

BEFORE THE ALASKA PUBLIC OFFICES COMMISSION

APOC)	
v.)	
Michael Dubke)	OAH Case No. 09-0231-APO
Arthur Hackney)	APOC Case No. 09-04-CD
Richard Jameson)	APOC Case No. 09-05-CD
_____)	APOC Case No. 09-06-CD
Pebble Ltd. Partnership,)	Consolidated with
Pebble Mines Corporation,)	APOC Case No. 09-01-CD
Resource Development Council)	
v.)	
Renewable Resources Coalition, Inc.,)	
Alaskans for Clean Water, Americans)	
for Job Security, Robert Gillam)	
_____)	

CONSENT DECREE BETWEEN THE ALASKA PUBLIC OFFICES
COMMISSION AND AMERICANS FOR JOB SECURITY

I. Summary of Proceedings Leading to Consent Decree

This Consent Decree is entered into in connection with an enforcement action that began with a complaint filed by Pebble Limited Partnership against Americans for Job Security (AJS) before the Alaska Public Offices Commission (APOC). The Staff of the APOC has investigated this complaint and has become responsible for this enforcement action. Though the initial complaint by the Pebble Limited Partnership made other allegations against AJS, the Staff of the APOC found cause and elected to proceed against AJS only with respect to a single allegation pertaining to AS 15.13.074 alleging that AJS made a contribution to Co-Respondent Alaskans for Clean Water (AFCW) and that AJS reported the contribution to the APOC in its own name when it should have disclosed that the source of the funds were from Co-Respondent Robert Gillam.

The parties to this Consent Decree are the APOC and AJS. This Consent Decree is intended to dispose of all proceedings between the APOC and AJS with respect to this matter including all allegations originally contained in the initial complaint by the Pebble Limited Partnership and the final report as issued by the Staff with respect to AJS. AJS understands that this Consent Decree is not effective unless and until it is approved by the members of Alaska Public Offices Commission. The Parties agree that all pre-hearing deadlines with respect to AJS in this matter shall be suspended pending approval of this Consent Decree by the Alaska Public Offices Commission.

II. The Facts.

The facts are not materially in dispute. AJS has fully cooperated with the investigation by the Staff and the facts as recited herein are an agreed upon set of facts to form the basis for this Consent Decree.

AJS is a non-profit entity that was formed in 1997 pursuant to 26 U.S.C. § 501(c)(6). AJS has engaged in issue related campaigns in 48 of the 50 states. In the May/June timeframe of 2008, AJS became aware that Mr. Robert Gillam was interested in becoming a member at the two million dollar level. On June 19, 2008 Gillam transferred \$1,000,000 to AJS. On June 20, 2008 AJS transferred \$750,000 to Alaskans For Clean Water. Again on July 11, 2008 Gillam transferred \$500,000 to AJS; and on July 15, 2008 AJS transferred \$450,000 to AFCW. On July 22, 2008 Gillam transferred \$500,000 to AJS, and on August 1, 2008 AJS transferred \$400,000 to AFCW. AJS and Gillam executed documents reciting that AJS was to have complete legal control over the funds once

transferred. AJS believed that it would be in compliance with reporting requirements, given that the funds were legally in AJS' name for all purposes, if it reported the funds in its own name. AJS reported the contribution(s) it made to AFCW, in its own name, to the APOC in a timely fashion. AJS has a policy of keeping the identities of its membership confidential. AJS did not believe that it could legally directly become involved in managing or carrying out a ballot initiative campaign while keeping its membership identities confidential and for this reason, in order to comply with what it thought was the law, forwarded funds to AFCW to be used in connection with the ballot initiative campaign and retained funds for use in an issue related campaign not directly related to the ballot initiative. AJS believed it was required to report the contribution to AFCW in its own name and did so.

Staff believes that the timing of the transactions, coupled with the facts that AJS has no specific internal guidelines other than its Charter and bylaws policy regarding how the president of AJS is to determine what issues to engage in, and all decisions regarding the disbursement of member contributions are made by AJS' president and sole employee, demonstrate that AJS was acting with respect to this transaction as a conduit for a contribution by Mr. Gillam to AFCW. As a result, the public was not informed in connection with the ballot initiative campaign that the actual funding of much of the campaign came from Mr. Gillam.

