

BEFORE THE ALASKA PERSONNEL BOARD

**In re Ethics Complaint of July 12, 2019; July 22, 2019; and
August 18, 2019**

SETTLEMENT AGREEMENT

This settlement agreement is entered into between Governor Michael J. Dunleavy (“Governor”) and the Alaska Personnel Board through its Independent Counsel (“Independent Counsel”). This settlement resolves the above-described Complaint. The Complaint alleges that the Office of the Governor used State funds to make communications through online and printed advertising (“Communications”) for partisan political purposes in violation of the Alaska Executive Branch Ethics Act.

WHEREAS certain Communications advocated for policy by urging Alaskans to contact their representatives, testify before the legislature, and attend events, and the parties agree these Communications were not for partisan political purposes and did not violate the Alaska Executive Branch Ethics Act;

WHEREAS certain Communications referred to specific officeholders, and the parties agree these Communications nonetheless were permissible because the officeholders referred to had not yet manifested an intent to run for reelection or further office;

WHEREAS certain Communications urged individuals to sign online “petitions” which were used to gather constituent contact information, but the parties agree that there is insufficient evidence to conclude that these Communications were for a partisan political purpose and further agree that the resulting lead lists have not been used or distributed in violation of the Alaska Executive Branch Ethics Act;

WHEREAS certain Communications refer to two officeholders who had, at the time the Communications circulated, filed regulatory paperwork indicating an intent to run for reelection, and the Independent Counsel finds the circumstances support an inference that these Communications were for a “partisan political purpose” as that term is defined by the Executive Branch Ethics Act;

WHEREAS the Independent Counsel recognizes that the partisan political purpose he attributes to certain Communications is owed to quick decision-making and inadequate education into the mandates of the Executive Branch Ethics Act, rather than improper intent;

WHEREAS State employees dedicated relatively little time to preparing Communications to which a partisan political purpose has been attributed by Independent Counsel;

WHEREAS the precise cost of advertisements containing Communications to which a partisan political purpose could be attributed is difficult to determine but is more likely than not about \$2,800;

WHEREAS the Governor approved a general communications strategy that included outreach to Alaskans through online and print advertising, as well as other means, instructed communications staff in the Office of the Governor to carry out the strategy in accordance with all laws, and, where needed, with input from the Department of Law, but otherwise provided communications staff in the Office of the Governor with only general direction as to communications content;

WHEREAS the parties disagree as to the proper interpretation of the definition of “partisan political purposes” under the Executive Branch Ethics Act, and whether the Governor can be found liable under the Executive Branch Ethics Act for violations committed by employees of the Office of the Governor done without his knowledge or approval;

WHEREAS the Independent Counsel interprets the Executive Branch Ethics Act to require a governor to ensure that the actions of his or her staff comply with law and interprets the Act to make the Governor strictly liable for actions taken by his staff that violate the Act, irrespective of the intent of the Governor;

WHEREAS the Governor disagrees with the Independent Counsel’s interpretation, and does not believe that the Executive Branch Ethics Act imposes strict liability on the Governor for actions of staff taken without his knowledge or approval;

WHEREAS the parties wish to resolve the issues raised by the Complaint voluntarily, cooperatively, and in the best interest of the State;

IT IS AGREED THAT:

1. The Governor shall within sixty days reimburse the State \$2,800, and this amount shall not be considered a fine or penalty. This is reimbursement for the estimated amount of public funds that the Independent Counsel believes should have been paid from a non-public source.

2. The Governor shall remind members of his staff to study the Department of Law’s self-guided ethics training available at <http://law.alaska.gov/doclibrary/ethics.html> and shall, on or before September 30, 2020, certify to the Personnel Board that all of his staff members have completed this study.

3. The Governor shall make terms of this agreement public by posting a link to this document on the Office of the Governor’s website together with the following statement:

I recently resolved a complaint under the Alaska Executive Branch Ethics Act. The complaint concerned communications my office made to Alaskans through print and online advertising. Most of the communications complained of did not violate the Alaska Executive Ethics Act. But some of these communications referred to two legislators who, unbeknownst to my staff at the time, had filed a notice of intent to run for reelection. I did not know about these communications before they were sent, and had no personal role in drafting, designing, publishing, reviewing, or approving the advertisements. I never intended for State resources to support a partisan political purpose, and I don't believe I violated the Alaska Executive Ethics Act. Nevertheless, I believe it is in the best interests of the State to resolve these complaints, and, for this reason, I am reimbursing the State for the cost of these advertisements and ensuring that my staff undergoes all appropriate ethics training. I am also taking this opportunity to remind the devoted public servants in my office of the very high ethical standards that Alaskans rightly demand..

4. Nothing in this agreement constitutes an admission of wrongdoing, nor may any admission of wrongdoing be inferred by virtue of the execution of this agreement.

Dated this 4th day of September, 2020.

Governor Michael J. Dunleavy

John J. Tiemessen
Independent Counsel
State of Alaska Personnel Board

Approved as to form and content:

Brewster H. Jamieson
Attorney for Governor Michael J. Dunleavy

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