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Local option elections

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This memorandum is in response to your August 5, 1991, opinion request regarding AS 04.11.502. The section establishes the procedures to be used by municipalities and established villages in conducting elections on the various alcoholic beverage options under AS 04.11.490 -- 04.11.500.

Section 04.11.502(d) provides:

Notwithstanding any other provisions of law, an election under (a) or (b) of this section to remove a restriction on the sale, importation, or possession of alcoholic beverages previously imposed under AS 04.11.490 -- 04.11.500 may not be conducted more than once every 12 months.

(Emphasis added.)

The 12-month limitation established under subsection (d) applies specifically to elections "to remove a restriction."

The language is clear and unambiguous. It does not apply to elections to impose a restriction under AS 04.11.490 -- 04.11.500. Therefore, this office concludes that an election to impose restrictions on the sale, importation or possession of alcoholic beverages may be held by a municipality or established village more than once every 12-months.

In addition, subsection (d) is prefaced with the phrase "[n]otwithstanding any other provisions of law." This means that only the 12-month time period established under AS 04.11.502(d) applies to elections to remove an alcoholic beverage restriction.

Consequently, the time periods established under AS 29.26.190 do not apply to elections to remove a restriction. 1/

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1/ As discussed, elections to impose a restriction may be conducted more than once every twelve months. This conclusion follows implicitly from the wording of the subsection. This implied rule is also governed by the preface "[n]otwithstanding

Finally, with respect to subsection (d), the Department of Community and Regional Affairs' handbook titled "Local Option Law, Controlling Alcohol in Alaska's Cities and Villages" (March 1990) provides that a new petition to choose a more restrictive option than the one voted in can be started 31 days after the previous election was certified. I can find no statutory or regulatory authority for this 31-day restriction on the ability of a sponsor to petition for a more restrictive option.

AS 04.11.502(e) provides:

AS 29.26.110--29.26.160 applies to a petition under (a) of this section in a general law municipality except the

- (1) number of required signatures is determined under (a) of this section rather than under AS 29.26.130;
- (2) application filed under AS 29.26.110 shall contain the question or combination of questions set out under AS 04.11.490 -- 04.11.500 rather than containing an ordinance or resolution;
- (3) petition shall contain the question or combination of questions set out under AS 04.11.490 -- 04.11.500 rather than material required under AS 29.26.120(a)(1) and (2).

Subsection (e) means that in a general law municipality only, the provisions of AS 29.26.110--29.26.160, with certain exceptions set out in paragraphs (1), (2), and (3), apply to a petition submitted under AS 04.11.502(a). 2/ For example, under AS 29.26.150, if the municipal clerk certifies that a petition is insufficient, a protest may be filed within 7 days. In addition,

(..continued)

any other provision of law." Consequently, subsection (d) alone, and not AS 29.26.190, also applies to elections to impose an alcoholic beverage restriction.

2/ Subsection (e) applies only to an election in a general law municipality. It does not apply to an election held under AS 04.11.502(a) in a home rule municipality or under AS 04.11.502(b) within an established village. So, for example, AS 29.26.110, requiring the filing of an application, does not apply to an election in a home rule municipality or an established village.

under AS 29.26.160, if sufficient signatures are not secured, a new petition may not be filed sooner than six months after the petition is rejected as insufficient.

Finally, the fact that only AS 29.26.110 -- 29.26.160 apply to certain petitions under AS 04.11.502(a) bolsters our previous conclusion that AS 29.26.190 does not apply to local option elections. 3/

I hope this information proves helpful to you. If I can be of further assistance, please don't hesitate to contact me.

JDL:ck

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3/ Except for the applicability of AS 29.26.110 -- 29.26.160 to an AS 04.11.502(a) petition in a general law municipality, it appears that the legislature intended the Title 4 petition process to operate independently from the AS 29.26 petition process. AS 29.26.190 was enacted in 1985. AS 04.11.502(d) and (e) were added in 1988 and 1989, respectively. In 1989, the legislature made specific provisions of the Title 29 petition process applicable to certain local option elections. AS 29.26.190 is not one of those provisions. A letter of intent relating to the enactment of subsection (d) by sec. 5, ch. 156, SLA 1988 (HCS CSSB 371 (Jud) am H) provides in part: "It is the intent of the legislature, through this piece of legislation, to assist those communities which have elected to adopt one or more of the local option provisions authorized under AS 04.11.490 -- [04.11.]500 by allowing for more local control once the option is adopted . . . ." See 1988 Senate Journal 2939.