ADVISORY OPINION REQUEST

Number: AO 10-10-CD

Requested By: Lon Garrison on behalf of the Sitka School Board

Prepared By: Jason Brandeis, Associate Attorney

Date Issued: June 14, 2010

Subject: May the Sitka School Board pass a resolution opposing Ballot Measure 1 when funds have not been specifically appropriated for this purpose?

Commission Decision: **On June 14, 2010, the Alaska Public Offices Commission heard and approved this advisory opinion request by a vote of 4 to 0.**

QUESTIONS PRESENTED

1. May the Sitka School Board pass a resolution taking a position on a ballot proposition and publicize that position through its usual and customary means of announcing a resolution without an appropriation of funds for this specific purpose?

2. Does the passage and dissemination of a resolution taking a position on a ballot initiative involve an expenditure of public funds that requires reporting to APOC?

SHORT ANSWERS

1. The resolution in question may be considered, passed, and distributed through the Sitka School Board's usual and customary means of considering and announcing a resolution without a specific appropriation.

2. Expenditures related to the passage and dissemination of the resolution at issue must be disclosed on a report to APOC.

FACTS

Initiative ANCO7, known as "The Alaska Anti-Corruption Act," will be Ballot Measure #1 ("BM1") in the August 2010 Primary Election. The Sitka School Board ("SSB") is interested in discussing and passing a resolution that would advocate against the passage of this initiative.

In e-mail and phone correspondence with APOC staff, Mr. Lon Garrison, Sitka School Board President, provided the following facts:

1. SSB currently has two draft proposed resolutions. One was drafted by the Association of Alaska School Boards ("AASB"), the other was prepared by the SSB President and reviewed by the SSB's attorney. Only one of the resolutions, or a variation thereof,

would be adopted. The draft resolutions were provided to APOC and are attached as exhibits 1 and 2.

2. It is SSB's intent to follow its normal resolution process with respect to the proposed resolution: (1) The resolution is drafted by the Board; (2) The resolution drafted by the Board is reviewed by the board's attorney (who is retained by the Sitka School District on behalf of the Board); (3) The resolution will be proposed and debated at the next regular board meeting (June 8, 2010).
3. SSB publicly distributes adopted resolutions to other organizations such as the City and Borough Assembly, the legislature or other organizations that are associated with the topic of the resolution.
4. Additional distribution of an adopted resolution may occur by the local media in the course of its normal reporting of SSB activities.
5. SSB does not anticipate that consideration or passage of a resolution related to BM1 will require the expenditure of any additional district funds or any time above and beyond its normal practices related to resolutions.
6. There has been no specific appropriation for the resolution made by any state law or municipal ordinance.

ANALYSIS

Under AS 15.13.145, the state and its political subdivisions (including school districts and school boards) may only use money held by the entity to influence the outcome of a ballot proposition if the money was specifically appropriated by a state or municipal law for that purpose. AS 15.13.145(a), (b). There are several exceptions to this rule. For instance, in the absence of a specific appropriation, an officer or employee of a such an entity may use money held by that entity to communicate about a ballot proposition if the communication[1] is made in the usual or customary performance of the officer's or employee's duties. 2 AAC 50.356(b). Additionally, such entities are permitted to disseminate nonpartisan information about ballot propositions and information about the time and place of an election. AS 15.13.145(c); *see also* AO 08-05-CD.

In the instant matter, we are asked to determine whether a communication planned by SSB is permitted by these laws. SSB seeks to consider and pass a resolution opposed to BM1, and there has been no appropriation of funds to SSB under state or municipal law for this purpose. In order to answer this question we must first consider whether the resolution is intended to influence the outcome of an election concerning a ballot proposition or if it is nonpartisan.

In AO 08-07-CD, the Commission considered whether an advertisement that informed the public that the Mental Health Trust received significant funds from resource extraction on Trust

[1] "Communication" means an announcement or advertisement disseminated through print or broadcast media, including radio, television, cable, and satellite, the Internet, or through a mass mailing, excluding those placed by an individual or nongroup entity and costing $500 or less and those that do not directly or indirectly identify a candidate or proposition, as that term is defined in AS 15.13.065(c). AS 15.13.400(3).

property would be perceived as influencing the outcome of the election on Ballot Measure 4, "An Act to Protect Alaska's Clean Water" (07WTR3). The Commission determined that the advertisement was not, by itself, influencing the outcome of an election based on the following factors: (1) the advertisement in question did not mention the ballot measure; (2) it did not appear to be specifically related to the ballot measure election; and (3) there was no language in the advertisement to suggest that the Mental Health Trust was taking a position on the ballot measure.

Applying this criteria, the resolution proposed by SSB is likely to be perceived as influencing the outcome of an election on a ballot proposition. The resolution mentions a specific ballot measure and clearly indicates the position SSB is taking on the ballot measure. For example:

- "This initiative, if passed, would disenfranchise tens of thousands of Alaskans from their own government."
- "Proposition 1 blocks our ability to be involved and undermines our civic responsibility."
- "Proposition 1 . . . is misdirected and would shackle the hands of anybody who does business with government."
- "Neither the official title that will appear on the August primary election ballot, nor that used by the initiative's sponsors, hints at the far-reaching consequences of the measure."
- "The Sitka School Board urges all voters to read this initiative carefully before heading to the polls in August and consider the grave consequences such a law could have on our ability to govern and advocate at the local, state, and federal level for our issues and needs."

