

ADVISORY OPINION REQUEST

Number: AO 10-06-CD

Requested By: Carl Rose, Association of Alaska School Boards

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Campaign Disclosure, Administrator

Date Issued: April 26, 2010

Subject: Request for an Advisory Opinion on advice under AS 15.13.374 on whether or not the AASB may participate in the activities listed below.
AO 10-06-CD

Commission Decision: **On April 26, 2010, the Alaska Public Offices Commission heard and approved this advisory opinion request by a vote of 5 to 0. The Commission did not take a position on question number five.**

QUESTIONS PRESENTED

1. Am I restricted in providing written information regarding this Ballot initiative to the AASB regular and customary mailing list?
2. Am I restricted in debating this issue in a public forum?
3. Am I restricted in writing information and opinion pieces that may be printed outside of AASB publications?
4. Are there any restrictions that would prohibit me from distributing resolutions adopted by individual school boards to our membership and regular and customary print and electronic mailing lists? Would there be any restriction to providing these to interested parties outside of the AASB's regular and customary print and electronic mailing lists (i.e., to other associations)?
5. We do not anticipate any of the above activities to increase our costs above our normal operating expenditures. May we use our normal operating expenditures for these activities?

SHORT ANSWER

The short answers to your questions under AS 15.13 are as follows:

1. No, you are not restricted from providing written information on AASB's views of the ballot initiative to its regular and customary mailing list.
2. No, you are not restricted from debating this issue in a public forum.
3. No, you are not restricted from writing information and opinion pieces that may be printed outside of AASB publication.
4. No, there are no restrictions on distributing resolutions adopted by individual school boards to the AASB membership and regular customary print and electronic mailing lists.
5. The Commission does not take a position on this question.

FACTS

The Association of Alaska School Boards (“AASB”) represents 53 school boards and 330 individual school board members in Alaska.¹ AASB collects approximately 30% of AASB’s budget from a public source – membership dues for individual members paid for by each member’s respective public school district. The remainder of AASB’s budget comes from grant funding or payment for the services it provides, such as superintendent searches or policy development work.

AASB has a 15 member Board of Directors (“the Board”). The Board is elected by the membership at an annual conference. The Board provides direction to the Executive Director through established policy and a long range plan. The Board holds three regular meetings each year, and also meets via teleconference as needed. AASB seeks to “strengthen the political influence of AASB and its members at the local, state and national level.” The membership passes Belief Statements and Resolutions, which then establish AASB’s positions before the legislature and state agencies. These resolutions are distributed both in print and electronically through the AASB’s regular mailing lists. The customary mailing list includes AASB membership, elected officials, educational groups, and other interested people.

AASB prepares and distributes publications that inform its membership and others about opportunities and challenges to Alaska’s school boards, their schools and students.²

ANALYSIS

The questions presented turn on whether AASB is “an instrumentality of State.” See *Alaska State Housing Authority v. Riley Pleas, Inc.* 560 P.2d 25 (Alaska 1977). Instrumentalities of the State, including state agencies, corporations, and subdivisions, can only use money held to influence the outcome of a ballot initiative if the money has been specifically appropriated by a state law for that purpose. AS 15.13.145(a)(1-3), (b).³ If it is not an instrumentality of the state, AASB is not covered by AS 15.13.145 and may freely attempt to influence a ballot proposition election subject to all of the other campaign finance and disclosure laws applicable to private organizations.

The AASB is not an instrumentality of the State of Alaska. It is not a state agency. Nor is it a state run corporation, university, board of regents, municipality, or a political subdivision of the

¹ Information on the formation, structure, governance, and mission of AASB is available on the AASB website at <http://aasb.org/>

² Examples of AASB publications include:

- The *Annual Report* provides a synopsis of AASB programs and services.
- *Critical Issue* is used to inform membership and distributed through regular and customary print and electronic mailing lists.
- *The Commentary* is a newsletter published 10 times each year.
- *Kids These Days* and the *ICE Newsletter* are monthly newsletters with stories and information about what’s happening around Alaska to support young people.
- *eNews* and the *Legislative Bulletin* are distributed weekly.

³ But see 2 AAC 50.356(b).

state. And it is technically not a school district or regional educational attendance area. Accordingly, the limitations under AS 15.13.145(b) do not apply. There are several reasons for this conclusion. First, though the AASB is recognized by statute as the *representative agency* of the *members* of the school boards across the state, AS 14.14.150 (emphasis added), the official designation as a representative agency does not per se create a state agency. This recognition only solidifies the point that AASB does not represent the interests of or work on behalf of particular government bodies. Rather, AASB represents the members of the school boards themselves. Next, AASB is a private corporation. AASB does receive some state funding, by way of membership dues paid for by individual school districts on behalf of their members, but these dues account for only 30% of AASB's budget and do not convert AASB into a corporation of the state. See AO 08-05 CD and AS 47.30.011. And unlike instrumentalities of the state, AASB is not entitled to legal representation by Department of Law.

