



TO: APOC Commissioners
DATE: October 20, 2021
FROM: Thomas R. Lucas, Campaign Disclosure Coordinator
SUBJECT: Staff Report, 21-03-CD,
Paula DeLaiarro v. Open for Business – Bronson/ Open for Business Anchorage

On September 15, 2021, Paula DeLaiarro (Complainant) filed a complaint against Open for Business Bronson/Open for Business Anchorage (OFB). The complaint alleges that OFB violated AS 15.13 by failing to

1. timely file independent expenditure reports;
2. register before making expenditures;
3. timely file a 24 hour report; and
4. provide accurate contributor information.¹

On October 5, 2021, OFB filed its answer to the complaint admitting some of the allegations, in part and denying others, in part.²

BACKGROUND

The Municipality of Anchorage held a regular mayoral municipal election on April 6, 2021.³ As no mayoral candidate secured more than 45% of the votes cast, a runoff election was scheduled to take place on May 11, 2021, between the top two candidates, David Bronson and Forrest Dunbar.⁴ The runoff election result was certified on

¹ Exhibit 1, Complaint

² Exhibit 2, Answer to Complaint.

³ Exhibit 3. Notice of Vacancy

⁴ Anchorage Municipal Charter Section 11.02(b); AMC 28.20.010C. If no mayoral candidate receives more than 45% of the votes cast for mayor, a runoff election must be held within three weeks of election certification between the top two candidates who received the highest number of votes.

May 15, 2021, where the majority of voters voted for David Bronson to be the next mayor of Anchorage.⁵

FACTS

1. Registration

OFB registered as a controlled group on April 19, 2021.⁶ On April 23, 2021, OFB amended its registration to show that it was actually an independent expenditure group supporting the candidacy of David Bronson in the Anchorage Municipal Mayoral Runoff Election.⁷ On June 30, 2021, OFB amended its registration to show its new name, Open for Business Anchorage.⁸ On June 10, 2021, OFB acquired the web domain, “Open For Business Anchorage.org”.⁹

2. Campaign Disclosure and Independent Expenditure Reports

OFB’s first report due was its 7 Day Report which it timely filed on May 4, 2021.¹⁰ The report disclosed 3 expenditures: \$20,370 to Optima Public Relations for radio ad production and radio advertising on various listed stations; a \$4,200 non-monetary from Judy Eledge for voter data for mailing and texting; and a \$5,000 non-monetary from Rebecca Logan for campaign coordination.¹¹

OFB next filed an independent expenditure report on May 20, 2021.¹² This report showed a \$25,000 expenditure incurred on May 5, 2021, to Optima Public Relations for a text campaign, newspaper placement and digital campaign; and a \$7,500 expenditure to

⁵ Exhibit 4. Municipality of Anchorage Election Summary Report, Official Results.

⁶ Exhibit 5, Registration.

⁷ Exhibit 6, Amended Registration [If a group intends to expend 33 1/3 % or more of its funds supporting one candidate, the name of the candidate must be part of the name of the group – AS 15.13.050(b)].

⁸ Exhibit 7, Second Amended Registration (the runoff election was over, and the group would no longer be spending its funds on the Bronson candidacy)

⁹ Exhibit 8, Whois Report.

¹⁰ Exhibit 9, 7 Day Report.

¹¹ *Id.*

¹² Exhibit 10, Independent Expenditure Report.

Optima Public Relations incurred on May 11, 2021, for newspaper ad creation and placement.¹³ OFB filed no other independent expenditure reports.

