

BEFORE THE ALASKA PUBLIC OFFICES COMMISSION

WALKER MALLOTT FOR ALASKA,)	
)	
Complainant,)	
)	
v.)	APOC Case Nos. 18-09-CD
)	and 18-11-CD
REPUBLICAN GOVERNORS)	
ASSOCIATION AND FAMILIES FOR)	
ALASKA’S FUTURE - DUNLEAVY,)	
)	
Respondents.)	
_____)	

ORDER

The complainant is Walker Mallott for Alaska, the re-election campaign for Governor Bill Walker. The respondents are the Republican Governors Association (RGA) and Families for Alaska’s Future – Dunleavy (FFAF), which is an independent expenditure group supporting the Republican gubernatorial nominee. Walker Mallott for Alaska alleges that the respondents have violated various registration and disclosure laws during the 2018 election season. For the following reasons, the Commission finds violations of AS 15.13.050(a) and AS 15.13.040 and assesses total civil penalties of \$4450 against the RGA and \$4450 against FFAF.

I. Facts and Proceedings

On various dates in April 2018, the RGA and FFAF reserved a considerable amount of air time on Alaska TV stations for the purpose of running advertisements in the weeks before the 2018 gubernatorial election. The RGA used the services of media placement firm Pinpoint Media to arrange these air time reservations.

On April 10, 2018, the RGA issued a press release stating that “The RGA, directly or with partner organizations, reserved ad time in Alaska (\$1.5 million) ... these reservations are just the beginning of GOP efforts to win these governorships.” The press release went on to say that “[b]y booking these ad reservations ahead of other campaigns and groups, the RGA will save considerable resources.”

The RGA has not registered with APOC. FFAF registered with APOC on June 19, 2018. On August 23, 2018, the name on the RGA’s advertising time reservations was changed from RGA to FFAF, making FFAF the advertiser.

On September 28, 2018, Walker Mallott for Alaska filed two expedited complaints alleging that the RGA and FFAF were violating various registration and disclosure laws. Specifically, the complaint against the RGA alleged that when the RGA reserved advertising time on Alaska TV stations, it violated AS 15.13.050(a) by making expenditures for the purpose of influencing the election of a candidate in Alaska without first registering with APOC. The complaint against FFAF alleged (1) that it similarly violated AS 15.13.050(a) by reserving advertising time before it registered with APOC, and (2) that after it ultimately registered with APOC, it violated AS 15.13.040 by filing inaccurate reports that did not disclose the expenditures that it made reserving advertising time and the contributions that it received of reserved advertising time from the RGA.

At an October 2, 2018 special meeting, the Commission granted expedited consideration of both complaints. In granting expedited consideration, the Commission considered whether the alleged violations, if not immediately restrained, could materially affect the outcome of an election or other impending event; whether the alleged

violations could cause irreparable harm that penalties could not adequately remedy; and whether there is reasonable cause to believe that the violations occurred.¹ The Commission found that the complainant established reasonable cause to believe that the violations occurred, and concluded that the alleged violations could cause irreparable harm that penalties could not adequately remedy because the election is approaching and APOC statutes and regulations entitle the public to full and accurate disclosures before the election.

On October 4, 2018, the Commission held hearings on the merits of both complaints and allowed Walker Mallott for Alaska to participate as a party. Treasurer Paula DeLaiarro and campaign manager John-Henry Heckendorn attended on behalf of Walker Mallott for Alaska, and attorney Stacey Stone attended on behalf of both respondents. The Commission heard testimony from two witnesses called by the complainants and considered exhibits submitted by the parties.

II. Analysis

A. The RGA violated the prohibition on making expenditures without first registering with APOC when it reserved ad time.²

Alaska Statute 15.13.050(a) provides that “[b]efore making an expenditure in support of or in opposition to a candidate ... each person other than an individual shall register, on forms provided by the commission, with the commission.” “Expenditure” is defined to include “a purchase or a transfer of money or anything of value, or *promise or*

¹ AS 15.13.380.

² The Commission voted 3-2 in favor of finding this violation.

