

# MEMORANDUM

# State of Alaska

## DEPARTMENT OF ADMINISTRATION

### ALASKA PUBLIC OFFICES COMMISSION

**TO:** APOC Commissioners  
**DATE:** December 9, 2011  
**FROM:** Martha Tansik, Associate Attorney II  
**SUBJECT:** Staff Report for 11-14-CD APOC v. Bob Griffin

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#### **SUMMARY**

On October 14, 2011, the Alaska Public Offices Commission (APOC) Staff filed a complaint against Bob Griffin (Respondent). Staff alleged that Respondent filed inaccurate and incomplete campaign disclosure reports for the 2011 Anchorage Election in violation of AS 15.13.040 and AS 15.13.110, and failed to disburse surplus campaign funds within 90 days of the election in violation of AS 15.13.116. During the investigation, Staff became aware that Respondent also violated: AS 15.13.072(b), by accepting a cash contribution in excess of the statutory limits; AS 15.13.074(b), by accepting anonymous contributions; AS 15.13.112(a)-(b), by converting campaign funds to personal income; and AS 15.13.114(b), by not forfeiting the anonymous funds to the State of Alaska.

#### **ISSUES**

1. Whether Bob Griffin fulfilled his filing duties under AS 15.13.040, AS 15.13.110 and 2 AAC 50.321.
2. Whether Bob Griffin disbursed his surplus campaign funds after the election in accordance with AS 15.13.116.
3. Whether Bob Griffin accepted prohibited contributions in violation of AS 15.13.072(b)(1) and AS 15.13.074(b), which were not forfeited or returned under AS 15.13.114.
4. Whether Bob Griffin used campaign funds for personal benefit in violation of AS 15.13.112(a)-(b).

**BRIEF CONCLUSION**

The Respondent failed to file accurate 24 Hour, 30 Day, and 105 Day Campaign Disclosure Reports for the 2011 Anchorage Election in the manner required; used campaign funds for personal use; retained \$15.61 past the disbursement period; accepted a cash contribution in excess of \$100 and anonymous cash contributions of \$64; and failed to return or forfeit anonymous and prohibited contributions.

**FACTS**

The following is a brief case timeline:

- April 1, 2011: Respondent submitted a 24 Hour Report for a \$400 contribution in conformance with the statute.<sup>1</sup>
- May 10, 2011: a different campaign reported a reimbursement<sup>2</sup> from the Respondent, for a shared campaign expense. Respondent's 105 Day Report shows no record of this reimbursement and should have.
- July 26, 2011: Respondent filed a 105 Day Report<sup>3</sup> and an Amended 30 Day Report.<sup>4</sup> Review of the reports showed substantial errors. Respondent filed a "No Activity" 105 Day Report even though his 7 Day Report indicated a \$3,243 closing balance.<sup>5</sup> Respondent also disclosed a cash contribution from Rob Timmons for \$200 on the Amended 30 Day Report, which exceeded the allowable cash limit.

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<sup>1</sup> See Attachment 1: 24 Hour Report

<sup>2</sup> See Attachment 2: Taylor Campaign Report page showing reimbursement to Respondent

<sup>3</sup> See Attachment 3: 105 Day Report

<sup>4</sup> See Attachment 4: 30 Day Report

<sup>5</sup> See Attachment 5: 7 Day Report

- July 26, 2011: APOC Staff thought the filing errors were inadvertent and notified Respondent. Staff received no response to the letter notice.
- August 11, 2011: Staff provided notice of its concerns again in writing, but there was still no response to the letter notice.
- September 14, 2011: Staff warned Respondent that failure to amend his reports would result in a Complaint. Staff received no response to the letter notice, despite the fact Respondent received APOC Staff's letters.<sup>6</sup>
- October 14, 2011: Staff filed the Complaint.

