

Hon. John B. 'Jack' Coghill
Lieutenant Governor

February 23, 1993

663-93-0312

465-3600

Effective date of
supplemental appropriation
enacted in CS HB 68
(FIN)(efd fld S)

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You requested advice concerning your power to spend amounts under an appropriation enacted in CSHB 68(FIN)(efd fld S) (ch. 1, SLA 1993) (hereinafter HB 68). HB 68 enacted a fiscal year 1993 supplemental appropriation to finance the cost of rural educational attendance area elections set by court order for March 2, 1993. However, the legislature failed to adopt an immediate effective date by a two-thirds vote of each house. You question whether the failure to adopt an immediate effective date causes the bill to carry an effective date of 90 days after enactment. See Alaska Const. art. II, • 18 (bills take effect 90 days after enactment unless another effective date is approved by two-thirds of the membership of each house of the legislature). You informed me that without this supplemental appropriation, the division will completely exhaust its fiscal year 1993 appropriations by February 23, 1993 and would be unable to hold the elections in compliance with the court's order.

Attached you will find a 1989 informal opinion issued by this office on the same issue presented here, i.e., "when may a supplemental appropriation be expended when an immediate effective date was not adopted." 1989 Inf. Op. Att'y Gen. (May 25; 883-89-0076). The 1989 opinion concludes that, upon enactment, a supplemental appropriation merges with the original appropriation and assumes the same effective date.

After the 1989 opinion was issued, the Alaska Supreme Court decided ARCO Alaska, Inc. v. State, 824 P.2d 708 (Alaska 1992). In that case, the court clarified the meaning of the constitutional provisions relating to effective dates when the legislature fails to adopt an immediate effective date. The court explained that a bill could be given retroactive effect without a two-thirds vote on an immediate effective date. The court reasoned that the retroactive effect of the bill would not be operative until the effective date either set by the legislature or determined by the constitution. A supplemental appropriation implies an intent to have retroactive effect by adding amounts to an earlier appropriation. The 1989 opinion is consistent with the holding in ARCO, in that the retroactive effect of a supplemental appropriation can be established without a special vote. However, it would defeat the stated purpose of the legislature (conduct an election

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on March 2) to require the division of elections to await the expiration of a 90-day period before it can spend the appropriation.

As explained in the 1989 opinion, an appropriation measure is not the same as a general law measure. An appropriation grants the administrative authority to spend. Appropriations are normally made for activities authorized by general law that occur within a specific fiscal year. An appropriation does not establish or limit rights or proscribe conduct. With these differences in mind, the purpose of the effective date provisions of the Alaska Constitution are not violated by a merger of a supplemental appropriation with the original enactment. See, e.g., State v. A.L.I.V.E. Voluntary, 606 P.2d 769 (Alaska 1980) (the clause that laws do not become immediately effective, unless a two-thirds vote provides otherwise, is designed to provide a fair opportunity to those people affected by legislation to learn of the laws they must live by).

The Department of Administration is responsible for the establishment and administration of the funds and accounts of the state. AS 37.05.140. In the exercise of this function, the department is limited only by the provisions of AS 37.05.170. Under AS 37.05.170, before authorizing payment the department must certify that there is a sufficient unencumbered balance and that an appropriation has been made. Clearly, HB 68 makes an appropriation. The department can implement sufficient accounting controls to ensure that the division of elections does not exceed the spending authority granted. In summary, the department's power is broad enough to authorize expenditures under HB 68 without waiting for the constitutional effective date to occur.

Even under the strictest interpretation of the effect of the failed effective date, nothing stands in the way of the ability to expend money appropriated by HB 68 other than the expiration of time. The Department of Administration could devise an alternative strategy where surplus amounts are "borrowed" from other sources to provide a funding source until the effective date of this bill occurs. However, that seems unduly burdensome and administratively inefficient. It would be reasonable to follow the precedent set by the 1989 opinion by considering a supplemental appropriation to merge with the appropriation that it supplements in all respects, including the original effective period for that appropriation.

I hope this memorandum satisfactorily answers your question.

JLB:lae

Enclosure