Ex. 1, Ex. 2. Indeed, SSB's opposition to the ballot measure is the very reason for the resolution.

The SSB resolution appears intended to elicit the conclusion that voting "yes" on BM1 will adversely affect the public interest and the interests of SSB. This resolution is similar to the advertisements considered in AO 08-05-CD, where the Commission found that other advertisements to be produced by the Mental Health Trust did not constitute nonpartisan information[2] because they encouraged voters to consider the unintended consequences of voting "yes" on an initiative.[3, 4] We therefore find that the resolution proposed by SSB is not

[2] Nonpartisan information does not advocate a position in an election. It includes the official language of a ballot question, or a neutral ballot summary. 2 AAC 50.356(c).

[3] The draft print advertisement at issue in AO 08-05-CD included the language "[t]hat's why the Trustees of the Alaska Mental Health Trust are concerned Ballot Measure 4- Clean Water Act will so restrict mining in Alaska that our ability to continue generating revenue for beneficiary programs will be impacted." The proposed TV spots included phrases such as "that's why we're concerned about Measure 4's impact on our beneficiaries" and "that's why we're concerned Ballot Measure 4 will impact our ability to raise revenue for Trust beneficiaries." The materials provided with that advisory opinion request also included

limited to nonpartisan information. The resolution is intended to influence the outcome of an election concerning a ballot proposition. Thus, it is permissible only if (1) SSB did not spend money held by it on the resolution, or (2) SSB did spend its money, but the communication was made by an SSB employee or officer in the usual or customary performance of the officer's or employee's duties. AS 15.13.145(b); 2 AAC 50.356(b).

The limitation in AS 15.13.145 is on "money held by" an entity and used to influence the outcome of a ballot proposition election. The Commission has previously considered what is meant by the term "money held," and rejected the argument that it should be narrowly construed to mean "money" as it is defined in 2 AAC 50.450 (as "currency… , checks, money orders, or negotiable instruments payable on demand."). *Hancock v. Marquardt*, Case No. 07-02 CD at 3. Rather, the meaning of "money held by" is similar to that of "expenditure," which includes "a transfer of money or anything of value, . . . for the purpose of (iv) influencing the outcome of a ballot proposition or question." *Kraft v. State of Alaska, Dep't of Natural Resources*, Case No. 08-14-CD at 2-3; AS 15.13.400(6). Additionally, even *de minimus*, hard-to-quantify expenditures can be considered use of money held by a public entity to influence a campaign. *See Hancock v. Marquardt*, 07-02 CD.

Based on the facts provided by SSB, we conclude that money held by SSB will be used to pass and disseminate the proposed resolution. Copies of the resolution will be included with the materials prepared for the meeting. If the resolution passes, it will then be distributed and publicized, as all SSB resolutions are. The proposed resolution will also be reviewed by the SSB attorney, who reviews all proposed SSB resolutions. These are the standard procedures that SSB employs for all resolutions and are in the usual and customary performance of an SSB officer's or employee's duties (i.e., publicizing everything the school board does).[5]

But consideration of the resolution also involves actions that do not necessarily involve money held by SSB. One of the proposed resolutions was drafted by SSB President Lon Garrison, an elected unpaid member of the school board. The other draft resolution was prepared by the

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references to "unintended consequences", namely a reduction of assets used to fund mental health programs if mining operations were restricted on Mental Health Trust lands.

[4] In AO 08-05-CD, the Commission did not address whether running print and television advertisements were within the usual and customary performance of the duties of the Mental Health Trust. The Commission's decision rested on the fact that the communication at issue did not contain nonpartisan information.

[5] This opinion is fact-specific. The Commission takes no position on whether SSB would be permitted to engage in any other type of communication related to BM1 other than a resolution considered and passed within its customary means.

Association of Alaska School Boards ("AASB") without input from SSB.[6] School Board members will discuss the resolutions at their next meeting. As we were in *Kraft v. DNR,* the Commission is concerned with the free speech implications of a ruling that would attempt to limit what public officials could say. *Kraft v. DNR*, Amended Decision and Order, Case No. 08-14-CD (Aug. 11, 2009) at 3. In *Kraft* we were "mindful of the principle of law that, if possible, a statute should be interpreted in a way that will avoid the danger of unconstitutionality," and that "[i]nterpreting AS 15.13.145 as prohibiting the Governor from expressing her opinion on a ballot measure risks running afoul of the constitutional right of free speech." *Id* at 4-5. Accordingly, we found that the Governor's press conference comment on how she would vote on a ballot measure did not violate AS 15.13.145.[7] *Id.*

Similarly, in AO 99-03-CD we determined that a public official's statement regarding a ballot proposition does not run afoul of AS 15.13.145 if it was made as part of the official's usual and customary duties:

> In the case of a public official corresponding with his or her constituents about a ballot proposition, it is difficult to distinguish between an official's intent to influence a public vote and his or her duty to protect the public interest…
>
> If the action is part of an official's usual and customary duties, like responding to constituent inquiries or answering questions at a press conference, the presumption is that the action is primarily intended to satisfy the officials' duties to the public and not to influence the outcome of the election. As a result, the action is not covered by the campaign disclosure law.

