

# MEMORANDUM

## State of Alaska Department of Law

TO: MG Jake Lestenkof  
Commissioner  
Dept. of Military and Veterans Affairs

DATE: June 16, 1997

FILE NO: 663-94-0165

TEL. NO: 465-3600

SUBJECT: Authority of Division of  
Emergency Services to Make  
Expenditures from Disaster  
Relief Fund in the Absence of  
Gubernatorial Action

FROM: John B. Gaguine  
Assistant Attorney General  
Governmental Affairs Section - Juneau

You have asked two questions about the Disaster Relief Fund (DRF), codified in AS 26.23.300.<sup>1</sup> First, you ask whether costs incurred by the Department of Military and Veterans Affairs (DMVA) in assessing potential disaster situations may be charged to the DRF. Second, you ask whether DMVA may in general expend funds from the DRF without any action on the part of the governor. We believe that the answer to both of these questions is a qualified yes.

AS 26.23.300(b) and (c) provide,

(b) Subject to the restrictions of (d) of this section, the governor may, without additional legislative authorization, expend not more than \$1,000,000 of the assets of the disaster relief fund for the following purposes:

(1) to implement provisions of law relating to disaster relief in the case of a disaster;

(2) to alleviate the effects of a disaster by making grants or loans to persons or political subdivisions on terms the governor considers appropriate or by other means the governor considers appropriate.

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<sup>1</sup> Although AS 26.23.300 was enacted in 1990, the DRF has been in existence since 1967. A special session of the legislature that year, following the great Fairbanks flood, enacted AS 44.19.171 (renumbered by the revisor of statutes in 1980 as AS 44.19.048), a statute quite similar to AS 26.23.300. The 1990 law enacting AS 26.23.300 repealed its predecessor.

(c) Subject to the restrictions of (d) of this section, the governor may, without additional legislative authorization, expend during a fiscal year not more than \$500,000 of the assets of the disaster relief fund to prevent or minimize the effects of an event that occurs in the state and that, in the determination of the governor, poses a direct and imminent threat of a disaster of sufficient magnitude and severity to justify state action.

We do not believe that subsection (b) can be read broadly enough to authorize payment of assessment costs from the DRF. The language of (b), and the higher allowable amount that may be spent without appropriation, leads us to believe that (b) limits expenditures to situations in which an assessment has been made and a disaster is found to exist. Subsection (c), however, is less constraining, as we noted in our opinion to you last year (1996 Inf. Op. Att’y Gen. (661-97-0150; Sept. 9)). We believe that the language of subsection (c) can be read to cover assessment costs.

Our construction of AS 26.23.300(c) does not complete the necessary analysis, since that subsection speaks of the governor’s authority, and not of DMVA’s. We believe, however, that the governor can delegate his authority under that subsection to DMVA. This necessity of a delegation is why our answer is a qualified yes.

The relevant statute here is AS 26.23.220. As passed by the legislature in 1977, and modified by Executive Order No. 58 in 1984, that statute provides, “This chapter [AS 26.23] shall be administered by the Department of Military and Veterans’ Affairs, which is responsible to, and which may receive delegations of authority from, the governor.” Because AS 26.23.300 is part of AS 26.23, AS 26.23.220 would give the governor the authority to delegate his spending power under AS 26.23.300(c) to DMVA.<sup>2</sup>

As it appears in the Alaska Statutes, however, AS 26.23.220 does not read as quoted above. Instead of “This chapter” it says “AS 26.23.010 - 26.23.220.” This change was made by the revisor of statutes in 1990, “to reflect the enactment of AS 26.23.300 and 26.23.400 by ch. 178, SLA 1990.” Revisor’s note following AS 26.23.220. If that statute is read as the revisor would have it, then there is no statutory authority for the governor to delegate his spending power under AS 26.23.300(c) to DMVA.

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<sup>2</sup> As we recently advised the Office of Management and Budget in the 1996 opinion cited above, a formal disaster declaration under AS 26.23.020(c) is not necessary before money can be expended under AS 26.23.300(c).

We believe that the revisor overstepped his authority in changing AS 26.23.220, and that his change constitutes an invalid substantive change in the law.<sup>3</sup> The plain language of that statute, as enacted by the legislature, makes it applicable to all of AS 26.23, and not just the first article (AS 26.23.010 - 26.23.220). While it is true that when AS 26.23.220 was enacted there was no AS 26.23.300, there is nothing to indicate that, when AS 26.23 was amended in 1990, the legislature did not intend the governor's delegation authority to apply to his powers under the DRF. Indeed, if the legislature had intended to so curtail the governor's delegation authority, it presumably would have amended AS 26.23.220 in the way that the revisor did. The legislature's failure to so amend AS 26.23.220 suggests that it did not share the revisor's interpretation of the statute.

We therefore conclude that the governor may delegate to DMVA his spending power under AS 26.23.300(c).<sup>4</sup> Our conclusion that AS 26.23.220 applies to AS 26.23.300 also leads us to answer your other, more general question with a qualified affirmative. Given a suitable general delegation from the governor, we believe that DMVA can make the requisite determination under AS 26.23.300(c) and then can make expenditures under that subsection, up to the \$500,000 limit.<sup>5</sup>

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<sup>3</sup> AS 01.05.031(b) prohibits the revisor of statutes from "changing the meaning of any law."

<sup>4</sup> Any such delegation should be in writing and should specifically delegate to DMVA the authority to make the required determination under AS 26.23.300(c) and to expend funds under that subsection.

<sup>5</sup> However, we do not believe that DMVA has any authority to expend funds from the DRF absent a delegation from the governor. We must also note that there might be constitutional problems with a blanket delegation: certain functions assigned to the governor in the disaster statutes may be non-delegable. We need not address the permissible extent of the delegation power here, as the delegation of authority under AS 26.23.300(c) is in our opinion clearly permissible.

MG Jake Lestenkof, Commissioner  
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Please feel free to contact us if we can be of further assistance.

JBG:jn

cc: Bob Heavilin, DMVA  
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