

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS
ON REFERRAL BY THE COMMISSIONER OF REVENUE**

IN THE MATTER OF)
)
 Y. S.)
) Case No. OAH 04-0159-PFD
) Previous Case No. 040761
)
2004 Permanent Fund Dividend)

DECISION & ORDER

I. Introduction

Y. S. timely applied for a 2004 permanent fund dividend. The Permanent Fund Dividend Division determined that Mr. S. was not eligible, and it denied the application initially and at the informal appeal level. Mr. S. requested a formal hearing. Administrative Law Judge Dale Whitney heard the appeal on February 22, 2005. Mr. S. appeared by telephone; Susan Lutz represented the PFD Division by telephone. The administrative law judge affirms the division's decision.

II. Facts

During the qualifying year and the application period for a 2004 dividend, Mr. S. was a student attending school in California. On March 1, 2004, Mr. S. registered to vote in the State of California. Later that same day, Mr. S. signed his 2004 PFD application. On July 29, 2004, Mr. S. sent a letter to a county clerk's office in California relinquishing his right to vote in California, and also on that day he mailed an Alaska voter registration application to an Alaska elections office.

III. Discussion

The law governing this case is 15 AAC 143(d), which reads,

An individual is not eligible for a dividend if, any time from January 1 of the qualifying year through the date of application, the individual has

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(12) registered to vote in another state or country, except if the individual

(A) registered to vote in another state within 30 days of a presidential election solely for the purpose of voting in that election and voted in no other election in another state than that for president of the United States; or

(B) registered to vote in another country for which the individual was not required to claim residency of the country in order to register to vote;

In his informal hearing request, Mr. S. described the circumstances under which he registered to vote in California:

Please let me explain my situation. I registered to vote during voter registration week at my school (University of Southern California) in March 2004 on the way to class. Before I even touched the California voter registration form, I asked the student worker at the booth if I would still be an Alaskan resident if I registered to vote in California. She informed me that this would not change my residency, but because I filled out that form, my PFD is being taken away from me. I explained to the person who registered me about Alaska's PFD program, and since her organization gets paid if I register, she ignorantly told me this: "Since this does not change your residency, you will still be eligible for your PFD." She was wrong. I was lied to by the ignorant student working at the voter registration booth. I specifically asked her if this would interfere with my AK residency and PFD eligibility-SHE SAID NO! Had she told me the truth, I would never have registered to vote in the first place. When I registered to vote in CA, little did I know that it would cost me my PFD. I thought of it as nothing.

At the formal hearing, Mr. S.'s argument was essentially unchanged from his position at the informal conference:

I was born and raised in Alaska, and I have served the community for all 21 years of my life. I am an Alaskan resident now, and will continue to be an Alaskan resident indefinitely. AK is my home state and I plan to return to my home after I graduate from USC in Dec 2004. I have served the great state of Alaska for over 21 years now. It is wrong that the state is not giving me my PFD which I deserve as an active member of Alaska's community just because someone lied to me as I was signing a CA registration form. If this was my fault, I would accept the consequences of my actions, but I am innocent of whatever the state of AK is accusing I did wrong.

I have NEVER been denied a PFD in my entire life until this year, and the state's reason for denying me is not warranted. AS AN ALASKAN RESIDENT, I think it is wrong that I even have to pay to submit my appeal. I wish that I did not have to write this letter in the first place.

Mr. S. explained at the hearing that because he had just turned eighteen when he registered, he was unfamiliar with voting laws and the significance of registering to vote. He pointed out that he had reversed his action by later registering to vote in Alaska, and advanced the position that because he did not actually vote in California, there was "no harm done."

The law disqualifying an applicant who has registered to vote in another state, 15 AAC 23.143(d)(12) is an absolute rule. It clearly states that a person is not eligible for a dividend if he registers to vote in another state between the beginning of the qualifying year and the date of application. The law does not permit the division to weigh this fact against other facts to determine whether a person is an Alaska resident and should therefore qualify for a dividend in spite of having registered to vote in another state. It is possible that this regulation could exclude from PFD eligibility applicants who would otherwise qualify under the statutory eligibility criteria. The Alaska Supreme Court has upheld the authority of the Department of Revenue to implement such

regulations in order to streamline the PFD program and ease the administrative burdens of determining eligibility.¹ In this case, the regulation simply requires the division to ask whether the applicant registered to vote in another state during the specified time period. If the applicant has done so, the division must deny the application without further inquiry into the applicant's background and status as a resident. The regulation affords the division no choice.

Mr. S. argues that the law should be waived or overlooked because he was given erroneous legal advice from a student worker in a booth in California. While the young woman in the booth was probably not qualified to dispense legal advice regarding Alaska law, this does not provide a basis for not complying with the law. An applicant who relies on the advice of third parties does so at his peril. There is no evidence that the division has provided false or incomplete information regarding the law.²

IV. Conclusion

Mr. S. registered to vote in another state during the period between the beginning of the qualifying year and the date of application. While he may still be an Alaska resident, he is ineligible for a 2004 permanent fund dividend.

V. Order

IT IS HEREBY ORDERED that the decision of the Permanent Fund Dividend Division to deny the application of Y. S. for a 2004 permanent fund dividend be AFFIRMED.

DATED this 29th day of July, 2005.

By: Signed _____
DALE WHITNEY
Administrative Law Judge

¹ *Church v. State of Alaska*, 973 P.2d 1125 (Alaska 1999).

² The division publishes a two-page Student Guide, available online at <http://www.pfd.state.ak.us/Index.aspx>, that states: "You should register to vote in Alaska and vote absentee. If you aren't registered to vote, you can register by mail. **Beware of voter registration drives held on campus.** If you register to vote in another state, you terminate your residency in Alaska and will lose your dividend."

Adoption

This Order is issued under the authority of AS 43.05.010 and AS 44.17.010. I, Dale Whitney, Administrative Law Judge, on behalf of the Commissioner of Revenue, order that this decision and order relating to the eligibility of Y. S. for a 2004 permanent fund dividend be adopted and entered in his file as the final administrative determination in this appeal.

Reconsideration of this decision may be obtained by filing a written motion for reconsideration within 10 days after the date of this decision, pursuant to 15 AAC 05.035(a). The motion must state specific grounds for relief, and, if mailed, should be addressed to: Commissioner's Office Appeals (Reconsideration), Alaska Department of Revenue, P.O. Box 110400, Juneau, Alaska 99811-0400.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with AS 25.27.210 within 30 days of the date of this decision.

DATED this 29 day of July, 2005

By: *Signed* _____
DALE WHITNEY
Administrative Law Judge

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