

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

IN THE MATTER OF)
)
 B. C.)
)
) Case No. OAH 05-0901-PFD
2005 Permanent Fund Dividend)

DECISION & ORDER

I. Introduction

B. C. timely applied for a 2005 permanent fund dividend. The Permanent Fund Dividend Division determined that Ms. C. was not eligible, and it denied the application initially and at the informal appeal level. Ms. C. requested a formal hearing. Administrative Law Judge Dale Whitney heard the appeal on January 10, 2006. Ms. C. appeared by telephone with counsel Elizabeth Smith. Thomas Coté represented the PFD Division. The administrative law judge affirms the division’s decision.

II. Facts

Ms. C. was born and raised in Alaska. She graduated from Colony High School in Wasilla in 2004, and is now attending college in Nevada under the Western Undergraduate Exchange (WUE) program as an Alaska resident. There is no dispute that Ms. C. intends to return to Alaska when her education is complete, and that she remains an Alaska resident. While she is in school, Ms. C. returns to visit her parents and friends in Wasilla on vacations and between terms. Ms. C. maintains an Alaska driver’s license. She relies heavily on the income from permanent fund dividends to finance her education and attendant expenses.

As a senior in high school, Ms. C. registered to vote in Alaska at the age of 18 at the urging of one of her teachers. When she got to college, there was a table set up in her dorm for voter registration. Wanting to take part in government and perform her civic duty for the first time, Ms. C. registered to vote in Nevada on August 24, 2004. It did not occur to her at the time that registering to vote in Nevada might affect Ms. C.’s residency or PFD eligibility, or that she could vote in Alaska by absentee ballot.¹ Ms. C. voted in the general election in Nevada in November

¹ Ms. C. predicament apparently is not unique. In an online guide for students available at <http://www.pfd.state.ak.us/students/index.aspx>, the division cautions students, “If you aren’t registered to vote [in Alaska], 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 you will lose your dividend. Visit Division of Elections for more information.”

2004, but she testified that the only office for which she cast a vote was for president of the United States.

Ms. C. testified that when she registered to vote in Nevada, there was no warning that voting in Nevada was limited to Nevada residents. She stated that there were no signs displayed indicating this information, and nothing that she signed had any language concerning residency. In her formal hearing request, Ms. C. wrote, “When filling out the state of Nevada Voter Registration Application, it did not indicate anywhere on the form that by registering to vote in Nevada it would directly impact my residency and therefore my permanent fund. I included the application as proof.”² Ms. C. attached a copy of a blank State of Nevada Voter Registration Application.³ The form contains the following signature block:

“I swear or affirm • I am a U.S. citizen • I will be at least 18 years old by the date of the next election • I will have continuously resided in Nevada at least 30 days in my county and at least 10 days in my precinct before the next election • the present address listed herein is my sole legal place of residence and I claim no other place as my legal residence • I am not laboring under any felony conviction or other loss of civil rights that would make it unlawful for me to vote. I declare under penalty of perjury that foregoing is true and correct.”

↓ SIGNATURE OF APPLICANT REQUIRED ↓

↓ DATE ↓

III. Discussion

Regardless of where their residency and domicile may properly lie, persons who register to vote in another state are not eligible for a permanent fund dividend, unless they register in that state within thirty days of a presidential election for the purpose of voting for president.⁴ A person who actually votes in another state’s election is not eligible for a permanent fund dividend, unless voting solely for president of the United States.⁵

Ms. C. argues that these regulatory provisions are discretionary. The full language of the regulatory provisions of 15 AAC 23.143(d) that are in question read as follows, with emphasis added:

(d) 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

* * * * *

² Exhibit 14, p.4.

³ Exhibit 14, p. 8.

⁴ 15 AAC 23.143(d)(12).

⁵ 15 AAC 23.143(d)(13).

(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;

(13) voted in another state's or country's state, country, or local election, except if the individual voted in an election described in this paragraph and the individual was not required to claim residency in order to vote;

* * * * *

(16) claimed to be unavailable for Alaska jury duty service because the individual was a resident of another state or country; or

(17) obtained any other benefit or benefits as a result of establishing or maintaining any claim of residency in another state or country or by disclaiming Alaska residency, except that the department will not deny a dividend to an individual solely because the individual received Medicaid benefits from another state if the individual's application for Medicaid was consistent with the intent to maintain residency in Alaska.

Only subparagraphs (12) and (13) are at issue in this case. Numbers (16) and (17) are included above to show the inclusion of “or” at the end of number (16), which shows that each provision applies individually in the alternative.

Ms. C. points to AS 43.23.015(a), which states in part that “the commissioner shall consider all relevant circumstances in determining the eligibility of an individual.” Ms. C. argues that in her case, the particular circumstances of her strong life-long ties to Alaska should be considered and regarded as outweighing the one-time act of registering to vote in another state as an eighteen-year-old when her intent was merely to vote in the presidential election.

