

MEMORANDUM

State of Alaska
Department of Law

To: The Honorable Loren Leman
Lieutenant Governor

Date: August 25, 2003

File No.: 663-04-0025

Tel. No.: 465-3600

From: Sarah J. Felix
Assistant Attorney General
Labor and State Affairs – Juneau

Re: Review of Initiative Petition
Application on Campaign Finance
Reform (03-CAMP)

I. INTRODUCTION AND SUMMARY:

You have asked us to review an application for an initiative petition entitled “An Act Relating to Campaign Contribution Limits and Disclosure.” We have completed our review, and find that the application complies with the constitutional and statutory provisions governing the use of the initiative. Under these circumstances we recommend that you certify the application.

II. SUMMARY OF THE PROPOSED BILL AND ANALYSIS:

A. SUMMARY

The proposed bill is comprised of six sections. Section one of the bill proposes to amend AS 15.13.070(b), which establishes the limits on contributions by individuals to decrease the limit for contributions to a candidate from \$1,000 to \$500, and from \$10,000 to \$5,000 for contributions to a political party. Section two of the bill proposes to amend AS 15.13.070(c) to decrease the amount that a group may contribute to a candidate or another group from \$2,000 to \$1,000. Section three would amend AS 15.13.070(f) which sets the limits on the dollar amount on a campaign contribution from a “nongroup entity” to another nongroup entity; the amount would be reduced from \$1,000 to \$500. Section four revises the definition of “lobbyist” set out in AS 24.45.171(8), to set out a broader definition of this term. Section five amends AS 24.60.200, on financial disclosure by legislators, public members of the committee, and legislative directors.

Section six of the bill provides for an effective date of January 1, 2005 for the bill to be initiated. We note that the earliest date that an initiative may become effective is 90 days following certification of the election results at which a majority of the votes cast on the proposition favor its adoption. *See* Alaska Constitution, art. XI, sec. 6. Therefore, the

effective date set out in the proposed bill may be operative only if it falls on a date on or after the effective date established by art.XI, sec. 6 of the Alaska Constitution.

The bill to be initiated amends provisions of the Alaska Statutes that were amended by the legislature last session in HCS CSSB 89(RLS) am H, and HCS CSSB 119(FIN) am H(efd fld). Sections one through three and five of the bill propose to amend statutes that were amended by the legislature in sections 8, 9, 10, and 30 of SB 119; section five of the bill proposes to amend a statute that was amended last session in section four of SB 89.

B. ANALYSIS

Under AS 15.45.070, the lieutenant governor is required to review an application for a proposed initiative and either “certify it or notify the initiative committee of the grounds for denial.” The grounds for denial of an application are that (1) the proposed bill is not in the required form; (2) the application is not substantially in the required form; or (3) there is an insufficient number of qualified sponsors. AS 15.45.080.

1. The Form of the Application

The form of an initiative application is prescribed in AS 15.45.030, which provides:

The application shall include (1) the proposed bill to be initiated, (2) a statement that the sponsors are qualified voters who signed the application with the proposed bill attached, (3) the designation of an initiative committee of three sponsors who shall represent all sponsors and subscribers in matters relating to the initiative, and (4) the signatures and addresses of not less than 100 qualified voters.

The application meets the first three requirements. With respect to the fourth requirement, the Division of Elections within your office determines whether the application contains the signatures and addresses of not less than 100 qualified voters.

2. The Form of the Proposed Bill

The form of a proposed initiative bill is prescribed by AS 15.45.040, which requires that (1) the bill be confined to one subject; (2) the subject be expressed in the title; (3) the enacting clause state, “Be it enacted by the People of the State of Alaska”; and (4) the bill not include prohibited subjects. The prohibited subjects -- dedication of revenue, appropriations, the creation of courts or the definition of their jurisdiction, rules of court, and local or special legislation -- are listed in AS 15.45.010 and in article XI, section 7 of the Alaska Constitution.

Constitutional amendments are also a prohibited subject. *Starr v. Hagglund*, 374 P.2d 316, 317 n.2 (Alaska 1962). An initiative may not be used to attempt to accomplish an action contrary to law. *Cf. Whitson v. Anchorage*, 608 P.2d 759, 761 (Alaska 1980). Although *Whitson* involved a municipal initiative in conflict with a state law, we have previously taken the position that its holding is equally applicable to a proposed initiative that is plainly inconsistent with a provision of the Alaska Constitution. *See e.g.* 1990 Inf. Op. Att'y Gen. (Feb. 5; 663-90-0190); 1991 Inf. Op. Att'y Gen. (Nov. 7; 663-91-0527). Also, the subject of an initiative "must constitute such legislation as the legislative body to which it is directed has the power to enact." *Municipality of Anchorage v. Frohne*, 568 P.2d 3, 8 (Alaska 1977). Our office has also opined in the past that the initiative may not be used as a vehicle for amending the Federal Constitution. *See* 1979 Inf. Op. Att'y Gen. (Feb. 13; 663-79-0474).

The form of the bill satisfies the requirements of AS 15.45.040. The Alaska Supreme Court has taken a broad view of the single subject rule, and the bill to be initiated by this initiative application appears to satisfy the single subject rule as it concerns the subject of campaign contribution limits and disclosure. The subject of the bill is expressed in the title of the bill, and the bill contains the required enacting clause language. The bill does not appear to address one of the subjects prohibited from initiative by the Alaska Constitution. We note that our office has advised the lieutenant governor in the past to certify applications for campaign finance initiatives. *See* 1995 Inf.Op. Att'y Gen. (Apr. 18; 663-95-0407).

