

Hon. Willie Hensley, Commissioner  
Department of Commerce and  
Economic Development

March 15, 1995

663-95-0413

465-3600

Alaska Aerospace  
Development Corporation

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In your January 3, 1995, memorandum you asked two questions in relation to the Alaska Aerospace Development Corporation (AADC).<sup>1</sup>

1. Is the expenditure of money in the AADC revolving fund (AS 14.40.841) contingent upon legislative appropriation? In SLA 92, ch. 136, sec. 41, the sum of \$1,000,000 was appropriated to the AADC revolving fund "for capitalization of the fund." Is any further legislative action required before the AADC may spend all or a portion of this \$1,000,000?

2. Can interest earned on money in the AADC revolving fund be retained without legislative action?

We understand from conversations with Guy Bell, Director of Administrative Services for DCED, that question number two above actually consists of two questions. First, may interest earned on money in the AADC revolving fund be retained in that fund, rather than go to the general fund? Second, if the interest remains in the revolving fund, may the AADC expend the interest absent a legislative appropriation? The answer to the first question is yes. We have advised in the past that interest earned on money in a revolving fund may be retained in that fund without running afoul of the constitutional prohibition on dedicated funds.<sup>2</sup> See 1982 Op. Att'y Gen. No. 13 (Nov. 30); 1992

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<sup>1</sup>The AADC is a public corporation under AS 14.40.821 -- 14.40.990. Under AS 14.40.821 the AADC is located for administrative purposes within the Department of Commerce and Economic Development (DCED), but, with a separate and independent legal existence.

<sup>2</sup>The prohibition on dedicated funds is set out in the Alaska

Inf. Op. Att'y Gen. (Jan. 1; 663-92-0183). The answer to the second question is no, for the following reasons.

Under AS 14.40.866(b)(2) the AADC shall "submit an annual budget to the Legislature through the Governor as provided for state agencies by AS 37.07."<sup>3</sup> The legislative history of the enabling legislation creating the AADC indicates that the requirement in AS 14.40.866(b)(2) was not present initially in the enabling legislation, and was specifically added by the legislature to ensure close legislative control over financial matters. See minutes of meetings of the Senate Labor and Commerce Committee, dated May 10, 1991, and May 13, 1991. The specific addition of the above language in AS 14.40.866(b)(2) indicates that the legislature intended that the AADC submit a budget requesting appropriations, just as any state agency would; the language itself clearly states this requirement, as well.

Therefore, we conclude that the AADC must secure an appropriation from the legislature before expending funds not previously appropriated. This requirement covers interest on the \$1,000,000 previously appropriated to the AADC for capitalization, and any other funds that come into the revolving fund. See 1981 Inf. Op. Att'y Gen. (Aug. 21; J-66-590-81). However, because the \$1,000,000 capitalization has already been appropriated to the AADC by the legislature in sec. 41, ch. 136, SLA 92, an additional appropriation is unnecessary before expenditure of the \$1,000,000.

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Const. art. IX, • 7:

The proceeds of any state tax or license shall not be dedicated to any special purpose, except as provided in Section 15 of this article [establishing the Permanent Fund] or when required by the federal government for state participation in federal programs. This provision shall not prohibit the continuance of any dedication for special purposes existing upon the date of ratification of this section by the people of Alaska.

<sup>3</sup>AS 37.07 is the Executive Budget Act.

Honorable Willie Hensely, Commissioner  
Dep't of Commerce & Economic Development  
File No. 663-95-0413

March 15, 1995  
Page 3

We trust this memorandum answers your questions.

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cc: Pat Ladner, Executive Director  
Alaska Aerospace Development Fund

Guy Bell, Administrative Director  
Department of Commerce and Economic Development

Nancy Slagle, Director  
Division of Budget Review, OMB  
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