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Department of Education

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Donations to ASAA, and
ASAA, Inc. property

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You have asked whether the Alaska School Activities Association (ASAA) can collect private donations and, if it cannot, whether ASAA, Inc. can continue to exist for that one function. Additionally you ask what will happen to ASAA, Inc. property, such as the condominium it purchased, when the nonprofit winds up its operation as a corporation. We address each of your questions in turn.

1. Can ASAA receive private donations?

AS 14.07.030(10) provides that the department may "apply for, accept, and spend endowments, grants, and other private money available to the state for educational purposes in accordance with AS 37.07 (the Executive Budget Act)[.]" In our opinion this provides sufficient authority for ASAA to accept private donations.

In order for those donations to be available for ASAA purposes, however, instead of deposited in the general fund, the legislature must appropriate to the department the program receipts from ASAA. This can probably be accomplished during the next legislative session for FY 95. For FY 94, the department will need to seek approval to spend unappropriated program receipts from the Legislative Budget and Audit Committee pursuant to AS 37.07.080(h). The department will probably also want to anticipate program receipts from membership dues when requesting approval, as well as any amounts that may be turned over to ASAA from ASAA, Inc., as described in question three below.

Donations to ASAA could be used to support and administer state school activities if appropriated to the department for that program. The donations could not, however, be used to fund ASAA positions within the department. To do so would violate the Executive Ethics Act, AS 39.52.120.

I am attaching for your information an attorney general opinion that addresses similar issues to those raised by ASAA donations. (1986 Inf. Op. Att'y Gen. (June 30; 663-86-0470).)

The opinion responds to questions by the Department of Natural Resources about soliciting donations to parks. As the opinion notes, the department must be circumspect about how it solicits donations so as not to favor certain groups or exclude others.

2. Can ASAA, Inc. continue in a limited capacity for the purpose of collecting donations for ASAA?

The answer to this question is yes, but it may be unnecessary in light of our answer to question number one. What you are suggesting is similar to Friends of the Museum, operating to benefit the museum. A separate entity may be practical if a fairly extensive fund-raising operation is contemplated, but it raises certain concerns. When such an adjunct group is set up, it is important that it not be just an end run around the constitutional appropriation requirements. ASAA, Inc. could exist for the purpose of supporting ASAA, but the nonprofit would then have a say in what money was contributed to ASAA. If it turned over to the department all contributions with no voice in how those moneys were spent it would appear to be an extension of the department, spending money that should properly be deposited in the general fund unless appropriated to the department. Additionally, if the nonprofit is administered by paid staff, there would have to be a source of funds to pay the staff, presumably donated funds. A separate state position to administer ASAA within the department would also be necessary. Unless ASAA, Inc. could be run purely by volunteers, this arrangement would probably result in higher administrative costs overall.

3. What will happen to ASAA, Inc.'s existing property, including real property?

Nonprofit corporations are purely statutory creatures; they can be created and dissolved only according to the statutory provisions of AS 10.20. The article on dissolution addresses both voluntary and involuntary dissolution. It is our understanding that ASAA, Inc. intends to voluntarily dissolve, and therefore we confine our remarks only to the procedure for voluntary dissolution.

The assets of a corporation in the process of dissolution shall be applied and distributed as follows:

- (1) all liabilities and obligations of the

corporation shall be paid and discharged, or adequate provision shall be made therefor;

(2) assets held by the corporation upon condition requiring return, transfer or conveyance, which condition occurs by reason of the dissolution, shall be returned, transferred or conveyed in accordance with the requirements;

(3) assets received and held by the corporation subject to limitations permitting their use only for charitable, religious, eleemosynary, benevolent, educational or similar purposes, but not held upon a condition requiring return, transfer or conveyance by reason of the dissolution, shall be transferred or conveyed to one or more domestic or foreign corporations, societies or organizations engaged in activities substantially similar to those of the dissolving corporation, under a plan of distribution adopted as provided in this chapter;

(4) other assets, if any, shall be distributed in accordance with the provisions of the articles of incorporation or bylaws to the extent that the articles of incorporation or bylaws determine the distributive rights of members, or any class or classes of members, or provide for distribution to others;

(5) any remaining assets may be distributed to persons, societies, organizations or domestic or foreign corporations, whether for profit or nonprofit, as may be specified in a plan of distribution adopted as provided in this chapter.

AS 10.20.295 (emphasis added).

I would imagine that most donations made to ASAA, Inc. fall into section (3) above, that is, held by the corporation subject to use for ASAA-related activities, but not upon a condition requiring return if the corporation dissolves. (The nature of the assets must be verified, of course, and ASAA, Inc. has an attorney who should walk them through this process.) If there are assets available for distribution, ASAA would appear to be a logical recipient of those assets because its activities are

substantially similar to those of the dissolving corporation. If there is another organization that would be a suitable recipient, however, the department could not insist that the assets be transferred to the state. If it is anticipated that the state will receive assets from ASAA, Inc., it would be extremely helpful if the corporation would liquidate those assets, including the condominium, before transferring or conveying to the state.

If assets are available for distribution, then the corporation must adopt a plan of distribution pursuant to AS 10.20.300 that will authorize a transfer of those assets. AS 10.20.300(a). The plan must be filed with the commissioner of commerce and economic development. AS 10.20.300(d). After obligations have been paid and remaining assets transferred or distributed in accordance with the plan, then the corporation shall execute articles of dissolution. AS 10.20.310. When the articles have been filed and other requirements met, the commissioner of commerce and economic development will issue a certificate of dissolution. AS 10.20.315(a)(3).

Among other requirements, the articles of dissolution must state "that there are no suits pending against the corporation in any court, or that adequate provision has been made for the satisfaction of a judgment, order or decree which may be entered against it in a pending suit." Id. This is relevant because ASAA, Inc. is currently a party in two suits in the superior court. The attorney for ASAA, Inc. may advise that existing funds, or at least a portion of them, be held pending the resolution of those suits.

Finally, I bring to your attention AS 10.20.450, which speaks to the continued existence of remedies for or against a nonprofit corporation after dissolution, providing in part:

The dissolution of a corporation . . . does not take away or impair a remedy available to or against the corporation, its directors, officers, or members, for a right or claim existing, or a liability incurred, before dissolution if an action or other proceeding is commenced within two years after the date of dissolution. The action or proceeding by or against the corporation may be prosecuted or defended by the corporation in its corporate name. The members, directors, and officers may take appropriate action to protect the remedy, right, or claim.

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Id. Thus, even after dissolution, ASAA, Inc. could be named a party in a suit by a student or member school aggrieved of the application of a rule or some other action by ASAA, Inc. I would not anticipate too many of these, however, because of the requirement to exhaust administrative remedies and the 30-day period in which to file administrative appeals. Of course the pending actions were not brought as administrative appeals, and ASAA, Inc. would still have to defend against suits brought as original actions if a court permitted the suit or relaxed the 30-day requirement for appeals.

In conclusion, we believe that the department can receive donations to ASAA, but that approval must be obtained from the Legislative Budget and Audit Committee to spend donations as unappropriated program receipts. Approval must also be sought to spend dues received from member schools. Although a separate entity could be set up to collect donations, we do not believe it is necessary to do so at this time. ASAA, Inc.'s property must be disposed of in accordance with the laws governing dissolution of a nonprofit corporation. If the department anticipates that ASAA, Inc. will transfer assets to the state for ASAA, it should request that ASAA, Inc. first liquidate those assets to simplify the transfer. The department should also request approval for the department to spend those assets on the ASAA program.

If I can be of further assistance, please do not hesitate to contact me.

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Attachment