While our review of the initiative is limited to the form of the application and the proposed bill for compliance with the constitutional and statutory provisions governing the initiative, our practice has been to advise your office of potential constitutional issues presented by a bill proposed in an initiative application. In that regard, it should be noted that it is possible that the constitutionality of various sections in the bill may be litigated.

Campaign finance reform measures, such as the provisions set out in the bill to be initiated in 03 CAMP, implicate First Amendment rights under the Alaska and United States Constitutions. In the past there has been litigation concerning prior campaign finance reform measures enacted in Alaska. We are aware that the Alaska Supreme Court has upheld various campaign finance reforms in the case *State v. Alaska Civil Liberties Union*, 978 P.2d 597 (Alaska 1999), and that the Ninth Circuit Court of Appeals recently upheld certain of Alaska's campaign finance reform measures in *Jacobus v. State of Alaska*, No. 01-35666, (Aug. 12, 2003).

However, litigation in the federal courts concerning campaign finance reform measures is ongoing. For instance, the United States Supreme Court has noted probable jurisdiction in the case considering the federal campaign finance reform law, the "McCain-

Feingold” Act.¹ Issues surrounding campaign finance reform laws are litigated regularly, and there is some uncertainty regarding what is an allowable restriction. We note that the amendments to existing statutes proposed by the bill to be initiated are generally more restrictive than in the existing law, and therefore, may draw challenges. However, the bill to be initiated does appear to fall within constitutional limitations as set out in the current caselaw, set out above.

As you know, the lieutenant governor is obligated to assure that a proposed initiative does not violate the restrictions of article XI, section 7 of the Alaska Constitution, however, the “usual rule is to construe voter initiative broadly so as to preserve them whenever possible.” *See, e.g., Pullen v. Ulmer*, 923 P.2d 54, 58 (Alaska 1996); *Yute Air Alaska, Inc. v. McAlpine*, 698 P.2d 1173, 1181. In general, other constitutional or legal infirmities must await passage of the initiative by the voters and review by the courts. *See Brooks v. Wright*, 971 P.2d 1025, 1027 (Alaska 1999). Therefore, our preelection review of this initiative is limited to determining whether the bill to be initiated includes a prohibited subject as set out in article XI, section 7, of the Alaska Constitution, and the various cases interpreting use of the initiative in Alaska, set out above.

Therefore, while we recognize that there may be a challenge at some point to the law to be initiated by this initiative application, we recommend that you certify the application. As the courts have explained in the past, a petition for an initiative that is otherwise in the proper form cannot be rejected because it may be substantively unconstitutional. The courts will not entertain a challenge to an initiative’s substantive constitutionality unless or until the initiative passes. *Boucher v. Engstrom*, 528 P.2d 456, 460 (Alaska 1974).

III. CONCLUSION

For the reasons set out above, we find that the proposed bill and application are in the proper form, and therefore recommend that you certify this initiative application.

IV. PROPOSED BALLOT AND PETITION SUMMARY

We have also prepared a ballot-ready petition summary and title for your consideration. It is our practice to provide you with a proposed title and summary to assist

¹ The federal district court decision on the McCain-Feingold campaign finance reform act is set out in a 203 page decision cited as *McConnell v. Federal Election Commission*, 251 F.Supp.2s 176 (D.D.C. 2003). The United States Supreme Court has noted probable jurisdiction concerning this decision in *Federal Election Com’n v. McConnell*, 123 S.Ct. 2268, 156 L.Ed. 2d 127, 71 USLW 3753 (June 5, 2003).

you in complying with AS 15.45.090(2) and AS 15.45.180. We believe that it is good practice for the petition and ballot to conform to the requirements of a title (six words) and ballot summary (100 words) under AS 15.45.180. We do this in order to reduce the chance of collateral attack due to a divergence between the ballot and petition summaries. We therefore propose the following ballot and petition title and summary for your review:

Campaign Contribution, Lobbyist, and Disclosure Initiative

This bill would decrease the amount that an individual may contribute to a nongroup entity to elect or nominate a candidate to \$500. It would decrease the amount an individual may give a political party to elect or nominate a candidate to \$5,000. It would decrease the amount that a group may give to a candidate, group, or political party to \$1,000. It would decrease the amount that a nongroup may give a nongroup entity to elect or nominate a candidate to \$500. The bill changes the definition of "lobbyist." It amends the law on the legislature's required financial disclosures.

Should this initiative become law?

This summary has a Flesch test score of 52.866, which is somewhat lower than the target score of 60. We think that the reason for the lower score is that the summary includes commonly understood words containing three or more syllables, such as "individual," "political," and "candidate." Under these circumstances we believe that the summary meets the readability standards of AS 15.60.005.

At the request of your office we have reviewed the above language with Representative Eric Croft, the designated representative of the initiative committee. Representative Croft has indicated his approval of the summary.

Please contact me if we can be of further assistance to you on this matter.

SJF:sro

cc: Laura Glaiser, Director
Division of Elections

Hon. Loren Lemman

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Representative Eric Croft
Initiative Committee Member