

Hon. Stephen McAlpine
Lt. Governor

December 1, 1989

and

663-90-0141

Sandra J. Stout, Director
Division of Elections

465-3600

Application for
initiative re:
compensation of legislators

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I. INTRODUCTION

You have asked us to analyze an application for an initiative petition concerning the compensation of legislators in aid of your review under AS 15.45.070. For the reasons set out below, we recommend that you reject the application.

II. ANALYSIS

A. Questions of Form

The application, as nearly as we can tell from the documents forwarded to us, consists of (1) a page entitled "Statement of Mission" on the letterhead of an organization called Alaskans for Legislative Reform, referring to three initiatives on various subjects including this one, (2) a four-page document entitled "Application for an Initiative Petition" which seems to consist of a bill entitled "An Act Reaffirming a Citizen-Legislature and Establishing the Compensation Paid to State Legislators; And Providing for an Effective Date", a section beginning "because" which may or may not have been intended to be part of the bill, and (4) a page with the following at the top:

THEREFORE: We the undersigned sponsors, being qualified voters of the State of Alaska and supporters of the above initiative, have subscribed to this application for an initiative petition proposing an act entitled: "An Act Relating to Limiting the Compensation Paid to State Legislators" with said proposed bill attached.

Initiative Committee (Sponsors)

[SIGNATURES OF THE INITIATIVE COMMITTEE]

This page is numbered "4", apparently making it part of the document entitled "Application for an Initiative Petition."

Sponsor signature pages follow containing the statement below at the top of each:

The undersigned voters of the State of Alaska hereby file an Initiative entitled AN ACT REAFFIRMING A CITIZEN LEGISLATURE AND ESTABLISHING THE COMPENSATION PAID TO STATE LEGISLATORS, AND PROVIDING FOR AN EFFECTIVE DATE, as defined on the cover pages attached hereto, and request certification of said Initiative by the Lieutenant Governor and the Department of Law.

From conversations with the sponsors, we understand that the cover sheets referred to on the signature pages included the one-page "Statement of Mission" and the four pages entitled "Application."

1. The form of the application

You must reject an application which is not in substantially the proper form. AS 15.45.080(2). 1989 Inf. Op. Att'y Gen. (Mar. 21; 663-89-0306); 1987 Inf. Op. Att'y Gen. (Mar. 23; 663-87-0323); 1986 Inf. Op. Att'y Gen. (Apr. 10; 663-86-0442); 1980 Inf. Op. Att'y Gen. (Jul. 14; J-66-025-80); 1970 Inf. Op. Att'y Gen. (Feb. 9; Spear). That form is prescribed by 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 related to the initiative, and (4) the signatures and addresses of not less than 100 qualified voters.

It is our understanding that the requirements of clause (4) have been met. See October 19, 1989 memorandum of Director Sandra J. Stout to Lt. Gov. McAlpine.

The initiative committee is identified on page 4 of the document entitled "Application" and each member of the committee has signed as a sponsor. AS 15.45.030(3).

The wording of the sponsor signature pages does not state that the sponsors signed the application with the proposed bill attached. Instead, it indicates that the subscribers "filed" an act which has the title found at page 1 of the application as "defined on the cover pages attached hereto." Page 4 of the application expressly state that the "undersigned sponsors . . .

subscribed to this application" proposing an act with a different title. It is not clear whether the paragraph at the top of page 4 refers only to the committee members whose names also appear on that page, or to all of the sponsors.

2. The form of the bill

You must reject an application for an initiative petition if the proposed bill is not in the required form. AS 15.45.080(1). 1987 Inf. Op. Att'y Gen. at 3 (Mar. 27; 663-87-0323); 1986 Inf. Op. Att'y Gen. at 22 (Apr. 10, 663-86-0374, 0400); 1970 Inf. Op. Att'y Gen. at 2-4 (Feb. 9, Spear); 1959 Op. Att'y Gen. #36. The form is prescribed by AS 15.45.040, which requires that the bill be confined to one subject, that the subject be expressed in the title, that the enacting clause be "Be it Enacted by the People of the State of Alaska" and that the bill not include prohibited subjects. The prohibited subjects: dedication of revenue, appropriation, the creation of courts or the definition of their jurisdiction, the rules of court, or local or special legislation, are listed at AS 15.45.010 and article XI, section 7 of the Alaska Constitution. Constitutional amendments are likewise prohibited subjects. Starr v. Hagglund, 374 P.2d 316, 317 n.2 (Alaska 1962). Initiatives must meet the requirements of article II, section 13 of the Alaska Constitution, duplicated as AS 15.45.040(1) and (2) that a bill be on a single subject, which is expressed in the bill's title. 1959 Op. Att'y Gen. #36 at 2.

