

# MEMORANDUM

## State of Alaska Department of Law

TO: The Honorable Wilson Condon  
Commissioner  
Department of Revenue

DATE: May 16, 1997

FILE: 663-97-0380

TELEPHONE: 465-3600

SUBJECT: Interpretation of  
AS 05.15.150

FROM: Vincent L. Usera  
Assistant Attorney General  
Commercial Section - Juneau

You have requested that we address the department's interpretation of amendments made to AS 05.15.150 in 1996, which became effective on January 1, 1997.<sup>1</sup> These changes impose additional limitations on political entities' use of monies derived from charitable gaming other than raffles and lotteries. The pertinent portions of the section provide:

**AS 05.15.150 Limitation on use of proceeds.** (a) The authority to conduct the activity authorized by this chapter is contingent upon the dedication of net proceeds of the charitable gaming activity to the awarding of prizes to contestants or participants and to political, educational, civic, public, charitable, patriotic, or religious uses in the state. "Political, educational, civic, public, charitable, patriotic, or religious uses" means . . . through aiding candidates for public office or groups that support candidates for public office . . . but does not include

...

*(3) the direct or indirect payment of any portion of the net proceeds of a charitable gaming activity, except the proceeds of a raffle or lottery,*

*(A) to aid candidates for public office or groups that support or oppose candidates for public office;*

*(B) to a political party or to an organization affiliated with a political party; or*

*(C) to a group, as that term is defined in AS 15.13.400, or*

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<sup>1</sup> Section 2, ch. 48, SLA 1996.

*a political group, as that term is defined in AS 15.60, that seeks to influence the outcome of an election.*<sup>2</sup> (Amendments shown in italic.)

The department has interpreted these amendments to mean that the targeted political entities may receive permits to conduct bingo and pull-tab games, or any other game allowed under AS 05.15 other than raffles or lotteries, but their uses of the monies raised through activities other than raffles or lotteries are limited.<sup>3</sup> Thus, a political entity could obtain a permit for and conduct bingo or pull-tab games, but it could not use any of the proceeds for general operating funds, or for any purpose connected to the entity's objectives. For all practical purposes, there is virtually nothing that a political entity could do for itself with funds raised from the conduct of charitable games other than raffles and lotteries. A political entity, could, though, raise funds using pull-tabs or bingo and donate these in their entirety to an eleemosynary

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<sup>2</sup> AS 15.13.400 provides:

(5) "group" means

(A) every state and regional executive committee of a political party; and

(B) any combination of two or more individuals acting jointly who organize for the principal purpose of influencing the outcome of one or more elections and who take action the major purpose of which is to influence the outcome of an election; a group that makes expenditures or receives contributions with the authorization or consent, express or implied, or under the control, direct or indirect, of a candidate shall be considered to be controlled by that candidate; a group whose major purpose is to further the nomination, election, or candidacy of only one individual, or intends to expend more than 50 percent of its money on a single candidate, shall be considered to be controlled by that candidate and its actions done with the candidate's knowledge and consent unless, within 10 days from the date the candidate learns of the existence of the group the candidate files with the commission, on a form provided by the commission, an affidavit that the group is operating without the candidate's control; a group organized for more than one year preceding an election and endorsing candidates for more than one office or more than one political party is presumed not to be controlled by a candidate; however, a group that contributes more than 50 percent of its money to or on behalf of one candidate shall be considered to support only one candidate for purposes of AS 15.13.070, whether or not control of the group has been disclaimed by the candidate;

AS 15.60 provides:

(19) "political group" means a group of organized voters which represents a political program and which does not qualify as a political party;

(20) "political party" means an organized group of voters that represents a political program and that nominated a candidate for governor who received at least three percent of the total votes cast at the preceding general election for governor;

<sup>3</sup> As a practical matter, the games from which funds would be prohibited for political uses are bingo, pull-tabs, and contests of skill. Virtually all other types of charitable gaming are functionally either raffles or lotteries.

organization, or a municipality.<sup>4</sup> The Alaska Public Offices Commission has offered a contradictory opinion and reads the amendments to require denial of a permit to conduct bingo or pull-tab games to political entities. We disagree and find the department's interpretation reasonable.

**STATUTORY CONSTRUCTION: EXTRINSIC  
AIDS NECESSARY WHEN STATUTE IS UNCLEAR**

Under the "plain meaning rule" of statutory interpretation, "[w]here the meaning of a statute is apparent, there is no need to resort to methods of statutory construction." *White v. Alaska Ins. Guar. Ass'n*, 592 P.2d 367, 369 (Alaska 1979) quoted in *State v. Alex*, 646 P.2d 203, 208 n. 4 (Alaska 1982). Where a court seeks to interpret a statute, it must first look to the language of the act itself. *Lagos v. City and Borough of Sitka*, 823 P.2d 641 (Alaska 1991). See also, AS 01.10.040; 2A NORMAN J. SINGER, SUTHERLAND STATUTORY CONSTRUCTION § 46.01 (5th ed. 1992). Although Alaska has moved away from the "plain meaning" rule, "the legislative history and rules of construction must present a compelling case that the literal meaning of the language of the statute is not what the legislature intended." *Homer Elec. Ass'n v. Towsley*, 841 P.2d 1042, 1044 (Alaska 1992) (citations omitted) (emphasis added). However, when the meaning of a statute is ambiguous or unclear, one looks first to legislative history for help in determining the intent of the legislature in enacting a particular statutory scheme. *Konecky v. Camco Wireline, Inc.*, 920 P.2d 277, 281 (Alaska 1996) (if the language of the statute is unclear, legislative history is consulted to ascertain intent). See also *Bartz v. State of Oregon*, 839 P.2d 217, 220 (Or. 1992) ("When the text and context of the statute do make the legislature's intention clear, we turn to the legislative history to aid us in construing the statute.").

