



TO: Kelly Tshibaka, Commissioner, Department of Administration

FROM: Paula Vrana, Deputy Commissioner, Department of Administration *Paula Vrana*

DATE: January 28, 2021

SUBJECT: Department of Administration, Division of Motor Vehicles Personalized Plate Review

Introduction

On the weekend of January 23-24, 2021, the Department of Administration (“DOA” or “Department”) was made aware that several Alaskans were concerned about messages conveyed on two personalized Alaska vehicle registration plates. The plates in question were “3REICH” and “FUHRER.” Both plates had already been recalled by the Department of Motor Vehicles (DMV). “FUHRER” was issued over ten years ago and the other was issued in October 2020. The Commissioner of the Department of Administration, Kelly Tshibaka, ordered this review of DMV’s policies and procedures to determine how plates were issued that referenced these messages and improve the existing process to prevent these types of incidents from occurring in the future.

DMV Personalized Plate Review and Approval Process

Over the last 3 years, the DMV has processed an average of nearly 9,000 personalized plate applications per year. A personalized plate is a custom combination of numbers or letters the vehicle owner chooses, usually portraying a recognizable phrase, slogan, or abbreviation on their plate.

The process for issuing a personalized plate begins with an application filled out by the owner. The paper application form requests basic information such as the applicant’s name and address, proposed plate symbols, and ranking of name choices. On a weekly basis, an electronic system screens personalized plate requests using a list of approximately 11,450 vulgar, violent, criminal, and demeaning terms. While all personalized plates are reviewed by staff to ensure they do not include prohibited references or terms, flagged plates receive closer scrutiny. An employee independently reviews the list of personalized plate requests and if a potentially inappropriate character combination is identified, the application is flagged for further review by a panel of at least 3 employees.

For an application of a plate that has been flagged for further consideration to be approved, two of the three members on the panel must vote to approve it. If the panel votes to approve, the

application then moves forward for the plate to be manufactured and sent to the customer. If the majority rules that it should not be approved, the DMV will deny the application.

In the event that a plate with vulgar, violent, criminal, or demeaning terminology has erroneously been approved, the DMV has established a recall process. The recall review process is triggered when a member of the community reports to the DMV a concern regarding a potentially offensive or inappropriate plate. The plate in question is reviewed by a recall panel of at least 3 staff who consider and vote on whether it complies with the personalized plate standards in 2 AAC 92.120. If the majority concludes that it does not, the DMV will recall the personalized plate, notify the customer of the recall, and issue an alternate set of customer plates. It is important to note the practice of issuing personalized plates assumes the plate is not offensive to members of the community and that, if complaints are received, the plate is subject to being recalled.

The "3REICH" plate was applied for in October of 2020 and was subject to an electronic screening process. The electronic system did not flag the request for the "3REICH" plate when it was issued in November 2020 because the term was not on the screening list. When included among several hundred other unflagged personalized plates, the employee reviewing the applications inadvertently overlooked the plate for a second level of review, and the plate was issued on November 3, 2020. On January 14, 2021, the DMV received a report of concern regarding the plate via email. The DMV recalled the plate on January 21, 2021.

The "FUHRER" plate in question was originally issued by the DMV over a decade ago. Because the "FUHRER" plate was issued over ten years ago, the DMV has little information surrounding the processes in place at that time. A complaint regarding the plate was received by the DMV via email on September 16, 2020. The Division recalled the plate on October 11, 2020.

Officially, both the plates involved in this review, "FUHRER" and "3REICH," were recalled by the DMV and revoked from the customer. The same customer owned both plates at different times.

If a customer were to continue to display a recalled plate and was stopped by law enforcement for any type of traffic violation, law enforcement, upon pulling the information on the plate, would have immediate information signaling improper use of plates and the driver would be subject to citation.

Conclusion and Recommendations

The Department is examining current DMV policy regarding personalized license plates expression. In 2015, in *Walker v. Texas Division, Sons of Confederate Veterans*, 576 U.S. 200 (2015), the United States Supreme Court held that license plates are "government speech" and consequently states can regulate and restrict their content under the First Amendment. Notably, the Court held that just as a State cannot require an individual to convey the State's ideological message, an individual cannot force the State to include a message on its license plate.

The American Association of Motor Vehicle Administrators (AAMVA) advises that when administering a personalized license plate program, states should be neutral and consistent while recognizing that societal norms change over time.

2 AAC 92.12 states “the department will not issue personalized license plates that display:

- (1) symbols in a combination identical to one already in use on a registration plate;
- (2) a total of more than six or less than two symbols;
- (3) symbols other than numbers or letters; or
- (4) symbols in a combination that demeans an ethnic, religious, or racial group, or that is otherwise vulgar, indecent, or has sexual connotations; any combination known by the department to have a sexual connotation or to be patently offensive to a person of ordinary sensibilities will be considered vulgar or indecent; any combination known by the department to be patently offensive to an ethnic, religious, or racial group will be considered demeaning to that group.”

At times, the DMV has enforced and interpreted the policy addressing personalized plates more strictly than the Alaska Administrative Code requires. Going forward, the Department seeks to ensure more accurate adherence and compliance with the regulation which allows for a greater level of expression than previously interpreted. Consistent with the regulation, the DMV will establish and implement an application policy and process which prohibits plate symbols that demean any ethnic, religious, or racial group, or include otherwise vulgar, violent, or criminal terms. The Department will also strive to improve the application review process to reduce the risk of error due to manual entry mistakes, human bias, and subjectivity.

The Department has taken the following steps to protect against these types of incidents from occurring in the future as well:

- The terms 3REICH and FUHRER, and their variations, have been added to the electronic screening system.
- The DMV’s list will undergo a review and be updated to add additional references to vulgar, violent, criminal, and derogatory terms, per the criteria in the Alaska Administrative Code (2 AAC 92.120).
- Plates flagged by the electronic system will be reviewed by a committee when staff is uncertain whether they meet acceptable criteria. This will reduce human subjectivity and error in determining the content of personalized plates.
- The DMV will have two or more staff members be responsible for the initial review of personalized plate applications, in addition to the electronic screening system. The application and review process will be reviewed and strengthened if necessary.

- Enhance and expand current use of nationally accepted best practices, as explained in the AAMVA Second Edition of Best Practices for Managing Vanity and Specialty License Plate Programs.
- Consider filtering requests through an algorithm programmed to identify text commonly used in social media platforms to convey vulgar and offensive concepts.
- Proactively review the list of registered personalized plates to ensure there are no unacceptable plates on Alaska's roadways.
- Create a reporting mechanism by which emerging drug culture and other problematic phrases can be reported to the DMV.

In facilitating the personalized plate program, it is incumbent upon the DMV to remain neutral and consistent in promoting civility while also creating opportunity for personal expression.