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Statutory appropriation
limit

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You requested our advice concerning the correct interpretation of the appropriation limit set out in AS 37.05.540. The essential terms of the limit are expressed as follows:

Appropriations from the treasury made in a fiscal year may not exceed appropriations made in the preceding fiscal year by more than five percent plus the change in the population and inflation since the beginning of the preceding fiscal year.

AS 37.05.540(b). Specifically, you ask two questions: (1) whether the limit applies on a fiscal year basis or to some other interval of time; and (2) how the limit applies to appropriations to reserve funds such as the railbelt energy fund (AS 37.05.520). The purpose of this opinion is to help you determine if certain appropriation bills you are preparing for the governor exceed the statutory appropriation limit. By interpreting the provisions of the statutory appropriation limit we are not acknowledging that the limit has binding effect. Rather, we perceive that you want to know whether you should advise the legislature whether these bills, if enacted, would be within or exceed the limit.

An appropriation limit set out in statute does not bind the governor or the legislature to act within the limit established. The legislature's power to appropriate is an essential element of the legislative power of the state assigned by the Alaska Constitution. Alaska Const. art. II, • 1. Similarly, the governor's power to formulate and present the state budget originates from the state constitution. Alaska Const. art. IX, • 12.

The Alaska Constitution contains an express appropriation limit. Alaska Const. art. IX, • 16. The existence of such a limit in the state constitution lends force to our view that the legislature is powerless to impose another limit by statute. However, the constitutional provision embodies serious conflicts

within its text. It also incorporates a formula that sets the limit far beyond the amount annually appropriated in recent fiscal years. If effectively implemented, the provision set out in section 16 would serve as no limit at all. The defects of the limit set out in section 16 are the subject of an opinion of this office. 1983 Op. Att'y Gen. No. 1 (Feb. 7). We assume that the statutory limit was enacted out of frustration with the failure of section 16 to function as envisioned.

A state statute can never override powers conferred by the state constitution. At best, the statutory appropriation limit constitutes a boundary beyond which the legislature and the governor may freely venture. 1986 Inf. Op. Att'y Gen. (May 29; 883-86-0149). They suffer no legal penalty for doing so. Any dispute between the branches of government as to purported violations of this limit would most probably be nonjusticiable--or in other words, a political question.

PERIOD OF APPLICATION

Based on the language of the statute itself, the statutory limit is determined by the appropriations enacted in a fiscal year. AS 37.05.540(b) provides as follows:

For purposes of applying this limit an appropriation is considered to be made in the fiscal year in which it is enacted

This provision is clear and unambiguous. An appropriation is not to be attributed to the fiscal year in which it takes effect but rather to the fiscal year in which it is enacted. A bill is not necessarily enacted when it takes effect. Enactment occurs under the following circumstances:

(A) a bill which is passed by the legislature is signed by the governor;

(B) the period specified in art. II, • 17 of the Alaska Constitution expires without gubernatorial action;

(C) the legislature overrides the governor's veto of a bill.

AS 01.10.070(f)(4). In other words, a bill is enacted on the day it becomes law.

This literally means that if the general appropriations

bill made to finance the operations of state government for the fiscal year ending June 30, 1990, was signed on June 30, 1989, to take effect on July 1, 1989, the appropriation made in the bill would be attributed to the fiscal year ending June 30, 1989, for purposes of determining the appropriations limit set out in AS 37.05.540. While this may appear to be an irrational result, there can be little doubt that when the statutory limit was passed, the legislature understood the legal significance of the term "enacted." *Hafling v. Inlandboatmen's Union*, 585 P.2d 870 (Alaska 1978) (when legislature enacts a statute it has in mind previous statutes relating to the same subject matter).

APPLICATION TO RESERVE FUNDS

You are uncertain whether appropriations from the railbelt energy fund under consideration by the governor would be attributed to fiscal year 1991. If these appropriations apply to the fiscal year 1991 appropriations limit, the limit may be exceeded and the legislature must be so informed.

It is difficult to determine to what fiscal year an appropriation from a reserve fund such as the railbelt energy fund (AS 37.05.520) should be attributed. We make this observation because an appropriation from a reserve fund requires two and sometimes more appropriations of what amounts to the same spending authorization. For example, the railbelt energy fund consists of appropriations and may only be expended after the enactment of other appropriations. The first appropriation capitalizes the reserve fund and subsequent appropriations allocate the balance of the fund for specific objects of expenditure. The appropriation limit statute provides some guidance in solving the problems of construction by stating as follows:

[A] reappropriation remains attributed to the fiscal year in which the original appropriation is enacted.

AS 37.05.540(b). However, the Fiscal Procedures Act (AS 37.05) does not contain a definition of the term "reappropriations." It is well known that in recent fiscal years the legislature passed appropriations bills carrying titles that describe the contents as containing reappropriations. These so-called "reappropriations" usually take the form of amending appropriations made in an earlier fiscal year. The amendments include changes in purpose, reductions in amount, or reallocations of spending amounts between existing objects of expenditure.

Even though a subsequent appropriation from a reserve

fund is a separate enactment, it differs little from the effect of a traditional reappropriation. In the past, we advised the governor that amendments of an existing appropriation made in the form of a reappropriation must be considered a new appropriation for the purpose of exercising a line-item veto. 1984 Inf. Op. Att'y Gen. (Jan. 1; 366-126-84). In both situations, the effect of the provision is to add new allocations or objects of expenditures consistent with the original authorization.

We also advised the governor that the legislature may not amend or repeal an earlier appropriation that has been expended. 1986 Inf. Op. Att'y Gen. (Apr. 21; 663-86-0230). That opinion simply recognized an obvious truth. While an appropriation to a reserve fund is expended when the fund is credited with the amount appropriated, this principle does not settle the question of whether appropriations from a reserve fund such as the railbelt energy fund may be considered a "reappropriation" for purposes of applying the statutory appropriation limit. It must be remembered that we are interpreting a statute that purports to limit the most fundamental power of the legislature--the power of appropriation. A statute that purports to limit the legislature's appropriation power should be construed so that constitutional defects are minimized.

The lack of an express definition of the term "reappropriation" leaves the governor and the legislature free to provide a definition through contemporaneous construction. We believe that the governor may rationally construe an appropriation from the railbelt energy fund to be a reappropriation for purposes of applying the statutory appropriation limit. In that case, a subsequent appropriation would be attributed to the fiscal year in which the capitalization appropriation was made. If the legislature acquiesces in that interpretation, it will be given even more weight. For the reasons stated earlier in this memorandum, the limit represents nothing more than the expression of an earlier legislature as to the desirable scope of debate between the legislative branch and the governor over the amount necessary to finance the operations of state government. The statutory appropriation limit does not bind this legislature or this governor to act in a particular manner.

JLB:tg

cc: Garrey Peska, Chief of Staff
Office of the Governor

Hon. Frank Baxter, Commissioner
Department of Administration