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CONFIDENTIAL report regarding Ethics
Complaint pursuant to Alaska Statute
39.52.340

January 12, 2009

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

Re: Ethics Complaint of Sigurd D. Rutter

Dear Debra:

You have asked me to serve as independent counsel for the Alaska Personnel Board pursuant to AS 39.52.310(c) to investigate the ethics complaint of Sigurd D. Rutter, which was received by the Attorney General's Office on December 18, 2008. This letter constitutes my report and disposition of the matter.

The Complaint

The complaint alleges that Governor Sarah Palin used funds of the Alaska Seafood Marketing Institute ("ASMI") to promote her political ambitions. Specifically, the complaint alleges that full-page advertisements featuring photographs of Governor Palin were placed in trade publications, including National Fishermen, Alaska Fishermen's Journal, Pacific Fishing, and Fishermen's News Trade Journal. Rutter alleges that by placing these ads in publications that target the fishing industry, rather than those targeting seafood consumers, the Governor is "using public funds to sell herself to a constituent group" instead of promoting the sale of Alaska seafood. In other words, Rutter alleges that ASMI funds are being used to promote the Governor's political agenda instead of promoting the sale of Alaska seafood.

57440-0001/LEGAL15105768.1

ANCHORAGE · BEIJING · BELLEVUE · BOISE · CHICAGO · DENVER · LOS ANGELES · MENLO PARK
OLYMPIA · PHOENIX · PORTLAND · SAN FRANCISCO · SEATTLE · SHANGHAI · WASHINGTON, D.C.

Perkins Coie LLP and Affiliates

Background Facts

The Alaska Seafood Marketing Institute is a public corporation, which was created by a state statute enacted in 1981. *See* AS 16.51.010 – 16.51.180. It is authorized to conduct market research, education, and advertising, all aimed at maintaining a stable seafood industry and promoting the sale of Alaska seafood to consumers. ASMI has a seven-member Board of Directors appointed by the Governor, and is funded by a combination of industry assessments, state government appropriations, and federal government grants. However, state funding is only a small fraction of ASMI's budget. For example, in fiscal years 2007 and 2008, the total revenue of ASMI was, respectively, \$14,715,350 and \$14,453,965. During those same years however, the State of Alaska contributed only \$1,000,000 and \$750,000.

To obtain more information on the nature of the ads, I contacted Ray Riutta, the Executive Director of ASMI. Mr. Riutta referred me to Laura Fleming, ASMI Communications Director, who is the person most familiar with the ads. Fleming came up with the idea for the ads.

Laura Fleming stated that the ads featuring the Governor were part of the "Faces of the Fleet" series that was run in fishing industry trade magazines. The series of ads featured seven fishermen in monthly ads over a period of twenty-five months beginning in November 2006, and ending in November 2008. One of the fishermen featured in the ads was Governor Palin. Those ads are titled, "Governor Sarah Palin Fishing in Alaska" and show two photos of Governor Palin. One photo, taken in Bristol Bay in June 2007, shows Governor Palin holding a salmon, and the other is one of the official photograph of Governor Palin. Beside the photographs, the ads state "The Honorable Sarah Palin Governor of Alaska, Age: 43 What do you like most about fishing? Being in Alaska's great outdoors." A copy of one of the ads is attached as Exhibit A.

Although the "Faces of the Fleet" ads began running in November 2006, the ads featuring Governor Palin did not begin until the March 2008 issue of *National Fisherman* and continued to run through the November 2008 issue. An ad with Governor Palin also ran in *Pacific Fishing* in March, May, and July of 2008, and in the *Alaska Journal of Commerce* in June 2008.

Governor Palin's only involvement in the decision to run these ads was giving permission to use her image in the ads. She gave her permission in December 2007 or January 2008 for the first ads, and then again in the spring of 2008 for the *Alaska Journal of Commerce* ad.

According to Laura Fleming, the vast majority of ASMI ads are run in consumer and food service publications to encourage the consumption of Alaska seafood. The "Faces of the Fleet" ads were run in industry trade publications instead of consumer and food service publications to raise awareness among members of the fishing fleet about ASMI, which is part of the constituent group of ASMI. However, the ads in the trade publications were only a small percentage of the total advertising budget.

