

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

IN THE MATTER OF  
M.J.A.

2004 Permanent Fund Dividend

Case No. OAH 05-0026-PFD

**DECISION & ORDER**

**I. Introduction**

M.J.A timely applied for a 2004 permanent fund dividend. The Permanent Fund Dividend Division determined that Mr. J.A. was not eligible, and it denied the application initially and at the informal appeal level. Mr. J.A. requested a formal hearing. Administrative Law Judge Dale Whitney heard the appeal on February 23, 2005. Mr. J.A. appeared by telephone. Susan Lutz also appeared by telephone on behalf of the PFD Division. The administrative law judge affirms the division's decision.

**II. Facts**

The facts in this case are not in dispute. Mr. J.A. registered to vote in the State of Washington on February 7, 2004, and he participated in the Washington Democratic Caucus on the same day. Mr. J.A. filed his application using an online application form on March 18,2004.

**III. Discussion**

The issue in this case concerns the correct interpretation of the following regulation:

An individual is not eligible for a dividend if, at any time from January 1 of the qualifying year through the date of application, the individual has...registered to vote in another state or country, except if the individual... registered to vote in another state within 30 days of a presidential election solely for the purpose of voting in that election....<sup>1</sup>

Mr. J.A. argues that for purposes of this regulation, a "presidential election" includes a party caucus or a primary election to nominate a candidate for president. Mr. J.A. notes that the regulation speaks of a person who votes in *a* presidential election, not *the* presidential election, and he argues that the regulation implicitly recognizes that there is more than one kind of event that would qualify as a presidential election.

<sup>1</sup> 15 AAC23.143(d)(12).

The construction of words and phrases is guided by AS 01.10.040(a):

Words and phrases shall be construed according to the rules of grammar and according to their common and approved usage. Technical words and phrases and those which have acquired a peculiar and appropriate meaning, whether by legislative definition or otherwise, shall be construed according to the peculiar and appropriate meaning.

No Alaska statute defines "presidential election." While it is true that the United States Constitution provides for the system of elections under the Electoral College, many people commonly understand the presidential election to be the November general election. The limit on the number of electors who may participate in the Electoral College makes it clear that a regulation implemented for practical usage would probably not be intended to refer to the Electoral College.

Webster's does not define the phrase "presidential election," but the definition of "Election Day" shows the extent to which the general national election is ingrained in common usage:

A day legally established for the election of public officials; *esp* : the first Tuesday after the first Monday in November in an even year designated for national elections in the U.S. and observed as a legal holiday in many states.<sup>3</sup>

Mr. J.A. argues that "presidential election" is also a commonly approved term for a primary election or party caucus to field candidates for a presidential election. The proposition that "presidential election" and "caucus" or "presidential primary" have distinct meanings is supported by the context of the regulation. A vote for president is a vote for an official who will govern all states. There is nothing inconsistent with Alaska residency in voting for president from another state. But in primaries and caucuses, a determination is made of the preference of the members of a party from that state. The Democrat or Republican voters in Washington may have very different interests to consider in their choice of a candidate than Alaskan voters in the same party. Voters in the same political parties routinely nominate different candidates for president, expressing the distinct interests and cultures of their states.

In 2004, Mr. J.A. did not register to vote in Washington for the sole purpose of voting in a presidential election. He registered so he could participate in that state's Democratic caucus. By participating in the caucus, he stood with other Democratic residents of Washington in selecting a candidate whom the party members in that state believed would best represent Washington's interests. Washington and Alaska Democrats may have, coincidentally, selected the same candidate that year to run in the presidential election, but Mr. J.A. was

<sup>3</sup> MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 400, (11<sup>th</sup> ed. 2004).  
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participating in an activity in which Washington voters expressed the desires and concerns of that state, not an election in which individual voters express their preferences for national leadership.

#### **IV. Conclusion**

Mr. J.A. registered to vote in the State of Washington between the beginning of the qualifying year and the date of his application. He did not register to vote within 30 days of a presidential election for the purpose of voting in that election. Mr. J.A. is not eligible 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 M.J.A. for a 2004 permanent fund dividend be AFFIRMED.

DATED this 26th day of August, 2005.

By: DALE WHITNEY  
Administrative Law Judge

#### **Adoption**

This Order is issued under the authority of AS 43.05.010 and AS 44.17.010.1, Dale Whitney, Administrative Law Judge, on behalf of the Commissioner of Revenue, order that this decision and order relating to the eligibility of M.J.A. 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 A A C 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 26th day of August, 2005.

The undersigned certifies that this date an exact copy of the foregoing was provided to the following individuals:

By: DALE WHITNEY  
Administrative Law Judge

PFD Division  
8/26/05