In this case, the title of the bill is problematic if the section beginning with "BECAUSE" on page 3 of the application is not intended to be part of the bill because the phrase "Reaffirming a Citizen-Legislature" is not really an expression of anything in section (1) - (8) of the bill. However, the "because" section does attempt to tie the bill to the reaffirmation of a "citizen-legislature" and would be an appropriate title if the section is intended to be part of the bill. The bill itself is on a single subject and although portions of it may be unconstitutional as applied to the rights of legislators already enrolled in state retirement programs, the subject is not one prohibited by AS 15.45.010. (See sec. II.B below.) The enacting clause is correct. AS 15.45.040(3).

Although the bill is not drafted in conformity with the Legislative Affairs Agency's Manual of Legislative Drafting (January 1989) (Manual), we have not previously recommended that an application be rejected on these grounds alone, if the constitutional standards are met. Cf. 1989 Inf. Op. Att'y Gen. at 4 (Mar. 21; 663-89-0306); 1986 Inf. Op. Att'y Gen. at 2 (Apr.

10; 663-86-0394, 0422). In this case, the bill has the following drafting defects: (1) it includes the word "reading" after the title; (2) it sets out repealed section (Manual at 24); (3) what appears to be a statement of purpose is at the end rather than the beginning of the bill (Manual at 14-15); and (4) the effective date is not properly drafted (Manual at 29). If the bill is enacted, these defects will result in corrective amendments by the revisor of statutes. AS 01.05.031.

We must evaluate the difficulties this application poses with two somewhat divergent viewpoints in mind. On the one hand, pre-election, technical prerequisites, that is, the forms of the bill and the application, are mandatory, and you cannot waive these defects where they appear. Silides v. Thomas, 559 P.2d 80, 87 (1977), quoting Ryshpan v. Cashman, 326 A.2d 169, 170 (1974). You cannot be required to guess at whether, for example, the bill was actually attached to the application; compliance must appear on the face of the document. (1987 Inf. Op. Att'y Gen. at 3 (Mar. 27; 663-87-0323)). On the other hand, the power of the people to enact legislation is to be construed liberally, Yute Air Alaska, Inc. v. McAlpine, 698 P.2d 473, 1176 (Alaska 1985). Further, the requirement of article II, section 13 of the Alaska Constitution that bills be upon a single subject, expressed in the bill's title, is to be construed to prevent logrolling, inadvertence, stealth, and fraud and the inclusion of incongruous and unrelated matters in one bill, but not so narrowly interpreted as to unduly restrict the scope and permissible subject matter of bills. Short v. State, 600 P.2d 20, 23 (Alaska 1979); Suber v. Alaska State Bond Committee, 414 P.2d 546, 556-57 (Alaska 1966). See also State v. A.L.I.V.E. Voluntary, 606 P.2d 769, 772 (Alaska 1980); Gellert v. State, 422 P.2d 1120, 1122 (Alaska 1974).

Even if the bill is read to include only sections (1) - (8), the fact that the title contains extraneous material may not be fatal to compliance with statutory and constitutional form requirements, since it is more a flight of rhetoric than a misrepresentation. But see Manual at 10-11: "The title must be broad enough to cover everything in the bill, but must not be so broad as to lose its function of giving notice of the bill's contents."

B. Defects in Form

While the language on the signature pages may be unfortunate, it nonetheless could be read to suggest that the bill included in the application was attached when the sponsors signed.

