

Cheryl Frasca, Director
Division of Budget Review
Office of Management and Budget
Office of the Governor

October 21, 1991

663-92-0183

465-3600

Authority to receive and
expend Agricultural
Revolving Loan Fund
receipts

James L. Baldwin
Assistant Attorney General

You requested our advice concerning a proposal by the division of agriculture in the Department of Natural Resources to receive and expend receipts of the Agricultural Revolving Loan Fund (AS 03.10.040) (hereafter, "ARLF") for certain costs of administering the ARLF. You wish to determine whether it is appropriate to use the "revised program" procedure authorized by AS 37.07.080(h) to increase the spending authority of the Division of Agriculture.¹

¹ AS 37.07.080(h) reads as follows:

(h) The increase of an appropriation item based on additional federal or other program receipts not specifically appropriated by the full legislature may be expanded in accordance with the following procedures:

(1) the governor shall submit a revised program to the Legislative Budget and Audit Committee for review;

(2) 45 days shall elapse before commencement of expenditures under the revised program unless the Legislative Budget and Audit Committee earlier recommends that the state take part in the federally or otherwise funded activity;

(3) should the Legislative Budget and Audit Committee recommend within the 45-day period that the state not initiate the additional activity, the governor shall again review the revised program and if the governor determines to authorize the expenditure, the governor shall provide the Legislative Budget and Audit Committee with a statement of the governor's reasons before commencement of expenditures under the revised program.

Cheryl Frasca, Director
Division of Budget Review
Office of Management and Budget
Office of the Governor

October 21, 1991
Page 2
AGO file: 663-92-0183

First, you want to know if the legislative budget and audit committee has the legal authority to review this transaction. You also want to know if assets of ARLF may be expended in the absence of an appropriation enacted by the legislature. In the past, the department contends, amounts have been spent for this purpose without seeking an appropriation.

We understand these questions result from a decision by the legislature to change the governor's budget by designating the general fund as the source for a major part of the fiscal year 1992 operating appropriations for the ARLF. The governor proposed a budget that used money from the ARLF as the source for an appropriation to cover part of the administrative expenses of the ARLF. The governor sought to counteract the legislature's change of funding source by reducing the general fund appropriation by \$500,000. Ch. 73, SLA 1991, p. 43, l. 25. The combined effect of the veto and the change in funding source forces the administrator to seek additional spending authorization to meet operating expenses for this fiscal year.

To answer your first question, we believe that the ARLF receipts proposed as the funding source for this transaction probably qualify as "program receipts." The term "program receipts" is defined by law to mean "fees, charges, income earned on assets, and other state money received by a state agency in connection with the performance of its functions." AS 37.05.146.

The review of program receipt appropriations by the legislative budget and audit committee after enactment of the state budget is expressly authorized by law. AS 37.07.080(h). Additionally, each program receipt appropriation made in the general appropriation act is conditioned so that it may not be augmented by additional receipts until the review process set out in AS 37.07.080(h) is complete. Sec. 2, ch. 73, SLA 1991. This process recognizes that the amount of "program receipts" appropriated is an estimate that becomes certain only after the fiscal year is underway and the true earnings of various state agencies and enterprises become known.

In Kelly v. Hammond, No. 77-4 Ci. (Alaska Super., 1st Jud. Dist., Apr. 12, 1978), the superior court decided that federal receipts held in trust for a specific purpose are subject to the appropriation power of the legislature. The court reasoned that these receipts are within the state treasury and may not be spent unless appropriated. Alaska Const. art. IX, • 13. The superior court also held that the committee could not be given

Cheryl Frasca, Director
Division of Budget Review
Office of Management and Budget
Office of the Governor

October 21, 1991
Page 3
AGO file: 663-92-0183

the power to approve transfers between appropriations. After the decision in Kelly, the legislature enacted the Executive Budget Act (AS 37.07), which conferred the program review powers set out in AS 37.07.080(h) on the legislative budget and audit committee. Former Governor Hammond allowed the Executive Budget Act to become law and the finances of state government have been administered consistent with this process since enactment. However, the decision in Kelly was not appealed to the Alaska Supreme Court, so it is uncertain whether that court would reach the same result as the superior court.

In our opinion, the program review powers conferred on the legislative budget and audit committee by AS 37.07.080(h) are probably valid. We consider the committee's review function to be equivalent to the legislature's traditional oversight powers. Our determination of validity depends on the fact that the committee may only review, rather than approve or disapprove, the proposed increase in spending authority. Our opinion would be different if the committee were given the power to withhold or seriously delay approval of additional spending authority. That would constitute an invalid delegation of law-making powers to a legislative committee. Cf. State v. A.L.I.V.E. Voluntary, 606 P.2d 769 (1980) (delegation to interim legislative committee to veto administrative regulations held invalid). The power to approve or disapprove is the essence of the lawmaking power that may only be exercised by a legislature consisting of 40 representatives and 20 senators. The constitution does not provide for delegation of that power to a discrete group of legislators comprising the membership of an interim committee.

Your second question is whether assets of the ARLF must be appropriated before they may be spent. We express no opinion concerning the validity of the past practice of the ARLF of spending loan fund assets for legal services without an appropriation. Revolving loan funds are treated in many respects in the same manner as a dedicated fund. See 1982 Op. Att'y Gen. No. 13 (Nov. 30). Repayments of principal and interest are automatically deposited in a revolving loan fund and reloaned to qualified borrowers without further appropriation. The justification for this treatment is that a revolving loan fund is considered to be a separate enterprise. Appropriations to capitalize a revolving loan fund are interpreted to continue in effect to give authority to receive and expend repayments of principal and interest for the purpose of the fund.

The purposes for which revolving fund assets may be spent under a continuing appropriation must be expressly stated

Cheryl Frasca, Director
Division of Budget Review
Office of Management and Budget
Office of the Governor

October 21, 1991
Page 4
AGO file: 663-92-0183

in the enabling act of the revolving fund. This means that amounts may be spent for the direct purposes of the ARLF; i.e., loans for agricultural purposes. However, to be consistent with the Alaska Constitution, it would not be appropriate to spend assets of the ARLF for purposes not necessarily implied under the enabling act or in a manner that is inconsistent with express provisions of the act.

A recent amendment to the enabling act for the ARLF implies that assets of the ARLF may only be spent for administrative purposes when appropriated by the legislature. That provision states as follows:

Money in the fund may be used by the legislature to make appropriations for costs of administering this chapter.

AS 03.10.040(b). We believe this provision was added to make certain that assets of the ARLF could be spent for purposes other than for loans to eligible borrowers. This provision is intrinsic evidence of the legislature's intent concerning the use of the ARLF for the cost of administration.

Finally, we believe it is prudent to advise you that the facts surrounding the disagreement between the legislature and the governor over the source of money to cover the cost of administration may provide evidence that the legislature intended the appropriation involved to not be augmented. However, the express authority granted by AS 37.07.080(h) and sec. 2, ch. 73, SLA 1991 appears to overcome any presumption that the legislature intended to limit the availability of ARLF program receipts to the amounts set out in the general appropriations Act. If you consider the department's request worthy of approval, you should submit it to the legislative budget and audit committee for review.

We hope this memorandum adequately answers your questions.

JLB:tg