

**BEFORE THE ALASKA PUBLIC OFFICES COMMISSION**

ALASKA PUBLIC OFFICES COMMISSION, )  
 )  
 Complainant, )  
 )  
 v. )  
 )  
 RBG BUSH PLANES LLC, NANA )  
 KALMAKOFF, and MICHELLE RAVENMOON, )  
 )  
 Respondents. ) OAH No. 11-0328-APO  
 ) Agency No. 11-09-CD  
 \_\_\_\_\_ )

**REVISED DECISION AND ORDER AFTER RECONSIDERATION**

Respondents Nana Kalmakoff and Michelle Ravenmoon ran for seats on the Lake and Peninsula Borough Assembly in 2010. The Alaska Public Offices Commission staff alleges that RBG Bush Planes LLC (RBG) supplied transportation services to each of them to assist them in campaigning, and that RBG charged less than the legally required rate for these services. The staff alleges that the discounted services therefore constituted an in-kind contribution to the candidates. Because RBG is an entity that is prohibited from contributing to campaigns, the staff alleges that RBG, as the donor, and the candidates, as recipients of illegal contributions, are in violation of Alaska’s campaign finance laws.

The commission heard this case in a single extended hearing day on December 1, 2011. The record closed on December 7, 2011. The record for decision consists of the testimony received at the hearing, staff exhibits A-N (with pages 2 and 3 of staff exhibit L having been withdrawn), Kalmakoff exhibits KR-1 to KR-4 (revised versions of KR-3 and KR-4 having been substituted during the hearing), and RBG exhibits 1-22, together with supplemental filings by Ms. Kalmakoff and the staff on December 7, 2011. All exhibits were admitted without objection or limitation.<sup>1</sup> Ms. Kalmakoff’s supplemental filing of December 7, 2011 is admitted without objection. The staff’s supplemental filing of December 7, 2011 has been admitted over objection.<sup>2</sup>

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<sup>1</sup> In proceedings under the Administrative Procedure Act (APA), hearsay is generally admissible but is potentially subject to a limitation under AS 44.62.460(d). In this case, a party wishing to assert that limitation as to a particular item of evidence had to raise it by objection. Notice of Hearing (Oct. 28, 2011) at 2. No party asserted the limitation.

<sup>2</sup> RBG’s objection to this item is overruled for lack of standing, as the item relates solely to the regulatory status and alleged violations of a different party. The objection purportedly submitted on behalf of Ms. Ravenmoon

On December 16, 2011, the commission issued a decision and order in this matter. One respondent, Nana Kalmakoff, filed a timely petition for reconsideration pursuant to AS 44.62.540. On January 12, 2012, the commission granted reconsideration and took this matter back under advisement, affording all parties an opportunity to respond to Ms. Kalmakoff's petition. This document represents the commission's decision after further deliberation and review of the record. It corrects any errors or inadequacies in the explanation of the decision that the commission identified while the case was again under advisement, and represents a new final decision subject to AS 44.62.540 and 560.

## **I. Findings of Fact**

Alaska's Lake and Peninsula Borough is a political subdivision 400 miles in length, containing scattered communities that generally are not linked to one another by road.<sup>3</sup> Robert B. Gillam owns a home in the borough at a location called Keyes Point.

Respondent RBG Bush Planes LLC (RBG) is a limited liability company based in Anchorage.<sup>4</sup> The Robert B. Gillam Revocable Trust, a trust set up "for" Mr. Gillam, is the sole member of RBG.<sup>5</sup> Mr. Gillam controls RBG.<sup>6</sup>

RBG is a holding company, not a business concern.<sup>7</sup> Its purpose is to hold title to a number of aircraft, including two Piper Navajo Chieftains and a De Havilland Beaver that were used in connection with the trips at issue in this case.<sup>8</sup> RBG's aircraft are based at Anchorage International Airport in a hanger owned by Mr. Gillam.<sup>9</sup> When not piloted by Mr. Gillam, RBG's aircraft are piloted by salaried employees of McKinley Capital Management, LLC.<sup>10</sup> McKinley Capital is a for-profit company of which Mr. Gillam is chief executive officer. In exchange for supplying pilot services to RBG, McKinley Capital is permitted to use RBG aircraft for McKinley Capital's purposes from time to time.<sup>11</sup> Apart from this barter, RBG does

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is rejected because it was submitted by an attorney who had withdrawn as her counsel. The item has not been used in this decision to establish a violation or support sanctions against Ms. Ravenmoon, but if Ms. Ravenmoon nonetheless objects to its consideration, she may move for reconsideration.

<sup>3</sup> A map of the borough is found at Ex. K, p. 6.

<sup>4</sup> Ex. H.

<sup>5</sup> *Id.*; testimony of Mr. Gillam.

<sup>6</sup> Inference from testimony of Mr. Gillam and Mr. Jacko.