AJS asserts that it makes clear to all members and prospective members that a member may not control how membership funds are used and that all legal

title, control and discretion over membership funds belongs to AJS once membership funds are forwarded to AJS. AJS relies upon its contention that no evidence has been adduced of any agreement with Mr. Gillam or anyone else that AJS would be contributing to AFCW at the time of the forwarding of Mr. Gillam's membership to AJS, or prior to AJS forwarding the funds to AFCW. AJS contends, and other material witnesses to the transaction support the contention, that Mr. Gillam received no assurances as to what AJS would do with the membership funds. AJS also executed a written membership contract with Mr. Gillam setting forth the terms of the membership which expressly stated that AJS was the sole authority for disposition of membership funds.

However, the facts as set out above were ascertained as a result of the investigation by the Staff. AJS has forthrightly cooperated with every investigative request by the Staff. The result has been that the nature and the details of the transaction have now been fully disclosed to the Staff and therefore the public, as a consequence of this investigation.

II. Legal Questions Presented.

Though the facts of the matter are not materially in dispute, the legal duties of AJS with respect to the reporting of this matter are disputed. The parties disagree both as to whether the material facts as described above make out a violation of AS 15.13.074, as well as the answer to the legal question of whether AS 15.13.074 applies to contributions made to support a ballot measure election.

The issue surrounds the applicability of AS 15.13.065(c), which states that except for reports under Section 040 and 110, (other exceptions not pertinent omitted), the provisions of AS 15.13.010-15.13.116 do not limit the authority of a person to influence the outcome of a ballot proposition. AJS, as set forth above, is not charged with a violation under Section 040 or 110, but is instead charged with a violation of Section 074, which is a section included in Section 065(c) as not being applicable to ballot initiatives. The Staff nevertheless has concluded that Section 074 applies to ballot propositions by virtue of the existence of reporting requirements for ballot propositions and that Section 074 is a statute governing the manner in which reports must be made. The Staff also places reliance on regulations promulgated by the agency such as 2 AAC 50.352, which directly prohibits the reporting of ballot proposition contributions in the name of another, citing 2 AAC 50.258.

Therefore, in its Report, the APOC Staff alleges that "AJS did violate AS 15.13.074 by acting as a pass through and allowing Gillam to make unreported [contributions] to AFCW." See APOC Staff Report, 40.

AJS, by contrast, contends inter alia that AS 15.13.065(c) specifically and unequivocally exempts ballot measures from the statutory requirements of AS 15.13.074. AS 15.13.065(c) states that:

(c) Except for reports required by AS 15.13.040 and 15.13.110 and except for the requirements of AS 15.13.050, 15.13.060, and 15.13.112 15.13.114, the provisions of AS 15.13.010-15.13.116 do not apply to limit the authority of a person to make contributions to influence the outcome of a ballot proposition.

AJS believes that AS 15.13.074 is included only amongst the provisions that "*do not apply* to limit the authority of a person to make contributions to influence the

outcome of a ballot proposition." (emphasis added). AJS therefore asserts that whatever reporting requirements exist for ballot propositions, AS 15.13.074 is not among them by express exclusion and any regulation to the contrary is unenforceable. AJS believes that it could have cited persuasive precedent for the foregoing and the Staff disagrees.

Staff believes that while AS 15.13.065(c) states that certain statutes do not limit the authority of a person to make a contribution to influence the outcome of a ballot proposition, a person making a contribution to influence the outcome of a ballot proposition must still abide by all reporting requirements.

AJS also contends that the report was properly made in its own name even if AS 15.13.074 applies to ballot measures because full legal title and discretion were vested in the funds at the time the contribution was made and the decision to contribute to AFCW was made entirely by AJS with no advance understanding or promise as to how the funds would be managed. AJS believes under these circumstances its obligation was to file with the APOC in its own name, as it did.