AO 99-03-CD; *Kraft v. DNR* at 4. Based on these opinions, we believe it is within the usual and customary duties of a school board to discuss matters that are of direct concern to it and its constituents at its public meetings. It would implicate the free speech rights of the Board and its members to find otherwise. SSB may therefore discuss its opposition to BM1 at its meetings.

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[6] In AO 10-06-CD, the Commission ruled that AASB was not restricted from distributing resolutions adopted by individual school boards to the AASB membership and its regular customary print and electronic mailing lists. The Commission was not asked to determine whether individual school boards could then pass theses resolutions, such as the one at issue here. The Commission's opinion was limited to the questions presented.

[7] The complaint in *Kraft* also involved an allegation that the State Department of Natural Resources ("DNR") website violated AS 15.13.145 because it did not contain a neutral explanation of the ballot initiative. This issue was resolved independently of the issue related to the Governor's speech. *Kraft v. DNR,* Case No. 08-14-CD, at 1. The Commission ordered changes to the DNR website because it found that the state had specifically appropriated money to educate the public about Ballot Measure 4 and the DNR website should "provide a fair representation in order to educate the public." *Kraft v. DNR,* Oral Order of August 22, 2008; *see also Kraft v. DNR*, Oral Order of August 21, 2008. The Commission did not discuss whether 2 AAC 50.356(b) applied to DNR's website. In the instant matter, there was no appropriation of funds for SSB to provide public education on BM1.

However, unlike the situations reviewed by the Commission in AO 99-03-CD and *Kraft*, SSB's planned communication involves not just a discussion but also a *de minimus* expenditure and is intended to influence the outcome of an election. We must therefore still decide whether SSB can take action beyond discussing or considering the proposed resolution.

Concern for free speech can make it "difficult to distinguish between an official's intent to influence a public vote and his or her duty to protect the public interest." AO 99-03-CD. Here, the line between them is blurred. SSB intends to influence a public vote in order to protect the interest of SSB, a public entity. This is a unique situation that is driven by the substance of BM1. According to the official summary of BM1, "This bill would ban the use of public funds for political campaigns and lobbying by state and local government agencies, and school districts. Public funds could not be used to support or oppose ballot measures, lobby to pass a law, or ask for public funding."[8] BM1 seeks to prevent the very activity at issue in this advisory opinion request, namely the ability of a school district to oppose a ballot measure. There is no doubt that BM1 directly affects SSB.

SSB is responsible for the control and direction of education in the Sitka School District. It is SSB's responsibility to advocate for the best interests of the school board and its students.[9] Due

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[8] The full text of the official summary of the ballot measure is as follows:

> Ballot Measure #1, 07ANCO - Initiative Prohibiting the Use of Public Funds to Lobby or Campaign; and Prohibiting Holders of Government Contracts and Family Members from Making Political Contributions.
>
> This bill would ban the use of public funds for political campaigns and lobbying by state and local government agencies, and school districts. Public funds could not be used to support or oppose ballot measures, lobby to pass a law, or ask for public funding. Any entity that lobbies or campaigns would be barred from receiving public funds. It would ban political contributions by government contract holders and members of their families. It would ban legislators and their staff from being employed by government contract holders for two years after leaving state service. The bill has criminal and civil penalties.
>
> Should this initiative become law?

Available at http://www.elections.alaska.gov/ei_primary_bm.php.

[9] Sitka School Board Policy 9000a establishes the role of the Board and its members. The policy states, in relevant part:

> The Board is responsible for the general control and direction of education in the district and is preempted by law. This broad authority shall be exercised in accordance with the State and Federal Constitutions, laws and regulations. The Board is responsible for the general control and direction of education in the district and is empowered to carry on and finance any program or activity that is not in conflict with, inconsistent with, or preempted by law. This broad authority shall be exercised in accordance with the State and Federal Constitutions, laws and regulations.

to the substance of BM1, SSB reasonably believes that if passed, the measure will interfere with its ability to perform those duties. Opposing BM1 is therefore within the usual and customary performance of the duties of SSB, its officers , and its employees. SSB may communicate about this ballot proposition by way of passing a resolution as part of its usual and customary duties consistent with 2 AAC 50.356(b).

CONCLUSION

Consideration and passage of the proposed resolution will involve activity that involves a *de minimus* expenditure, does not stray from the standard procedures SSB employs to consider, pass, and distribute resolutions, and is within the usual and customary performance of the of the duties of SSB, its officers, and employees. Accordingly, SSB is permitted to consider, pass, and distribute a resolution opposed to BM1 under 2 AAC 50.356(b) according to its customary procedures. Any expenditures related to this process must be disclosed on a report of contributions or independent expenditures to APOC under AS 15.13.040(d) and (e). 2 AAC 50.356(d).

COMMISSION DECISION

On June 14, 2010, the Alaska Public Offices Commission heard and approved this advisory opinion request by a vote of 4 to 0.

