Hon. John B. Coghill
Lieutenant Governor

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663-94-0114

465-2127

Application for initiative petition: "The Alaska Term Limitation Act of 1993"

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You have received an application for an initiative petition under AS 15.45.020, and have requested us to review the application for form. We believe that the application must be rejected because of defects in the form of the proposed bill.

I. Content of the proposed bill

The bill proposed by the application would add a new AS 15.30.130 to the Election Code.[1] The proposed section limits access to the ballot by candidates who have served as Alaska's representatives in the United States House of Representatives and United States Senate. Under paragraph (b), a person who, at the end of the then-current term, has held office as Alaska's member of the United States House of Representatives during six or more years of the previous 12 years is not eligible to have his or her name placed on the ballot for that office. Under paragraph (c) a person who, at the end of the then-current term, has held office as one of Alaska's members of the United States Senate during 12 or more years of the previous 18 years is not eligible to have his or her name placed on the ballot for that office. Years of service for a term that began before the election at which the bill is enacted are excluded from the determination of previous years of service. The bill specifically provides that its provisions do not prevent voters from electing candidates by write-in or candidates from running write-in campaigns. In addition, paragraph (g) instructs the members of Alaska's Congressional delegation to use their best efforts to attain nationwide term limits.[2]

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[1] It also contains lengthy sections on "Findings and Declarations" (bill section 2) and "Purpose and Intent" (bill section 3).

[2] The bill includes complicated effective dates. Under paragraph (a), the ballot-access limitations of paragraphs (b) and (c) become applicable only when Congressional term or ballot access limits are enacted and are in simultaneous effect in 25 other states. The operative dates of the term or ballot access limits of the 25 other states may be contingent on enactment of

II. Form of the application

The form of an initiative application is prescribed in AS 15.45.030. That statute requires that an application include

- the proposed bill to be initiated;

- a statement that the sponsors are qualified voters who signed the application with the proposed bill attached;

- the designation of an initiative committee of three sponsors who shall represent all sponsors and subscribers in matters relating to the initiative; and

- the signatures and addresses of not less than 100 qualified voters.

The application meets the first three requirements. 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.

III. 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.[3] We believe that the proposed bill complies with the first, third,

(..continued)
such limits by any number of other states. Paragraph (a) governs the effective date if it conflicts with paragraph (h), which makes the bill effective and applicable to federal legislative candidates whose terms of office begin on or after January 1, 1995. Paragraph (d) provides for retrospective effect on federal office holders elected at the same election at which the initiative is enacted. If the initiative is enacted in the 1994 election, apparently paragraph (h) prevents the limits from being applied to a person elected in the 1994 election until that person is elected to a new term after January 1, 1995.

[3] Article XI, section 7, of the Alaska Constitution and that section's statutory restatement, AS 15.45.010, prohibit the use of the initiative to dedicate revenue, to make or repeal appropriations, to create courts, to define the jurisdiction of courts or prescribe their rules, or to enact local or special legislation.

and fourth requirements, but not with the second.[4]

The proposed bill simply says, "An Act." It does not describe what the act purports to do. As such we believe that it is does not comply with AS 15.45.040(2), requiring the subject of the bill to be expressed in the title.

The title is not a trivial part of the bill that can be overlooked. The framers of the Alaska Constitution felt that bill titles were important enough to warrant mention in the constitution. Hence the portion of article II, section 13, that provides, "The subject of each bill shall be expressed in the title." The purpose of this provision is "to prevent surreptitious introduction of legislation not indicated by the title." State v. First Nat'l Bank, 660 P.2d 406, 415 n.19 (Alaska 1982).

In an opinion issued during the first year of statehood, we recommended that the secretary of state (now the lieutenant governor) reject an application for an initiative petition when the proposed bill lacked a title. 1959 Op. Att'y Gen. No. 36. Although that opinion was issued before the 1960 adoption of AS 15.45.040(2), we concluded that article II, section 13, was applicable to bills proposed for enactment through the initiative. We noted that case law from other jurisdictions supported our conclusion.

A comprehensive elections code was enacted by the 1960 legislature. That code included AS 15.45.040(2). Because the legislature enacted AS 15.45.040(2) -- virtually identical to the "expression" clause of article II, section 13 -- only a few months after the issuance of the attorney general's opinion discussed above, we conclude that the legislature accepted that opinion, and ratified the opinion's conclusion that when a proposed bill attached to an initiative application has no title, the application should be rejected.