Staff acquired the full scope of Respondent's violations through the investigation process. After the Complaint was filed, APOC Staff repeatedly requested Mr. Griffin's bank records, both orally and in writing. The bank records were not provided voluntarily and Staff subpoenaed the records from Mr. Griffin.<sup>7</sup> The records were not provided until the original due date of the staff report, November 14, 2011.

Respondent's records showed a number of irregularities.<sup>8,9,10</sup> While the records did show the majority of the campaign money was disbursed in a timely fashion, deposits did not match the reported contributions. Moreover, cash withdrawals were made from ATMs in various states. Mr. Griffin told Staff he transferred money from his personal checking account into the campaign account to access cash on work layovers in Hawaii and California because his personal bank cards were not working. However, due to bank fees for the withdrawals, Mr. Griffin withdrew \$11.75 more than he transferred.<sup>11</sup>

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<sup>6</sup> See Attachment 6: Staff Correspondence to Griffin

<sup>7</sup> See Attachment 7: Staff Correspondence and Subpoena for Bank Records

<sup>8</sup> See Attachment 8: Affidavit of Martha Tansk

<sup>9</sup> See Attachment 9: Copy of CPA payment.

<sup>10</sup> See Attachment 10: Griffin Bank Records

<sup>11</sup> See Attachment 10: Griffin Bank Records—May statement

Staff asked for detailed bank records for the campaign account. On November 21, 2011, Mr. Griffin provided specific records to help explain the discrepancies. At that time, Respondent self-reported an undisclosed contribution of \$250 during the 24 Hour reporting period and \$64 dollars in undisclosed, anonymous cash contributions (one from March 3 and one from March 25).<sup>12</sup> As of the date of this Staff Report, no 105 Day Report has ever been received and the public still does not have information regarding that reporting period.

### **LAW AND ANALYSIS**

1. The Griffin Campaign did not fulfill its reporting duties.

Candidates must file certified campaign disclosure reports regarding contributions and expenditures, including personal information of contributors and details of expenditures. AS 15.13.040. The details required in the report are defined by 2 AAC 50.321. Each report covers a specific time period and is due three days after the reporting period's closure. AS 15.13.110.

Respondent failed to file in accordance with 2 AAC 50.321. Respondent's Amended 30 Day Report did not contain all of the required pages, lacking a summary page. Because Respondent filed a "No Activity" Report for his 105 Day Report, it discloses no information about expenditures or contributions for the period immediately preceding the election and for the period following the election. For example, the contributor name, address, employer, occupation, and form of payment are missing for a \$400 and a \$250 contribution. The 105 Day Report also fails to describe any disbursement of the surplus campaign funds; although, the bank records show deposits and withdrawals through June 2011. Finally, because of changes in the closing cash on hand to the 30 Day Report, the 7 Day Report also required amendment. Respondent self-reported a failure to file a 24-Hour Report. APOC Staff considers the 30 Day, missing 24 Hour, and 105 Day Reports

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<sup>12</sup> See Attachment 11: Griffin Email to Staff Nov 20, 2011.

substantially noncompliant and in violation of AS 15.13.040, AS 15.13.110 and 2 AAC 50.321. APOC Staff finds the 7 Day Report to be substantially compliant.

2. The Griffin Campaign failed to disburse surplus money within 90 days.

Under Alaska Statute 15.13.116, candidates must disburse surplus campaign funds in statutorily mandated ways. The money must be disbursed within 90 days of the election and accounted for on either the Final or the 105 Day Report. Undisbursed surplus money is forfeited to the State of Alaska.

Respondent's 7 Day Report indicated a surplus of \$3,243.<sup>13</sup> A filed 24 Hour Report showed an additional \$400 contribution<sup>14</sup> and during the investigation Respondent alerted Staff of an additional \$250 contribution. The 105 Day Report, Respondent's final report, should have shown the disbursement of all assets and a final zero balance. Instead, Respondent submitted a "No Activity" report, certifying he had not accepted or disbursed any funds. This was incorrect because a 24 Hour Report was filed. APOC Staff attempted to acquire Respondent's bank records numerous times, through both written and oral means, including a subpoena.<sup>15</sup> These documents arrived on November 15, 2011 at noon.<sup>16</sup> The bank records show that, on July 18, the balance was \$15.61.

