



November 20, 2012

Final Investigative Report Concerning Ombudsman Complaint 2012-0075

COMPLAINT

On March 1st, 2012 a complaint was filed with the Municipal Ombudsman's office that there was a job posting for a taxpayer funded position (contract) with Native shareholder preference on the State of Alaska, ALEXsys website.

FINDINGS

The allegation that a contractor with a municipal contract should not advertise with Native shareholder preference is justified. Anchorage Municipal code calls for no discrimination in making employment decisions. **Thus, the allegation of this complaint is JUSTIFIED.**

ANALYSIS AND CONCLUSION

Advertising for Native Shareholder Preference. Anchorage Municipal Code §7.60.060 prohibits municipal contractors from discriminating on the basis of race or national origin in making employment decisions. While federal law carves out an exemption for employers on or near Indian lands, the Alaska Supreme Court has ruled that this federal law does not preempt the Alaska constitution's guarantee of equal protection of our own codes. **For this reason, the allegation that a municipal contractor may not advertise for Native Shareholder Preference is justified.**

For the above reason, the allegation of this complaint is JUSTIFIED. Because this complaint has been made numerous times, it is recommended that the municipal contracts be written with explicit language that the practice of advertising with native shareholder preference for hiring is not allowable under municipal code. **Thus it is recommended that municipal contracts include specific language to discourage improper advertising for municipal contract employees to resolve the issue.**

A preliminary report regarding this matter was provided to the department.

If you object to the Ombudsman's decision to decline or discontinue this investigation or review, you may file a grievance with the Ombudsman as specified in A.M.C.R. 2.60.006.

Darrel W. Hess
Municipal Ombudsman