

MEMORANDUM

State of Alaska
ALASKA PUBLIC OFFICES COMMISSION
DEPARTMENT OF ADMINISTRATION

TO: APOC Members
DATE: December 14, 2007
FROM: Jeff Berliner
Investigator
TEL. NO: 907-334-1724
SUBJECT: Metcalfe v. McGuire
07-01-LFD

SUMMARY

This complaint and investigation have evolved and expanded since the initial complaint was filed on March 15, 2007. Complainant Ray Metcalfe alleged that Sen. Lesil McGuire violated financial disclosure laws in her 2004 Legislative Financial Disclosure statement by making inaccurate, inconsistent and untrue statements about the work she performed when the legislature was not in session.

Following a preliminary investigation based on the formal complaint, the staff submitted a report which concluded that the facts did not support the allegation. The August 30, 2007 staff report was taken up by the Commission at its September 14, 2007 meeting.

At that meeting, the complainant appeared and made additional allegations. The respondent was out of state on business and did not appear. Nor did she submit a response to the complaint. The Commission concluded that additional investigation was needed and specified areas of inquiry where it sought more information. The Commission also asked that the respondent submit an answer to the complaint.

This report is based on the findings of the expanded investigation into the original complaint and the additional areas of inquiry identified by the Commission. Staff has gathered additional documents and conducted interviews. As a result, staff concludes that there is insufficient evidence to support the allegations in this case.

COMPLAINT

Complainant Ray Metcalfe alleged in the original complaint that Sen. McGuire's 2004 Legislative Financial Disclose [2004 LFD, Exhibit 1] presented a description of her self-employment (Schedule A) that may have been altered and which conflicted with other statements about her work [Complaint, Exhibit 2]. Metcalfe made further verbal allegations against Sen. McGuire at the Commission's September meeting.

At that meeting, commissioners requested further inquiry and information in the following areas: proof of employment, proof of payment, details about the nature of the work performed, whether the work was connected to any legislation and whether the veracity of the LFD was in question.

Complainant's allegations of Legislative Financial Disclosure violations

1. Rep. McGuire described her self-employment in three different ways:

(1) Her 2004 LFD Schedule A statement listed the nature of services provided as "Consulting & Research."

(2) A July 6, 2004 Anchorage Daily News article said she described her job as to "review legal documents."

(3) She testified in an unrelated lawsuit that her job was to "review medical records."

2. The LFD statement Schedule A "bears the tell-tale markings of whiteout that has been written over with the words Consulting & Research.."

3. These acts show a violation of the reporting requirements of AS 39.50 and 24.60.200 because these different descriptions cannot all be true and thus violate the requirement that statements be accurate, consistent and sufficient. In 2003, the period covered in the report under investigation, AS 24.60.200(a)(2) required a legislator to report receipt of income over \$5,000 as compensation for personal services by providing the name and address of the source of income and a statement describing the nature of the services performed. If the source of income is known or reasonably should be known to have a substantial interest in legislative, administrative or political action, and the recipient of the income is a legislator, the amount of income must also be disclosed.

Commission's request for more investigation

The Commission's request for more information served to essentially broaden the investigation beyond disclosure violations to determine details about McGuire's self-employment and whether her LFD contained truthful information.

FACTS

Sen. Lesil McGuire was a state representative during the period covered by the complaint. Her 2004 LFD statement covered calendar year 2003. She submitted her 2004 LFD Statement, including Schedule A, which has been challenged by the complaint, to APOC by fax on March 4, 2004, prior to the March 15 deadline.

In a routine review of required filings, staff noticed an obvious facial error on Schedule A, where she mistakenly listed herself as the client/customer for self-employment even though she correctly listed the client/customer address as Providence Drive, where Providence Hospital is located. Staff clarified this with her and then corrected the mistake by lining out Lesil McGuire's name, writing in Providence Hospital and initialing and dating the correction.

The Schedule A self-employment section stated that Sen. McGuire earned \$10,500 by contracting for "Consulting & Research" services through her sole proprietorship business, Midnight Sun Consulting.

Sen. McGuire's work was an outgrowth of a complex land swap and comprehensive U-Med District Land Use Plan which made possible the transaction in which Providence negotiated for the old API.