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[4] We also note that this initiative, dealing only with Congressional representatives and not constituting an absolute term limitation, is not a proposal that can be enacted only through amendment to the Alaska Constitution. Therefore it is distinguishable from the recent initiative application to limit terms of Alaska state legislators, which you rejected because such term limits would require amendment of the state constitution. The superior court upheld that rejection in Alaskans for Legislative Reform v. State, No. 3AN-92-7079 CI (Alaska Super., May 21, 1993), appeal pending, No. S-5717 (Alaska Supreme Ct.).

We have consistently advised that compliance with the title requirement of AS 15.45.040(2) is necessary. In a 1987 informal opinion (Mar. 27; 663-87-0323), we recommended the rejection of an application which, among many other problems, contained a "title" that merely read "The Initiative." We noted that that did not meet the descriptive requirements of AS 15.45.040(2). In a 1986 informal opinion (Apr. 10; 663-86-0394 and -0422), we recommended rejection of an application because, among other things, the proposed bill lacked a title expressing the subject of the bill. See also 1976 Inf. Op. Att'y Gen. (May 6; Johnson).

With regard to the application before you now, it is true that section 1 of the bill provides, "This act shall be known and may be cited as `The Alaska Term Limitation Act of 1993.'" This, however, is not a title within the meaning of article II, section 13, and AS 15.45.040(2). The Manual of Legislative Drafting makes this clear.[5] The manual states, at pages 13-14:

> **SHORT TITLE, PURPOSE, AND FINDINGS:**
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> After the enacting clause, but before the substantive provisions of the bill, the requestor may desire certain preliminary provisions. These provisions are explanatory in nature and are normally drafted as uncodified law. Uncodified law has the same force and effect as that which is codified in the Alaska Statutes, but because it may only be effective for a limited time or may be merely explanatory rather than substantive, it is not assigned an AS section number.
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> (a) Short title
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> Bills are rarely given short titles in Alaska, but occasionally the practice is useful. The short title of a bill should not be confused with the short title of a part of the Alaska Statutes. The former is a brief description of the bill (e.g., "The Omnibus Crime Act of 1988" or "The Education Reform Act") and is not codified in

[5] The Manual of Legislative Drafting is published by the Legislative Affairs Agency. AS 24.08.060(a) makes adherence to the drafting manual mandatory for legislators. It is not mandatory for persons proposing initiatives, although adherence is clearly desirable, since laws enacted by the initiative are placed in the Alaska statutes just as are laws enacted by the legislature.

> the Alaska Statutes. The latter is a brief description of a coherent body of codified law (e.g., "The Administrative Procedure Act" or "The Uniform Commercial Code"), is given an AS number, and appears at the end of the appropriate article or chapter of the Alaska Statutes.
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> When a short title is drafted for a bill, it should be the first section of the bill in the following form:
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> *** Section 1.** SHORT TITLE. This Act may be known as . . . .

Note that the discussion of "title" in its constitutional meaning (and hence in the meaning of AS 15.45.040(2)), as opposed to "short title," is discussed at pages 10-13 of the manual.

Moreover, even if section 1 of the proposed bill is viewed as constituting a "title" within the meaning of article II, section 13, and AS 15.45.040(2), that section does not express the subject of the proposed bill. First, as discussed, the proposed bill does not limit terms; it merely limits ballot access to certain incumbents. Since those incumbents may run and be re-elected through write-in ballots, a description of the proposed bill as a term limitation bill is simply inaccurate.[6]

Second, the proposed bill only applies to three offices: the three members of the state's Congressional delegation. We believe that most voters seeing a bill entitled the "The Alaska Term Limitation Act of 1993" would expect it to be much broader, likely applying to the state legislature as well as to Congress (or maybe even to only the state legislature and not Congress). Thus the title is misleading.

