

August 24, 1993

The Honorable John B. "Jack" Coghill
Lieutenant Governor
State of Alaska

Re: Review of initiative
application for a new state
capital

Our File No.: 663-94-0113

Dear Lieutenant Governor Coghill:

I. INTRODUCTION AND SUMMARY

You have asked us to review the application for an initiative petition providing for the capital of Alaska to be moved to Wasilla, Alaska. The application and the proposed bill comply with the constitutional and statutory provisions governing the use of the initiative. Therefore, the application should be certified.

II. ANALYSIS

A. Introduction

Under AS 15.45.070, the lieutenant governor is required to review an application for a proposed initiative and either "certify it or notify the initiative committee of the grounds for denial." The grounds for denial of an application are that (1) the proposed bill is not in the required form; (2) the application is not substantially in the required form; or (3) there is an insufficient number of qualified sponsors. AS 15.45.080.

B. The Form of the Application

The form of an initiative application is prescribed in 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 relating to the initiative, and (4) the signatures and addresses of not less than 100 qualified voters.

The application meets the first three requirements. The proposed bill is included in the application, the sponsor signature pages include the proposed bill and a statement that the sponsors are qualified voters, and the application designates a three-member initiative committee. Before petitions are issued, your office must determine whether the application contains the signatures and addresses of not less than 100 qualified voters.

C. The Form of the Proposed Bill

The form of a proposed initiative bill is prescribed by AS 15.45.040, which requires that (1) the bill be confined to one subject; (2) the subject be expressed in the title; (3) the enacting clause be "Be it enacted by the People of the State of Alaska"; and (4) the bill not include prohibited subjects. The prohibited subjects -- dedication of revenue, appropriations, the creation of courts or the definition of their jurisdiction, rules of court, or local or special legislation -- are listed in AS 15.45.010 and in article XI, section 7, of the Alaska Constitution. Constitutional amendments are also a prohibited subject. Starr v. Hagglund, 374 P.2d 316, 317 n.2 (Alaska 1962).

The proposed bill reads:

"An act providing for a new capital for the State of Alaska."

BE IT ENACTED BY THE PEOPLE OF THE STATE OF ALASKA:

SECTION 1. At the first statewide election at which this initiative can be submitted to the People of Alaska, the voters shall be asked:

Shall the capital of Alaska be changed to Wasilla?

SECTION 2. If a majority of the votes cast on the question vote yes, Wasilla, Alaska shall be Alaska's capital effective January 1, 1997.

The proposed initiative meets the first three requirements of AS 15.45.040: it is confined to one subject; the subject is expressed in the title; and the enacting clause is in

the proper form.¹

The proposed bill raises three issues with regard to prohibited subjects: (1) whether the initiative would make an appropriation; (2) whether the initiative would enact local or special legislation; and (3) whether the initiative would impermissibly amend the Alaska Constitution.

1. Would the proposed initiative make an appropriation?

The proposed initiative would not make an appropriation. An appropriation "involves setting aside funds for a particular purpose." McAlpine v. University of Alaska, 762 P.2d 81, 88 (Alaska 1988) (emphasis in original); see also Alaska Conservative Political Action Committee v. Municipality of Anchorage, 745 P.2d 936, 938 (Alaska 1987) (initiative requiring conveyance of government assets is an appropriation whether the assets are money or other property); Thomas v. Bailey, 595 P.2d 1, 7-9 (Alaska 1979). That state money would have to be expended in order for an initiative to be implemented never has caused the Alaska Supreme Court to invalidate an initiative. Rather, "[t]he reason for prohibiting appropriations by initiative is to ensure that the legislature, and only the legislature, retains control over the allocation of state assets among competing needs." McAlpine, 762 P.2d at 88 (footnote omitted) (emphasis in original).

The proposed initiative "leaves the legislature with all the discretion it needs with respect to appropriations" for a new capital. McAlpine, 762 P.2d at 91. Nothing in the proposed bill usurps the legislature's appropriation powers. For these reasons, the proposed bill does not violate the constitutional and statutory prohibitions against using the initiative to make an appropriation.

¹ Section 2 of the proposed bill provides that if a majority of the votes cast on the question vote yes, Wasilla shall be Alaska's capital effective January 1, 1997. This section does not constitute the effective date for the bill, but rather the effective date for the change of the capital if the bill is enacted. The effective date of an initiated law is governed by the Alaska Constitution. Article XI, section 6, provides that "[a]n initiated law becomes effective ninety days after certification" of the election, provided a majority of the votes cast on the proposition favor its adoption. See also AS 15.45.220.