PROCEDURES

- After Ray Metcalfe filed the complaint on March 15, 2007, APOC staff notified Sen. McGuire in writing on March 16, 2007 and discussed the procedure for follow-up in a March 22, 2007 telephone conversation.
- The complaint was filed during the legislative session. Since legislators have immunity from legal actions (except felony charges) while in session, no action was taken for the duration of the session.
- During the third week of August 2007, APOC hired an investigator who conducted a preliminary investigation and interviewed Sen. McGuire, who denied the allegations and decided not to exercise her right to make a statement at the time.
- APOC staff requested [Exhibit 3] a statement of fact from Providence about Sen. McGuire's work. Providence attorney Dan Hickey submitted a statement [Exhibit 4].
- The August 30, 2007 staff report summarized the findings, which the Commission discussed at its September 14 meeting. The Commission heard further allegations by the complainant, asked questions of its own and called for further investigation. Sen. McGuire was out of state on business and did not attend the Commission meeting. Nor did she submit a statement. However, a member of her staff attended the meeting as an observer and later obtained a recording of the meeting for Sen. McGuire.
- The investigation continued along with renewed requests to Sen. McGuire for a response to the allegation and the additional questions raised by the Commission. McGuire continued to deny the allegation and, as a result of the Commission request, agreed to submit a statement. But no statement was immediately forthcoming and she requested more time as a result of her husband's impending sentencing (October 15, 2007) on federal corruption charges.
- The legislature went into special session on October 18, 2007. All legislators have immunity from civil actions while the body is in session plus five days before and five days after the session. Sen. McGuire contacted APOC after her immunity ended and indicated she was hiring an attorney.
- Attorney Charles Dunnagan notified APOC on November 29, 2007 that he was representing Sen. McGuire [Exhibit 5]. He promised that his client would respond to the allegations, but requested more time to prepare and asked for a continuance beyond December 11 when the Commission was scheduled to take up the case. The Commission granted a continuance, but set deadlines for Sen. McGuire's statement and for a new APOC report so that the Commission could consider the matter at a special meeting on December 18, 2007.

RESPONDENT'S STATEMENT

Sen. McGuire denied the allegations in repeated telephone conversations with APOC and asserted that her 2004 LFD was correct. She stated that reviewing legal documents was a part of the project, which she discussed in some detail. APOC requested a written statement, but she preferred to stand on her verbal denials. APOC informed Sen. McGuire, prior to the Commission's September meeting, that she had the right to respond to the allegations, but she was not required by law to do so. However, the Commission made it clear in their instructions to staff at the September 14, 2007 Commission meeting that it wanted a direct response from Sen. McGuire.

As soon as she obtained counsel, he set in motion steps to get a direct written response. Sen. McGuire and her attorney requested questions for her to answer. She submitted a sworn statement and sworn answers to APOC questions [Exhibit 6] on December 12, 2007.

Sen. McGuire objected to the expanded nature of the investigation, but addressed the allegations and answered the new questions. Her sworn statement reasserted that her LFD provided accurate and lawful disclosures. Among her assertions:

- She never misrepresented her contract work for Providence.
- She reviewed documents involving plans by Providence hospital to obtain the old Alaska Psychiatric Institute building, which contained asbestos and was scheduled for demolition. The documents she worked with included legal, property, asbestos and financial issues. She never claimed that she reviewed medical records as part of her job.
- Her project did not involve any health care or other issues before the legislature. Nor did it involve any legislation in which her physician father, Dr. David McGuire, had a vested interest. She was not involved in the Certificate of Need issue, a regular subject of legislation and controversy.
- She was hired by Providence CEO Al Parrish and Laurie Herman, regional director of government affairs.
- When the project was complete, she worked with Laurie Herman on a final written work product and signed off on it.

DOCUMENTS, EXHIBITS & EVIDENCE

Before looking at the evidence gathered in the case, it is critical to establish the integrity of documents upon which the allegations are based and which figure into the case.

The original allegation says this about Sen. McGuire's 2004 LFD statement: "The copy available through APOC bears the tell-tale markings of whiteout that has been written over with the words Consulting & Research." This is misleading. Sen. McGuire's 2004 LFD statement was faxed to APOC on March 4, 2007. It arrived at APOC with the whiteout changes made prior to the statement being faxed to APOC. When documents arrive at APOC, they are stamped in with a dated, blue "ARRIVED" stamp to designate the original. APOC allows disclosure statements to be submitted by fax. The fax received at APOC

becomes the original document that is stamped in. Clearly, Sen. McGuire used whiteout to make a change on her LFD, but that change was made before the LFD was faxed to APOC. APOC received the LFD with the change already made. Documents prepared for APOC only become official APOC documents after they are received at APOC. From APOC's standpoint, it doesn't matter what a document says that is not submitted or before it's submitted. What matters is what the submitted document says after it is submitted and received by APOC.