In a 1970 opinion, we recommended rejection of an application for an initiative because the proposed bill's enacting clause was not in precise conformity with AS 15.45.040(3). 1970 Inf. Op. Att'y Gen. (Feb. 9; Spear). What we said there is equally applicable to the question before us now:

> However strong may be the reasons for a court

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[6] This allowance of write-in candidacy is probably in response to case law that indicates that a restriction on ballot access does not constitute a "qualification" under the U.S. Constitution's qualifications clause, if the candidate can be elected by write-in. Hopfmann v. Connolly, 746 F.2d 97 (1st Cir. 1984); State v. Crane, 197 P.2d 864 (Wyo. 1948).

to apply a more lenient rule where a bill has passed but is challenged on the basis of technical errors, these considerations are not particularly applicable to the facts here. In the situation at hand, the Secretary of State is not passing on the legality or validity of a bill which has been passed by the requisite votes but which may contain an error. He is passing only on the form of an application which contains a proposed bill. The difficult question of whether such a bill is valid after having been passed may be avoided at this early juncture by denying the application before it ever reaches that stage. Moreover, if the initiative committee is dissatisfied or aggrieved by such a decision, they may bring an action for judicial review of the question. (See AS 15.45.240)

In passing on this question it is important to note the language of AS 15.45.080 cited above. The legislature apparently wished to make a distinction between the standard of exactitude required in the initiative application (which must be "substantially" in the proper form) and in the bill itself (which must be in the "required" form). This language suggests that while minor deviations from the prescribed form for applications is [sic] permissible, such deviations from the prescribed form for the bill itself are not permissible. Likewise AS 15.45.230 makes room for error in the application form ("No initiative submitted to the voters shall be held void because of the insufficiency of the application or petitions by which the submission was procured.") but does not apply to drafting errors in the bills themselves. Moreover, it cannot be assumed that the statute was passed to encourage the Secretary to overlook technical or formal errors where he may feel they are not particularly important. Neither does the power of the Secretary of State to change the proposed bill in any way appear in the statutes. Though it is true that the Secretary may summarize long bills for purposes of the petition and election, this is not the version that becomes law. The original bill as proposed would become the law. Since the Secretary's duty in these cases is formal it would be improper for him to change the bill even in a technical way. Opponents of any given bill could always allege that the bill was tampered with or that the meaning had been changed in some way,

> after the bill had been passed. This would result in unnecessary cost and confusion. The proper persons to change the bill are the original sponsors.

In short, we recommend that you reject the application because of the title defect in the accompanying proposed bill. In order to cure the title defect, we would suggest the following, or some variant thereof: "An Act prohibiting the ballot listing of candidates for Congress who have a certain amount of prior service in the Congress."

If the sponsors resubmit their application, we would suggest that they correct one other flaw of form in their proposed bill.[7] The bill has a severability clause, proposed AS 15.30.130(i), included with the substantive law. The Manual of Legislative Drafting calls, at page 25, for severability provisions to be in separate bill sections.[8]

IV. Substantive constitutionality of the proposed bill

Because proposed AS 15.30.130 restricts ballot access, we believe that there is a significant possibility that it would be held unconstitutional, if enacted, as violative of the Alaska

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[7] This flaw is not one that, if it were the only flaw, would lead us to recommend rejection of the application.

[8] The proposed bill also includes two provisions that refer to effective dates. See proposed AS 15.30.130(a) and (h), found in section 4 of the bill. If these provisions were truly effective date provisions, they would likely conflict with article XI, section 6, of the Alaska Constitution, which provides that an initiated law becomes effective 90 days after the Lieutenant Governor certifies the election returns enacting the law. However, we believe that a court would construe the "effective" dates as being "applicability" dates. The legislature frequently passes legislation with provisions that are made applicable only to, or are contingent upon, events that occur some time after the effective date of the legislation. The scope of the people's law-making power, through the initiative, is equal to that of the legislature, except as to subjects specifically prohibited by the constitution. Alaska Const. art. XII, sec. 11. Therefore the people may initiate laws that delay the applicability of certain provisions. The delayed applicability dates would not affect the authority of the legislature to amend the initiated law at any time after 90 days from certification of the election, or to repeal it after two years from that date. Alaska Const. art. XI, sec. 6.

equal protection clause, article I, section 1. See, e.g., Castner v. City of Homer, 598 P.2d 953 (Alaska 1979) (requiring compelling governmental interest to uphold law prohibiting candidate from appearing on ballot). However, your review of the initiative application for form does not include a determination of the constitutionality of the proposed bill, except for review under article XI, section 7 (the prohibited subjects section). Boucher v. Engstrom, 528 P.2d 456 (Alaska 1974).

Please feel free to contact us if we can be of further assistance.

cc: Joseph Swanson, Director
Division of Elections