<sup>7</sup> Testimony of Mr. O'Keefe.

<sup>8</sup> Testimony of Mr. Gillam; oral stipulation.

<sup>9</sup> Testimony of Mr. Gillam.

<sup>10</sup> *Id.*

<sup>11</sup> *E.g.*, Second Affidavit of Diane Wilke, ¶ 2.

not ordinarily charge any entity or person for use of its planes or for transportation on its planes.<sup>12</sup>

George Jacko is an independent contractor employed by Robert Gillam whose job duty is to do community outreach on a controversial issue of importance to Mr. Gillam.<sup>13</sup> RBG aircraft were used to transport George Jacko around the borough to perform his community outreach duties.<sup>14</sup>

On June 24, 2010, Michelle Ravenmoon of Port Alsworth filed a letter of intent to run for the Lake and Peninsula Borough Assembly, simultaneously claiming an exemption from campaign disclosure reports on the basis that she expected to spend less than \$5000 on the campaign.<sup>15</sup> Nana Kalmakoff of Chignik Lake filed a letter of intent on August 19, 2010, likewise claiming an exemption.<sup>16</sup> This was the first campaign for public office for each of them.<sup>17</sup> Ms. Ravenmoon and Ms. Kalmakoff ran for separate seats, not against one another. The two elections were contested.<sup>18</sup>

At some time prior to September 3, 2010, Mr. Jacko approached Mr. Gillam and asked him if he could take Ms. Kalmakoff and Ms. Ravenmoon on RBG flights.<sup>19</sup> Mr. Gillam consulted with an attorney, and, based on advice from the attorney, he gave permission for the candidates to accompany Mr. Jacko on flights.<sup>20</sup> He directed a McKinley Capital employee to keep track of the fuel costs for the flights on which the candidates traveled.<sup>21</sup> He believed that fuel costs are what a noncommercial aircraft owner (one lacking a 14 C.F.R. Part 135 certificate) “can charge” to passengers.<sup>22</sup>

Ms. Kalmakoff and Ms. Ravenmoon were subsequently passengers on two itineraries in RBG aircraft, one spanning September 3-6, 2010 and one spanning September 17-18, 2010. On some legs only one of the candidates was a passenger and on others both were passengers.

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<sup>12</sup> Testimony of Mr. Gillam.

<sup>13</sup> Testimony of Mr. Jacko and Mr. Gillam.

<sup>14</sup> Testimony of Mr. Jacko.

<sup>15</sup> Ex. B.

<sup>16</sup> Ex. A.

<sup>17</sup> Testimony of Ms. Ravenmoon; Dec. 6, 2011 Affidavit of Nana Kalmakoff (Ms. Kalmakoff has previously been elected to her village council, but that election entailed no campaign).

<sup>18</sup> Testimony of David Wilder (Ms. Ravenmoon’s opponent). With respect to Ms. Kalmakoff, the commission takes official notice of this fact, which was implied but not expressly stated in hearing testimony.

<sup>19</sup> Testimony of Mr. Gillam.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

George Jacko was a passenger on all of these flights. There were no other passengers.<sup>23</sup> The candidates' purpose for traveling was to campaign or to return home after campaigning, and they did campaign at most of the locations visited.<sup>24</sup>

The flights at issue in this case were under the control of RBG.<sup>25</sup> The flights were conducted for the "purposes and benefit" of RBG.<sup>26</sup> Accordingly, any benefit conferred on the candidates was conferred solely by RBG. RBG has stipulated that "RBG . . . provided all the transportation services at issue in this case."<sup>27</sup>

Three short legs of one of the itineraries were provided in a DeHavilland DHC-2 Beaver, a six-passenger aircraft.<sup>28</sup> All other flights were provided in one of two Piper PA-31-350 Navajo Chieftains registered to RBG.<sup>29</sup> Although this twin-engine plane can be configured to carry nine passengers, RBG's Chieftains were configured to provide more comfortable accommodation for just four passengers.<sup>30</sup> While the two to three passengers on all of the flights at issue in this case could have been accommodated in smaller planes that are cheaper to operate, such as a Cessna 206, the Chieftain provides some advantages over these alternatives: it is faster, safer, and more comfortable, and it can fly through clouds.<sup>31</sup> These advantages were part of the reason that Ms. Ravenmoon, who had originally planned to fly to the southern part of the borough to campaign in her family's Cessna 185, decided to fly with RBG instead.

The commercially reasonable value of the transportation supplied to each candidate is calculated in the table below:

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<sup>23</sup> Flight logs showing who was on the planes are at Ex. 3 and 4.

<sup>24</sup> Testimony of Ms. Kalmakoff and Ms. Ravenmoon.

<sup>25</sup> Second Affidavit of Diane Wilke, ¶ 2 (Ex. 2).