OFB next filed their 105 Day Report.¹⁴ This report shows various expenditures that were not reported on independent expenditure reports: a \$13,400 expenditure on May 10, 2021, to Optima Public Relations; a \$300 expenditure on June 14, 2021, to Young Republicans; a \$1,160 expenditure on July 2, 2021, to Alaska Republican Party; a \$4,620 expenditure on July 8, 2021, to the Petroleum Club; a \$2,800 expenditure on July 19, 2021, to Optima Public Relations; a \$228.06 expenditure on July 22, 2021, to PIP Printing; a \$29.95 expenditure on August 2, 2021, to Pay Simple; a \$127.82 expenditure on August 9, 2021, to the IRS; and a \$120 expenditure on August 9, 2021, to Mailchimp.¹⁵

3. Incorrect Contributor Information

OFB's 105 Day Report contained four instances of an incorrect address for a contributor, one instance of misnaming a contributor, and three instances of an incorrect check number.¹⁶ OFB contends that the incorrect information was the result of typographical errors.¹⁷

LAW AND ANALYSIS

1. Registration

Before making an expenditure, each person, other than an individual must first register with APOC.¹⁸ Here, OFB registered on April 19, 2021, as a controlled group and amended its registration of April 23, 2021, to show it was an independent expenditure group supporting Dave Bronson. On June 30, 2021, after Dave Bronson was elected, the group amended its registration to change its name to “Open for Business Anchorage”

¹³ *Id.*

¹⁴ Exhibit 11, 105 Day Report.

¹⁵ *Id.*

¹⁶ Exhibit 12, First Amended 105 Day Report filed September 15, 2021; Exhibit 13, Second Amended 105 Day Report filed October 4, 2021.

¹⁷ Ex. 2.

¹⁸ As 15.13.050(a).

because it would no longer be spending 33^{1/3}% of its funds supporting a Dave Bronson Candidacy. But, the web domain, Open for Business Anchorage, was purchased on June 10, 2021. Complainant argues that the purchase of the web domain on June 10, 2021, was an expenditure before registration because the group did not amend its registration to Open for Business Anchorage until June 30, 2021.¹⁹ Complainant provides no statutory or regulatory citation to support this argument. The statute only says that the person must register before making an expenditure. OFB registered on April 19, 2021. Accordingly, staff recommends that this allegation of the complaint be dismissed.

2. Independent Expenditure reports

Independent expenditure reports are required to be filed within ten days of the expenditure.²⁰ If the expenditure is in excess of \$250 and is made within the last nine days before the election, the report must be filed within ten days.²¹ Here, a review of OFB's 7 Day and 105 Day Reports reveals that there were six independent expenditure reports that should have been filed, but were not. The first, from the 7 Day Report included an April 23, and two April 27, 2021, expenditures of \$23,370, \$4,200 and \$5,000 respectively, that could have been timely filed on a single independent expenditure report filed no later than April 30, 2021.²²

The second, from the 105 Day Report, was a May 10, 2021, expenditure of \$13,400 that should have been reported within 24 hours because it was made within the last nine days before the election; the third was a June 14, 2021, expenditure of \$300 that should have been reported no later than June 24, 2021; the fourth included July 2 and July 8, 2021, expenditures of \$1,160 and \$4,620 respectively, that could have been timely filed on a single independent expenditure report filed no later than July 12, 2021; the fifth included July 19, July 22, and July 26, 2021, expenditures of \$2,800, \$228.06 and \$7.73 respectively, that could have been timely filed on a single independent expenditure report

¹⁹ Ex. 1.

²⁰ AS 15.13.110(h)

²¹ *Id.*

²² Exhibit 14, Annotated 7 Day Report.

filed no later than July 29, 2021; and the sixth included August 2 and August 9, 2021, expenditures of \$29.95, \$127.82, \$160, and \$120 that could have been timely filed on a single independent expenditure report filed no later than August 12, 2021.²³

By failing to file the six identified independent expenditure reports, OFB violated AS 15.13.040(d) and AS 15.13.110(h).

3. Incorrect Contributor Information

Groups must report the name, address, principal occupation, and employer of each contributor who contributes in excess of \$100 in the aggregate during the calendar year.²⁴ In addition, groups must report the following information for each expenditure: the date, check number, name and address of the vendor, the purpose of the expenditure and the amount of the expenditure.²⁵ Here, there were four incorrect addresses, one misnaming of a contributor, and three incorrect check numbers on OFB’s 105 Day Report. Three of the incorrect addresses were corrected on the September 15, 2021, amendment to the 105 Day Report.²⁶ The fourth address, the misnamed contributor, and the incorrect check numbers were corrected on the October 4, 2021, amendment to the report. By providing incorrect information on its 105 Day Report, OFB violated AS 15.13.040(b) as well as 2 AAC 50.321(b)(2).

