

**BEFORE THE STATE OF ALASKA OFFICE OF ADMINISTRATIVE HEARINGS
ON REFERRAL BY THE DIVISION OF OCCUPATIONAL LICENSING**

In the Matter of:)	
)	
KENNETH WILLIAM CHASE,)	
)	
Applicant.)	OAH No. 04-0288-GUI
_____)	[1756-04-001]

AMENDED PROPOSED DECISION

I. Introduction

This case involves the denial of Kenneth Chase’s applications to renew his Alaska licenses as a class-A assistant guide and a transporter under AS 08.54.620 and AS 08.54.650. The amended statement of issues in this case contains two counts. It alleges that Chase was convicted of crimes in 2003 arising from his illegally taking game (a wolverine) during a closed season and transporting the game. His criminal sentence included a \$1,500 fine with \$500 suspended and 30 days in jail with 30 days suspended. Chase applied to the division of occupational licensing to renew his assistant guide and transporter licenses. The division denied the applications based on AS 08.54.605(a)(1)(A), which provides that a license may not be renewed if the person has been convicted of “a violation of a state hunting, guiding, or transportation services statute or regulation within the last five years for which the person was fined more than \$1,000 or imprisoned for more than five days.”

Chase requested a hearing. The division transferred the case to the Office of Administrative Hearings¹ and a hearing was held in conformance with the Administrative Procedure Act.² This document is the proposed decision for the Commissioner of the Department of Commerce, Community, and Economic Development.³ Based on the evidence, it is recommended that the division deny Chase’s license renewal applications.

¹ The Office of Administrative Hearings (OAH) was created in 2004. See AS 44.64.010. Under a transitional provision relating to transfer of employees, the hearing officer for the Department of Commerce, Community and Economic Development was transferred to OAH.

² See AS 44.62.330 – .640.

³ Since 1989, no guide board has existed under AS 08.54. The Department of Commerce, Community and Economic Development, through the division of occupational licensing, processes applications under AS 08.54.

II. Facts

Kenneth Chase, division investigator George Weaver, and division licensing examiner Cindy Roccodero testified as witnesses under oath and subject to cross-examination at the hearing. The division's exhibits "A" through "E" were admitted as evidence. References are made in the fact findings to the audiocassette tape comprising the record made at the hearing, which is not transcribed. The following findings are based on the record in this case:

1. Kenneth Chase was licensed in Alaska as a class-A assistant guide on June 23, 1993. He was issued a transporter license in Alaska on August 18, 2003. (Direct exam of Chase, tape 1A; Direct exam of Weaver, tape 1A; Direct exam of Roccodero, tape 1B; Exhs. A, B, C, E)

2. On April 10, 2003, Chase shot and killed a wolverine that he had trapped near the No Name River. The season for wolverine closed on March 31, 2003. Chase transported the wolverine pelt in his dogsled when returning to No Name. An Alaska State Trooper searched Chase's sled in No Name and discovered the pelt. Chase admitted to the trooper that he shot the wolverine. Chase also admitted that he was transporting the pelt from his cabin to his house in No Name. He was cited for negligently and unlawfully shooting and killing a wolverine during a closed season in violation of 5 AAC 85.001 and 5 AAC 85.057(a)(2). He was also cited for negligently and unlawfully shooting and killing a wolverine after he had been airborne in his personal aircraft in violation of AS 16.05.783(a). An amended information with two counts was filed in the criminal case against Chase at the district court in Bethel (Case No. 4AK-S03-66 CR). Chase pled no contest to the charges and was convicted on August 11, 2003, under Count I for violating 5 AAC 92.140(a) and under Count II for violating 5 AAC 85.057 and 5 AAC 85.001. His sentence included a \$1,500 fine with \$500 suspended and 30 days in jail with 30 days suspended on each count with the sentences to run concurrently. (Direct exam of Chase, tape 1A; Direct exam of Weaver, tape 1A; Exh. D)

3. Chase's transporter and class-A assistant guide licenses expired on December 31, 2003. He filed renewal applications for both licenses. Chase's class-A assistant guide application filed April 7, 2004, states that he had not been "convicted [sic] of a state hunting, guiding, or transportation services statute or regulation for which you were fined more than \$1,000 or imprisoned for more than five days." His transporter license application filed August 23, 2004, has both "yes" and "no" boxes checked in response to the question whether since the transporter license was last issued, he was "convicted of a state hunting, guiding, or transportation services statute or regulation for which you were fined more than \$1,000." In

Chase's transporter license application, he included the following handwritten annotation at the bottom of page two:

Pd. 1,000.00 fine 2 year prob. on trapping violation. I did not Have a Hunting or Same day Airborne conv. I agreed to the condition that would not affect my license, the state agreed, and I did not go to trial.