*agreement to purchase or transfer money or anything of value, incurred or made for the purpose of ... influencing the nomination or election of a candidate.”*³

The complaint against the RGA alleges that it violated AS 15.13.050(a) by reserving advertising time on Alaska TV stations for the purposes of influencing the 2018 gubernatorial election without registering with APOC. The RGA acknowledges making the air time reservations, but argues that the reservations do not constitute “expenditures” because the RGA alleges that it did not pay for the ad time and that it could have been cancelled. But the definition of “expenditure” is broader than RGA claims. The statute also encompasses a “promise or agreement to purchase or transfer money or anything of value,” which, in the case of a promise or agreement, does not require payment nor a contract. An air time reservation, even if it is subject to potential cancellation, is an agreement to purchase air time, and both the air time and the reservation have value. If the reservations for air time during an election had no purpose and did not constitute any sort of agreement, there would be no reason to make them. Moreover, the RGA acknowledges using the services of media placement firm Pinpoint Media to arrange the air time reservations. Testimony at the hearing showed that negotiating air time reservations is a valuable professional service. Engaging a media placement company to perform this professional service for the purpose of influencing an Alaska election constitutes an “expenditure” requiring registration. Indeed, the

³ AS 15.13.400(6) (emphasis added).

Commission has previously ruled that even sending an email, which had minimal value, constituted an “expenditure” requiring registration.⁴

The RGA also argues that it did not have to register with APOC because it is not a “group” as defined by AS 15.13.400(8), but the applicability of AS 15.13.050(a) does not depend on whether the RGA is a “group.” Alaska Statute 15.13.050(a) requires “each person other than an individual” to register before making expenditures, and the RGA is a person other than an individual regardless of whether it meets the definition of “group.”

Accordingly, the Commission finds that the RGA violated AS 15.13.050(a).

B. FFAF violated the prohibition on making expenditures without first registering with APOC when it reserved ad time.⁵

The complaint against FFAF alleges that it also violated AS 15.13.050(a) by reserving advertising time on Alaska TV stations in April 2018 before it registered with APOC. The evidence attached to the complaint and presented at the hearing demonstrated that FFAF reserved some advertising slots on its own behalf on April 9, 2018 but did not register with APOC until June 19, 2018. For the same reasons described above, this constituted a violation of AS 15.13.050(a).

Accordingly, the Commission finds that FFAF violated AS 15.13.050(a).

⁴ See Final Order in *APOC Staff v. David Scott*, 11-16-CD (“The Commission notes that the campaign expenditures in this case involved the sending of emailed press releases announcing Scott’s candidacy. Although the costs of sending emails are often minimal, the Commission has considered such actions to be an expenditure under AS 15.13.400(6).”).

⁵ The Commission voted 4-1 in favor of finding this violation.

C. FFAF failed to file accurate APOC reports because it did not report contributions and expenditures related to media reservation.⁶

Every person making an independent expenditure must file a report showing expenditures made and contributions received.⁷ The complaint against FFAF alleges that it failed to file accurate independent expenditure reports because it did not report reserving advertising slots nor did it report receiving reserved advertising slots from RGA. As explained above, reserving advertising slots constitutes an expenditure. Therefore, that expenditure should be reported on an independent expenditure report. If the reserved advertising time has not yet been paid for, it should be reported as debt. Likewise, RGA's transfer of its reserved advertising slots to FFAF should have been reported as in-kind contributions from RGA to FFAF. FFAF's independent expenditure reports are inaccurate because they do not report these expenditures and contributions.

Accordingly, the Commission finds that FFAF violated AS 15.13.040.

III. Remedies

Alaska Statute 15.13.380(d)(1) provides that when the Commission expedites consideration of a complaint and finds a violation of Alaska's campaign finance laws, the Commission shall "enter an emergency order requiring the violation to be ceased or to be remedied and assess civil penalties under AS 15.13.390." The Commission therefore orders the RGA to comply with AS 15.13.050(a) by registering with APOC, and orders

⁶ The Commission voted 4-1 in favor of finding this violation.

