

MEMORANDUM

State of Alaska Department of Law

TO: Hon. John B. "Jack" Coghill
Lieutenant Governor
State of Alaska

DATE: September 21, 1993

FILE NO.: 663-94-0066

TEL. NO.: 465-3600

SUBJECT: Initiative application
to reform Alaska's
campaign finance laws

FROM: Barbara J. Blasco
Assistant Attorney General
Governmental Affairs - Juneau

I. INTRODUCTION AND SUMMARY

You have asked us to review the application for an initiative petition to reform Alaska's campaign finance laws. The application does not comply with the statutory provisions governing the form of initiative applications. Therefore, the application should not 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 and third requirements: the proposed bill is included with the application, and an initiative committee of three sponsors has been designated. With respect to the fourth requirement, your office must determine whether the application contains the signatures and addresses of not less than 100 qualified voters.

The application does not, however, comply with the second requirement: the sponsor signature pages do not include a statement that the sponsors are qualified voters who signed the application with the proposed bill attached.

1. Failure to state that the sponsors are qualified voters

The failure of the signature pages to include a statement that the sponsors are qualified voters does not require rejection of the application. 1981 Inf. Op. Att'y Gen. (Mar. 9; J-66-579-81). When this statutory requirement was adopted in 1960, there was no pre-registration of voters in Alaska. The requirement was necessary to dissuade persons who were not qualified voters from signing initiative applications. Now, however, the division of elections can check the sponsor signatures against the list of registered voters and simply not count the signatures of persons who are not registered. Therefore, we do not recommend the application be rejected because of this defect standing alone; the omission of the "qualified voters" statement does not make the application "not substantially in the required form." AS 15.45.080(2).

2. Failure to state that the sponsors signed the application with the proposed bill attached

The failure of the sponsor signature pages to include a statement that the sponsors signed the application with the proposed bill attached is a substantive defect. The purpose of this statutory requirement is to ensure that each sponsor has been given an opportunity to become personally familiar with the legislation being initiated. It is based on the constitutional requirement that the application contain the bill to be initiated. Alaska Const., art. XI, § 2. Inclusion of the statement provides prima facie proof that the requirement has been met. The requirement is therefore substantive, and an application which does not comply with it is not substantially in the required form

and should not be certified.

The campaign finance reform initiative application was received with a cover letter from the sponsor committee chair and consisted of the initiative bill, sponsor signature pages, a letter designating the sponsor committee, and a check for the filing fee. However, the application includes no statement anywhere that "the sponsors are qualified voters who signed the application with the proposed bill attached." AS 15.45.030(2). The sponsor signature pages have the following heading:

APPLICATION FOR AN INITIATIVE PETITION TO BE
SUBMITTED TO THE LIEUTENANT GOVERNOR, STATE OF
ALASKA

Be it enacted by the People of the State of
Alaska:

PROPOSED BILL TO REFORM ALASKA'S CAMPAIGN
FINANCE LAWS AN INITIATIVE

Thus, the signature pages indicate only that the sponsors support the proposed bill as described in its title without suggesting that the bill was attached. According to the division of elections, the proposed bill was not attached to the sponsor signature pages received by the division.

The attorney general's office has consistently recommended rejection of initiative applications when the application form fails to include the statement that the sponsors signed the application with the proposed bill attached. 1991 Inf. Op. Att'y Gen. at 2 (Jan 1; 663-90-0104); 1989 Inf. Op. Att'y Gen. at 3-4 (Mar 21; 663-89-0306); 1987 Inf. Op. Att'y Gen. at 2-3 (Mar. 27; 663-87-0323); 1986 Inf. Op. Att'y Gen. at 2 (Apr. 10; 663-86-0394); 1980 Inf. Op. Att'y Gen. (July 14; J-66-025-81). This advice is consistent with AS 15.45.080(2), which provides, "The lieutenant governor shall deny certification upon determining in writing that . . . (2) the application is not substantially in the required form" (emphasis added).

The defect in this application must be evaluated under two somewhat divergent considerations. On the one hand, an initiative application must meet the minimum statutory and constitutional requirements before it can be certified. Technical requirements concerning the form of the application are mandatory and cannot be waived where the requirement is substantive in nature. See Silides v. Thomas, 559 P.2d 80, 87 (Alaska 1977) (elections official bound to follow mandatory election statutes subject only to authority given the official within the statutory

provisions). On the other hand, the constitutional and statutory provisions governing the use of the initiative should be liberally construed in order to facilitate the voters' right to enact legislation by initiative. Yute Air Alaska, Inc. v. McAlpine, 698 P.2d 1173, 1181 (Alaska 1985).