The sentence in the statute to which Ms. C. refers is preceded by a sentence reading, “the commissioner shall adopt regulations under the Administrative Procedure Act for determining the eligibility of individuals for permanent fund dividends.” The meaning of the two sentences together suggests that legislature directed the commissioner to consider all relevant circumstances when adopting regulations regarding eligibility, not that the commissioner must consider all the relevant circumstances in each individual applicant’s case.

The Supreme Court has held that the commissioner may adopt regulations that would exclude an applicant who would otherwise meet the statutory eligibility criteria as long as the

exclusion is consistent with the statutory purpose and is not unreasonable or arbitrary.⁶ The court has held that limiting dividends to permanent Alaska residents and easing the administrative burden of determining an applicant's eligibility are both legitimate purposes of PFD regulations.⁷

In this particular case the regulations in question might not have been the most effective method of limiting dividends to eligible residents. Because Ms. C. appealed the matter, the case likewise does not illustrate a great easing of the administrative burden. But as applied to the more than one half of a million applications the division receives, the regulation appears reasonably related to streamlining the administration of the program and limiting dividends to eligible Alaska residents. The evidence does not show that the commissioner failed to consider all relevant circumstances when performing the duty of adopting regulations designed to determine the eligibility of the hundreds of thousands of PFD applicants.

The language of subsection (d) is clear and unambiguous. Under (12), a person who registers to vote in another state during the qualifying year "is not eligible for a dividend" with two exceptions, (A) and (B), noted. Under (13), a person who actually votes in another state's election "is not eligible for a dividend," unless the person is not required to claim residency in that state in order to vote. The regulations are not discretionary or mere guidelines. They do not define a person's residency. They simply state that a person who takes either of these two actions, or any of the other actions listed in 15 AAC 23.143(d), is not eligible for a dividend the following year, and that the division need spend no further time investigating whether the person might in fact still be an Alaska resident.

Ms. C. next argues that she falls within one of the two exceptions listed in subparagraph (12), and the exception in subparagraph (13). The first exception, (12)(A), makes the regulation inapplicable to someone who has registered to vote within 30 days of a presidential election for the sole purpose of voting in that election. This exception does not apply because Ms. C. registered to vote in Nevada more than thirty days before the presidential election.

The next two exceptions apply, respectively, to someone who registered to vote in a jurisdiction that does not require a person to claim residency in order to register there and to a person who voted in a jurisdiction that does not require a claim of residency in order to vote. Ms. C. argues that the State of Nevada does not require people to be residents of that state in order to vote there.

⁶ *Church v. State of Alaska, Department of Revenue*, 973 P.2d 1125 (Alaska 1999).

⁷ *Cosio v. State of Alaska, Dept. of Revenue*, 858 P.2d 621, 624 (Alaska 1993).

The signature block on the Nevada Voter Registration Application clearly requires a sworn certification under penalty of perjury that the applicant “claim[s] no other place as my legal residence.” Article 2, Section 1 of the Nevada Constitution limits the right to vote to residents of that state. Nevada Revised Statute 293.485 provides as follows:

Qualification of voter: Citizenship, age and residence.

1. Every citizen of the United States, 18 years of age or over, who has continuously resided in this State and in the county 30 days and in the precinct 10 days next preceding the day of the next succeeding:

- (a) Primary election;
- (b) Primary city election;
- (c) General election; or
- (d) General city election,

and who has registered in the manner provided in this chapter, is entitled to vote at that election....

Nevada Revised Statute 10.155 provides:

Legal residence. Unless otherwise provided by specific statute, the legal residence of a person with reference to his right of naturalization, right to maintain or defend any suit at law or in equity, or any other right dependent on residence, is that place where he has been physically present within the State or county, as the case may be, during all of the period for which residence is claimed by him. Should any person absent himself from the jurisdiction of his residence with the intention in good faith to return without delay and continue his residence, the time of such absence is not considered in determining the fact of residence.

Thus, a person becomes a resident of Nevada, or of someplace within Nevada, by being physically present there and simultaneously claiming to be a resident of that place.

The voter registration form that Ms. C. apparently signed contained a clear certification, under penalty of perjury, that the applicant would have been a Nevada resident for at least 30 days before the next election, and that the person was not claiming to be a resident anywhere else. Under these circumstances, it cannot be said that a person is not required to claim residency in Nevada in order to vote in that state. The exceptions of (12)(B) and (13) do not apply for this reason. Further, the exception in (12)(B) only applies to people who register to vote in other countries. Nevada is not another country.

Finally, Ms. C. argues that there is an inherent conflict between the regulatory provisions of subparagraphs (12) and (13) of 15 AAC 23.143(d). Having reviewed counsel’s argument on the

record and the regulatory provisions, I do not find the conflict or ambiguity to which counsel refers. Some comments on the record suggest that Ms. C. may have confused the seventeen listed disqualifiers in subsection (d) with the three listed indicia of residency or nonresidency listed in subsection (a). But (a) and (d) serve two different purposes. Subsection (a) provides indicia of residency that the division may consider when it is trying to determine whether an applicant is an Alaska resident. Subsection (d) lists seventeen absolute disqualifiers that apply without regard to whether the person is an Alaska resident. If a person does any of the things listed in (d) during the qualifying year, the person is not eligible for a dividend the following year. The division is not required to make a determination as to whether the person may be an Alaska resident who is eligible for a dividend in spite of having, for example, perpetrated a fraud on another state by obtaining a resident fishing license in that state for which the person was not eligible.