The additional surplus funds were primarily disposed of by cash withdrawals from ATMs.<sup>17</sup> Mr. Griffin said that the funds were expended, in accord with AS 15.13.116, to pay debts of the campaign. However, there is nothing on the public record to substantiate that claim. Regardless, \$15.61 remained in the account after disbursement was required in violation of AS 15.13.116.

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<sup>13</sup> See Attachment 5: 7 Day Report

<sup>14</sup> See Attachment 1: 24 Hour Report

<sup>15</sup> See Attachments 6 and 7.

<sup>16</sup> See Attachment 10: Griffin Bank Records

<sup>17</sup> See Attachment 10: Griffin Bank Records May Summary

3. The Griffin Campaign accepted prohibited contributions.

The Legislature set clear limits on the amounts and sources of campaign contributions. A cash contribution to a candidate cannot exceed \$100. AS 15.13.072(b). Excessive cash contributions are prohibited and must be returned immediately. AS 15.13.114(a). A campaign treasurer must determine the legality of all contributions. 2 AAC 50.266(a). If the “excess amount cannot be returned in the same form, the equivalent value of the contribution or excess amount shall be returned.” *Id.* Audit revealed the receipt and retention of a cash contribution exceeding the allowable amount under AS 15.13.072(b). Rob Timmins contributed \$200 on February 24, 2011 and the excess cash contribution was not returned.

Furthermore, identifying information must exist for every contributor. AS 15.13.074(b). If its contributor is unidentifiable within five days of receipt, the contribution is forfeited to the Department of Revenue of the State of Alaska. AS 15.13.114(b).

Respondent self-reported two anonymous contributions in violation of AS 15.13.074(b). The first, a \$14 cash contribution was received during a fundraiser on February 24, 2011. A second, received around March 25, 2011, was a \$50 cash contribution from a man who gave the money to Respondent at a Denny’s. Respondent lost the card with the contributor’s information.<sup>18</sup> Both contributions lack contributor information and are therefore considered anonymous. Neither contribution was forfeited to the State of Alaska. Detailed bank records clarified deposit information, but did not reveal further information regarding expenditures.<sup>19</sup>

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<sup>18</sup> See Attachment 11: Griffin Email to Staff Nov 20, 2011.

<sup>19</sup> See Attachment 12: Detailed Bank Records

4. The Griffin campaign used money held by the campaign inappropriately.

Campaign contributions may only be used to pay for campaign related expenses or activities. AS 15.13.112(a). Furthermore, a candidate cannot use contributions as a personal benefit or convert contributions to personal income. AS 15.13.112(b)(1-2).

Respondent transferred \$300, from his personal checking account, into the campaign account with the intent to remove it while he was out of town, as his other bank cards were not working. However, Respondent removed more than the \$300 he had placed into the campaign account for that purpose. He removed an additional \$11.75 of campaign contributions in order to cover the ATM and bank fees associated with his withdrawals in California and Hawaii. The expenditure of campaign funds for bank fees converted \$11.75 in campaign contributions into personal income for the Respondent in violation of AS 15.13.112.

### **CONCLUSION**

Respondent's 30 Day Report and 105 Day Report are both substantially noncompliant, because they do not accurately describe transactions that occurred during those reporting periods, and Respondent failed to file a 24 Hour Report, in violation of AS 15.13.040, AS 15.13.110, and 2 AAC 50.321. While the Respondent disbursed the majority of funds, he did not disburse all the funds, and he has not disclosed the expenditures in accord with AS 15.13.116. Respondent received \$64 in anonymous contributions and a prohibited cash contribution, in violation of AS 15.13.072, AS 15.13.074, and AS 15.13.114. Finally, Respondent converted \$11.75 in campaign funds to his personal benefit in violation of AS 15.13.112.