⁷ AS 15.13.040(d) and (e).

FFAF to cure its violation of AS 15.13.040 by filing independent expenditure reports that document contributions and expenditures related to advertising reservations.

The Commission also assesses civil penalties against RGA and FFAF. The maximum civil penalty for failure to register as required by AS 15.13.050(a) is \$50 per day for each day the violation continues. The RGA made its earliest advertising bookings on April 9, 2018, but still had not registered with APOC as of the date of the hearing. As a result, the RGA's violation lasted 178 days, for a maximum civil penalty of \$8900. FFAF made its earliest advertising bookings on April 9, 2018, and registered with APOC on June 19, 2018. As a result, FFAF's violation lasted 71 days, for a maximum civil penalty of \$3550.

The maximum civil penalty for failure to file an accurate report under AS 15.13.040 is \$50 per day for each day that the violation continues. FFAF registered with APOC on June 19, 2018, and did not file accurate independent expenditure reports. FFAF's violation lasted 107 days, for a maximum civil penalty of \$5350.

The Commission has decided to reduce the maximum penalties by 50 percent due to the respondents' status as inexperienced filers—i.e., entities that have been subject to a registration or reporting requirement for less than 365 days.⁸ The Commission therefore assesses total civil penalties of \$4450 against the RGA and \$4450 against FFAF.⁹

Alaska Statute 15.13.390(a) provides that “[a]n affidavit stating facts in mitigation may be submitted to the commission by a person against whom a civil penalty is

⁸ 2 AAC 50.865(a)(1)(B).

⁹ The Commission voted 4-1 in favor of reducing the penalties.

assessed.” Accordingly, the Commission will accept such affidavits from the respondents within ten days of this order and will consider at its next regular meeting whether to reduce the penalties. The Commission instructs its staff to prepare a report addressing whether the assessed penalties are appropriate or should be reduced.

IV. Conclusion

The Commission orders the RGA to comply with AS 15.13.050(a) by registering with APOC, and orders FFAF to cure its violation of AS 15.13.040 by filing accurate independent expenditure reports. The Commission assesses total civil penalties of \$4450 against the RGA and \$4450 against FFAF.

This is not a final Commission order, because the Commission must accept an affidavit stating facts in mitigation under AS 15.13.390(a), and therefore retains jurisdiction to adjust the assessed civil penalties at its next regular meeting if appropriate.

Dated: October 5, 2018.

BY ORDER OF THE ALASKA PUBLIC OFFICES COMMISSION¹⁰

¹⁰ Commissioners Anne Helzer, Irene Catalone, Robert Clift, Jim McDermott, and Tim Dietz participated in this decision.

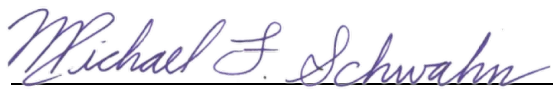
BEFORE THE ALASKA PUBLIC OFFICES COMMISSION

WALKER MALLOTT FOR ALASKA,)
)
Complainant,)
)
v.) APOC Case Nos. 18-09-CD
) and 18-11-CD
)
REPUBLICAN GOVERNORS)
ASSOCIATION AND FAMILIES FOR)
ALASKA'S FUTURE - DUNLEAVY,)
)
Respondents.)
_____)

CERTIFICATE OF SERVICE

I hereby certify that on this date, I caused a true and correct copy of the foregoing Commission Order and this Certificate of Service to be delivered as indicated to the following:

Stacey C. Stone Holmes Weddle & Barcott, PC 701 West Eighth Avenue, Suite 700 Anchorage, Alaska 99501-3408 sstone@hwb-law.com	<input checked="" type="checkbox"/> Email <input checked="" type="checkbox"/> Certified Mail
Paula DeLaiarro Walker Mallot for Alaska 601 W. 5 th Ave., Ste 200 Anchorage, AK 99501 paula@walkermallotforalaska.com	<input checked="" type="checkbox"/> Email <input checked="" type="checkbox"/> U.S Mail

 10-5-2018

Paralegal Date