. McLeod. Ms. McLeod advised in early May that she intended to submit records on May 11 and I advised that she could provide them by the end of that week. No records have been received.

We have now concluded the preliminary investigation and recommend that the complaint be dismissed under AS 39.52.310(d) because the evidence reviewed does not support the alleged violations of the Ethics Act and no further investigation is warranted. Attached is a Report of Preliminary Investigation explaining the basis for the recommendation. Please indicate below whether you concur in the dismissal.

If you concur in dismissal, a copy of your determination and the report will be forwarded to Ms. Perry, Ms. McLeod and the State Personnel Board.

The complaint and its investigation remain confidential under AS 39.52.340 and 9 AAC 52.160(f), unless confidentiality is waived by the subject. Ms. Perry has not waived confidentiality to date.

 I concur. _____ I do not concur.

Richard A. Svobodny
Acting Attorney General

Date: June 5, 2009

SARAH PALIN
Governor




P.O. Box 110001
Juneau, Alaska 99811-0001
(907) 465-3500
Fax (907) 465-3532

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

MEMORANDUM

TO: Kris Perry, Director
Anchorage Executive Office

DATE: September 26, 2008

FROM: 
Linda Perez
Administrative Director
Designated Ethics Supervisor
Office of the Governor

SUBJECT: Ethics Determination

I am writing with regard to your recent assignment to staff the governor while she is out-of-state campaigning for national office. By officially staffing the governor, you will be providing a more efficient means for direct communication between the state and the governor. While the present circumstance is unusual, historically the Office of the Governor has had a state employee staff governors who are attending partisan political events as part of their official state duties. The primary purpose for this is to provide a more efficient means for governors to receive information and communicate with state officials on state matters. Although the governor is campaigning for national office, she is still governing the state and must be kept apprised of issues and developments as they arise. It is in the best interest of the state at this time to have a state employee provide that staff function to ensure that information is provided timely to the governor and any decisions, questions or directions relayed back to the state.

During this staff assignment, you will be on official duty. You will not be required to take personal leave for your staffing role, and you will be in official state travel status. Any transportation, lodging, or meals you may receive from the McCain campaign while staffing the governor must be declared and reviewed as a gift under the Ethics Act. I suggest you keep a log of any travel on a campaign bus, charter aircraft, or other transportation that may be provided, and of any lodging and meals you may receive. If you are aware of the actual or estimated value of the services at the time, please note it in your log.

Please have your staff prepare a travel authorization (TA) and submit it for approval. I realize that it will need to be amended as your trip develops but we can

reconcile the travel with your records and receipts when you return. Where possible to identify transportation costs such as airfare, or other expense, we will reimburse the campaign for your travel.

Please remain cautious regarding the use of your time. Please be confident that you are staffing the governor for state business during your work day. If you have instances where you feel you are acting in a capacity to further her election effort and not as a state staffer, please keep a log of those times in order to submit leave slips when you return. Remain aware that for the state to pay your travel expenses, the majority of your workday while in travel status should be spent on state business.

Finally, if you receive any other gifts during your travel, remember that gifts valued in excess of \$150 must be disclosed.

If you have any questions or concerns regarding this memo or at any time, please feel free to call me.

cc: Michael Nizich
Chief of Staff

Judy Bockmon
Assistant Attorney General