APPLICABLE LAW

Sec. 15.13.040. Contributions, expenditures, and supplying of services to be reported. (a) **[See delayed amendment note]**. Except as provided in (g) and (l) of this section, each candidate shall make a full report, upon a form prescribed by the commission,

(1) listing

(A) the date and amount of all expenditures made by the candidate;

(B) the total amount of all contributions, including all funds contributed by the candidate;

(C) the name, address, date, and amount contributed by each contributor; and

(D) for contributions in excess of $50 in the aggregate during a calendar year, the principal occupation and employer of the contributor; and

(2) filed in accordance with AS 15.13.110 and certified correct by the candidate or campaign treasurer.

(b) Each group shall make a full report upon a form prescribed by the commission, listing

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Board Policy 9000a is available at : http://www.ssd.k12.ak.us/BoardPolicy/Sitka9000.html

(1) the name and address of each officer and director;

(2) the aggregate amount of all contributions made to it; and, for all contributions in excess of $100 in the aggregate a year, the name, address, principal occupation, and employer of the contributor, and the date and amount contributed by each contributor; for purposes of this paragraph, "contributor" means the true source of the funds, property, or services being contributed; and

(3) the date and amount of all contributions made by it and all expenditures made, incurred, or authorized by it.

(c) The report required under (b) of this section shall be filed in accordance with AS 15.13.110 and shall be certified as correct by the group's treasurer.

(d) Every individual, person, nongroup entity, or group making an expenditure shall make a full report of expenditures, upon a form prescribed by the commission, unless exempt from reporting.

(e) The report required under (d) of this section must contain the name, address, principal occupation, and employer of the individual filing the report, and an itemized list of expenditures. The report shall be filed with the commission no later than 10 days after the expenditure is made.

(f) During each year in which an election occurs, all businesses, persons, or groups that furnish any of the following services, facilities, or supplies to a candidate or group shall maintain a record of each transaction: newspapers, radio, television, advertising, advertising agency services, accounting, billboards, printing, secretarial, public opinion polls, or research and professional campaign consultation or management, media production or preparation, or computer services. Records of provision of services, facilities, or supplies shall be available for inspection by the commission.

(g) The provisions of (a) and (l) of this section do not apply to a delegate to a constitutional convention, a judge seeking judicial retention, or a candidate for election to a municipal office under AS 15.13.010 , if that delegate, judge, or candidate

(1) indicates, on a form prescribed by the commission, an intent not to raise and not to expend more than $5,000 in seeking election to office, including both the primary and general elections;

(2) accepts contributions totaling not more than $5,000 in seeking election to office, including both the primary and general elections; and

(3) makes expenditures totaling not more than $5,000 in seeking election to office, including both the primary and general elections.

(h) The provisions of (d) of this section do not apply to one or more expenditures made by an individual acting independently of any group or nongroup entity and independently of any other individual if the expenditures

(1) cumulatively do not exceed $500 during a calendar year; and

(2) are made only for billboards, signs, or printed material concerning a ballot proposition as that term is defined by AS 15.13.065(c).

(i) The permission of the owner of real or personal property to post political signs, including bumper stickers, or to use space for an event or to store campaign-related materials is not considered to be a contribution to a candidate under this chapter unless the owner customarily charges a fee or receives payment for that activity. The fact that the owner customarily charges a fee or receives payment for posting signs that are not political signs is not determinative of whether the owner customarily does so for political signs.

(j) Except as provided in (l) of this section, each nongroup entity shall make a full report in accordance with AS 15.13.110 upon a form prescribed by the commission and certified by the nongroup entity's treasurer, listing

(1) the name and address of each officer and director of the nongroup entity;

(2) the aggregate amount of all contributions made to the nongroup entity for the purpose of influencing the outcome of an election;

(3) for all contributions described in (2) of this subsection, the name, address, date, and amount contributed by each contributor and, for all contributions described in (2) of this subsection in excess of $250 in the aggregate during a calendar year, the principal occupation and employer of the contributor; and

(4) the date and amount of all contributions made by the nongroup entity, and, except as provided for certain independent expenditures in AS 15.13.135 (a), all expenditures made, incurred, or authorized by the nongroup entity, for the purpose of influencing the outcome of an election; a nongroup entity shall report contributions made to a different nongroup entity for the purpose of influencing the outcome of an election and expenditures made on behalf of a different nongroup entity for the purpose of influencing the outcome of an election as soon as the total contributions and expenditures to that nongroup entity for the purpose of influencing the outcome of an election reach $500 in a year and for all subsequent contributions and expenditures to that nongroup entity in a year whenever the total contributions and expenditures to that nongroup entity for the purpose of influencing the outcome of an election that have not been reported under this paragraph reach $500.

(k) Every individual, person, nongroup entity, or group contributing a total of $500 or more to a group organized for the principal purpose of influencing the outcome of a proposition shall report the contribution or contributions on a form prescribed by the commission not later than 30 days after the contribution that requires the contributor to report under this subsection is made. The report must include the name, address, principal occupation, and employer of the

individual filing the report and the amount of the contribution, as well as the total amount of contributions made to that group by that individual, person, nongroup entity, or group during the calendar year.

