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**CONFIDENTIAL report regarding
Ethics Complaint pursuant to
Alaska Statute 39.52.340**

VIA EMAIL

June 2, 2009

Debra E. English, Chair
Alaska Personnel Board
9787 Middlerock Road
Anchorage, AK 99507

RE: Analysis of Kellen Ethics Complaint

Dear Debra:

This constitutes my report on the ethics complaint of Linda S. Kellen against Governor Sarah Palin that was submitted to the Attorney General's office dated March 24, 2009. The Attorney General's office forwarded the complaint to the Personnel Board, which, in turn, retained me to investigate the complaint. By letter dated March 26, 2009, I notified Ms. Kellen that the complaint would not be accepted because it was not signed under oath as required by the Ethics Act. Ms. Kellen then signed the complaint under oath and re-submitted it on April 1, 2009.

I conducted an initial review of the complaint pursuant to AS 39.52.310(d), to determine whether "it contains allegations which, if true, would constitute conduct in violation of [the Ethics Act]." The complaint alleges that the Governor violated the Ethics Act when she acted as the official starter of the Iron Dog snow machine race in February 2009, while wearing a jacket emblazoned with the name "Team Arctic," a logo of the Arctic Cat Company. The complaint further alleges that Arctic Cat sponsored the Iron Dog team of Governor Palin's husband, Todd, and provides substantial discounts to him on Arctic Cat snow machines and equipment. The complaint states that Governor Palin was a "walking billboard for Arctic Cat," and thus "used her position and state resources to serve her personal financial interests."

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After my initial review of the complaint, I concluded that I could not determine whether the allegations, if true, would constitute a violation of the Ethics Act, based solely on the allegations of the complaint. In determining whether there is probable cause to believe that the Governor used her position for personal gain, I concluded it was essential to ascertain the reason that the Governor wore the Team Arctic jacket when she acted as the official starter of the Iron Dog. If the Governor merely wore the jacket to support her husband, whose team was a participant in the Iron Dog, I hardly see how she received any "personal gain" as a result of wearing the jacket. On the other hand, if the Governor was being compensated by Arctic Cat to wear a jacket with Arctic Cat logo at an official function, that would seem to be using her position for personal gain. I concluded that I could not make the probable cause determination without more facts.

Therefore, pursuant to AS 39.52.310(f), I sent a letter to the Governor's attorney, Thomas Van Flein, dated April 6, 2009, and asked for a response to the complaint from the Governor. I also asked nine questions regarding the relationship between Arctic Cat and the Governor or Todd Palin. I also asked for a copy of the sponsorship agreement between Arctic Cat and Todd Palin.

On the day the Governor's response was due, April 27, 2009, her attorney sent me a "motion to dismiss the complaint," arguing that the complaint should be dismissed because Ms. Kellen had made the complaint public by posting it on one or more Internet websites. The Governor's attorney argued that this violated the requirement of confidentiality contained in AS 39.52.335, which provides that "before the initiation of formal proceedings under [the Ethics Act], the complaint and all other documents and information regarding an investigation are confidential and not subject to inspection by the public." I circulated a copy of the motion to the Personnel Board. However, the Board concluded that it did not have the authority to dismiss the complaint, nor did I feel that I had that authority. Accordingly, I asked the Governor's attorney to respond to the complaint and answer my questions. I also reminded Ms. Kellen of the confidentiality provision in the Ethic Act.

I received a response to the complaint and my questions from the Governor by letter dated May 13, 2009, from Thomas Van Flein, the Governor's attorney. He subsequently sent me a copy of the confidential Arctic Cat sponsorship agreement pursuant to my agreement to keep it confidential.

Analysis

1. Prohibition on Use of Official Position for Personal Gain

Alaska Statute 39.52.120(a) provides that a "public officer may not use, or attempt to use, an official position for *personal gain*" *Gain* is defined in the statute as "actual or anticipated gain, benefit, profit, or compensation." AS 39.52.960(10). A benefit is defined very broadly in the Ethics Act to include "anything that is to a person's advantage or self-interest, or from which

a person profits, regardless of the financial gain, including any dividend, pension, salary, acquisition, agreement to purchase, transfer of money, deposit, loan or loan guarantee, promise to pay, grant, contract, lease, money, goods, service, privilege, exemption, patronage, advantage, advancement, or anything of value." AS 39.52.960. Compensation means "money, thing of value, or economic benefit conferred on or received by a person in return for services rendered or to be rendered by the person for another." AS 39.52.960(7).

Putting the relevant sections of the statute together, *the issue is whether the Governor used her official position for personal gain, benefit, profit or compensation.* In the context here, the issue is whether the Governor's wearing of a jacket emblazed with the logo of the name of the company that provides a substantial discount to her husband, while acting in her official capacity as Governor, constitutes using her position for personal gain.

My investigation has uncovered no evidence that the Governor or her husband received anything of value in exchange for the Governor wearing the "Team Arctic" jacket when she acted as the official starter of the 2009 Iron Dog. There is an agreement between Todd Palin and the racing division of Arctic Cat providing that Arctic Cat will sponsor Todd Palin's Iron Dog race team and will provide him with discounts on Arctic Cat snow machines, parts, and clothing. The agreement also requires Todd Palin to wear Team Arctic 2009 race wear at race events. However, nothing in the agreement requires Todd Palin's family members to wear Team Arctic clothing. Nor is there any provision in the agreement that gives Todd Palin or the Governor a financial or other incentive if the Governor wears Team Arctic clothing. In addition, I confirmed with the Race Manager of the Team Arctic Race Department of Arctic Cat that there was no express or implied requirement that Governor Palin wear a Team Arctic jacket, nor did Arctic Cat provide anything of value to Governor Palin or Todd Palin because the Governor wore a Team Arctic jacket at the start or finish of the 2009 Iron Dog race.

