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Assistant guiding under
former AS 08.54.110

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This is in response to your request for our opinion whether one of the qualifications for becoming a registered guide, under former AS 08.54.110 (repealed in 1989), was that a person have received compensation for acting as an assistant guide. After reviewing the applicable statutes, it is my opinion that, prior to July 1, 1986, it was not necessary to have received compensation in order to have accumulated the necessary level of experience as an assistant guide to become a registered guide, and that after that date a person would not have been acting unreasonably in coming to that same conclusion.

The genesis of your question is an ombudsman's draft report which concludes that to have "performed the services of an assistant guide" under former AS 08.54.110 meant "being employed by a registered guide."¹ The draft report therefore proposes to find that a departmental employee "improperly made conflicting statements" by saying he was qualified to be a registered guide, while at the same time asserting that he had not received compensation for being an assistant guide. For the reasons set out in this memorandum, the ombudsman's conclusion is incorrect.²

Prior to 1989, in order to have been qualified to become a registered guide, a person must have previously "performed the services of an assistant guide." Former AS 08.54.110(a)(7) (prior to 1986 numbered AS 08.54.110(a)(8)). There was no definition of the phrase "performed the services of an assistant guide," although the verbs "guide" and "guiding" were defined in former AS 08.54.240 to include the requirement of compensation.

Under this definition, if you were assisting or directing a hunter in the field for compensation you were "guiding."³ This definition appears, however, to have been inclusive, rather

¹ A preliminary audit report by the Legislative Budget and Audit Committee reviewed an earlier version of the ombudsman's report and came to the same conclusion. Neither the ombudsman's report nor the auditor's report contains any detailed analysis of the statutes involved.

² There also exists an opinion, written by a private attorney representing the subject of the ombudsman's report, concluding that the ombudsman is incorrect. While I have agreed as a general matter with the private attorney's conclusion, I disagree with his analysis and reasoning.

³ The definition of "guiding" changed somewhat in 1986, but that change does not affect this opinion. Sec. 23, ch. 71, SLA 1986.

than exclusive, that is, it established that anyone assisting hunters for compensation had to be licensed as a guide, rather than establishing that one who did not receive compensation could not be considered to have performed as a guide.⁴

This definition does not, therefore, answer the question of whether a person must have accepted compensation to have been acting as an assistant guide for purposes of qualifying to become a registered guide. To answer that question, other statutes must be analyzed.

Former AS 08.54.130 required that a "class-A assistant guide" be "under the supervision" of a registered or master guide. There was no requirement of compensation, nor was there a requirement of an employment relationship. Perhaps it was an oversight, but there was no similar requirement that non-class-A assistant guides be supervised by a registered guide, much less employed or compensated. Former AS 08.54.140. In addition, prior to July 1, 1986, AS 08.54.210(a)(6) made it unlawful for a registered or master guide "to employ or supervise" more than three assistant guides at the same time, thus indicating a difference between the concepts of employment and supervision. (Emphasis added.) Again, there was no requirement of compensation.

Moreover, in former AS 08.54.110(a) the legislature used the phrase "performed the services of an assistant guide," rather than the simpler phrase "employed as an assistant guide." The obvious purpose of AS 08.54.110(a) was to assure that, before someone became a registered guide, he had obtained sufficient experience as an assistant guide. There is no indication the legislature intended to require that an assistant guide have accepted compensation.

Based on this statutory scheme, prior to July 1, 1986, a person could have "performed the services of an assistant guide" under former AS 08.54.110, and have been qualified to become a registered guide, without having accepted compensation.

July 1, 1986, was the effective date of amendments to some of the statutes in AS 08.54. Ch. 71, SLA 1986. In particular, former AS 08.54.210 was amended to make it unlawful for an assistant guide to be along on a guided hunt "except while employed and supervised by a registered or master guide." Former AS 08.54.210(a)(8). (Emphasis added.) Despite this new statute which seemingly required that assistant guides be both employed and supervised by a registered or master guide, there was no change made to former AS 08.54.130, which required class-A assistant guides merely to be under the "supervision" of a licensed guide, with no requirement of either "employment" or "compensation." There was, however, a new statute enacted that required non-class-A assistant guides to be employed and supervised by a registered guide. Former AS 08.54.141.

This ambiguity is difficult to resolve, however a definitive resolution is not necessary. In my opinion, even after July 1, 1986, a reasonable person could have concluded that a person "performed the services of an assistant guide" under former AS 08.54.110, and was qualified to become a registered guide, without having accepted compensation.

⁴ The definition of "guide" was used to determine whether a person had committed the offense of "guiding without a license". Former AS 08.54.210.

Even if there was a requirement of both employment and supervision, the statutes made no mention of "compensation" for assistant guides. The ombudsman's draft report seems to refer to employment and compensation interchangeably, but it appears that in AS 08.54 the legislature treated them differently and recognized three types of master-servant relationships: "supervision," "employment," and "compensation."

Before 1986, the definition of "guide" in AS 08.54.240 included the concept of "monetary or material remuneration." In 1986 that definition was modified to refer to "compensation or with the intent to receive compensation." Neither version of the definition referred to "employment." If the legislature had simply intended to refer to the concept of being "employed," it could have more easily done so than using the complicated phrases necessary to convey the concept of money changing hands.

It is not necessary at this point to try to fully explain the differences between "supervision," "employment," and "compensation." Suffice to say that, even after July 1, 1986, a person, who had waived payment or received only transportation and food while acting as an assistant guide on a hunt, would not have been acting unreasonably in asserting that he had not received "compensation," while at the same time seeking to rely on that experience as an assistant guide in attempting to become qualified as a registered guide under AS 08.54.110.⁵

Please contact me if you have questions.

DJG:jf

cc: Division of Occupational Licensing
Department of Commerce and Economic Development

⁵ It should be noted that the current definition of "compensation" in AS 08.54.590 excludes "reimbursement for actual expenses incurred", which suggests that an assistant guide who obtains transportation and food has not accepted "compensation". It should also be noted that the current guide-outfitter statutes in AS 08.54.350 -- 590 contain the same ambiguity as past statutes, by continuing to refer to the concepts of "supervision", "employment" and "compensation". As a practical matter, the division of occupational licensing did not previously, and does not now, inquire whether assistant guides have been paid in determining their qualifications to become a registered guide.