The seventeen disqualifiers are separated by the word “or” and therefore apply individually as alternatives. If a person registered to vote in Nevada but did not vote there, she is ineligible under subsection (12). If a person voted in Nevada without having registered, perhaps using a contested ballot form, she is ineligible under (13). If she registered to vote in Nevada and then voted in that state, she is ineligible under both (12) and (13).

By allowing the person to register and vote in certain cases for president only, the regulation appears crafted to avoid running afoul of federal voting rights legislation that allows residents of any state to vote for president in whatever state they may find themselves on election day. The exception of (12)(B) applies only to people who register to vote in other countries that do not require residency. This exception recognizes that other nations, even established democracies, may have elections systems and laws that are radically different from ours. In some countries, emigrants who have gone so far as to become United States citizens and renounce citizenship in their old country may still be allowed to vote in some elections in the original country. Switzerland is an example, where the government actively encourages expatriates and emigrants to retain cultural ties to their country of origin. To this end, Swiss emigrants who have become U.S. citizens and lost their Swiss citizenship may nevertheless vote for president by registering with the local embassy.

The exception to (13) applies to people who vote in other countries or states for which residency is not required to vote. It is hard to imagine any place within the United States where a nonresident would be allowed to vote in a government election, but such an event could easily occur in some other country, particularly countries with different systems of government than we enjoy in the United States or in similar democracies. Even within the United States, essentially apolitical

elections are not unheard of. Although counties are generally political subdivisions of states, no vacationing Alaskan should lose a dividend because of a vote cast for best zucchini in a county fair, or a vote for best parade float or festival princess in an event that is somehow sponsored by or affiliated with a local government, so long as nonresident tourists are welcome to vote in these elections.

The exception in paragraph (13) applies to people who “voted in an election described in this paragraph.” Ms. C. is correct that this language is somewhat difficult to interpret. If by “paragraph” the department meant only (13), the “described elections” are described in the same sentence as the language, and the paragraph could be made clearer by simply eliminating the words “voted in an election described in this paragraph and the individual.” The sentence would then read, “voted in another state’s or country’s state, country, or local election, except if the individual was not required to claim residency in order to vote.” If the “paragraph” mentioned in paragraph (13) is intended to refer to voting as described in subparagraph (12)(A), the regulation should specifically say so. The department may wish to review this regulation for clarification, but the two subparagraphs do not appear to be in conflict to the extent that they nullify each other or are too ambiguous to be reasonably understood, at least as applied to this situation. Ms. C. registered more than 30 days before the election, and she was required to be a resident of Nevada in order to register and in order to vote.

Ms. C. did not advance the argument that she was not required to declare residency to vote in Nevada solely for president because federal law permits nonresidents to vote for president in any state. She did testify that the only office she voted for was the office of U.S. president. This might have been a valid argument that would put Ms. C. within the exception of (13). Because Ms. C. would still be ineligible under paragraph (12), the effect of any federal legislation, particularly the Voting Rights Act of 1965 and its amendments, on paragraph (13) is not examined here.

Finally, Ms. C. argues that the denial of a dividend is a harsh result for “a practice run in civics lessons”⁸ because she was a young and inexperienced voter. She argues that because PFD applicants are advised that they are not required to register to vote at all in order to be eligible for a dividend,⁹ the entire legal effect of registering to vote anywhere is too confusing for young adults to understand.

⁸ Counsel’s closing argument at hearing.

⁹ AS 43.23.016.

Ms. C.'s acts of registering to vote as a resident of Nevada and of voting as a Nevadan were not "practice runs." They were real. Though she is young, at the time she registered to vote Ms. C. enjoyed and benefited from all the privileges of an adult member of society. Adult privileges are coupled with adult responsibilities. Adults are responsible for understanding the laws under which they live, and they are accountable for their actions. This is a civics lesson that can be expensive when it must be learned from actual experience, but there is no good reason to delay it.

IV. Conclusion

Ms. C. registered to vote in another state more than thirty days prior to a presidential election. The other state limited voter registration to residents of that state. The division was correctly following the law when it made the decision to deny Ms. C.'s application for a 2005 PFD.

V. Order

IT IS HEREBY ORDERED that the decision of the Permanent Fund Dividend Division to deny the application of B. C. for a 2005 permanent fund dividend be AFFIRMED.

DATED this 7th day of June, 2006.

By: Signed _____
DALE WHITNEY
Administrative Law Judge

Adoption

This Order is issued under the authority of AS 44.33.010 and AS 44.17.010. The undersigned, on behalf of the Commissioner of Revenue 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 Rule of Appellate Procedure 602(a)(2) within 30 days of the date of this decision.

DATED this 11th day of July, 2006.

By: Signed _____
Signature
Dale Whitney _____
Name
Administrative Law Judge _____
Title

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