<sup>26</sup> *Id.*

<sup>27</sup> Oral stipulation recorded in Commission's Ruling on Supplemental Motion for Summary Adjudication by McKinley Capital Management, LLC (Sept. 19, 2011), at 2. Because of this stipulation and the other facts found in this paragraph, later suggestions in argument that the transportation may have been a contribution by Mr. Jacko rather than by RBG cannot be entertained.

<sup>28</sup> Ex. 4, F.

<sup>29</sup> Ex. 3, 4, F.

<sup>30</sup> Testimony of Mr. Alsworth and Ms. Ravenmoon.

<sup>31</sup> Testimony of Mr. Alsworth and Ms. Ravenmoon.

<b>Date</b>	<b>From</b>	<b>To</b>	<b>Aircraft</b>	<b>Leg Value Per Cand.</b>	<b>Candidate</b>
9/3	Port Alsworth	Chignik Lagoon <sup>32</sup>	Navajo	400	Ravenmoon
9/4	Chignik Lagoon	Chignik Lake	Navajo	95	Kalmakoff <sup>33</sup>
9/4	Chignik Lake	Perryville	Navajo	60	Ravenmoon Kalmakoff
9/4	Perryville	Chignik Lake	Navajo	60	Ravenmoon Kalmakoff
9/4	Chignik Lake	Chignik Lagoon	Navajo	95	Kalmakoff
9/5	Chignik Lagoon	Chignik Lake	Navajo	95	Kalmakoff
9/5	Chignik Lake	Keyes Point (via Levelock & Nondalton)	Navajo	400	Ravenmoon Kalmakoff
9/5	Keyes Point	Nondalton	Beaver	60	Ravenmoon Kalmakoff
9/5	Nondalton	Port Alsworth	Beaver	60	Ravenmoon <sup>34</sup>
9/5	Port Alsworth	Keyes Point	Beaver	60	Kalmakoff
9/6	Keyes Point	Anchorage Int'l	Navajo	200	Kalmakoff
9/17	Chignik Lake	Port Alsworth	Navajo	400	Kalmakoff
9/17	Port Alsworth	Kokhanok	Navajo	100	Ravenmoon Kalmakoff
9/18	Chignik Lake	Chignik Lagoon	Navajo	60	Kalmakoff

Ordinary scheduled air service is effectively unavailable for an itinerary of this kind, but charter carriers sometimes have extra seats available on flights in the area. For itinerary legs that took place for Mr. Jacko's business purposes, the commission has valued the seat provided to each candidate by using the lowest market price that a commercial operator would charge for a single

<sup>32</sup> An intermediate stop in Igiugig did not benefit Ms. Ravenmoon and has been disregarded.  
<sup>33</sup> The reason for allocating this leg to Ms. Kalmakoff is discussed in the text below the table.  
<sup>34</sup> The purpose of this stop was to drop off Ms. Ravenmoon.

seat on an existing flight in a comparable aircraft covering the leg in question.<sup>35</sup> Because the underlying purpose of these flights was apparently an RBG purpose other than campaigning, the commission has not used the staff's much higher valuation for these legs, which was based on the charter value to rent an equivalent aircraft. For the short flights between Chignik Lake and Chignik Lagoon on the early September itinerary, the commission has determined that the sole purpose of these legs was to pick up or drop off Ms. Kalmakoff,<sup>36</sup> and therefore the commission determines that the commercially reasonable rate for these legs is the charter rate for an equivalent aircraft for that leg, all of which should be allocated to Ms. Kalmakoff.<sup>37</sup> (The finding that these legs were arranged to benefit Ms. Kalmakoff causes her to be allocated the value of legs on which she did not travel—legs on which the plane was repositioned for her benefit before picking her up or moved back to Mr. Jacko's overnight location after dropping her off).

A flight on September 6, 2010, transporting Mr. Jacko and Ms. Kalmakoff from Keyes Point to Anchorage, was excluded from the table in the commission's original decision but has been added on reconsideration. Ms. Kalmakoff used this flight because bad weather prevented

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<sup>35</sup> The seat fares used were based on testimony of Glen Alsworth, operator of a commercial air carrier in the region, who provided the lowest market rates for these legs that can be found in the evidence offered by the parties. Mr. Alsworth indicated that these fares might be offered to a passenger wishing to purchase an open seat on a charter flight that had previously been arranged for another customer's benefit. For the seat fare on the Keyes Point-Anchorage leg on September 6, this testimony is corroborated by Exhibit 16, pages 5-7; these invoices show the rate charged to Pebble Partnership personnel flying a similar but not identical route, and give a price within \$10 of the one quoted by Mr. Alsworth in testimony.

The commission rejects Ms. Kalmakoff's and RBG's argument on reconsideration that Mr. Alsworth's testimony should be disbelieved because his company's seat fares per mile or per hour are lower on some routes, such as Anchorage-Iliamna, than the market rate he identified for others, such as Port Alsworth-Chignik Lagoon. No respondent elicited testimony about the market for these less expensive routes, routes that may support a higher volume of traffic and be more competitive. No evidence supported the assumption implicit in this argument, which is that distance traveled is the only factor affecting the market rate for air travel from one destination to another.

