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Oct 9, 2023
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FINAL ORDER

For the following reasons, the Commission orders Mr. Colbert to pay the \$68 penalty to which he agreed for the civil penalty appeal. The second matter, which came before the Commission for collections referral, is **DISMISSED**.

Mr. Colbert was a candidate in the 2020 state primary election for the House. Alaska Statute 15.13.116(a) required him to dishurse all unused campaign contributions according to the statutorily acceptable methods by February 1, 2021. He was then required to file a final, year-end campaign disclosure report showing a zeroed-out account by February 16, 2021.¹

¹ AS 15.13.110(a)(4). The report's usual due date of February 15 was a state holiday in 2021, making the report due the next business day. ² AAC 50.811(d).

Mr. Colbert filed his year-end report on February 20, 2021, but the report showed that he had not zeroed out his account. Instead, the report represented that the campaign held a balance of \$1,827.99 in unused contributions.² The statute provides the remedy for failure to zero out an account: based on his report of an undispersed balance, Mr. Colbert should have been required to turn over the unused funds to the Department of Revenue for deposit in the general fund in 2021.³

That is not what occurred. Instead, APOC staff concluded that Mr. Colbert was subject to a continuing reporting obligation and required him to file a second year-end report for the same campaign in 2022. Staff's approach relied on 2 AAC 50.384(a), which provides that "[a] candidate who is unable to close a campaign account or pay all campaign debts by the deadlines in this section shall continue to file applicable reports."

That regulation, to the extent it is read to mean a candidate may carry a campaign balance into another year and simply file another year-end report, conflicts with AS 15.13.116(c)'s instruction that a balance go to the State within 30 days. And where a regulation is inconsistent with a statute, the statute controls.⁴

² Colbert Year-End Report (Feb. 20, 2021), available at <https://aws.state.ak.us/ApocReports/Common/View.aspx?ID=33917&ViewType=CD>.

³ AS 15.13.116(c) ("Property remaining after disbursements are made under (a)--(b) of this section is forfeited to the state. Within 30 days, the candidate shall deliver the property to the Department of Revenue. The Department of Revenue shall deposit any money received into the general fund and dispose of any other property in accordance with law.").

⁴ *Nordlund v. Dep't of Corr.*, 520 P.3d 1178, 1183 (Alaska 2022) ("If there is a conflict between the regulation and the statute, the statute controls unless [the Alaska Supreme Court] determine[s] it to be unconstitutional."). A candidate could transfer an unused balance into "an account for a future election campaign," AS 15.13.116(a)(7),

Mr. Colbert filed another year-end report in 2022 as staff instructed. But he did not file until November 14, 2022, 272 days after the deadline.⁵ Unfortunately, the second report still showed an unused balance in his campaign account.

Staff assessed a \$6,800 penalty—\$50 for each day after the February 15 deadline with a 50 percent mitigation because the report was in connection with Mr. Colbert’s first election cycle.⁶ Mr. Colbert appealed, and staff recommended a 99 percent reduction to \$68 because the assessed penalty was so large in comparison to the amount of transactions on the late report. The report showed \$0 in transactions; no activity had taken place during the year.⁷

We decline to follow staff’s recommendation because we conclude it is inconsistent with the statute. As explained above, the statute does not provide Mr. Colbert an extra year to disperse unused campaign contributions. Rather, the statute puts a definite end date on the campaign cycle. If a candidate reports unused contributions on the year-end report, those go to the general fund and the campaign cycle ends.⁸ So, the problem with Mr. Colbert’s 2022 is not tardiness. And the fact that the report showed \$0 in transactions should not be considered a positive mitigating factor given that the entire

which would lead to continuing reporting obligations as contemplated by the regulation. 2 AAC 50.384. That is not what occurred here; Mr. Colbert simply did not zero out his account on time.

⁵ Colbert Year-End Report (Nov. 14, 2022), available at <https://aws.state.ak.us/ApocReports/Common/View.aspx?ID=39690&ViewType=CD>.

⁶ AS 15.13.390(a); 2 AAC 50.855(b)(2)(C)(i).

⁷ See 2 AAC 50.865(b)(5).

⁸ AS 15.13.116(c).

point of the report was that Mr. Colbert still had an obligation to zero out his account, something he still did not show he had completed, more than a year and a half after the February 1, 2021 deadline.

Nevertheless, the Commission orders Mr. Colbert to pay the \$68 penalty in resolution of this civil penalty appeal. That penalty is imposed despite the analysis above for two reasons. First, Mr. Colbert informed APOC staff in advance of the September 28, 2023 meeting that he agreed to pay that amount. Second, as explained below, Mr. Colbert recently showed that his account was in fact zeroed out all the way back in 2021. Just before the September meeting, he filed a 2023 year-end report showing zero balance and zero activity. He also amended his original 2020 and 2021 reports. The amended reports show that the account was in fact zeroed out on time, and the reports that showed a \$1,827.99 balance were incorrect. So, Mr. Colbert does not owe the State \$1,827.99.