CONCLUSION

The registration allegation should be dismissed because OFB registered before incurring the website expense. OFB violated AS 15.13.040(d) and AS 15.13.110(h) by failing to file five independent expenditure reports. OFB violated AS 15.13.040(d) and 2 AAC 50.321(b)(2) by providing incorrect information on its 105 Day Report.

²³ Exhibit 15, Annotated 105 Day Report.

²⁴ AS 15.13.040(b).

²⁵ 2 AAC 50.321(b)(2).

²⁶ There were four address corrections on this report, but one of them, even as “corrected” was not correct.

MAXIMUM CIVIL PENALTIES

The maximum civil penalty for failure to timely file an independent expenditure report is \$50 per day for each day that the violation continued whether it is a 24-hour report or not²⁷.

IE Report	Due Date	Date Reported	Days Late	Maximum Civil Penalty	Value of Late Reported Transaction(s)
First	4/30/2021	5/4/2021	4	\$200	\$32,570
Second	5/20/2021	8/24/2021	96	\$4,800	\$13,400
Third	6/24/2021	8/24/2021	61	\$3,050	\$300
Fourth	7/10/2021	8/24/2021	45	\$2,250	\$5,780
Fifth	7/29/2021	8/24/2021	26	\$1,300	\$3,035.79
Sixth	8/12/2021	8/24/2021	12	\$600	\$317.77
Total				\$12,200	

The maximum civil penalty for failure to file a properly completed 105 Day Report is \$50 per day for each day the delinquency continues.²⁸ Here, the report was due on August 24, 2021 and not properly completed with correct addresses, check numbers, and contributor name until October 4, 2021 – a period of 41 days. Thus, the maximum civil penalty for this violation is \$2,050.

MITIGATION AND RECOMMENDATION

A civil penalty may be reduced by a percentage greater than 50%, or waived entirely, if the penalty is significantly out of proportion to the degree of harm suffered by the public for not having the information.²⁹ A civil penalty is considered to be significantly out of proportion if it exceeds the value of the transactions that were reported late.³⁰ Here, the civil penalty for the third and sixth independent expenditure reports exceeds the value of the transactions that were reported late. Accordingly, staff recommends that the civil

²⁷ AS 15.13.390(a).

²⁸ *Id.*

²⁹ 2 AAC 50.865(b)(5).

³⁰ *Id.*

penalties for the third and sixth independent expenditure reports be reduced by 90% to \$305 and \$60, respectively.

A civil penalty may be reduced by up to 50% if the person required to file is an inexperienced filer.³¹ An inexperienced filer is a person who has been subject to a registration or reporting requirement for less than 365 days or is a person engaged in its first election cycle.³² Here, OFB has been subject to registration and reporting requirements for less than 365 days and is engaged in its first election cycle. Accordingly, staff recommends that the remaining civil penalties be reduced by 50% to \$5,300.

Thus, staff is recommending a total civil penalty of \$5,665. Staff spent 5 hours investigating this matter but does not recommend the assessment of costs because OFB cooperated with the investigation.

I hereby certify that on this date, I caused a true and correct copy of the foregoing to be delivered as indicated to the following:	
Open for Business Anchorage 3206 Spenard Road, Suite 9 Anchorage, Alaska 99503 paulrberger@gmail.com rebeccalogan@gci.net	<input checked="" type="checkbox"/> Email <input checked="" type="checkbox"/> Certified Mail
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Rachelle Ferguson

10/20/2021

Law Office Assistant

Date

9171-9690-0935-0265-9882-32

9171-9690-0935-0265-9882-49

³¹ 2 AAC 50.865(a)(1)(B)

³² *Id.*