There is very little in the legislative history to aid in this regard. When SB 191 was being heard in committee, the section pertaining to charitable gaming received scant consideration. In the Senate State Affairs Committee, the minutes of a meeting held March 12, 1996 reflect a question asking why the provision containing the amendments to AS 05.15.150 was not in the initiative.<sup>5</sup> A member of the legislative committee which drafted the measure responded that the intention of the committee was "to preclude operators of charitable gaming permits from returning money to groups or parties, because operators are corporations, and corporations are not allowed to give money [to political purposes]." (Transcript of minutes, tape

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<sup>4</sup> We doubt, though, that this would occur very often; bingo and pull-tab operations usually require substantial capital outlay in advance, making such altruistic gestures highly impractical.

<sup>5</sup> In 1995, a group of citizens gathered signatures for an initiative aimed at campaign reform to be placed on the November 1996 ballot. The initiative petition was approved by the Lieutenant Governor's office, however, the legislature launched its own effort and, using the citizen-drafted measure as a guide, an informal legislative committee drafted legislation to obviate the need for the initiative. The amendments to AS 05.15.150 arose in the legislative rewrite of the initiative.

location 150, available through Alaska Legislative Affairs Agency.) The import of this exchange is unclear. It may evidence a misunderstanding of the nature of operators and the interplay between operators and permittees. True “operators,” under AS 05.15.122(b), are, in the main, natural persons who conduct gaming strictly on behalf of a permittee.<sup>6</sup> Operators have no control over the expenditure of the net proceeds of charitable gaming; net proceeds must be paid to the authorizing permittee. AS 05.15.165(a). Permittees, the entities which do have control over monies raised through gaming and which could make the contributions contemplated, are municipalities and qualified organizations, which may be organized as firms, corporations, companies, associations, or partnerships. AS 05.15.690(36). If the reference was to permittees as operators in the generic sense of that term, or simply those who *conduct* gaming, then the reference to corporations is under-inclusive of entities which can qualify for a permit. If, however, the reference was to “operators” in the statutory sense, then the conclusion is incorrect; they are for the most part not corporations. AS 05.15.122. Regardless, if the prohibition was aimed at curbing *corporate* contributions, there is no explanation why money raised through raffles and lotteries remains available for political contribution. Thus, the legislative history provides little basis for divining the legislature’s intent in enacting the amendments, though it is evident that the activity being curtailed is political contributions, not charitable gaming.

#### **THE DEPARTMENT’S INTERPRETATION OF ITS STATUTES IS ENTITLED TO DEFERENCE**

Courts will defer to the interpretation given a statute by the agency charged with its administration. *State, Bd. of Marine Pilots v. Renwick*, \_\_\_ P.2d \_\_\_, No. S-7379, 1997 WL 71842 (Alaska Feb. 21, 1997). *See also* 2B NORMAN J. SINGER, SUTHERLAND STATUTORY CONSTRUCTION § 49.05 (5th ed. 1992); *Mississippi Power & Light Co. v. Mississippi ex rel. Moore*, 487 U.S. 354, 380, 108 S.Ct. 2428, 2443 (1988) (Court will defer to agency construction if it does not violate plain meaning and is a reasonable interpretation.); *Chemical Mfrs. Ass’n v. Natural Resources Defense Council*, 470 U.S. 116, 125, 105 S.Ct. 1102, 1107 (1985) (“The view of the agency charged with administering the statute is entitled to considerable deference. . . .”).

The critical element in showing the validity of an agency’s interpretation is that it is reasonable and does no violence to the meaning of the statute’s plain language. *Muller v. BP Exploration (Alaska) Inc.*, 923 P.2d 783, 792 (Alaska 1996) (Court will not defer to agency if its interpretation conflicts with the statute’s own language.). Here, two particulars support our view that the department’s reading of the statute is correct. One, the entire enactment was aimed

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<sup>6</sup> This statute provides that the department may issue an operator’s license to a natural person, a municipality, or a qualified organization. The only way a corporation could be an operator is if a qualified organization that is a corporation acts as an operator. Historically, only one qualified organization has acted as an operator; it was an association and acted as an operator for only a short time.

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at campaign spending reform, not at charitable gaming. Second, the enactment makes no mention of permits or what entities may operate which games; it is strictly couched in terms of limiting the sources of funds for political entities. If the legislature had wanted to deny political entities the opportunity to apply for a bingo or pull-tab permit, it could easily have done so in AS 05.15.100. Thus, it is entirely reasonable to view the amendment as not implying a prohibition on issuing permits to play certain games, but that it merely limits the uses to which political entities can put funds raised by games other than raffles and lotteries.

We hope this resolves your questions. If there is anything further you require in this regard, please don't hesitate to contact us.

VLU/smw