The original complaint also alleges: "According to the Anchorage Daily News July 6, 2004 account of what Lesil McGuire had reported, her report had said she was paid to 'review legal documents.'" The ADN article [Exhibit 7] reported: "McGuire, an Anchorage Republican who has a law degree, told the Alaska Public Offices Commission that she was hired by Providence Alaska Medical Center to review legal documents. She did not return calls seeking a fuller explanation."

There is no evidence that Sen. McGuire told APOC that she reviewed legal documents. The article gives no source for the information, and there is nothing in APOC files to indicate that she told APOC anything at all except what she disclosed in writing on her LFD statement. APOC asked reporter Sean Cockerham the source of the information, and he told his editors of the APOC request. Cockerham said they decided to assert their right not to respond to the inquiry. But he also gave no indication that the ADN possessed any documents that would support or refute the allegation. One can speculate how this originated. Perhaps, Sen. McGuire even showed an earlier version of her form to Cockerham, thus the "told APOC." Then, perhaps she changed it before submitting. This is all speculation, but there is nothing in APOC files to show she ever "told" APOC that she did legal research.

Although this issue remains one for speculation, it is not recommended that APOC go so far as to subpoena documents or information from a reporter, especially when APOC itself possesses nothing to support this allegation.

This may be an overly long discussion of these issues, where no evidence exists to support the allegations. However, the integrity of documents is a critical and principled issue underlying all disclosures and investigations. APOC cannot use documents unless they can be authenticated. It is important to investigate challenges to the integrity of documents, and APOC must be satisfied with the integrity and authenticity of any documents it accepts and uses.

INVESTIGATION

The McGuire-Providence Contract

Providence CEO Al Parrish and Lesil McGuire signed a contract [Exhibit 8] on October 23, 2003. Most of the contract is Providence boilerplate language, but the nature of Sen. McGuire's work is described on the last page.

Invoices, Proof of Payment

Providence has given APOC payment documents [Exhibit 9], including invoices, payment records and related internal accounting records.

Final work product

A December 2003 “Confidential Memorandum” [Exhibit 10] from Lesil McGuire, Midnight Sun Consulting, to AL Parrish, Vice President/Chief Executive, Providence Health System Alaska, outlines the project.

This document is the result of Providence officials debriefing Sen. McGuire on her work. Providence submitted this document to APOC as Sen. McGuire’s work product. Both Providence and Sen. McGuire acknowledge that this is not an original piece of writing from McGuire, but rather a joint effort. McGuire addresses in her sworn statement, and says she worked on this with Laurie Herman, the regional director of the government affairs.

In addition, Providence consultant and lobbyist Eldon Mulder pitched in and worked with both Sen. McGuire and Laurie Herman to refine and polish the final report. Mr. Mulder, a former legislator, said he met with Sen. McGuire twice to discuss her work and that he and Laurie Herman passed drafts back and forth until everyone involved was satisfied with the final product. Then McGuire signed off on it and initialed it.

Eldon Mulder described his role as “basically clean-up with Lesil.” He said Al Parrish brought him in because he had been on the House Finance Committee during the complicated transactions involving a land swap and planning for both the old and new API, which ultimately involved Providence.

Project documents

APOC staff reviewed a sampling of the documents that Sen. McGuire dealt with on the project, according to Providence attorney Dan Hickey, who permitted the review in his office.

APOC staff reviewed additional documents at the Alaska Mental Health Trust Land Office, which was the prime landowner and prime mover behind the transaction involving a land swap and Providence closing a deal to obtain the old API.

There is a long and complex history involving many agencies and going back many years in effort to figure out how to replace the old API. Key decisions were made before Sen. McGuire entered the legislature. A series of “Best Interest Decisions” – which were subjected to public scrutiny – provided the foundation for the series of events that ultimately led to the Providence purchase of old API and the McGuire contract. All this took place within the context of the U-Med District Land Use Plan, which included the Alaska Mental Health Trust, the Trust Land Office, API, the Department of Health and Social Services, UAA, Providence, the Municipality of Anchorage, community councils, private land owners and others.

The Trust Land Office documents comprise many volumes stacked high covering an entire conference room table. APOC reviewed these files for background and evidence in this case, but these voluminous files covering many years are not incorporated as exhibits here.

Offer to purchase land

Only one document makes a reference to Lesil McGuire in the massive volumes in the complex land swap and subject planning for the area. This document does not reference Providence Hospital or Sen. McGuire's contract, but it was examined to either determine that there was a connection or to rule out any connection.

This document is a Trust Land Office (TLO) letter [Exhibit 11] from TLO Executive Director Dave Hanson on October 7, 2004, to realtor Chris Stephens as a follow-up to discuss a land purchase. Mr. Stephens and Sen. McGuire had gone to the TLO to make an offer on behalf of Dr. David McGuire to purchase land at the southeast corner of 36th Avenue and Lake Otis. This is noteworthy because that parcel of land figured into the much larger multi-agency land swap that ultimately led to Providence acquiring the old API.

