Hon. John B. "Jack" Coghill
Lieutenant Governor

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Initiative applications concerning legislative term limits and legislative session lengths

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I. Introduction and Short Answer

You have asked our advice about two initiative applications submitted for your review under AS 15.45.070. The first would change the qualifications for members of the Alaska Legislature by limiting the number of years they may serve in the legislature. The second would limit the length of the legislative term. We believe that you must deny both applications, because although they are presented as if they were statutes, they are in fact constitutional amendments, which may not be enacted by the initiative. Our reasons for our conclusion are set out below.

II. Analysis

You are required to review an application for an initiative and "either certify it or notify the initiative committee of the grounds for denial." AS 15.45.070. You must deny certification to an application where (1) the proposed bill is not in the proper form, (2) the application is not substantially in the required form, (3) there is an insufficient number of qualified sponsors, or (4) where the bill to be initiated is on a subject prohibited by the Alaska Constitution article XI, section 7. See AS 15.45.080 and AS 15.45.010. See also Boucher v. Engstrom, 528 P.2d 456, 460 (Alaska 1974). Likewise, you may not approve an initiative that purports to place a constitutional amendment on the ballot; constitutional amendments are governed exclusively by Alaska Constitution article XIII. See Starr v. Hagglund, 374 P.2d 316, 317 n.1 (Alaska 1962). Cf. Whitson v. Anchorage, 608 P.2d 759, 762 (Alaska 1980).

The application must contain the following:

> Form of application. 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 relating to the initiative, and (4) the signatures and addresses of not less than 100 qualified voters.

AS 15.45.030.

The bill to be initiated must be in the following form:

> (1) the bill shall be confined to one subject;
> (2) the subject of the bill shall be expressed in the title;
> (3) the enacting clause of the bill shall be: "Be it enacted by the People of the State of Alaska;"
> (4) the bill may not include subjects restricted by AS 15.45.010.

AS 15.45.040.

The applications meet the requirements of AS 15.45.030(1) and (2). They fail to meet the requirements of AS 15.45.030(3) because the persons designated as the initiative committee do not appear to have signed the application, and are therefore not sponsors. Generally we have suggested that such a defect can be remedied without recirculating the petition, provided that it is done within a reasonable amount of time. See 1981 Inf. Op. Att'y Gen. (Mar. 18; J-88-579-81); 1989 Inf. Op. Att'y Gen. (Mar. 21; 663-89-0306). Were these applications not to be rejected on other grounds, your final step in determining compliance with AS 15.45.030 would be a review to assure that each application has been signed by 100 properly registered voters.

The term limit application is not properly filed under AS 15.45.020 because the sponsors failed to tender the required $100 fee. The initiative committee makes the claim that the fee has already been paid. However, the fee was paid for their previous application, which was expressly rejected.

As to matters of form, these bills contain extraneous matter at lines 2-4. The effective date clauses in each are also superfluous. Nonetheless, the bills to be initiated are in compliance with AS 15.45.040(1) - (3).

However, because initiatives cannot be used to amend the constitution, you may not certify the applications. We thoroughly addressed the term limitation issue in February 1990. See 1990 Inf. Op. Att'y Gen. (Feb. 5; 663-90-0190) (copy attached). We have reviewed the opinion and the authorities cited therein. We believe the opinion correctly states the law. Accordingly, we adopt it here.

As to the application for a bill limiting the session length of the Alaska Legislature, Alaska Constitution article II, section 8 provides:

> The legislature shall adjourn from regular session no later than one hundred twenty consecutive calendar days from the date it convenes . . .

It cannot be altered without resort to the amendment procedure prescribed in article XIII of the Alaska Constitution. The framers of the Alaska Constitution specifically rejected the use of initiatives for constitutional amendments. 2 Proceedings of the Alaska Constitutional Convention 1272-73 (Jan. 5, 1956). Thus, neither the legislature nor the people may amend the constitution by the enactment of law. Only by the actions of the legislature and the people in concert, or by a constitutional convention, can the Alaska Constitution be amended.

We understand that the Legislative Affairs Agency Division of Legal Services (LAA), while agreeing with the conclusions expressed in our February 5, 1990, memorandum of advice, suggests that the applications might nonetheless be approved by you for circulation. We believe this suggestion is incorrect. LAA failed to consider the intent of the framers of the Alaska Constitution as to the use of the initiative, as indicated in the above-cited passage. It also failed to consider the holdings in Starr and Whitson. Further, LAA's opinion does not adequately acknowledge the distinction between the substantive unconstitutionality of a matter which may nonetheless be enacted into law, and the unconstitutional use of the initiative procedure. In the former situation, you may not deny certification because a law not yet enacted may be unconstitutional; the courts will make such a determination when the matter is ripe, that is, if and when the law passes. An example of such a matter is the recently enacted law changing the penalties for marijuana use in a way that may violate Alaska Constitution article I, section 22, as interpreted by the Alaska Supreme Court in Ravin v. State, 537 P.2d 494 (Alaska 1975). Clearly, criminal penalties are a proper subject for the enactment of a law. Since a court could not rule on the

constitutionality of the law unless or until it was enacted, the lieutenant governor could not. See 1989 Inf. Op. Att'y Gen. (Mar. 21; 663-89-0306).

In the latter situation, where the matter cannot be enacted by initiative, certifying an application would allow expensive and time-consuming activities, the collection of signatures, and the conduct of the election, to go forward where they might be futile. Thus it is appropriate for you, and the court if your denial is appealed, to rule on the matter before that occurs. This is the underlying rationale of the holding in Boucher: that a lieutenant governor must determine whether the matter is a proper one for the initiative process. Boucher, 528 P.2d at 460. As the Alaska Supreme Court observed in Whitson:

> [I]t would be useless `to allow the voters to give their time, thought and deliberation to the question of the desirability of the legislation as to which they are to cast their ballots, and thereafter, if their vote be in the affirmative, confront them with a judicial decree that their action was in vain because of the reasons herein set forth.'

608 P.2d at 762 (quoting Schultz v. City of Philadelphia, 122 A.2d 279, 283 (Pa. 1956)).

Accordingly, we believe you must exercise your power of review under Alaska Constitution article XI, section 2, to deny these applications, as the initiative process may not be used to place constitutional amendments on the ballot.

KS:lmk