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January 31, 2019

Via Hand Delivery & Email

Heather Hebdon, Executive Director
Alaska Public Offices Commission
2221 E. Northern Lights Blvd., Room 128
Anchorage, Alaska 99508

Re: Mary Ann Pruitt and P.S. Strategies
Our File No.: 7228-31454

Dear Ms. Hebdon:

Our office represents Mary Ann Pruitt, who is the owner of P.S. Strategies ("P.S.") and also is currently contracting with the State as Acting Communications Director to Governor Michael J. Dunleavy. The purpose of this letter is to seek a determination that Ms. Pruitt is not covered by the requirements of AS 39.50.020 or, alternatively, to see an exemption from the requirements of AS 39.50.020 pursuant to 2 AAC 50.775.

All correspondence concerning this request should be directed to our office at 701 West 8th Ave., Suite 700, Anchorage, AK 99501. Counsel for Ms. Pruitt can be reached at sstone@hwb-law.com or by telephone at (907) 274-0666.

Background

Ms. Pruitt is the sole owner and managing partner of P.S., a full service advertising and communications agency, located in Anchorage, Alaska.¹ Following the election of Governor Michael J. Dunleavy, Ms. Pruitt was appointed as the Administrative Director of his transition team. Following his swearing in on December 17, 2018, P.S. Strategies accepted a contract for Ms. Pruitt to serve as Governor Dunleavy's Acting Communications Director on an *interim* basis.

Ms. Pruitt has not been hired by the Dunleavy Administration and is not an employee. She is serving in the role of Acting Communications Director through a personal services contract between the Administration and P.S. Strategies until such time as a permanent replacement can be hired. Ms. Pruitt does not intend to remain in this role indefinitely.

¹ See <https://psstrats.com/> for additional details.

Analysis

A. As a temporary independent contractor, Ms. Pruitt is not a “public official” subject to the disclosure requirements of AS 39.50.020.

The reporting regime created by AS 39.50.020 covers solely those who are actual employees of state government. Under its purpose section—AS 39.50.010—the law makes clear that it is intended to apply only to “public officials” and contains no mention of those who merely provide services under a contract with state government.² Finally, the statutes’ definition of “public officials” makes clear that its only potential application is to actual employees of the Administration or state government.

Specifically, AS 39.50.200 provides the relevant definitions. Subsection (a)(9)(D) describes a “public official” within the reporting regime as, among other things,³ “an assistant to the governor or lieutenant governor.” Subsection (a)(1) describes an “assistant to the governor or lieutenant governor” as “includ[ing] any executive, legislative, special, administrative, or press assistant to the governor or lieutenant governor, and any person similarly *employed* in a policy-making position.”⁴ In short, the statutes clearly contemplate covering only those who are actually employees of state government. Nowhere in the statutes is there any implication that independent contractors must file financial disclosures required of public officials.

Because Ms. Pruitt is an independent contractor and not a “public official” within the definitional scope of AS 39.50. *et seq.*, the APOC staff should determine that she is not required to file a Public Official Financial Disclosure (“POFD”).

B. In the alternative, Ms. Pruitt requests an exemption, pursuant to 2 AAC 50.775, from listing the clients of P.S. Strategies.

As described above, Ms. Pruitt is not a public official required to file a POFD. However, even assuming *arguendo* that Ms. Pruitt was a public official within the scope of AS 39.50., she should nonetheless be granted an exemption from listing the actual individual clients of P.S. and instead required only to report her total self-employment income from her firm.

² See also AS 39.50.020 stating that “public official[s]” “shall file” a report of their income sources and business interests. Additionally, those contracts are separately governed by state procurement law, which does not fall within the purview of the APOC.

³ None of the other listed definitions of “public official” would apply to someone serving in Ms. Pruitt’s role even if they were directly employed by the state. See AS 39.50.200 (9)(A to J).

⁴ Emphasis added.

Ms. Pruitt hereby requests, pursuant to 2 AAC 50.775, an exemption from listing the clients of P.S. P.S. is a full service advertising and communications agency wholly owned by Ms. Pruitt.