(l) Notwithstanding (a), (b), and (j) of this section, for any fund-raising activity in which contributions are in amounts or values that do not exceed $50 a person, the candidate, group, or nongroup entity shall report contributions and expenditures and supplying of services under this subsection as follows:

(1) a report under this subsection must

(A) describe the fund-raising activity;

(B) include the number of persons making contributions and the total proceeds from the activity;

(C) report all contributions made for the fund-raising activity that do not exceed $50 a person in amount or value; if a contribution for the fund-raising activity exceeds $50, the contribution shall be reported under (a), (b), and (j) of this section;

(2) for purposes of this subsection,

(A) "contribution" means a cash donation, a purchase such as the purchase of a ticket, the purchase of goods or services offered for sale at a fund-raising activity, or a donation of goods or services for the fund-raising activity;

(B) "fund-raising activity" means an activity, event, or sale of goods undertaken by a candidate, group, or nongroup entity in which contributions are $50 a person or less in amount or value.

(m) **[See delayed amendment note]**. Information required under this chapter shall be submitted to the commission electronically, except that the following information may be submitted in clear and legible black typeface or hand-printed in dark ink on paper in a format approved by the commission or on forms provided by the commission:

(1) information submitted by

(A) a candidate for election to a borough or city office of mayor, membership on a borough assembly, city council, or school board, or any state office, who meets the requirements of (g)(1) - (3) of this section; or

(B) a candidate for municipal office for a municipality with a population of less than 15,000; in this subparagraph, "municipal office" means the office of an elected borough or city

(i) mayor; or

(ii) assembly, council, or school board member;

(2) any information if the commission determines that circumstances warrant an exception to the electronic submission requirement.

(n) The commission shall print the forms to be provided under this chapter so that the front and back of each page have the same orientation when the page is rotated on the vertical axis of the page.

(o) Information required by this chapter that is submitted to the commission on paper and not electronically shall be electronically scanned and published on the Internet by the commission, in a format accessible to the general public, within two working days after the commission receives the information.

(p) For purposes of (b) and (j) of this section, "contributor" means the true source of the funds, property, or services being contributed (§ 1 ch 76 SLA 1974; am § 13 ch 189 SLA 1975; am § 33 ch 50 SLA 1989; am § 4 ch 126 SLA 1994; am §§ 5-7 ch 48 SLA 1996; am §§ 6, 7 ch 6 SLA 1998; am § 1 ch 74 SLA 1998; am §§ 3-6 ch 1 SLA 2002; am §§ 1-4 ch 1 TSSLA 2002; am §§ 2-7 ch 108 SLA 2003; am § 9 ch 99 SLA 2004; am §§ 1, 2 ch 155 SLA 2004; am § 3,2006 Primary Election Ballot Measure No. 1; am §§ 6 – 9 ch 47 SLA 2007; am § 1 ch 95 SLA 2008)

Delayed amendment of subsection (a). – Until January 1, 2009, subsection (a) of this section reads as follows: "(a) Except as provided in (g) and (l) of this section, each candidate shall make a full report, upon a form prescribed by the commission,

"(1) listing

"(A) the date and amount of all expenditures made by the candidate;

"(B) the total amount of all contributions, including all funds contributed by the candidate;

"(C) the name, address, date and amount contributed by each contributor; and

"(D) for contributions in excess of $250 in the aggregate during a calendar year, the principal occupation and employer of the contributor; and

"(2) filed in accordance with AS 15.13.110 and certified correct by the candidate or campaign treasurer."

Delayed amendment of subsection (m). – Until January 1, 2009, (m) of this section reads as follows:

"(m) Information required under this chapter shall be submitted to the commission electronically, except that the following information may be submitted in clear and legible black typeface or hand-printed in dark ink on paper in a format approved by the commission or on forms provided by the commission:

"(1) information submitted by a candidate for municipal office; in this paragraph, "municipal office" means the office of an elected borough or city

"(A) mayor; or

"(B) assembly, council, or school board member;

"(2) any information if the commission determines that circumstances warrant an exception to the electronic submission requirement;

"(3) information submitted by a candidate for election to state office other than the legislature who meets the requirements of (g)(1) – (3) of this section;

"(4) information submitted before January 1, 2009, by a candidate for the legislature."

Revisor's notes. – Subsection (n) was enacted as subsection (o). Relettered in 2004, at which time former subsection (n) was relettered as subsection (o). Subsection (o) was enacted as (p) and relettered in 2007, at which time former subsection (o) was relettered as (p).

Effect of amendments. – The 1996 amendment, effective January 1, 1997, in subsection (a), added the exception at the beginning of the first sentence and made a related stylistic change; in subsection (d), in paragraph (2), added "unless exempted from reporting by (h) of this section," and inserted " or other periodicals" and made minor stylistic changes and added subsections (g) and (h).

The first 1998 amendment, effective June 28, 1998, rewrote paragraph (d)(1) and the second and third sentences in subsection (f).

The second 1998 amendment, effective June 4, 1998, added subsection (i).

The first 2002 amendment, effective April 16, 2002, in subsection (b) added the language beginning "for purposes of this paragraph" to the end of paragraph (2); in the introductory language of subsections (d) and (h) inserted references to nongroup entities; added subsection (j); and made a minor stylistic change.