The judgment papers from Chase's criminal case do not state whether his criminal convictions will impact his transporter and class-A assistant guide licenses. (Direct exam of Chase, tape 1A; Direct exam of Weaver, tape 1A; Direct exam of Roccodero, tape 1B; Exhs. A, B, C, D, E)

4. The division conducted an investigation as part of processing his applications and determined that Chase was convicted for violating state hunting laws in Case No. 4AK-S03-66 CR as previously described. Based on the investigation, the division denied Chase's renewal applications by separate letters both dated September 3, 2004, each of which constituted a statement of issues under AS 44.62.370. The reason given for denial of both applications included citation to AS 08.54.605(a)(1)(A) accompanied by the statement "a person may not receive or renew [a license] if the person has been convicted of a violation of a state hunting, guiding, or transportation services statute or regulation within the last five years for which the person was fined more than \$1,000 or imprisoned for more than five days." Chase requested a hearing. An amended statement of issues filed December 23, 2004, contains two counts alleging that Chase is disqualified from licensure by AS 08.54.605(a)(1)(A). (Direct exam of Weaver, tape 1A; Direct exam of Roccodero, tape 1B; Exhs. A, B, C, D, E)

III. Discussion

A. Interpretation of "fined more than \$1,000" in AS 08.54.605(a)(1)(A)

This case raises the narrow question whether the suspended portion of a criminal sentence should be included in determining the threshold amount "fined more than \$1,000" in AS 08.54.605(a)(1)(A). The statute provides that license renewal is not allowed if the applicant was convicted "of a state hunting, guiding, or state transportation services statute or regulation within the last five years for which the person was fined more than \$1,000 or imprisoned for more than five days."

Principles of statutory interpretation provide the answer to the above question. In construing the meaning of a statute, courts look to the meaning of the language, the legislative

history, and the purpose of the statute in question.⁴ Under Alaska’s sliding-scale approach to statutory interpretation, “the plainer the language of the statute, the more convincing contrary legislative history must be.”⁵

The plain meaning of AS 08.54.605(a)(1)(A) controls in this case. “Fined more than \$1,000” is not ambiguous. Moreover, there is no legislative history contrary to this interpretation of AS 08.54.605(a)(1)(A).⁶

In addition to the above statutory construction analysis, a prior licensing case interpreting the meaning of “fine” under AS 08.54.605 also provides guidance in this case. In Boyd v. State of Alaska, the court held that a \$2,500 payment as a condition of suspended imposition of sentence (SIS) in a criminal case was a “fine” for the purpose of AS 08.54.605.⁷ Whether a suspended fine may be used to determine the threshold amount of AS 08.54.605(a)(1)(A) was not considered in the Boyd licensing case. However, the court placed reliance on the sentencing judge’s characterization of the payment as a fine and the fact that both attorneys in the case acknowledged on the record at the sentencing hearing that the payment constituted a fine.⁸ Chase’s judgments in Case No. 4AK-03-66 CR indicate that on each of the two counts he “is fined \$1,500.” (Exh. D, pp. 5-6) (emphasis added).

Chase’s \$500 suspension on each count simply means that he may not need to pay more than \$1,500 per violation as part of his sentences. He nonetheless was fined more than \$1,000 for each violation.

B. Equitable Estoppel

Chase’s argument to the effect that he would never have pled no contest to the violations if he knew it would jeopardize his licenses suggests that he may be raising the equitable estoppel doctrine.⁹ Equitable estoppel may be invoked against a state entity upon a showing that (1) the governmental body asserted a position by conduct or words; (2) the private party acted in

⁴ See Government Employees Insurance Company v. Graham-Gonzalez, 107 P.3d 279, 284 (Alaska 2005).