Civil Penalty Referral Matter—Year-End Report filed September 27, 2023

When Mr. Colbert filed his year-end report on November 14, 2022, staff again followed 2 AAC 50.384(a) and considered Mr. Colbert to owe a third year-end report, this time by February 15, 2023. Mr. Colbert did not file anything by that deadline. Staff sent him a deficiency notice on February 17, 2023. Still no report was filed, and staff sent him another letter on April 7, 2023 explaining that he had accrued a \$2,550 penalty to date and that the matter would be referred to the Commission for collection at its June 13, 2023 meeting.

Shortly before that meeting, Mr. Colbert contacted staff and asked for more time to file a 2023 report. He explained that he was undergoing medical treatment through the

summer. The Commission moved both of his matters to the September meeting.

Meanwhile, the penalty for not filing in 2023 was at \$5,950 and still accruing.

On September 11, 2023, staff sent Mr. Colbert a letter regarding the presentation of the matter at the Commission's September 28, 2023 meeting. Staff's calculation of the civil penalty to be referred for collection was by then \$11,250.

On September 27, 2023, Mr. Colbert filed a 2023 year-end report. That report showed beginning and ending balances of \$0, and no transactions.⁹ He also filed an amendment to his 2022 report showing the same—no balance and no activity.¹⁰ And, most significantly, Mr. Colbert amended his original 2021 year-end report¹¹ as well as the 7-day and 30-day reports from 2020 that preceded it.¹² Those three reports, as amended, together cover the entire period of the campaign's activity, February 2, 2020 through February 1, 2021. They show that the campaign did not in fact have cash on hand as of the deadline.

Based on those reports, Mr. Colbert did not actually violate AS 15.13.116(a) by failing to disperse contributions to his campaign. However, there can be no question that Mr. Colbert did *not* meet his obligation under the law to demonstrate that compliance on

⁹ Colbert Year-End Report (Sept. 27, 2023), available at <https://aws.state.ak.us/ApocReports/Common/View.aspx?ID=41909&ViewType=CD>.

¹⁰ Colbert Year-End Report (Nov. 14, 2022, as amended Sept. 27, 2023), available at <https://aws.state.ak.us/ApocReports/Common/View.aspx?ID=41910&ViewType=CD>.

¹¹ Colbert Year-End Report (Feb. 20, 2021, as amended Sept. 27, 2023), available at <https://aws.state.ak.us/ApocReports/Common/View.aspx?ID=41888&ViewType=CD>.

¹² Colbert 30-Day Report (July 19, 2020, as amended Sept. 27, 2023), available at <https://aws.state.ak.us/ApocReports/Common/View.aspx?ID=41834&ViewType=CD>.

a complete, accurate, timely year-end report in 2021. For two and a half years, Mr. Colbert's reports represented incorrectly that he had improperly carried a balance.¹³

The best characterization of what occurred here is that staff applied 2 AAC 50.384(a) to give Mr. Colbert more than two and a half years to amend what turned out to have been an inaccurate report. Had staff instead applied AS 15.13.116(c), Mr. Colbert would have been required to pay the \$1,827.99 he showed as undispersed in 2021 based on his inaccurate reporting. Staff's error was based on an understandable misapplication of a regulation that, if applied this way, conflicts with the governing statute.

However, having afforded him so much time to fix his reporting and having now received accurate information, the Commission cannot penalize Mr. Colbert for the fact that he late-filed a 2023 year-end report that should not have been due at all. The Commission appreciates Mr. Colbert's effort to correct the record, however belatedly.

The civil penalty matter regarding the 2023 report is DISMISSED.

This is a final Commission order. It may be appealed to the superior court within 30 days from the date of this order.¹⁴ A request for the Commission to reconsider this order must be filed within 15 days from the date this order is delivered or mailed.¹⁵

Dated: October 9, 2023

¹³ AS 15.13.116(c).

¹⁴ AS 44.62.560, Alaska R. App. P. 602, 2 AAC 50.860(e).

¹⁵ 2 AAC 50.891(g).

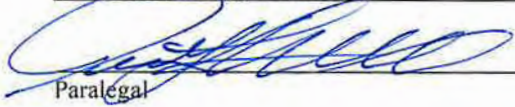
BY ORDER OF THE ALASKA PUBLIC OFFICES COMMISSION¹⁶

Certificate of Service:

I hereby certify that on this date, I served, by **certified mail and email** a true and correct copy of the foregoing in this proceeding on the following:

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Paralegal

10.9.23

Date

¹⁶ Commissioners Richard Stillie, Suzanne Hancock, Dan LaSota, Eric Feige, and Lanette Blodgett participated in this matter. The decision was made on a 5-0 vote.