

In *Dupere*, Robert Dupere had performed services for the Legislative Council, and sought payment for those services.⁴ The court distinguished this situation from a prior case, *State v. Haley*,⁵ in which a legislative research assistant sued the Legislative Council and other defendants for wrongful discharge. Haley did not have a claim for services given to the state, so her claim did not fall under the language of AS 44.77.010.⁶

The same rule would apply here. If ARC's claim is a type of claim that may be brought under AS 36.30.560 – 36.30.695, then ARC must follow the administrative procedure set out in those statutes. If the claim may not be brought under any of those statutory provisions, then ARC may file its claim directly in state court.

Alaska Statutes 36.30.560 – 695 provide for administrative review of three types of contract disputes.⁷ The Department asserts that ARC's claim is made pursuant to AS 36.30.620.⁸ As such, it must first be presented to the procurement officer for a decision before any hearing and final decision by the commissioner.⁹ An administrative hearing may only occur after the procurement officer has made a decision.¹⁰

ARC, however, asserts that this is not a claim that fits within AS 36.30.620. According to ARC, AS 36.30.620 only applies to claims for a contract adjustment, which ARC believes means any claim that the amount paid to the contractor should be different than what is provided for in the contract.¹¹ ARC says it is not seeking an adjustment in the contract amount. Instead, it is seeking damages for breach of contract due to the Department's allegedly wrongful termination of ARC's contract.¹² ARC is not seeking an adjustment in the amount it should be paid for services already provided. It is instead seeking damages for having been wrongfully prevented from providing future services.

Under either party's view, this appeal must be dismissed. If this claim fits within AS 36.30.620, then state law specifically requires that the claim be submitted to the procurement officer first.¹³ If

⁴ *State v. Dupere*, 709 P.2d at 494.

⁵ 687 P.2d 305 (Alaska 1984).

⁶ *State v. Dupere*, 709 P.2d at 496.

⁷ Bid or solicitation protests (AS 36.30.560), contract claims (AS 36.30.620), and decisions to debar or suspend a contractor (AS 36.30.650).

⁸ Motion to Dismiss at 1.

⁹ AS 36.30.620(a).

¹⁰ AS 36.30.625.

¹¹ Opposition at 4.

¹² Opposition at 5.

¹³ AS 36.30.620(a).

ARC is dissatisfied with the procurement officer's determination, then it may file an appeal with the commissioner.¹⁴

In the alternative, if ARC's claims may not be brought under AS 36.30.560 – AS 36.30.695, then there is no basis for any administrative appeal.¹⁵ ARC's breach of contract claim would instead be brought against the state in state court.¹⁶ Regardless of which party has correctly analyzed the nature of ARC's claims, those claims must be dismissed at this time. As stated by the Department, that dismissal should be without prejudice.¹⁷

III. CONCLUSION

For the reasons discussed above, this matter is not properly before the Office of Administrative Hearings at this time. Accordingly, this matter is DISMISSED without prejudice.

DATED this 29th day of June, 2011.

By: Signed
Jeffrey A. Friedman
Administrative Law Judge

ADOPTION

This Order is issued under the authority of AS 43.05.010 and AS 44.17.010. The undersigned, on behalf of the Commissioner of Administration and in accordance with AS 44.64.060, adopts this Decision and Order as the final administrative determination in this matter.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 14th day of July, 2011.

By: Signed
Signature
Becky Hultberg
Name
Commissioner
Title

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

¹⁴ AS 36.30.625.

¹⁵ There may also be no basis for referral to the Office of Administrative Hearings. See AS 44.64.030(a)(22) & (b) (describing OAH mandatory and discretionary jurisdiction.)

¹⁶ AS 09.50.250.

¹⁷ No ruling is made as to whether this claim does fall within AS 36.30.620.