It has taken Ms. Pruitt many years in the competitive Alaska market to build her business. She supports several employees through the work P.S. does. To publicly disclose a list of each and every client, as well as the amounts paid by each, would put P.S. at a competitive disadvantage. Additionally, some clients for which P.S. does not do public-facing work, consider their business relationship with P.S. and their need for the firm's services to be sensitive and/or confidential information.

At the outset, it should be noted that to the extent there is a public interest in the terms of Ms. Pruitt's actual contract with the Administration, that contract is subject to disclosure through both state procurement code as well as via the public records act. Accordingly, even absent the filing of a POFD, Ms. Pruitt's contractual relationship with state government will be transparent to the public.

In terms of Ms. Pruitt's request, AS 39.50.035 allows an exemption to the reporting requirements if professional relationships preclude complete compliance. Specifically, 2 AAC 50.775(f) provides that a public official governed by AS 39.50:

may request an exemption from reporting the name of a source of income, the amount of income, or any other information required under AS 39.50.030 or 2 AAC 50.680 – 2 AAC 50.740, if the public official ... demonstrates that the right to privacy of the information outweighs the compelling state interest in disclosing the information.

Ms. Pruitt requests the exemption because P.S.'s client information and income derived therefrom is protected under the trade secret doctrine. The doctrine is established in Alaska law and also covered in the Alaska Rules of Evidence. Alaska State 45.50.940(3) defines a "trade secret" as:

Information that (A) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and (B) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

Protective orders are routinely granted in order to protect against the disclosure of trade secrets.⁵

To determine whether something is a trade secret, the Alaska Supreme Court has imposed a six-part test:⁶

(1) the extent to which the information is known outside of the business; (2) the extent to which it is known by employees and others involved in the business; (3) the extent of the measures taken by the business to guard the secrecy of the information; (4) the value of the information to the business and its competitors; (5) the amount of effort or money expended by the business in developing the information; [and] (6) the ease of difficulty with which the information could be properly acquired or duplicated by others.⁷

These factors make clear that P.S.'s client list and the specific amounts of income received from each constitute a trade secret. The information is not known outside of the business. While some employees who work for P.S. are knowledgeable as to the trade secret information, the company takes precautions to guard its client information and the charges for services rendered. The information is invaluable, in that if it was obtained by the public or a competitor, it would not only discourage business relationships due to the inherent lack of privacy, but also grant a competitor the ability to undercut the rates and services provided by P.S. The amounts of time, effort, and money that Ms. Pruitt has put into building her business are significant and have spanned several years. If Ms. Pruitt is forced to disclose this information to APOC it will be acquired by competitors who will use it to unfairly compete. Such disclosure would irreparably harm P.S. for years to come.

Due to the fact that public disclosure of Ms. Pruitt's temporary and arms-length contractual relationship with the Administration is available⁸—and that public disclosure of her private business relationships with other clients will cause irreparable harm to her and P.S.—the right to privacy of P.S.'s client list and the income from private sector clients far outweighs any compelling state interest in disclosure.

Conclusion

Ms. Pruitt intends to fully comply with the requirements of the law. However, as discussed herein, she is a temporary contractor and not a "public official" as contemplated under the statutes requiring POFDs. Furthermore, that contract itself is already subject to disclosure,

⁵ AS 45.50.920.

⁶ *Powercorp Alaska, LLC*

⁷ *Id.*

⁸ As discussed above, both the procurement code and the public records act provide vehicles for public disclosure of Ms. Pruitt's contract.

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satisfying any public interest in transparency. Accordingly, the APOC Staff should confirm and determine that Ms. Pruitt is not required to file a disclosure. Even assuming Ms. Pruitt falls within the requirements of AS 39.50 (which she does not), APOC Staff should grant her an exemption from disclosure as requested above.

If the staff has any questions regarding this request for an advisory opinion, please do not hesitate to contact our office.

Sincerely,

HOLMES WEDDLE & BARCOTT, P.C.

 (for)

Stacey Stone

SCS/SMK/bjf