In her response to my questions, Governor Palin states that the Team Arctic jacket that she wore at the start and finish of the Iron Dog was given to her by Scott Davis, one of Todd Palin's Iron Dog team members (the "Davis Racing Team"). I interviewed Scott Davis who confirmed that Arctic Cat gave him two women's jackets, and he gave one of them to Governor Palin. Davis states that Governor Palin was not required to wear the jacket at the Iron Dog, and that he is not aware of any benefit that she received as a result of wearing the jacket. Governor Palin states that she wore the jacket simply because it was appropriate attire to keep warm, and denies that she received anything of value as a result of wearing the jacket. (Jackets like the one Governor Palin wore, with "Team Arctic" in large letters on the front and back, can be purchased through Arctic Cat on line, <http://www.arctic-cat.com/snow/arcticwear.asp>, and through Arctic Cat's catalog.)

Although the Governor did not state this in her response, I think it is reasonable to assume that the Governor may have worn the Team Arctic jacket, in part, to support her husband, Todd,

whose Iron Dog team had been a previous winner of the race before she was elected Governor. Even if that is true, however, it still does not show that the Governor or her family received any personal gain as a result of wearing the jacket.

It is conceivable that the Governor wore the Team Arctic jacket because she believed doing so might result in financial gain in the future. It is possible that the Governor wore the jacket to engender good will with Arctic Cat and thereby enhance the possibility that Arctic Cat will continue to offer financial discounts to her husband in future years. But that is only speculation, and therefore cannot support an Ethics Act violation. *See* AS 39.52.110(b)(2) ("there is no substantial impropriety if, as to a specific matter, a public officer's . . . action or influence would have insignificant or conjectural effect on the matter.").

I also note that most jackets worn by Alaskans have a company name or logo on them. It is common to see jackets with logos of North Face, Patagonia, Eddie Bauer, Marmot, Cabella's, L.L. Bean and others. Indeed, it is more likely than not that any jacket that an Alaskan wears will have a company logo on it. So the fact that a person wears a jacket with a company logo on it is not evidence that the person is receiving a financial benefit as a result. To the contrary, it is the company that is receiving the benefit in the form of free advertising.

In sum, there is not probable cause to believe that Governor Palin used her position for personal gain by wearing a "Team Arctic" jacket at the start and finish of the 2009 Iron Dog race.

2. Prohibition on Use of State Time, Property, or Equipment to Benefit a Personal or Financial Interest

The Ethics Act also states that a public officer may not "use state time, property, equipment or other facilities to benefit personal or financial interests." AS 39.52.120(b)(3). The Act defines a "personal interest" as "an interest held or involvement by a public officer, *or the officer's immediate family member* or parent, including membership, in any organization, whether fraternal, nonprofit, for profit, charitable or political, *from which, or as a result of which, a person or organization receives a benefit.*" AS 39.52.960(18) (emphasis added). The part of that long quote that is relevant here is this: *a "personal interest" is "an interest held by ... the officer's immediate family member ... from which, or as a result of which, a person or organization receives a benefit."* (Emphasis added.) A benefit is defined in the Ethics Act as "anything that is to a person's advantage or self-interest, or from which a person profits, regardless of the financial gain, including any dividend, pension, salary, acquisition, agreement to purchase, transfer of money, deposit, loan or loan guarantee, promise to pay, grant, contract, lease, money, goods, service, privilege, exemption, patronage, advantage, advancement, or anything of value." AS 39.52.960. A "financial interest" means "an interest held by a public officer or *an immediate family member*, which includes an involvement or ownership of an interest in a business, including a property ownership, or a professional or private relationship,

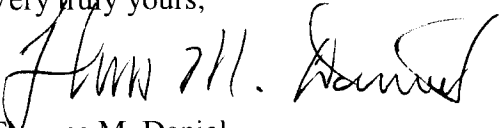
that is a source of income, or from which, or as a result of which, a person has received or expects to receive a financial benefit. AS 39.52.960(9)(A) (emphasis added).

Putting the relevant sections of the statute together, *the issue is whether the Governor used state time ... to benefit ... an interest held ... by her husband ... from which, or as a result of which, he ... receives something of value.* In her response to the complaint, the Governor concedes that she was acting in her official capacity as Governor when she acted as the starter of the Iron Dog race. Thus she used state time. The next question then is whether the Governor used that state time to benefit a financial interest of her husband, Todd. As explained above, there is no evidence that the Governor's wearing of a Team Arctic jacket at the start and finish of the Iron Dog provided any financial or other benefit to Todd. As mentioned above, the mere possibility that wearing the jacket might engender good will with Arctic Cat and serve to benefit Todd Palin in future years is possible, but entirely conjectural. As such, it is insufficient to support a finding of probable cause to believe that Governor Palin used state time to benefit a personal or financial interest when she wore a Team Arctic jacket when acting as the official starter of the 2009 Iron Dog race.

3. Conclusion

Having concluded that there is not probable cause to believe that a violation of the Ethics Act has occurred, pursuant to my authority under AS 39.52.320, the complaint is hereby dismissed. A copy of this disposition will be communicated to Ms. Kellen and Governor Palin with a reminder that this decision is confidential unless waived by the Governor.

Very truly yours,



Thomas M. Daniel

TMD:mlc