⁵ See Alaskans for Efficient Gov’t Inc. v. Knowles, 91 P.3d 273, 275 (Alaska 2004).

⁶ Courts are not precluded from considering an agency’s reading of statutory language. See Bartley v. State of Alaska, No. 5888, slip op. at 16 (Alaska April 15, 2005); Union Oil Co. of California v. State of Alaska, 560 P.2d 21, 23, 25 (Alaska 1977). In this case, licensing examiner Roccodero testified that the division’s policy when interpreting AS 08.54.605 is to consider both the suspended and unsuspended portion of a fine. (Direct exam of Roccodero, tape 1B)

⁷ See Boyd v. State of Alaska, 977 P.2d 113, 116-17 (Alaska 1999).

⁸ See id. at 114-16.

⁹ Chase, who represented himself at the hearing, did not identify the legal doctrine by name.

reasonable reliance thereon; (3) the private party suffered resulting prejudice; and (4) the estoppel serves the interest of justice so as to limit public injury.¹⁰

Chase claimed to have placed reliance on a representation in his criminal case, although it is unclear who made it, that his no contest plea “would not affect my license.”¹¹ In the Boyd case, an assistant district attorney assured a hunting guide pleading no contest to guide violations that a \$2,500 payment to the court as part of a suspended imposition of sentence (SIS) was not a “fine” within the meaning of AS 08.54.605.¹² The appellate court acknowledged that the assistant district attorney did not have authority to change the laws of Alaska as written, and that his written assurances to the defendant did not alter the fact that a payment to the court as part of an SIS is a fine under AS 08.54.605. Nonetheless, the court allowed the defendant to invoke the doctrine of equitable estoppel against the state based on the assistant district attorney’s erroneous assurances that Boyd would not lose his guide license based on his SIS conditions.¹³

In this case by way of contrast, Chase did not present evidence of assurance by anyone that his no contest pleas would not affect his licensure. The hearing record was left open for 30 days after the hearing to allow Chase to file documents from his criminal case that might provide a basis for estoppel. Chase did not file any exhibits at the hearing, and he did not file any documents thereafter in this case. In addition, contrary to his renewal application statement that he “agreed to the condition that would not affect my license,” Chase testified at the hearing in this case that “if my attorney had told me what was going to happen . . . I didn’t know anything about \$1,000 fine being, you know, jeopardizing my license.” (Direct exam of Chase, tape 1A) Based on the evidence, it is concluded that Chase’s continued licensing under AS 08.54 was not a condition for criminal sentencing in Case No. 4AK-S03-66 CR. The first prong of the equitable estoppel doctrine is therefore lacking.

Two other arguments that may loosely be characterized as bearing on estoppel also should be addressed. Chase argued at the hearing to his understanding that his no contest pleas did not result in convictions. The argument fails given the sentences imposed upon him resulting from judgments in Case No. 4AK-S03-66 CR. Chase also provided evidence at the hearing that the division failed to provide timely notice to him regarding the status of his license, and that he

¹⁰ See Boyd, 977 P.2d at 116-17.

¹¹ See Exh. B, p. 5 (transporter license renewal application).

¹² See Boyd, 977 P.2d at 116-17. Boyd was allowed to request the superior court to modify his SIS conditions under AS 12.55.085.

¹³ See id.

may have guided without being licensed as a result. Because the division did not charge Chase with violating licensing laws based on this conduct, the division's notice is not at issue.

IV. Conclusion

Chase was convicted for violating Alaska hunting regulations within the five years preceding his renewal applications and he was fined more than \$1,000. The fine criterion of AS 08.54.605(a)(1)(A) "fined more than \$1,000" has a plain meaning. It refers to the total fine imposed, not just the unsuspended portion. Legislative history for this provision does not contradict this meaning. Chase, therefore, did not meet his legal burden to establish that he is entitled to renewal of his licenses. The language from AS 08.54.605(a) "a person may not receive or renew" indicates that the agency has no discretion to renew a license if the applicant has a conviction meeting the statutory criteria. It is recommended that the commissioner deny Chase's renewal applications for a transporter license and class-A assistant guide license based upon AS 08.54.605(a)(1)(A).

DATED this 27th day of April, 2005.

By: Signed _____
David G. Stebing
Administrative Law Judge