In this instance, the elections official must not be required to guess whether the bill was actually attached to the application signed by the sponsors; compliance must appear on the face of the document. 1991 Inf. Op. Att'y Gen. at 4 (Jan 1; 663-90-0104). The defect in this application is substantive in nature and cannot be waived.

This conclusion is not inconsistent with the liberal construction principle noted above. This is not a situation where the subject matter of the proposed bill is being interpreted in a manner that unduly restricts the permissible subject matter of the bill, nor is it a situation where doubt as to whether the application complies with a statutory requirement should be resolved in favor of the applicants. Rather, as concluded in the prior opinions of this office cited above, the failure of the application to state that the sponsors signed the application with the proposed bill attached is a substantive defect, a defect that cannot be waived, and a defect that results in the conclusion that the application is not substantially in the required form.

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 state, "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 initiative meets the requirements of AS 15.45.040: it is confined to one subject; the subject is expressed in the title; the enacting clause is in the proper form; and it does not include any of the prohibited subjects.

D. Substantive Constitutionality of the Proposed Bill

While your review of the initiative is limited to the

form of the application and the proposed bill for compliance with the constitutional and statutory provisions governing the initiative, it should be noted that if this initiative is enacted, it is likely that the constitutionality of significant portions of the bill will be litigated.

The proposed amendments to AS 15.13.070(a) include: prohibiting corporations, labor unions, political action committees, political parties, and other groups from making campaign contributions and independent expenditures on behalf of or in opposition to a candidate for state or municipal office; limiting individual contributions to those candidates who are seeking election to state or municipal office in the election district in which the individual making the contribution resides; prohibiting individuals from making independent expenditures above \$1,000 per candidate per year; and prohibiting post-general election fund raising.

The proposed prohibitions and limitations on campaign contributions and independent expenditures for or against candidates are of questionable validity under the First Amendment to the United States Constitution. The United States Supreme Court has stated that campaign "contribution and expenditures limitations operate in an area of the most fundamental First Amendment activities." Buckley v. Valeo, 424 U.S. 1, 14 (1975); see also Messerli v. State, 626 P.2d 81 (Alaska 1981). While campaign contributions from groups may be regulated, it is very unlikely that they can be prohibited altogether without violating the First Amendment rights of both candidates and groups participating in the electoral process.

Similarly, both the proposed prohibition on independent expenditures by groups and the proposed limitation on independent expenditures by individuals likely violate the First Amendment. In Buckley v. Valeo, the Court held that the independent expenditure ceiling provisions of the Federal Election Campaign Act of 1971, as amended in 1974, were unconstitutional under the First Amendment. 424 U.S. at 51. The Court concluded that the ceiling on independent expenditures, and certain other restrictions on campaign expenditures in the Act, imposed direct and substantial restraints on the quantity of political speech and the ability of candidates, groups, and citizens to engage in protected political expression, and were therefore violative of the First Amendment. *Id.* at 58-59.¹

¹ Following the Court's decision in Buckley v. Valeo, this office issued an opinion concluding that the limitations on campaign expenditures by candidates in former AS 15.13.070(f) were unconstitutional under Buckley and should not be enforced by the

While the constitutionality of substantive provisions of this initiative application is doubtful, the application should not be rejected for this reason. Review of these and any other legal issues raised by the proposed bill must await post-enactment litigation. Boucher v. Engstrom, 528 P.2d 456, 460 n.13 (Alaska 1974). However, we point out these issues because similar laws have been struck down as unconstitutional.

III. CONCLUSION

In conclusion, the subject matter of the proposed initiative is a proper subject for the initiative under article XI, section 7, of the Alaska Constitution, and its substantive provisions are not subject to pre-election review for compliance with other constitutional provisions. However, we recommend that you reject the application as not substantially in the required form because it fails to state that the proposed bill was attached as required by AS 15.45.030(2). We further recommend that the sponsors quote the language of AS 15.45.030(2) on any application forms that are recirculated for sponsor signatures on this initiative.

Please let us know if you have any questions.

BJB:kh

cc: Joseph Swanson, Director
Division of Elections

(..continued)

Alaska Public Offices Commission. 1976 Op. Att'y Gen. No. 20 (May 13).