

**BEFORE THE ALASKA PUBLIC OFFICES COMMISSION**

**The Alaska Wildlife Alliance,  
Complainant**

**vs.**

**State of Alaska, Governor Sarah Palin,  
Department of Fish & Game  
Commissioner Denby Lloyd,  
Respondents**

**Case No. 08-12-CD**

**ORDER**

**INTRODUCTION**

On August 14, 2008, Complainant, The Alaska Wildlife Alliance, brought a complaint against Respondent, State of Alaska, Governor Sarah Palin, Commissioner Denby Lloyd, Board of Game, alleging expenditure of money of the State to influence the outcome of a vote on a ballot initiative without specific appropriation of monies by the Legislature for such purpose in violation of AS 15.13.145(b) and 2 AAC 50.356. Complainant also requested expedited consideration under AS 15.13.380 and 2 AAC 50.454.

The Alaska Public Offices Commission, hereinafter "Commission," heard the request for expedited consideration on August 15, 2008 and granted expedited consideration by Order, dated August 15, 2008. The hearing on the merits was held on August 19, 2008 with Commissioners Elizabeth Hickerson (Chair), Roger Holl, and Kate Ballenger participating.

Both Complainant and Respondent filed extensive exhibits for the hearing. Both parties also called witnesses to testify before the Commission. The Commission heard testimony from the Complainant's witnesses Nick Jans and Joel Bennett and the Respondent's witnesses Doug Larsen and Ron Somerville. The Commission considered all evidence and testimony presented on the issue of whether the State violated AS 15.13.145. Based on the evidence and testimony the Commission makes the following findings of fact and conclusions of law.

**FINDINGS OF FACT**

The Alaska Board of Game passed a Resolution in Support of a Public Education Program on Predator Control on March 13, 2005, to "request the Alaska State Legislature for funding for a formal, proactive public information program on predator control" for the fiscal year 2008. Respondent's Exhibit 6.

Ballot Measure #2 was certified on October 27, 2005. Complainant Attachment at page 2. Ballot Measure #2 would amend AS 16.05.783 concerning aerial hunting of wolves, wolverine or grizzly bear. Complainant's Exhibit A.

The Legislature approved funding for the Board of Game to conduct an educational program in the fiscal year 2008 capital budget, effective July 1, 2007, in the amount of \$400,000 to:

Facilitate [an] education campaign to support programs of the Board of Game which promote hunting and trapping, as required in state law. Specific emphasis is directed towards providing information to educate the public on the details of the Intensive Management programs required by State law and implemented by the Board of Game. These programs are starting to provide positive prey survival results in the five areas where intensive management programs were initiated- including predator management. Unfortunately, the general public is not aware of the positive results of these selective management efforts. A major public relations effort is needed to properly educate Alaska[n]s of the value of the programs and the critical importance of proactively managing some prey and predator species to benefit Alaskans that are dependent on species, like moose and caribou, for food.

Complainant's Exhibit E.

Boards Support Section Director Jim Marcotte testified at the hearing on expedited consideration that only about \$150,000 of the \$400,000 appropriated has been spent to date.

Doug Larson, Director, Division of Wildlife Conservation, Alaska Department of Fish and Game since August 2007, testified at the hearing on the merits that the Commissioner of the Department of Fish and Game (Department) from 2002-2006, Mckie Campbell, first requested that the Department develop an educational program on predator control. Mr. Larson also testified that the current Commissioner of the Department, Denby Lloyd, also wanted an education program on predator management. Respondent provided evidence of its Predator Control Information Outreach program that details the educational program. Respondent's Exhibit 7.

According to Mr. Larson, his staff was concerned about presenting a sound scientific basis for any educational program and so they created a technical report or "white paper" of approximately 30 pages for this purpose in late 2007. The Division staff used the report to create a more "user-friendly" booklet which was printed in December 2007. Respondent's Exhibit 2. The Department also published a brochure, "Understanding Intensive Management and Predator Control in Alaska," which was initially printed in December 2007, and reprinted in January 2008, albeit with mistakes, as acknowledged by the Department. Respondent's Exhibit 3 and Complainant's Prehearing Exhibit I [The latter omits the word

“most” from a statement about predator control on federal lands.] The brochure did not include anything about aerial hunting and did not mention Ballot Measure #2. The brochure was distributed to the public and placed on the Department’s website in December 2007 and January 2008.

Mr. Larson stated that based on communications with the public during the summer of 2008, he was convinced that people were confused about the Department’s predator control program. Mr. Larson testified that the Department of Law advised the Department not to “cross the line” and try to influence voters about Ballot Measure #2, and was only to provide the public with information about the predator control program. He was cautioned not to mention Ballot Measure #2. Mr. Larson stated that the Department avoided advocacy and never took a position on the Ballot Measure.

Mr. Larson testified that he decided to distribute the brochure to the public and run public radio advertisements before the election as part of the ongoing educational program. The Department inserted the brochure in newspapers throughout Alaska in August 2008 and ran public radio advertisements about the predator management program. Prehearing Exhibit 1. Mr. Larson testified that these actions were made in the usual and customary course of his duties as part of the on-going educational program.