The seat fare approach provided the lowest commercially reasonable result. All credible estimates of the cost of a full charter covering this itinerary were much higher. Respondent Kalmakoff's estimate at Ex. KR2, which purported to show that a charter could have been arranged for less than \$1000 per candidate, was not credible for multiple reasons including: (i) omission or misallocation of legs; (ii) allocating too much of the expense to the non-candidate passenger; (iii) failure to include the cost of bringing a charter aircraft to the pickup point; (iv) failure to account for overnighing and wait time; and (v) use of an aircraft that lacked the special capabilities that led at least one of the candidates to choose RBG.

<sup>36</sup> In making this finding the commission relies on testimony of Ms. Ravenmoon; to the extent that Mr. Jacko testified that he had an independent purpose to visit Chignik Lake on these occasions, his testimony was not credible.

Ms. Kalmakoff argues that the Sept. 4 flight to Chignik Lake should be allocated to Ms. Ravenmoon and Mr. Jacko rather than to her because Chignik Lake was on the way from Chignik Lagoon to Perryville. The commission is unpersuaded, noting that the stop in Chignik Lake required a detour and an extra landing and takeoff.

<sup>37</sup> The commission notes that Ms. Kalmakoff could have arranged her own transportation (by skiff or plane) to meet the RBG aircraft at Chignik Lagoon. The charter rate used was the lowest rate supported by testimony for a comparable aircraft, \$950 per hour (testimony of Mr. Alsworth).

her from returning home directly; she flew to Anchorage, spent the night, and continued to her home via a commercial carrier.<sup>38</sup> The commission finds that the cost of returning to the origin after a series of campaign visits is campaign-related travel. This finding is consistent with Ms. Kalmakoff's decision to use campaign funds for all portions of this travel for which she paid (fuel on the flight to Anchorage, hotel in Anchorage, and the \$878.39 commercial airfare from Anchorage to her home).<sup>39</sup>

The lowest commercially reasonable value of the transportation provided to Ms. Kalmakoff was \$1685. The lowest commercially reasonable value of the transportation provided to Ms. Ravenmoon was \$1140.

Mr. Gillam instructed that the candidates be billed solely for fuel costs.<sup>40</sup> For the September 3-6 itinerary, RBG billed each candidate for one quarter of the fuel used on the whole itinerary, without breaking the trip down further according to whether one candidate, the other candidate, or both of them were on any particular flight.<sup>41</sup> Half of the fuel cost was deemed to be attributable to Mr. Jacko and was not billed.<sup>42</sup> For the September 17-18 itinerary, RBG intended to attribute half of the fuel cost to Mr. Jacko as it had before, but due to an error the candidates paid for all fuel used, with Ms. Kalmakoff paying nearly all of that amount because she did the bulk of the traveling on that itinerary.<sup>43</sup>

For air transportation in September of 2010, Michelle Ravenmoon paid RBG a total of \$351.55.<sup>44</sup> The lowest normal charge in the market for the transportation she received exceeded this amount by \$788.45. For air transportation in September of 2010, Nana Kalmakoff paid RBG a total of \$1184.60.<sup>45</sup> The lowest normal charge in the market for the transportation she received exceeded this amount by \$500.40.

## **II. Whether the Transportation Constituted an In-Kind Contribution**

A commission regulation, 2 AAC 50.250(c), provides that if services are provided "at a charge that is less than the normal charge . . . in the market," and the lower rate is not offered to all campaigns, then there is a contribution consisting of the "difference between the normal charge . . . and the amount charged." Conversely, 2 AAC 50.250(a)(3)(G) establishes that no

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<sup>38</sup> Testimony of Ms. Kalmakoff and Mr. Jacko.

<sup>39</sup> Testimony of Ms. Kalmakoff; Ex. I p. 1; Ex. E.

<sup>40</sup> Testimony of Mr. Gillam.

<sup>41</sup> Ex. 1.

<sup>42</sup> *Id.*; Testimony of Mr. Gillam.

<sup>43</sup> Ex. 1.

<sup>44</sup> Ex. 1.

contribution occurs if a service is rendered to a candidate for payment “at a commercially reasonable rate within a commercially reasonable time,” or if the service is offered at the same rate to all candidates for a particular office. Since RBG did not offer transportation to other campaigns, if the partial fuel reimbursement RBG obtained from Ms. Ravenmoon and Ms. Kalmakoff was less than the “normal charge . . . in the market” and the “commercially reasonable rate” for the transportation they received, a contribution occurred.

RBG argues that in addition to market rates, the commission has, in the past, indicated that air transportation will not be deemed a contribution if the candidate determines the “actual costs and reimburses those costs.” RBG is relying on the commission’s 2006 advisory opinion to Linda Perez, Opinion Number AO 06-03-CD.