Although it fails to use the language of the statute, it does not have the defect of the applications discussed in the 1986 and 1989

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opinions discussed above, which indicated only that the subscribers supported the bill in question without suggesting that it was attached. The misnaming of the bill on page 4 of the application is more troublesome. However, it appears that the primary purpose page 4 serves is to identify the initiative committee as required by AS 15.45.030(3), and it does not appear that any other bill is attached to the application. Further, while the statute indicates what must be included in an application, it does not prescribe a format, and thus you must look at the documents submitted to you as a whole to determine whether the requirements of the statute are met. The election code provides that the application must be in substantially the required form, thereby imposing lower standards on the application than on the bill itself. AS 15.45.080.

Stricter standards are imposed with respect to the bill's form. We have rejected out of hand any variation in the enacting clause. 1970 Inf. Op. Att'y Gen. at 2 (Feb. 9; Spear). A title which does not express the contents of the bill, or a bill which contains more than one subject, will be rejected. However, if the single subject and title requirements are met, you must approve even argumentatively drafted provisions if they clearly enact a law.

Thus far, we have assumed for the purpose of discussion that the "because" clause on page 4 is a misplaced purpose clause, meant as a part of the bill to be enacted. We have serious doubts about whether our assumption is correct, however. The format chosen by the sponsors creates an ambiguity in this regard. The page numbering is apparently for the application as a whole (see page 4). Given its style and placement, the statement of reasons may not have been intended to be part of the bill to be enacted, but rather may have been appended as an explanation of the sponsors' or drafters' views. This ambiguity makes it impossible to determine whether the sponsors knew what part of the cover sheets referred to on the signature pages constituted the bill. Because the application does not allow the reader readily to determine what a sponsor would understand is the bill to be enacted, we recommend that you reject the application as not substantially in the proper form. Cf. 1987 Inf. Op. Att'y Gen. (Mar. 27; 663-87-0323).

Because of the ambiguity about what constitutes the bill to be enacted, it cannot be said with certainty that the bill's title is descriptive. Therefore, the bill is not in proper form, and you must reject the application on this basis as well.

C. Substantive Constitutionality

If section 7 of the proposed initiative is enacted, it will almost surely be held unconstitutional as applied to the rights of any legislator who is enrolled in a state retirement program on the measure's effective date. Proposed section 7 provides:

Legislators are not considered State employees and therefor shall not be eligible for State of Alaska retirement or other benefits. Legislators shall receive no compensation from the State other than salary and travel expenses recompensable under §§ 5 and 6 of the act.

Article XII, section 7 of the constitution provides:

Membership in employee retirement systems of the State or its political subdivisions shall constitute a contractual relationship. Accrued benefits of these systems shall not be diminished or impaired.

This article has been construed to include state legislators. State ex rel. Hammond v. Allen, 625 P.2d 844, 847 (Alaska 1981) (holding legislators enrolled in EPORS during its four-month life entitled to retirement benefits, even though the law creating it was repealed by referendum). As a matter of constitutional law the article protects legislators enrolled in a state retirement program from the diminishment or impairment of their rights, and the proposed bill could validly eliminate retirement program participation for legislators elected after its effective date. However, the wording is imprecise and the sponsors may wish to redraft it.

Standing alone, these legal deficiencies with the substance of the bill do not require you to deny certification of the application. The bill's subject matter is not restricted from enactment by initiative under the Alaska Constitution. Boucher v. Engstrom, 528 P.2d 456, 460-61 (Alaska 1974); 1977 Inf. Op. Att'y Gen. at 3 (Apr. 15; J-66-521-77). However, if the initiative is enacted it is likely that the defects noted in the memorandum will be litigated.

III. CONCLUSION

In summary, we recommend that you deny certification of the application because taken as a whole it is not in

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substantially the proper form, and because the bill is not in the proper form.

Since the sponsors will likely refile, we recommend they consider rewriting the bill to conform with the standards of the Manual. The bill should be clearly set out, so the application's subscribers know precisely what will be enacted into law if their application and subsequent initiative election are successful. The application's sponsor signature pages must also clearly show that the subscribers signed with the proposed bill attached. Other more specific suggestions are noted in II.A. above.

Please advise whether we can be of any further assistance in this matter.

KS:lmk