**FINES****Maximum Potential Penalties**

To provide a clear sense of the potential fines, the maximum possible penalties for each violation are listed below. The **total maximum potential penalty is \$52,000.**

A. Reporting Violations

Maximum penalties for inaccurate filings are assessed from the date of the filing to the date of correction or the date when a complaint is filed, whichever occurs first. An inaccurate 30 Day Report or Year End Report is assessed a \$10.00 per day fine for each day the report remains in error. A missing 24 Hour Report is assessed a \$50.00 per day fine for each day the report remains in error. AS 15.13.390 and 2 AAC 50.399. The total maximum fine for reporting errors, **\$5,600**, is calculated as follows:

30 Day General (80 days at \$10) = \$800  
24 Hour Report (80 days at \$50) = \$4,000

Year End/105 Day (80 days at \$10) = \$800

B. Failure to Disburse

At the end of the 90 day disbursement period, only \$15.61 remained in the account. However, much of the spend-down occurred by cash withdrawal from ATMs. To date, none of the incoming or outgoing funds have been specifically accounted for in a 105 Day Report and the source or destination of the deposits and withdrawals cannot be ascertained from the bank records. By statute, money not disbursed must be forfeited to the State of Alaska.

Additionally, failure to disburse accrues a maximum \$50 dollar a day penalty for every day the money is kept by the campaign. AS 13.15.390(a). **The maximum daily penalty (88 days) for the failure to disburse of the funds is \$4,400. The forfeit amount is \$15.61.**

C. Prohibited Contributions

Respondent had three prohibited contributions, two anonymous cash contributions totaling \$64 and one excess cash contribution by Mr. Timmins. By statute, prohibited contributions must be returned to the contributor, or if unidentifiable, given to the State of Alaska. **The forfeiture amounts are \$64 to the State and \$100 back to Mr. Timmins.**

Additionally, prohibited contributions accrue a maximum \$50 dollar a day penalty for every day the contribution is kept by the campaign. AS 13.15.390(a). There is a 10-day grace period in which to return a prohibited contribution before penalty begins to accrue. APOC Staff calculated the number of days based on the date the cash or anonymous contribution was accepted.

The breakdown is as follows:

Cash 1 (\$14): 221 days at \$50 = \$11,050                      Timmins (\$100) 221 days at \$50 = \$11,050  
Cash 2 (\$50): 192 days at \$50 = \$9,600

**The maximum daily penalty for the prohibited contributions is \$31,700.**

D. Use of campaign funds for personal benefit

Violations of AS 15.13 without specific fines associated incur penalties at a maximum rate of \$50 per day. Here, the campaign funds were removed on April 29, 2011. **The maximum daily penalty (172 days) for the conversion of the funds is \$8,600.**

E. Staff Costs

APOC Staff conservatively estimates 40 Staff hours have been spent on this case. **At a rate of \$42.50 per hour, Staff costs and fees for this case are \$1,700.**

F. Mitigation Criteria

APOC Staff recommends mitigation both because of Mr. Griffin's self-reported *de minimus* cash contributions and because he self-reported a marginal contribution unreported on a 24 Hour Report (up to 50% reduction). Additionally 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 (up to 100% reduction). Staff recognizes, however, that the information is still not available to the public and there is some ongoing harm as a result.

### **RECOMMENDATION**

APOC Staff recommends that the Respondent forfeit the **\$79.61** to the State of Alaska and return the **\$100** to Mr. Timmins within 60 days. Staff also recommends a civil penalty of **\$4,000** (**\$500 for disbursement errors, \$2,500 for reporting errors, \$500 for prohibited contributions, \$500 for the converted campaign contributions and \$1,700 in staff costs for a total of \$5,700 in penalties**) to be paid within 60 days or as determined by an approved payment plan. Additionally, APOC Staff recommends Mr. Griffin be required to **attend an APOC candidate training** prior to running for candidacy again.