Laura Fleming was hired in 1997 by former ASMI Executive Director Barbara Belknap during the administration of Governor Tony Knowles. Ms. Fleming states that she had no role whatsoever in suggesting or lobbying for the selection of Governor Palin as Senator John McCain's running mate, nor did she have any intent to benefit any of the Governor's political ambitions. Indeed, Fleming noted that she did not intend to include the Governor in any ads during the last two years of her term in order to avoid even the perception that the ads were being run to support the Governor's expected run for re-election. Moreover, as noted above, the decision to run the ads featuring Governor Palin was made long before she became a Vice Presidential candidate. Finally, the ads featuring Governor Palin had been running for five months before Republican Presidential candidate John McCain made his surprise announcement in August 2008, selecting Governor Palin as his running mate.

Analysis

The Rutter complaint alleges that Governor Palin used the ASMI ads to further her political agenda. The relevant provision of the Alaska Executive Branch Ethics Act is AS 39.52.120 (b)(6), which provides that a public officer may not "use or authorize the use of state funds, facilities, equipment, services, or another government asset or resource for partisan political purposes."¹ The short answer is that the ads run by ASMI featuring Governor Sarah Palin do not violate the Ethics Act because the ads were not run for partisan political purposes.

AS 39.52.120(b)(6) defines "partisan political purposes" as "having the intent to differentially benefit or harm a (i) candidate or potential candidate for elective office; or (ii) political party or group." Here, it is quite clear that the purpose of the ads was not to benefit the Governor's political career. Instead, the purpose of the ads was to use Sarah Palin's status as a high profile fisherman and Governor to benefit the seafood industry and the marketing of Alaska seafood. Indeed, at the time the ads were devised and began running, Governor Palin was not a candidate for any elective office, and the time at which she might be expected to announce for re-election was over two years away. Moreover, the person responsible for running these had no idea that Governor Palin was going to be selected as a Vice Presidential candidate.

¹ AS 39.52.120(b)(6) states, in pertinent part:

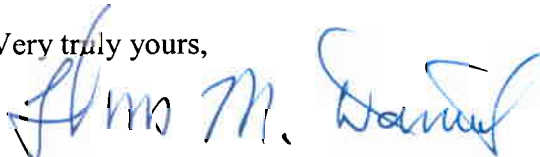
(b) A public officer may not . . .
(6) use or authorize the use of state funds, facilities, equipment, services, or another government asset or resource for partisan political purposes In this paragraph, "for partisan political purposes"
(A) means having the intent to differentially benefit or harm a
(i) candidate or potential candidate for elective office; or
(ii) political party or group;
(B) but does not include having the intent to benefit the public interest at large through the normal performance of official duties.

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In sum, state resources were not used for partisan political purposes. ASMI's purpose in running the ads was not to advance Governor Palin's political career but just the opposite – to use Governor Palin's celebrity to market Alaska seafood. AS 39.52.120(b)(6)(B) states that partisan political purposes "does not include having the intent to benefit the public interest at large through the normal performance of official duties." This is exactly what happened here. The purpose of the ASMI ads featuring Governor Palin was to benefit the public interest at large, i.e., the State of Alaska's interest in fostering the sale of Alaska seafood. Thus, even if it could be argued that the ads in question benefited Governor Palin's political career in some way, that was not the primary purpose of the ads, but instead was only an incidental effect of ads designed to benefit the public interest.

Therefore, I do not find probable cause to believe that a violation of the Executive Branch Ethics Act has occurred. Pursuant to AS 39.52.320, the complaint is hereby dismissed. A copy of this disposition shall be communicated to the complainant and to the Governor.

Very truly yours,



Thomas M. Daniel

TMD:mlc
Enclosure

Governor Sarah Palin Fishing in Alaska



Fishing in Bristol Bay, June 2007



The Honorable Sarah Palin

Governor of Alaska

Age: 43

What do you like most about fishing?

Being in Alaska's great outdoors!

“Recognized the world over for its effective resource management practices, Alaska is the model for premium wild and sustainable seafood.

Alaska Seafood develops in some of the world’s cleanest marine and freshwater habitats. I invite you to learn more about how our long-term fishery management practices ensure that this unmatched, delicious resource can be enjoyed for generations to come.”

Visit the Alaska Seafood Marketing Institute’s website at www.alaskaseafood.org



Exhibit A
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