The Perez advisory opinion addressed the use of state-owned aircraft in the context of the prohibition against the use of state assets for campaign activity. It dealt with the governor’s use of his state-assigned plane to travel around the state for a combination of official and campaign purposes. To avoid an impermissible contribution by the state to the campaign, the opinion found that the cost of the campaign-related travel must be reimbursed at a commercially reasonable rate. The opinion went on to hold:

[W]e provide the following method as commercially reasonable: an unrestricted, nondiscounted first class fare for any traveler who participates in the secondary or collateral campaign activity. If first class commercial travel is unavailable, payment should be at the fare for unrestricted, nondiscounted coach commercial travel. Charter rates for a comparable aircraft would be appropriate if commercial travel is unavailable to the particular destination. We do not preclude other methods, however, and leave the option open to the campaign and affected state agency to propose a rate for reimbursement that can be defended as commercially reasonable.

Elsewhere in the opinion, the commission suggested that another way to arrive at a commercially reasonable rate in the context before it (that is, avoiding use of state assets for a campaign) “*might be to determine the state’s actual costs and reimburse those costs*” (italics added). The opinion noted the importance of making it practical for the governor to travel in this manner because of “the need for the Governor to be available at all times to conduct the public’s business.”

The context of this case is different, but the Perez opinion provides considerable guidance. On flights arranged for a non-campaign purpose—that is, for flights that would occur anyway even if a person were not traveling to a campaign event—the opinion permits the market

value of air travel to be fixed by comparing the price at which a seat of comparable comfort would be sold in the commercial market. The methodology approved in the opinion does not ordinarily require the candidate to pay the cost of chartering the entire aircraft if seat fares are available. In the present case, there was credible evidence of the market value of single seats on comparable aircraft, and the commission has used those values in its factual findings above (with the exception of three short legs on which the evidence showed that the entire aircraft was repositioned for the convenience of a candidate; in that circumstance the full charter rate has been used).

In the particular context it was addressing, the Perez opinion mentioned that reimbursement of actual costs “might” be an alternative method of valuation. The commission is not convinced that in the present context a reimbursement of the cost of the flight, as opposed to its market value, would ever suffice as a method to determine “the normal charge . . . in the market.” A cost-based valuation might be appropriate for a governor’s journey on state aircraft, which might be so unique that no true market would exist for comparable travel, but this method seems less apt for a candidate choosing to fly from place to place in a company plane for the candidate’s own convenience, in an area where market rates for seat fares can be ascertained. In any event, a transporter or candidate wishing to establish a different method to set market value would need to lay the factual predicate for that alternative method; the Perez opinion made it clear that, to use a cost method, the candidate would have to “determine the state’s actual costs.” RBG and the two candidates did not provide the basis for that kind of alternative valuation in this case.

In this case, RBG has supplied evidence of what the fuel cost for the flights taken, and asks the commission to accept that fuel is the only true cost of a flight because all other costs of owning and operating an aircraft are fixed (RBG contends that its pilot costs were fixed because it purchased pilot services in bulk through the barter with McKinley Capital, and its witnesses claimed, somewhat counterintuitively, that flying an aircraft does not add appreciably to wear and tear or maintenance costs<sup>46</sup>). Nothing in the Perez opinion, however, suggested that only variable costs should be considered in “determin[ing] the . . . actual costs” if a cost-based

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<sup>46</sup> Testimony of Mr. Gillam and Mr. O’Keefe. The commission makes no finding on this issue.

valuation is used. RBG's assumption that it could restrict the analysis to variable costs is its own invention.<sup>47</sup>

Through a witness with no demonstrated expertise in air travel, respondent Kalmakoff presented a cost compilation designated Exhibit KR4 that did purport to account for both fixed and variable costs. This compilation was not usable, however. Among its deficiencies were the following. For flights used by Jacko, Ravenmoon, and Kalmakoff together, it allocated only one quarter of the purported costs to each candidate, even though each candidate represented one third of the passenger count on the plane. It failed to account for the fact that some legs were taken solely for Ms. Kalmakoff's benefit, and omitted several flights from Ms. Kalmakoff's total that ought to have been designated as campaign-related flights for her.<sup>48</sup> It dramatically understated pilot cost, omitting all wait time and all of the cost of overnighting the pilots, resulting in the fiction that six days of flying or standing by, primarily in a twin-engine aircraft, could be accomplished at a pilot cost of only \$395 (of which it charged only \$91.25 to Ms. Kalmakoff).<sup>49</sup> As a cost compilation, therefore, Exhibit KR4 was not credible.<sup>50</sup>

Since the respondents did not assemble or provide a credible cost-based valuation taking all costs into account, their argument that a cost-based valuation ought to be considered is moot. The seat fares and charter rates used in making the findings in Part I remain the only basis on which to calculate "the normal charge . . . in the market" for the transportation RBG provided to the candidates. Because the normal charge is higher than the amount the candidates paid for the travel, a contribution occurred.