The second 2002 amendment, effective June 26, 2002, rewrote subsection (d); in subsection (e) deleted "by the contributor" following "commission" and "contribution or" preceding "expenditure" in the second sentence and deleted the former third sentence, which read "A copy of the report shall be furnished to the candidate, campaign treasurer, or deputy campaign treasurer at the time the contribution is made"; updated an internal reference in subsection (h); and added subsection (k).

The 2003 amendment, effective September 14, 2003, rewrote subsections (a) and (b); in subsection (g) inserted "and (*l*)" in the introductory language and substituted "$5,000" for "2,500" in three places; in paragraph (h)(1) substituted "$500" for "250"; in subsection (j) added "Except as provided in (*l*) of this section," at the beginning, added the paragraph (3) and (4) designations, and rewrote paragraph (3); and added subsections (*l*), (m), and (o) [formerly (n), now (p)].

The first 2004 amendment, effective June 26, 2004, deleted "and principal occupation of the contributor and the" following address in paragraph (j)(3), and inserted "principal occupation and" in that paragraph.

The second 2004 amendment, effective October 1, 2004, rewrote subsection (m), and added subsection (o) [now (n)].

The 2006 amendment, effective December 17, 2006, rewrote subsection (b).

The 2007 amendment, effective July 10, 2007, substituted "to a delegate to a constitutional convention, a judge seeking judicial retention, or a candidate for election to a municipal office under As 15.13.010, if that delegate,

judge, or" for "if a" in the introductory language of subsection (g), repealed and reenacted subsection (m), and added subsection (p) [now(o)].

The 2008 amendment, effective January 1, 2009, substituted "$50" for $250" in subparagraph (a)(1)(D).

Editor's notes. – From April 16, 2002, through June 25, 2002, the reference in subsection (h) to "(d) of this section" reads "to (d)(2) of this section" and subsection (d) reads as follows: "(d) Every individual, person, nongroup entity, or group making a contribution or expenditure shall make a full report, upon a form prescribed by the commission, of

"(1) contributions made to a candidate or group and expenditures made on behalf of a candidate or group

"(A) as soon as the total contributions and expenditures to that candidate or group reaches $500 in a year; and

"(B) for all subsequent contributions and expenditures to that candidate or group that have not been reported under this paragraph reaches $500;

"(2) unless exempted from reporting by (h) of this section, any expenditure whatsoever for advertising in newspapers or other periodicals, on radio, or on television; or for publication, distribution, or circulation of brochures, flyers, or other campaign material for any candidate or ballot proposition or question."

NOTES TO DECISIONS

Constitutionality. – In the case of First Nat'l Bank v. Bellotti, 435 U.S. 765, 98 S. Ct. 1407, 55 L. Ed. 2d 707, rehearing denied, 438 U.S. 907, 98 S. Ct. 3126, 57 L. Ed. 2d 1150 (1978), the supreme court of the United States has indicated in unmistakable terms that state disclosure laws pertaining to ballot issues are constitutional. Messerli v. State, 626 P.2d 81 (Alaska 1980).

When there is no showing that an individual must remain anonymous with respect to advertising as to ballot propositions because of the possibility of being subject to reprisals, economic or otherwise, the state campaign disclosure laws are not unconstitutional as applied to a contributor hoping to influence the outcome of a ballot issue, because the objective of an informed electorate is sufficiently compelling to overcome an interest in anonymous political expression. Messerli v. State, 626 P.2d 81 (Alaska 1980).

The disclosure requirements of this chapter are not unconstitutionally vague or overbroad, nor do they violate the constitutional right of the people to privacy. VECO Int'l, Inc. v. Alaska Pub. Offices Comm'n, 753 P.2d 703 (Alaska 1988), appeal dismissed, 488 U.S. 919, 109 S. Ct. 298, 102 L. Ed. 2d 317 (1988).

Reporting provisions of this section and AS 15.13.074(i), 15.13.082(b), 15.13.110, and 15.13.135(a) survive strict scrutiny because the state's interest in regulating campaign contributions and expenditures is significant and the requirements are not particularly onerous. Alaska Right to Life Comm. v. Miles, 441 F.3rd 773 (9th Cir. 2006).

Cited in Libertarian Party of Alaska, Inc. v. State, 101 P.3rd 616 (Alaska 2004).

Sec. 15.13.065. Contributions. (a) Individuals, groups, nongroup entities, and political parties may make contributions to a candidate. An individual, group, or nongroup entity may make a contribution to a group, to a nongroup entity, or to a political party.

(b) A political party may contribute to a subordinate unit of the political party, and a subordinate unit of a political party may contribute to the political party of which it is a subordinate unit.

