

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

In the Matter of	)	
	)	
B J. L	)	
	)	
<u>2013 Permanent Fund Dividend</u>	)	OAH No. 13-1807-PFD Agency No. 2013-010-3293

**DECISION**

**I. Introduction**

When B L, an Alaskan attending college in Montana, applied for a 2013 Permanent Fund Dividend (PFD), the PFD Division denied her application initially and at the informal appeal level on two bases: first, that she had registered to vote in Montana during the qualifying year (registering in a state other than Alaska is ordinarily a disqualifying act in itself), and second, that by registering to vote in Montana she had severed her Alaska residency. At Ms. L’s request, this office conducted a hearing by correspondence in which both she and the Division were able to submit evidence and argument.

The denial is reversed. Ms. L’s voter registration in another state fit perfectly within a narrow exception that allows Alaskans to do just that during presidential elections. In denying her the benefit of the exception, the Division has, in effect, imposed an extra requirement on Ms. L: a requirement that she actually vote in Montana. The extra requirement does not appear in the PFD regulations and has no foundation in the letter or spirit of the PFD laws.

**II. Facts**

The facts in this case are entirely undisputed. Ms. L is a lifelong Alaskan, born and raised in Cordova. In August of 2012, she enrolled in Montana State University as a full-time out-of-state student (her enrollment was through a Western Undergraduate Exchange scholarship, and thus was specifically based on Alaska residency). On January 9, 2013, while in Montana, she applied for a 2013 PFD, claiming an allowable absence for full-time postsecondary education. At the end of the 2012-13 academic year, she returned to Cordova to work for the Alaska Department of Fish and Game.<sup>1</sup>

Ms. L’s first semester at Montana State coincided with a presidential election year. On September 27, 2012, Ms. L registered to vote in Montana.<sup>2</sup> She did so solely for the purpose of

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<sup>1</sup> Ex. 10, p. 3; Ex. 1, pp. 2-3; Ex. 3, p. 1.  
<sup>2</sup> Ex. 9.

voting in the presidential election.<sup>3</sup> However, her mother told her that registering in Montana could affect her Alaska residency, and based on that advice she immediately cancelled her Montana registration, removing herself from the Montana rolls on October 5, 2012.<sup>4</sup> She subsequently voted in the 2012 election in Alaska.<sup>5</sup>

Ms. L's application for a 2013 dividend was denied on the basis of her voter registration in Montana. This formal appeal followed.

### III. Discussion

The law governing this case is 15 AAC 23.143(d), which reads in relevant part:

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 60 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[.]<sup>6</sup>

This provision sets up an absolute, bright-line rule, subject to only two narrow exceptions. Ms. L relies on exception (A).

To fit within exception (A), Ms. L's registration must meet three criteria. First, the registration must have occurred within 60 days of a presidential election. Ms. L meets this criterion, because her registration in Montana occurred only 40 days before the election. Second, the registration must have been solely for the purpose of voting the presidential election. Ms. L meets this criterion as well; under penalty of unsworn falsification, she has identified this as her only purpose when she registered, and the Division has not attempted to offer any evidence to the contrary (such as evidence that she intended to vote in a local election). Third, the registrant must NOT have voted in any out-of-state election OTHER "than that for president of the United

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<sup>3</sup> *E.g.*, Ex. 10, p. 3. There is no contrary evidence.

<sup>4</sup> *Id.*; Ex. 9, p. 7.

<sup>5</sup> Ex. 9, pp. 12-13.

<sup>6</sup> The Division's position statement, filed in this case on January 23, 2014, materially misquotes this regulation by replacing "60" with "30." Position Statement at 6. The error is material because, if the regulation said "30" rather than "60," Ms. L would fall outside the window created by the regulation.

Unfortunately, this is not the only time in 2014 that the Division has materially misquoted the law in arguing a PFD appeal. While these errors are surely not deliberate, they are troubling.

States.” Ms. L meets this criterion as well: she has never voted in any election outside Alaska, whether presidential or otherwise.

This ought to be the end of the matter. The Division, however, has contended that although Ms. L’s application would have been granted if she had gone forward and voted in Montana following her registration, it must now be denied because she did not vote in Montana, instead canceling her registration there and voting in Alaska. Indeed, the Division contends that by failing to vote in Montana Ms. L not only forfeited her PFD eligibility, but forfeited her Alaska residency as well. In effect, the Division contends that to remain an Alaskan, Ms. L had to vote in Montana.

The Division’s position would make sense if exception (A) read:

registered to vote in another state within 60 days of a presidential election solely for the purpose of voting in that election, *voted in another state in the ensuing presidential election*, and voted in no other election in another state than that for president of the United States[.]

The exception does not read that way, however. There may be good reason for the omission of the hypothetical, italicized language from the regulation: it is difficult to think of a purpose of the PFD program that would be served by affirmatively requiring PFD recipients to cast votes in other states.

The Division’s reasoning in this case has not been clearly explained, and Ms. L is understandably baffled by it. It seems most likely that the Division has misconstrued the phrase “for the purpose of,” believing that an act cannot be “for the purpose of” completing a second act unless the person actually follows through and completes the second act. This is legally mistaken. A “purpose” is “an objective, goal, or end”<sup>7</sup>—the intent behind an act. Legal intent is a state of mind at a particular moment; it does not depend on whether the person carried through on that intent.<sup>8</sup> The exception at issue in this case focuses on the purpose of a single, momentary act: the act of registering to vote in another state or country. The purpose criterion is a question of whether the objective or goal that caused the person to register was the objective or goal of voting in the upcoming presidential election. There can be no question that that was Ms. L’s goal on the day she registered. That she later abandoned that goal does not change what her goal was when she did the act.

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<sup>7</sup> Black’s Law Dictionary (9<sup>th</sup> ed. 2009) at 1356.

<sup>8</sup> See, for example, *State v. Jeffery*, 170 P.3d 226, 235-36 & n.43 (Alaska 2007) (intent to run for election focused on intent “at the moment of filing,” not on whether the person later remained a candidate).

The out-of-state voting exception remains very narrow. Ms. L's mother was right: it is risky for an Alaskan to register to vote in another state, and the online database of PFD appeal decisions is replete with examples of college students who have forfeited their PFD eligibility by registering under circumstances that did not fit within the exception. Ms. L, however, met each of the three criteria in 15 AAC 23.143(d)(12)(A), and both her PFD eligibility and Alaska residency remained intact.<sup>9</sup>

#### IV. Conclusion

The denial of B L's application for a 2013 Permanent Fund Dividend is reversed.

DATED this 10<sup>th</sup> day of March, 2014.

By: Signed  
Christopher Kennedy  
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 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 after the date of this decision.

DATED this 7th day of April, 2014.

By: Signed  
Signature  
Christopher Kennedy  
Name  
Administrative Law Judge  
Title

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

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<sup>9</sup> The Division's insistence that registering to vote in Montana automatically had an effect beyond Ms. L's PFD eligibility, terminating her Alaska residency as well, was a surprisingly aggressive position that cannot be squared with prior PFD case law. *See, e.g., In re P.A.*, OAH No. 07-0192-PFD (Commissioner of Revenue 2007) (<http://aws.state.ak.us/officeofadminhearings/Documents/PFD/PFD070192.pdf>) (college student's registration to vote in another state was not within 15 AAC 23.143(d)(12)(A) exception, but it did not sever his Alaska residency).