### **III. Violations and Remedy**

#### **A. *RBG Bush Planes LLC***

RBG Bush Planes LLC is a company. Alaska Statute 15.13.074(f) provides that a company "that does not satisfy the definition of group or nongroup entity . . . may not make a contribution to a candidate." It has not been contested in this case that RBG is unable to meet

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<sup>47</sup> Nothing in the Perez opinion could have led a reasonable reader to believe that the commission had authorized the valuation of plane flights by reference to fuel cost alone. RBG's contention that there was uncertainty of the kind discussed in *APOC v. Stevens*, 205 P.3d 321 (Alaska 2009), is unfounded.

<sup>48</sup> Compare Ex. KR4 to the table on pp. 4-5 of this decision.

<sup>49</sup> It is important to note that the pilots' services were not free. RBG purchased them through a barter in which it gave something of substantial value to McKinley Capital: the unlimited use of a number of aircraft. McKinley Capital in turn paid the pilots approximately \$480 per day in salary and benefits, exclusive of reimbursement for food and lodging on multiday trips. See Ex. 2 (calculation from figures in ¶¶ 3-4:  $(\$971 \div 16.2) \times 8 =$  daily salary and benefits).

<sup>50</sup> It is clear that if the errors in the compilation were corrected, it would yield a much higher cost for the trip than the commercially reasonable value the commission has determined by other means.

the definition of group or nongroup entity,<sup>51</sup> and thus any contribution RBG makes to a candidate is an illegal contribution.

RBG made in-kind contributions to two candidates no later than October 25, 2010, when it submitted its final invoices to the candidates and charged each of them substantially less than the normal charge in the market for the transportation services it provided.<sup>52</sup> This contribution remained unreimbursed until the filing of the complaint in this matter on July 7, 2011. With respect to each candidate, the number of days of violation is at least 255. Alaska Statute 15.13.390 authorizes a civil penalty of up to \$50 per day for each violation. Viewing the in-kind contribution to each candidate in this case as a single violation,<sup>53</sup> the maximum civil penalty for the two violations together is 510 x \$50, or \$25,500.

At the time the violations occurred, the commission had adopted mitigation criteria as general guidelines to assist it in setting a civil penalty. The commission has more recently adopted its mitigation criteria (in different form) as regulations, giving them the force of law, but those regulations are too recent to be applicable to the matters at issue in this case.<sup>54</sup> The criteria relevant to this case were entitled Mitigation Criteria (All Laws), as revised in September 2010. The September 2010 guidelines applied to all types of violations. The criteria were not an exhaustive list of all considerations that might be relevant in a particular situation; the commission retains discretion to evaluate the special circumstances before it.<sup>55</sup>

As a general matter, the 2010 guidelines indicate that the commission will consider a respondent's length of experience and filing history. In this connection, the commission is troubled by the fact that RBG's principal, Robert Gillam, is not a stranger to the commission. Prior allegations of campaign disclosure violations by Mr. Gillam and entities associated with him were settled only last year for a payment of \$100,000.<sup>56</sup> Mr. Gillam must be considered a

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<sup>51</sup> Briefly, it is not a combination of two or more individuals organized for the principal purpose of influencing the outcome of an election, and thus cannot be a group (AS 15.13.400(8)), and it is not prohibited from participating in business activities and thus cannot be a nongroup entity (AS 15.13.400(13)(A)).

<sup>52</sup> Ex. I.

<sup>53</sup> Because the transportation occurred over a span of only 15 days and could reasonably be billed as a unit, the commission declines to view each flight segment as a separate in-kind contribution and a separate violation.

<sup>54</sup> See 2 AAC 50.855-865 (effective Dec. 22, 2011).

<sup>55</sup> The commission would take some guidance from prior adjudicated decisions or, to a lesser extent, from recent settlements, if any existed that applied a penalty to similar conduct. However, no party in this case has identified any prior decisions analogous to the present case. In particular, the two rulings identified by respondents, *Holman v. Wilder*, No. 10-15-POFD, and *Holman v. Alsworth*, No. 10-14-POFD, are not comparable. In both of those cases, the commission ultimately found no violation at all, and hence there was no basis to impose any penalty.

<sup>56</sup> Consent Decree Between the Alaska Public Offices Commission and Renewable Resources Coalition, Alaskans for Clean Water, and Robert B. Gillam, APOC Case No. 09-01-CD (approved March 14, 2010).

sophisticated participant in the campaign process, and that sophistication can be imputed to his holding company. The remainder of the mitigation criteria are largely directed toward reporting and filing requirements, somewhat distinct from RBG’s violation of a prohibition against making a contribution at all, and none of the criteria apply.<sup>57</sup>

RBG is an entity with substantial assets and with sophisticated management. The conduct it engaged—giving certain candidates access to heavily subsidized transportation around a large district—has great potential to alter the outcome of elections to the detriment of candidates not so favored, and to undermine the public’s confidence in the fairness of elections. RBG and its counsel could have, but chose not to, obtain an advisory opinion from the commission before embarking on conduct that they appear to have recognized as questionable.<sup>58</sup> Moreover, when it engaged in a questionable practice without adequately exploring its legality, RBG embroiled two unsophisticated candidates in its wrongdoing.