Mr. Hanson's letter indicates that the TLO rejected the offer to purchase land and returned the offer without considering it. Hanson, now the Director of Economic Development for the Mat-Su Borough, and current TLO Deputy Director Wendy Woolf said in separate interviews that offers to buy land, like McGuire's, are fairly common, especially when prime real estate becomes available. The McGuire offer was rejected because TLO puts most of its real estate out to competitive bid for long-term leases and does not entertain offers to buy. Hanson also noted that Sen. McGuire was in the TLO office as a representative of her father and avoided any mention of her role as a legislator.

Al's Action Line

"Al's Action Line" is an internal Providence system that allows employees to communicate directly with the chief executive, to ask questions, make proposals or register complaints. Questions arose recently about Sen. McGuire's Providence contract, and Parrish answered the questions on Al's Action Line [Exhibit 12]. Although this is an internal message system, Providence is the largest private employer in Alaska so this message was accessible by thousands of people.

Al Parrish affidavit

Sen. McGuire's contract with Providence became an issue in a personal injury lawsuit (3AN-03-08531 CI) in which she was injured and sued for damages. Her non-legislative earnings became an issue in the damage claim and the defendants asked for details of her Providence work. Providence attorney Peter Gruenstein submitted an opposition to the request, but ultimately provided the documents under seal along with an affidavit from Providence Chief Executive Al Parrish [Exhibit 13] that gave a brief description of her work, made mention of the "performance" of the agreement, what her services included and what she reviewed "in the process of her work."

Did the McGuire-Providence work involve any issues before the legislature?

The Commission asked this question as a result of insinuations that she was working on Certificate of Need (CON) legislation in which the hospital and her physician father had an interest.

Sen. McGuire's sworn statement denies that her contract work involved CON measures or any other legislation.

Rep. Ralph Samuels sponsored major CON legislation in the 23rd legislature. When it came to a vote on April 28, 2004, then-Rep. McGuire asked that she be allowed to abstain from voting because of a conflict of interest, according to the House Journal text, page 3597 [Exhibit 14]. She was not excused and was ordered to vote.

In her sworn statement, Sen. McGuire said her conflict of interest involved family business not related to her contract with Providence.

APOC asked Rep. Samuels if then-Rep. McGuire had anything to do with his CON bill, HB511. "Absolutely not," he said. "She was not involved in this bill." Rep. Samuels said much of content came from the Dept. of Health and Social Services. He said Dr. McGuire was on the periphery and he spoke to him once. "I think this is an issue because Lesil McGuire has the wrong last name because of Dr. McGuire."

Providence lobbyist Eldon Mulder said he approached Rep. Samuels on the issue. Rep. Mulder dismissed allegations that then-Rep. McGuire was involved in the CON bill. "I know it's untrue. I was there," he told APOC. "Lesil had nothing to do with it."

Paul Fuhs, a lobbyist for the opposite side on CON legislation from Dr. McGuire and Providence, also denied that then-Rep. McGuire had anything to do with the legislation. He wrote a letter to the editor of the Anchorage Daily News on the subject. The letter [Exhibit 15] was published September 23, 2007. Fuhs later told APOC in an interview that the CON measure was a matter of life and death for his imaging center clients. But he said that Sen. McGuire "never had anything to do with it." Fuhs said: "I know. I was there."

A review of all legislation sponsored or co-sponsored by then-Rep. McGuire turns up a few measures related to health care, but nothing with any apparent connection to her Providence work.

ANALYSIS & CONCLUSION

This broadened investigation delved into many areas not directly related to this APOC complaint in the search for any evidence related to the allegations and Sen. McGuire's work for Providence. Based on the evidence and interviews gathered, APOC has found that the allegations are not supported by the evidence and that the additional questions posed by the Commission have been answered satisfactorily.

There is no evidence that documents were altered or changed after being submitted to APOC. There is no evidence that the integrity of APOC documents has been compromised.

Although Sen. McGuire's 2004 LFD statement description of her self-employment as "Consulting & Research" may seem suspect from the vantage point of a changed political environment in 2007, she has gone far beyond any requirements in the 2004 law or the tougher 2007 law in describing her self-employment.

There is no evidence to support the allegation that her disclosure presented inaccurate, inconsistent or untruthful information. On the contrary, there is substantial evidence, including sworn statements, that she engaged in a project for Providence and that she was paid for her services.

APOC staff recommends that the complaint be dismissed.