2. Would the proposed initiative enact "local or special" legislation?

Nor can the proposed initiative be characterized as "local or special legislation" prohibited by AS 15.45.010 and article XI, section 7, of the Alaska Constitution. In Boucher v. Engstrom, 528 P.2d 456 (Alaska 1974), the Alaska Supreme Court reviewed a proposed initiative to relocate the capital of Alaska from Juneau to a location to be determined by a commission. The court held that the initiative did not constitute local or special legislation, stating:

Thus, in deciding whether an initiative is local or special legislation, we must consider the subject matter of the initiative and determine whether the subject matter is of common interest to the whole state. In our view, the question of the location of Alaska's capital has obvious statewide interest and impact. Access to Alaska's seat of government is of substantial importance to citizens of Alaska throughout the state.

Boucher, 528 P.2d at 461 (footnotes omitted).

The court further observed that "a law does not cease to be general, and become local or special, because it operates only in certain subdivisions of the state." Id. at 461-62. Rather, the critical element in determining whether legislation is "local or special" is whether there is a rational basis for the particular classification; the classification must bear a reasonable and proper relationship to the purposes of the act and the problem sought to be remedied. Id. at 463.

The court determined that if any conceivable factual basis would render an initiative's classification constitutional, the state's courts are obligated to uphold the measure. Applying this test, the court upheld the initiative, finding a rational basis for eliminating Anchorage and Fairbanks from consideration on the premise that the new capital should be a planned capital not located in a relatively heavily urbanized area. Id. at 464.

A factual basis exists to support the proposed initiative for a new capital at Wasilla. Wasilla is located in the Matanuska-Susitna Valley near Anchorage. This area is the main center of population in Alaska. Changing the capital of Alaska to Wasilla is rationally related to making the capital more accessible to Alaskans. In considering this issue, it is important to point out that, in the absence of a clearly fatal

constitutional flaw, an initiative should be allowed to proceed in order to facilitate the citizens' right to utilize the initiative, "an act of direct democracy guaranteed by our constitution." Yute Air Alaska, Inc. v. McAlpine, 698 P.2d 1173, 1181 (Alaska 1985). In using the initiative, the Alaska Supreme Court has repeatedly recognized that the "people are exercising a power reserved to them by the constitution and the laws of the state, and that the constitutional and statutory provisions under which they proceed should be liberally construed." Id. (quoting Boucher v. Engstrom, 528 P.2d at 462, and Municipality of Anchorage v. Frohne, 568 P.2d 3, 8 (Alaska 1977)). The court applied this rule of liberal construction in its review of the local or special legislation question in Boucher. Id. at 462.²

3. Would the proposed bill impermissibly amend the Alaska Constitution by initiative?

The proposed bill would not impermissibly amend the Alaska Constitution by initiative.

The Alaska Supreme Court addressed this issue in Starr v. Hagglund, 374 P.2d 316 (Alaska 1962). In Starr, the court considered an initiative petition to move the capital from Juneau to some place in Western Alaska. The court held that article XV, section 20 of the Alaska Constitution, which provides that "[t]he capital of the State of Alaska shall be at Juneau," is a transitional provision which "is subject to change by law, enacted either by the legislature or by the people through the initiative." Id. at 322.

III. IMPARTIAL SUMMARY OF THE PROPOSED BILL

AS 15.45.090(2) requires that the initiative petition include an impartial summary of the subject matter of the bill. We recommend the following title and summary:

"An Act providing for a new capital for the State of Alaska."

² The court might now analyze the local or special legislation issue under a slightly different standard from that applied in Boucher. This issue was discussed in our recent opinion concerning the legislative session relocation initiative. 1993 Inf. Op. Att'y Gen. at 6-8 (Aug. 4; 663-93-0173). However, the same result would probably be reached under the "sliding scale" test: The proposed initiative has a legitimate purpose and the means used do not impair a constitutionally protected right.

The Honorable John B. "Jack" Coghill
Our File No.: 663-94-0113

August 24, 1993
Page 6

This initiative would amend state law to provide that the capital of Alaska be changed from Juneau to Wasilla effective January 1, 1997.

V. CONCLUSION

For the reasons discussed above, it is concluded that the proposed initiative complies with the constitutional and statutory provisions governing the use of the initiative. Therefore, provided the required number of signatures and addresses of qualified voters have been submitted in the application, we recommend that you certify the application and so notify the initiative committee. Preparation of the petitions may then commence in accordance with AS 15.45.090.

Please let us know if you have any questions.

Very truly yours,

Charles E. Cole
Attorney General

CEC:BJB:kh

cc: Joseph Swanson, Director
Division of Elections