After weighing these considerations, the commission finds no basis in the 2010 mitigation criteria or in the particular circumstances of this case to mitigate the civil penalties against RBG. The commission finds that a strong deterrent fine is necessary to prevent future violations with great potential to harm the electoral process, and assesses a civil penalty of \$25,500 for the two violations.

In addition to the per-day civil penalty, the commission is authorized to assess the commission’s costs of investigation and adjudication, as well as reasonable attorney fees.<sup>59</sup> In its staff report in this case (which functions as the Administrative Procedure Act accusation defining the matters in contest), the staff promised that these additional items “will be calculated and presented at hearing.”<sup>60</sup> The figures were not presented, and comprehensive figures would

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<sup>57</sup> RBG does not qualify for criterion II-4 (“No significant harm to the public AND no aggravating factors”) because the dollar amount of the violation exceeds the de minimis threshold and the violation was not self-reported, therefore failing to meet the two potentially relevant prongs of the definition of “no significant harm to the public.” RBG does not qualify for criteria II-1, 2, 3, or 5 because those criteria, even if the factual basis were present, are addressed only to informational violations. RBG does not qualify for partial mitigation criteria III-1 and 3 because they are addressed to reporting violations. RBG does not qualify for criterion III-2 because its principal is experienced with APOC requirements. RBG does not qualify for criteria III-4 or 5 because the violation exceeds the de minimis and marginal thresholds. RBG does not qualify for criterion III-6 because this was not a new law. RBG does not qualify for criteria II-6 or III-7 because the circumstances are not unique.

<sup>58</sup> Mr. Gillam, and perhaps his counsel, seem to have believed that federal regulations in 14 C.F.R. Part 91 prohibited charging the candidates more than fuel cost. This is mistaken; candidates may be assessed whatever charge is required by “applicable state or local law.” 14 C.F.R. § 91.321(a)(3). In any event, if federal law had prevented RBG from transporting the candidates in compliance with Alaska law, the correct solution would have been not to transport the candidates at all.

<sup>59</sup> AS 15.13.390(b)(2) and (3).

<sup>60</sup> Staff Report (Aug. 5, 2011) at 7.

not, in any event, have been available before the hearing ended. At the invitation of the commission, the staff filed post-hearing motions for costs and fees. The commission will act on those motions by separate order.

***B. Ms. Kalmakoff***

Alaska Statute 15.13.072(a) makes it unlawful for an announced candidate to “accept a contribution from a person not authorized by law to make a contribution.” Alaska Statute 15.14.114(a) requires a candidate who receives an illegal contribution, immediately upon discovering that the contribution was illegal, to return it to the contributor. The commission staff alleges a violation of the latter provision.

As established above, the unbilled portion of the market value of the transportation that RBG supplied to Ms. Kalmakoff was a contribution, and it was illegal. Ms. Kalmakoff accepted valuable transportation without determining the market value of that transportation, and she left a portion of the value unreimbursed. This put Ms. Kalmakoff in violation of AS 15.14.114(a). The maximum civil penalty for her violations together is 255 days times \$50, or \$12,750.

Unlike RBG, Ms. Kalmakoff qualifies for reduction of the penalty under the commission’s 2010 mitigation criteria. She does not qualify for any of the criteria for complete waiver of the penalty,<sup>61</sup> but her status as a first-time candidate qualifies her for the “inexperienced filer” criterion for up to 50 percent reduction of the penalty. Moreover, the commission believes a substantial penalty against a wholly inexperienced borough assembly candidate in the circumstances of this case could have an undesirable chilling effect on the willingness of citizens to run for an office of this kind. The public interest is better served by ensuring that such a candidate is educated sufficiently to avoid future violations. Accordingly, Ms. Kalmakoff’s penalty will be set at \$6,700, all of which will be suspended for a period of six months and discharged on condition that she (1) completes an Alaska Public Office Commission training course on campaign financing and disclosure within six months of the date of this order and (2) pays \$500.40 to RBG Bush Planes LLC as provided in this order.

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<sup>61</sup> She does not qualify for criterion II-4 (“No significant harm . . . AND no aggravating factors”) because the dollar amount of the violation exceeds the de minimis threshold and the violation was not self-reported, therefore failing to meet the two potentially relevant prongs of the definition of “no significant harm to the public.” She does not qualify for criteria II-1, 2, 3, or 5 because those criteria, even if the factual basis were present, are addressed only to informational violations. She does not qualify for criterion II-6 because the circumstances are not unique.

