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The Honorable Fran Ulmer
Lieutenant Governor
P.O. Box 110015
Juneau, Alaska 99811-0015

Re: Ballot Placement, Post-Session Supplementary Petition
A.G. File No: 663-96-0278

Dear Lieutenant Governor Ulmer:

You have requested our opinion whether the initiative #95 BITL (ballot information term limits) can be placed on the 1996 general election ballot if the sponsors are required to circulate a supplementary petition after the second session of the legislature convened. The short answer to your question is "yes," if the supplementary petition properly corrects or amends the original petition.

The initiative petition was filed January 8, 1996. The petition was initially reviewed by the Division of Elections to determine if the petition booklets contained enough signatures to meet the requirement imposed by the Alaska Constitution.¹ The initial review determined

¹ Alaska Const. Art. XI, Sec. 3 provides:

If signed by qualified voters, equal in number to ten per cent of those who voted in the preceding general election and resident in at least two-thirds of the election districts of the State, it may be filed with the lieutenant governor.

See also, AS 15.45.140. When the petition was filed, it contained barely enough signatures to meet the 10 percent requirement.

that the petition was facially sufficient insofar as the number of signatures. The division then proceeded to verify if the signatures were qualified and resident in the requisite number of election districts of the state. After completing the verification process, the division determined that the sponsors lacked sufficient signatures. After duplicate signatures, signatures of ineligible nature, or not registered voters were eliminated, the petition was 2,400 short of the 10 percent requirement.

The sponsors are entitled to a 30-day period in which to circulate a supplementary petition to "amend and correct" the petition. AS 15.45.170. We understand that if the petition was verified and determined to be properly filed, the initiative would appear on the 1996 general election ballot. You have asked whether the circulation of a supplementary petition during the legislative session would change the election at which the initiative will be placed on the ballot to the 1998 general election. You correctly point out that there are conflicting opinions from this office on this issue. In 1976, we advised the Lieutenant Governor that the need to circulate a supplementary petition during the legislative session should not delay placement on the ballot. We reasoned that such a delay would "unnecessarily restrict the power of the people to engage in direct legislation." 1976 Inf. Op. Att'y Gen. (Feb. 10, 1976). In 1994, we took the opposite view by advising the Lieutenant Governor:

If the sponsors file a petition which is sufficient on its face before the legislature convenes, but the petition is determined insufficient under AS 15.45.160, the sponsors could file a supplementary petition under AS 15.45.170; however, the proposition proposed by that petition could not appear on the 1994 general election ballot because the supplementary petition would not have been filed before the legislature convened.

1994 Inf. Op. Att'y Gen. note.2 (January 1; 663-94-0297). The 1994 opinion relied on the literal wording of AS 15.45.190, which provides that the proposition be placed

on the first statewide general, special, or primary election that is held after (1) the petition and any supplementary petition have been filed, (2) the legislative session has convened and adjourned, and (3) a period of 120 days has expired since the adjournment of the legislative session.

(emphasis added). The 1994 opinion relied on a 1984 opinion which determined that a

petition filed with a patent defect could not be remedied by a supplementary petition and still be placed on the ballot at the next general election. 1984 Inf. Op. Att'y Gen. (Feb. 1; 663-84-0374). The 1994 opinion extended the construction applied in 1984 to delay ballot placement for a facially valid petition that is later determined to require a supplementary petition to cure defects².

We believe that the 1994 opinion must be reversed. Even though the 1994 opinion states a cogent argument in favor of its outcome, the opinion does not discuss or distinguish the decision of the Alaska Supreme Court in *Yute Air Alaska v. McAlpine*, 698 P.2d 1173 (1985). We believe this case substantially decides the matter. In *Yute Air*, the court was confronted with a claim that the verification process, if it occurs after the legislature convenes, causes the placement of the initiative not on the first general election occurring more than 120 days after adjournment, but on the next general election ballot occurring after that election. In an unusual move, the court adopted the opinion of the trial court resolving this issue. Superior Court Judge Rodger Pegues wrote:

. . . the legislature does not need an initiative petition to be verified before it considers the same subject. It suffices for all practical purposes that a facially valid initiative be filed.

698 P.2d at 1179. In *Yute Air*, the court did not reach the question of ballot placement if a supplementary petition is needed after the legislature is in session. The initiative in *Yute Air* was found properly filed after verification, without needing a supplementary petition. However, in each circumstance, a facially valid initiative was filed. This plainly puts the legislature on notice of the existence of an initiative that has substantial public support. The election code allows a supplementary petition to "amend and correct" the petition. It is reasonable to consider the petition to be "filed" for purposes of determining ballot placement even though it must be supplemented. The legislature could easily have worded AS

² A division employee, unaware of the conflicting opinions, advised the sponsors, before the petition was filed, that a supplementary petition circulated after the legislature convened would not affect ballot placement. We have not addressed a possible estoppel argument here because our reasoning affirms the advice given to the sponsors by the division.

15.45.190 to remove any question by requiring that the initiative be "properly" filed for the purpose of determining ballot placement. However, it did not use those words and, just as Judge Pegues did in *Yute Air*, we must attach significance to this omission.

We hope this memorandum adequately answers your question.

Very truly yours,

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