(c) Except for reports required by AS 15.13.040 and 15.13.110 and except for the requirements of AS 15.13.050 , 15.13.060, and 15.13.112 - 15.13.114, the provisions of AS 15.13.010 - 15.13.116 do not apply to limit the authority of a person to make contributions to influence the outcome of a ballot proposition. In this subsection, in addition to its meaning in AS 15.60.010 , "proposition" includes an issue placed on a ballot to determine whether

(1) a constitutional convention shall be called;

(2) a debt shall be contracted;

(3) an advisory question shall be approved or rejected; or

(4) a municipality shall be incorporated. (§ 9 ch 48 SLA 1996; am § 7 ch 1 SLA 2002)

Effect of amendments. – The 2002 amendment, effective April 16, 2002, inserted references to nongroup entities in three places in subsection (a) and made minor stylistic changes.

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 .(§ 24 ch 48 SLA 1996)

Sec. 15.13.150. Election educational activities not prohibited. This chapter does not prohibit a person from engaging in educational election-related communications and activities, including

(1) the publication of the date and location of an election;

(2) the education of students about voting and elections;

(3) the sponsorship of open candidate debate forums;

(4) participation in get-out-the-vote or voter registration drives that do not favor a particular candidate, political party, or political position;

Sec. 15.13.374. Advisory opinion. (a) Any person may request an advisory opinion from the commission concerning this chapter, AS 24.45, AS 24.60.200 - 24.60.260, or AS 39.50.

(b) A request for an advisory opinion

(1) must be in writing or contained in a message submitted by electronic mail;

(2) must describe a specific transaction or activity that the requesting person is presently engaged in or intends to undertake in the future;

(3) must include a description of all relevant facts, including the identity of the person requesting the advisory opinion; and

(4) may not concern a hypothetical situation or the activity of a third party.

(c) Within seven days after receiving a request satisfying the requirements of (b) of this section, the executive director of the commission shall recommend a draft advisory opinion for the commission to consider at its next meeting.

(d) The approval of a draft advisory opinion requires the affirmative vote of four members of the commission. A draft advisory opinion failing to receive four affirmative votes of the members of the commission is disapproved.

(e) A complaint under AS 15.13.380 may not be considered about a person involved in a transaction or activity that

(1) was described in an advisory opinion approved under (d) of this section;

(2) is indistinguishable from the description of an activity that was approved in an advisory opinion approved under (d) of this section; or

(3) was undertaken after the executive director of the commission recommended a draft advisory opinion under (c) of this section and before the commission acted on the draft advisory opinion under (d) of this section, if

(A) the draft advisory opinion would have approved the transaction or activity described; and

(B) the commission disapproved the draft advisory opinion.

(f) Advisory opinion requests and advisory opinions are public records subject to inspection and copying under AS 40.25. (§16 ch 108 SLA 2003)

Effective dates. – Section 16, ch. 108, SLA 2003, which enacted this section took effect on September 14, 2003.

Sec. 15.13.400. Definitions. In this chapter,

(3) "communication" means an announcement or advertisement disseminated through print or broadcast media, including radio, television, cable, and satellite, the Internet, or through a mass mailing, excluding those placed by an individual or nongroup entity and costing $500 or less and those that do not directly or indirectly identify a candidate or proposition, as that term is defined in AS 15.13.065(c);

(6) "expenditure"

(A) means a purchase or a transfer of money or anything of value, or promise or agreement to purchase or transfer money or anything of value, incurred or made for the purpose of

(i) influencing the nomination or election of a candidate or of any individual who files for nomination at a later date and becomes a candidate;

(ii) use by a political party;

(iii) the payment by a person other than a candidate or political party of compensation for the personal services of another person that are rendered to a candidate or political party; or

(iv) influencing the outcome of a ballot proposition or question;

(B) does not include a candidate's filing fee or the cost of preparing reports and statements required by this chapter;

(C) includes an express communication and an electioneering communication, but does not include an issues communication;

2 AAC 50.356. USE OF PUBLIC MONEY.
(a) Funds are specifically appropriated for the purposes of AS 15.13.145(b) if the appropriating body provides notice on the public record that the funds will be used to influence the outcome of an election.

(b) In the absence of a specific appropriation, an officer or employee of an entity who is identified in AS 15.13.145(a)(4) may use money held by that entity to communicate about a ballot proposition or question if the communication is made in the usual and customary performance of the officer’s or employee’s duties.

(c) For the purposes of AS 15.13.145(c)(2), information is nonpartisan if it does not advocate a position in an election. Nonpartisan information includes the official language of a ballot question, a neutral ballot summary, or if provided for all candidates seeking a particular office, the candidates’ names, contact information, or statements.

(d) If an entity or individual identified in AS 15.13.145(a)(1)-(4) uses money held by the entity to make an election-related expenditure, the expenditure must be disclosed on a report of contributions or independent expenditures under AS 15.13.040(d) and

(e) unless the expenditure is made only to disseminate information about the time and place of an election or to hold an election. (Eff. 1/1/2001, Register 156)

Authority: AS 15.13.010 AS 15.13.030 AS 15.13.145

2 AAC 50.450. Complaints.
(a) A complaint filed with the commission must be in writing and must contain
(1) the full name, mailing address and telephone number of the person, group, or nongroup entity making the complaint;

(2) the name of the person, group, or nongroup entity alleged to be in violation;

(3) the statute or regulation for which a violation is alleged;