The Complainant’s witnesses testified that the brochure was inaccurate and that it was distributed to influence the public on Ballot Measure #2. The Complainant also argued that distributing the brochure and running public radio advertisements just before the election was further evidence that the State was attempting to influence the election.

Ron Somerville, former member of the Alaska Board of Game, testified for the Respondent and stated that he served on the Board from 2003-2007 and helped prepare the Resolution making the request for funds from the Legislature. A copy of a Standard Agreement Form for Professional Services was presented to the Commission at the Commission’s request. Commission’s Exhibit 1. According to the terms of the contract, Mr. Somerville was hired by the Department in April 2008 for the “purpose of providing educational materials to the public explaining the [S]tate’s intensive management programs and the legal requirements.” Mr. Somerville testified that he made presentations to various groups, such as Rotary, as a member of the Board of Game beginning in February 2008 and under the contract after his term on the Board expired. According to Mr. Somerville, his last presentation was on July 31, 2008. At these presentations Mr. Somerville testified that he never took a position on Ballot Measure #2.

## CONCLUSIONS

Complainant alleges that Respondent expended money of the State to influence the outcome of a vote on a ballot initiative without specific appropriation of monies by the Legislature for such purpose. The facts show that money was appropriated for the purpose of educating the

public about Board of Game programs, including predator management. There was, however, no specific appropriation of funds for the purpose of influencing the outcome of an election concerning a ballot proposition under AS 15.13.145(b).

The Commission concludes that the Department had a directive from the Legislature to develop educational programs including predator control. The educational program began in 2007 and continues. Only about \$150,000 of the funding has been spent out of the \$400,000 appropriated.

The evidence showed that in the Department's booklet, brochures and public radio advertisements there was no express discussion of Ballot Measure #2. According to the witnesses and by stipulation of the parties, no state employee or contractor advocated a position on Ballot Measure #2. The Complainant argued that the timing of the insertion of the brochure in newspapers, radio spots, and presentations made weeks before the election was suspect.

The Commission was most concerned about the timing of these actions. Nonetheless, there is a record which dates back to 2005 that shows the State's intent to establish an educational program about the Board of Game programs, including predator control. The Legislature provided funds for an educational program in 2007. Publications (white paper, booklet, and brochure) began to be developed in late 2007 and the first printing of the booklet and the brochure was in December 2007. Public education presentations have been part of the educational program and began in February 2008. A contractor was hired to make presentations to various community groups. Prior to the Department's actions in July 2008, of inserting the brochure and running radio advertisements, there was a pattern of consistent education of the public by the State.

There was compelling testimony that based on communications from the public, the Department determined that the public was confused about the programs under the Board of Game. Based on the legislative mandate and as part of its ongoing educational program, the Department testified that to address the public's heightened interest in predator control, due to Ballot Measure #2, and apparent public confusion, the Department would take the opportunity to again provide information on intensive management and predator control in Alaska.

The burden of proof in this case is by preponderance of the evidence. See AS 44.62.460. While the Commission concludes that the timing of the publications appears to be suspect, the Commission finds that the Complainant did not prove by a preponderance of the evidence that the Department intended to influence the outcome of an election concerning a ballot proposition. Testimony of the Respondent and the pattern of evidence support a reasonable alternative purpose for the publication of the brochure and radio advertisements: education of the public on intensive wildlife management and predator control that is broader than the wording of Ballot Measure #2, and consistent with the Respondent's ongoing educational

outreach program. These actions of the Respondent did not mention the terms "Ballot Measure 2" or "aerial hunting" at all. Further, there is no statute or regulation that prohibits educational activities during an election cycle if those activities do not advocate a position on a ballot measure.

### ORDER

The Commission did not find a preponderance of the evidence demonstrating a violation of AS 15.13.145 by the Respondent to influence the outcome of an election concerning a ballot proposition. Since the Commission finds that the Respondent did not violate AS 15.13.145 by a preponderance of the evidence, the Commission finds that the Respondent did not violate the reporting requirements under AS 15.13.040 or the registration requirements under AS 15.13.050. Complaint 08-12-CD is dismissed under AS 15.13.380.

This is a final decision of the Commission. Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court under Appellate Rule 602. Any appeal must be taken within 30 days from the date of the mailing or distribution of this decision.

By order of the Alaska Public Offices Commission, (Commissioners Frederick and Dean not participating), on August 20 2008.

  
Signed by Elizabeth J. Hickerson, Chair

## AFFIDAVIT OF SERVICE

### DISTRIBUTION

I certify that I served the following parties by fax and e-mail on August 20, 2008:

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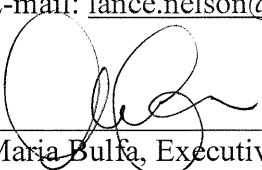
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Maria Bulfa, Executive Secretary  
Alaska Public Offices Commission

Findings of Fact, Conclusions & Order  
*The Alaska Wildlife Alliance v. State of Alaska,*  
*Governor Sarah Palin, Commissioner Denby Lloyd,*  
*Board of Game, 08-12-CD*