While the Staff and AJS stand by their respective positions both acknowledge that the positions of the other are in good faith. The APOC Staff believes that it is in the public interest to address this transaction and AJS wishes to continue to cooperate with the APOC in this matter for the purpose of fully resolving this matter notwithstanding the fact that AJS believes that its factual and legal positions have merit. The Parties do not wish to engage in protracted litigation as to this matter given the good faith nature of the positions of both

parties. The parties are also mindful that this controversy would likely only be resolved after protracted and expensive litigation. Therefore the parties have agreed to proceed by Consent Decree in this matter, subject to the approval by the APOC.

III. Terms of the Consent Decree.

1. WHEREAS the legal issues presented, should this matter be contested further, are likely to be protracted and expensive;

2. WHEREAS both the Staff and AJS have good faith and substantial factual and legal positions to assert making the outcome of these matters uncertain;

3. WHEREAS AJS wishes to continue its posture of cooperation and compliance with the APOC and all other relevant regulatory agencies that may govern its conduct;

4. WHEREAS the Staff agrees that AJS has cooperated fully with its investigation;

5. WHEREAS both parties understand the legal positions of the other and the potential merit in the legal positions of one another as well as the public interest in disclosure and the public interest in maintaining confidentiality and privacy of matters which are not subject to regulation;

6. WHEREAS the full details and nature of the transaction in question have been fully disclosed to Staff, and;

7. WHEREAS the parties believe that it is in the public interest, subject to approval by the APOC, to settle this matter rather than further undergoing state and private expense through continued litigation:

AJS agrees to pay costs to the State of Alaska in the amount of \$20,000. AJS agrees that it will in the future strictly comply with all statutes and regulations administered by the APOC and will not engage in similar activity in the State of Alaska whereby it receives membership dues and directly uses a portion of those dues, irrespective of the legal arguments to which it may avail itself, in the State of Alaska with respect to any election or ballot initiative campaign in the future. AJS agrees that it will not make anonymous contributions, or contributions in the name of another, or assist any other person in making anonymous contributions or contributions in the name of another in connection with any election or ballot initiative campaign in the State of Alaska. The foregoing does not apply to any other jurisdiction which may have laws dissimilar to the State of Alaska.

AJS agrees that, within 15 days of acceptance of this Consent Decree by the Commission, AJS will file a notice with APOC that it withdraws its previous filings stating that AJS was the source of the contributions to AFCW, described above. Upon the filing of this notice of withdrawal, AJS shall have been deemed to have complied with all reporting requirements with respect to this matter.

AJS and the Staff agree that this Consent Decree is entered into by way of settlement, no representations contained herein are intended to be admissible in any other proceeding, are not admissions by either party and shall not constitute a formal finding on the merits of a violation of AS 15.13.074 or any other state

statute, but instead is the consequence of AJS' voluntary agreement to be bound in this matter by the legal interpretation of the law as interpreted by the Staff for purposes of settlement only and agrees that its future conduct will be regulated accordingly. This Consent Decree is not to be interpreted or construed as binding legal precedent in any subsequent legal proceeding against either party except that this Consent Decree may be used in the future should AJS be subject to proceedings in any future matter before the APOC as it may be relevant to its past history before the APOC.

Upon the approval by the Alaska Public Offices Commission, and payment of costs in the amount of \$20,000 described above, the parties stipulate that the complaint against AJS shall be dismissed with prejudice and no further proceedings will ensue with respect to this matter with respect to AJS or its employees. However, nothing in this agreement shall be interpreted to have any effect on the APOC case currently pending against Michael Dubke who the parties agree was not an employee of AJS during the period of time covered by the allegations resolved by this Consent Decree.

DATED this 31 day of August, 2009.

AMERICANS FOR JOB SECURITY

Stephen A. DeMaura
Steve DeMaura, President

DATED this 24th day of AUGUST, 2009.

ALASKA PUBLIC OFFICES COMMISSION

A handwritten signature in cursive script, appearing to read "Holly Hill", written in black ink.

Holly Hill, Executive Director