11th Amendment jurisprudence is also useful to this analysis as it helps to distinguish between the state and private parties. In this case, AASB would not be immune from suit under the 11th Amendment to United States Constitution. To make this determination, a court would consider several factors. See *Alaska Cargo Transport Inc. v. Alaska Railroad Corporation*, 834 F.Supp. 1216, 1221-23 (D. Alaska 1991) (citing *Alaska Commercial Fishing & Agriculture Bank v. O/S Alaska Coast*, 715 P.2d 707, 708-711 (Alaska 1986)). Among them are that AASB purchases property in its own name and does not rely on state procurement procedures; that AASB is not performing an essential government function--AASB is best described as an advocacy group for its members; and that AASB has relative independence from the State of Alaska.

AS 15.13.145(a)(1)-(3) sets forth a distinct list of entities that are restricted from using money held to influence the outcome of a ballot proposition under AS 15.13.145(b). Neither AASB nor entities substantially similar to AASB are on that list. Accordingly, AASB may seek to influence the outcome of a ballot initiative election. The AASB must report to the Commission according to AS 15.13. Any independent expenditures for or against a ballot issue will be reported on an Independent Expenditures form within 10 days of making the expense or the accrual of the expense to the Commission. Likewise, any cumulative contributions of \$500 or more to a group formed to support or oppose a ballot proposition or question must be reported within 30 days of the contribution on a Statement of Contributions form with the Commission. These reporting requirements may change due to pending legislation. As such, AASB should feel free to contact APOC Staff with any questions pertaining to reporting requirements throughout the initiative process.

CONCLUSION

The AASB is not restricted from influencing the outcome of a ballot proposition under AS 15.13.145(b) because the AASB is not an instrumentality of the state or any other type of entity listed under AS 15.13.145(a)(1)-(3). Any expenditures made by AASB must still be reported in accordance with AS 15.13.

COMMISSION DECISION

On April 26, 2010, the Alaska Public Offices Commission heard and approved this advisory opinion request by a vote of 5 to 0. The Commission did not take a position on question number five.

APPLICABLE LAW

Sec. 14.14.150. Association of Alaska School Boards the representative agency of board members.

The Association of Alaska School Boards is recognized as the organization and representative agency of the members of the school boards of the state.

Sec. 15.13.145 Money of the state and its political subdivisions.

(a) Except as provided in (b) and (c) of this section, each of the following may not use money held by the entity to influence the outcome of the election of a candidate to a state or municipal office:

- (1) the state, its agencies, and its corporations;
- (2) the University of Alaska and its Board of Regents;
- (3) municipalities, school districts, and regional educational attendance areas, or another political subdivision of the state; and
- (4) an officer or employee of an entity identified in (1) - (3) of this subsection.

(b) Money held by an entity identified in (a)(1) - (3) of this section may be used to influence the outcome of an election concerning a ballot proposition or question, but only if the funds have been specifically appropriated for that purpose by a state law or a municipal ordinance.

(c) Money held by an entity identified in (a)(1) - (3) of this section may be used

- (1) to disseminate information about the time and place of an election and to hold an election;
- (2) to provide the public with nonpartisan information about a ballot proposition or question or about all the candidates seeking election to a particular public office.

(d) When expenditure of money is authorized by (b) or (c) of this section and is used to influence the outcome of an election, the expenditures shall be reported to the commission in the same manner as an individual is required to report under [AS 15.13.040](#).

REGULATIONS

2 AAC 50.905. ADVISORY OPINIONS.

- (a) The commission staff shall review all requests for advisory opinions submitted under AS 15.13.374. If the commission staff determines that a request does not satisfy the requirements in AS 15.13.374, the commission staff shall reject the request and notify the person, group, or nongroup entity making the request of the deficiencies. A rejected request may be refiled.
- (b) If the commission staff determines that the request satisfies the requirements in AS 15.13.374, the executive director or the executive director's designee shall prepare a recommended advisory opinion within seven days after receipt of the opinion request for the commission to consider at its next regular meeting.

(c) The commission will approve, disapprove, or modify the recommended advisory opinion.

(d) The commission may reconsider an advisory opinion at any time upon the motion of a member who voted with the majority that originally approved the opinion, and if the commission adopts the motion to reconsider by the affirmative vote of at least four members. Adoption of a motion to reconsider vacates the advisory opinion to which it relates. Action by the requesting party in good faith reliance on the advisory opinion before the party has notice of reconsideration may not be the subject of an investigation under 2 AAC 50.460, 2 AAC 50.507, 2 AAC 50.810, or 2 AAC 50.815. (Eff. 1/4/86, Register 97; am 7/20/95, Register 135; am 1/1/2001, Register 156; am 2/20/2005, Register 173)

Authority: AS 15.13.030 AS 24.45.021 AS 39.50.050
AS 15.13.374 AS 24.60.220