(4) a clear and concise description of facts that, if true, would violate AS 15.13 or 2 AAC 50.250 - 2 AAC 50.405 (Campaign Finance), AS 24.45 or 2 AAC 50.505 - 2 AAC 50.545 (Regulation of Lobbying), or AS 39.50 or 2 AAC 50.0l0 - 2 AAC 50.200 (Public Official Financial Disclosure);

(5) the basis of the complainant's knowledge of the alleged facts, noting those allegations based upon personal knowledge and those based upon other sources of information and belief;

(6) all documentation relevant to the facts alleged that is available to the complainant;

(7) adequate proof that copies of the complaint and documentation were received by each respondent before filing with the commission; and

(8) evidence that satisfies the standard for expediting a complaint in AS 15.13.380(c), if expedited consideration of an alleged violation of AS 15.13 or a regulation adopted under AS 15.13 is requested.
(b) The complaint must be signed and sworn under oath before a notary public, municipal clerk, court clerk, postmaster, or a person authorized to administer oaths. The commission will provide notary service without charge.

(c) The complaint may be on
(1) a form prescribed by the executive director, which is available from the commission or on the commission's web site; or

(2) any other form satisfying the requirements of (a) of this section. Eff. 5/16/76, Register 58; am 12/29/77, Register 64; am 6/29/84, Register 90; am 1/4/86, Register 97; am 1/1/2001, Register 156; am 2/20/2005, Register 173)

Authority: AS 15.13.030 AS 15.13.380 AS 39.50.050
AS 24.45.021 AS 24.45.131

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 1/1/200l, 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

Resolution 2010-02

A Resolution Concerning the Proposed "Anti-Corruption Initiative"

The Sitka School Board resolves that it is in opposition to passage of the **"Initiative Prohibiting Public Funds for Election Campaigns; also Prohibiting Campaign Contributions by Holders of Government Contracts"**, referred to by its sponsors as **"The Anti-Corruption Initiative"** finding that the measure would dramatically restrict the public's ability to participate in the democratic process. Neither the official title that will appear on the August primary election ballot, nor that used by the initiative's sponsors, hints at the far-reaching consequences of the measure. Among other potential impacts, the initiative would define furthering "any political agenda" so broadly as to criminalize most uses of public funds to enable school board members, superintendents and staff to interact directly with the local assembly, the state legislature and the federal congress concerning our schools and students. Moreover it would restrict the ability of a large swath of the public to likewise interact with elected officials as it defines the category of those prohibited from furthering "any political agenda" to include anyone whose income derives from public funds such as municipal employees, teachers, firefighters, etc. Not only does it restrict them personally but the prohibition extends to their immediate family. There is even speculation that, if the initiative is interpreted strictly, anyone receiving a permanent fund check, obviously a form of public funding in excess of the $500 annually specified in the initiative, would also be restricted from exercising his/her First Amendment right to speak out on public issues before elected bodies.

The Sitka School Board uses a very small part of it's annual budget to advocate for school funding and appropriate school programs in front of the Alaska Legislature and occasionally the U. S. Congress. Use of public funds for these public purposes, helping the legislature and congress to understand issues critical to our schools and students, would be declared a criminal activity by this initiative. To make it criminal to use public funds to give school officials direct access to legislators and staff, or to support school district advocacy, would so restrict the flow of information that legislators would be forced to act on education issues with scant and out of date information.

Citizen involvement is the foundation of our republic. The Sitka School Board believes that the voters who signed the petition to place this initiative on the ballot acted in the finest tradition of democracy -- the right of citizens to influence the course of their government. However many may not have understood that this **"Anti-Corruption Initiative**" would infringe on that same right for many fellow Alaskans and nearly all Sitkans seeking to act through local officials (assembly, school board, legislature) to affect their government. The Sitka School Board urges all voters to read this initiative carefully before heading to the polls in August and consider the grave consequences such a law could have on our ability to govern and advocate at the local, state, and federal level for our issues and needs.

EXHIBIT 1

Lon Garrison, President _____

Cass Pook, Vice-President _____

Mollie Kabler, Secretary _____

Tim Fulton, Member _____

Tom Conley, Member _____

EXHIBIT 1

Draft Resolution on Proposition 1 for Alaska School Boards

As members of the _____ School Board, we believe Proposition 1 on the August 2010 primary election ballot poses grave problems for the rights of citizens to influence their government and improve the lives of children. The ballot measure seeks to prohibit, as a criminal act, any school district from hiring a lobbyist or any superintendent to advocate for state funds. This initiative, if passed, would disenfranchise tens of thousands of Alaskans from their own government.

Rationale. The broad brush of Proposition 1 seeks to ban the use of tax dollars for any partisan activity, but in so doing threatens criminal penalties against any public official, state employee, public body, school district, council or candidate for office who "directly or indirectly" violates the terms of the initiative. For our republic to work, our citizens have to be involved. Proposition 1 blocks our ability to be involved and undermines our civic responsibility. The 1st Amendment guarantees our right to free speech and to associate with other citizens; this initiative assumes anybody who receives public dollars, "directly or indirectly," is capable of breaking the law.

As public officials, we believe in corruption-free government. However, Proposition 1 is misdirected in this regard and would shackle the hands of anybody who does business with the government, "directly or indirectly."

EXHIBIT 2