**C. Ms. Ravenmoon**

As in the case of Ms. Kalmakoff, Ms. Ravenmoon received and is presently holding an illegal contribution equal to the unbilled portion of the market value of the transportation that RBG supplied to her. Ms. Ravenmoon accepted valuable transportation without determining the market value of that transportation, and she left a portion of the value unreimbursed, placing her in violation of AS 15.14.114(a). As with Ms. Kalmakoff, her status as an inexperienced filer and the particular circumstances of this case make it appropriate to suspend her penalty on condition that she rectifies the violations and obtains appropriate education. Accordingly, Ms. Ravenmoon's penalty will be set at \$6,700, all of which will be suspended for a period of six months and discharged on condition that she (1) completes an Alaska Public Office Commission training course on campaign financing and disclosure within six months of the date of this order and (2) pays \$788.45 to RBG Bush Planes LLC as provided in this order; and (3) complies with the remedial reporting set out in the next paragraph.

The determination that Ms. Ravenmoon received an illegal \$788.45 contribution from RBG causes her total contributions from the campaign to exceed \$5000.<sup>62</sup> As has been noted previously, Ms. Ravenmoon claimed a reporting exemption during this campaign on the basis that she would not raise or spend more than \$5000.<sup>63</sup> Pursuant to 2 AAC 50.286, a candidate

loses the reporting exemption if the candidate accepts more than \$5,000 in contributions . . . . A candidate whose exemption is lost shall immediately register the change of status and, in accordance with AS 15.13.110, disclose campaign contribution and expenditure activity when the next campaign disclosure report is due following the change of status.

Accordingly, Ms. Ravenmoon must immediately register her change of status and must file any reports that would have been due had the contribution been recognized.

**IV. Order**

A. Within 20 days of the date of this order, candidates Ravenmoon and Kalmakoff shall repay RBG Bush Planes LLC as set forth above.

B. Within 20 days of the date of this order, candidate Ravenmoon shall amend her registration and file any required reports as set forth above.

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<sup>62</sup> Staff's Supplemental Filing (Dec. 7, 2011). The contribution total appears to be \$5,338.45.

<sup>63</sup> Ex. B at 2.

C. Candidate Kalmakoff is assessed a civil penalty of \$6,700. The penalty is suspended for a period of six months. The obligation to pay the penalty shall be discharged if Ms. Kalmakoff complies with paragraph A above and completes an Alaska Public Office Commission training course on campaign disclosure within six months of the date of this order.

D. Candidate Ravenmoon is assessed a civil penalty of \$6,700. The penalty is suspended for a period of six months. The obligation to pay the penalty shall be discharged if Ms. Ravenmoon complies with paragraphs A and B above and completes an Alaska Public Office Commission training course on campaign disclosure within six months of the date of this order.

E. Within 90 days of the date of this order, RBG Bush Planes LLC shall pay a civil penalty of \$25,500, together with any award of investigation costs, adjudication costs, and attorney fees that may be determined according to the procedure below.

F. In addition to the civil penalty assessed in E, the commission will evaluate the pending motions for an award of investigation costs, adjudication costs, and attorney fees against respondent RBG Bush Planes LLC, and will enter any such awards by separate order.

G. Pursuant to AS 44.62.520(a)(2), this Decision and Order shall be effective immediately.

All members of the commission concur in this Decision and Order.

DATED this 8<sup>th</sup> day of February, 2012.

BY ORDER OF THE COMMISSION

By: Signed  
Christopher Kennedy  
Administrative Law Judge

## NOTICE

A party may request reconsideration of the decision by filing a petition under AS 44.62.540 within 15 days after delivery or mailing of the decision. Send the petition requesting reconsideration to the following address:

Office of Administrative Hearings  
550 W. 7<sup>th</sup> Ave Ste 1600  
Anchorage, AK 99501

At the same time, send a copy of the petition to the opposing parties' legal counsel, or to the opposing party if not represented by counsel.

Judicial review of the commission's decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with Alaska Rule of Appellate Procedure 602(a)(2) within 30 days after the decision is mailed or otherwise distributed.

## Certificate of Service

The undersigned certifies that on February 8, 2012, this order was distributed by **e-mail attachment and by certified mail** to the following: Timothy McKeever and Scott Kendall, counsel for respondent RBG; John Ptacin, Assistant Attorney General, counsel for the APOC staff; William Ingaldson and Peter Maasen, counsel for respondent Kalmakoff; and respondent Ravenmoon. Courtesy copies of this order were provided by e-mail attachment to Paul Dauphinais, APOC Executive Director, Elizabeth Hickerson, APOC Chair, and William Milks, APOC counsel.

*Signed* \_\_\_\_\_  
Jessica Ezzell

[This document has been modified to conform to the technical standards for publication.]