

June 6, 1996

Pat Pourchot, Legislative Director  
Office of the Governor  
State Capitol  
Juneau, Alaska 99801

Re: Power of the Legislature to Reconsider Vetoed  
Bills During a Special Session Called by  
Governor  
A.G. file no: 663-96-0551  
1996 Op. Att'y Gen. No. 4

Dear Mr. Pourchot:

You have requested our advice whether the Nineteenth Alaska State Legislature may reconsider bills vetoed by the governor while it is convened in its first special session. The special session was convened by the governor on May 8, 1996. Veto messages for bills passed during the second regular session were delivered by the governor late in the special session. The House and Senate voted on the 29th day of the special session to reconsider these vetoed bills during a joint session set to convene on the 30th day of the special session.

There is a substantial legal question as to the legislature's power to reconsider the veto of these bills. Our opinion is based on the unambiguous text of article II, section 16 of the Alaska Constitution which provides:

Bills vetoed after adjournment of the second regular session shall be reconsidered by the legislature sitting as one body *no later than the fifth day of a special session of that legislature*, if one is called.

(Emphasis added.)

This provision was added to the Alaska Constitution by an amendment approved by the voters as ballot proposition No. 1 at the 1976 general election. SCS CSHJR 11 (Ninth Legislature, Second Session) (hereinafter HJR 11).<sup>1</sup>

Before HJR 11 was adopted and ratified, it was not possible for the legislature to reconsider vetoes during special sessions called by the governor. The legislature was limited to considering subjects set out in the governor's proclamation or presented by him. HJR 11 amended section 16 as set out above and also amended section 9 to provide that:

At special sessions called by the governor, legislation shall be limited to subjects designated in his proclamation calling the session, to subjects presented by him, *and the reconsideration of bills vetoed by him after adjournment of the last regular session.*

Alaska Const. art. II, sec. 9 (emphasis added to illustrate the text added by HJR 11). Because these provisions were adopted in a single vote, they must be read together to understand whether and when the legislature may reconsider vetoed bills delivered after adjournment of the second regular session.

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<sup>1</sup> Amendments to the Alaska Constitution are proposed by a two-thirds vote of each house of the legislature. The lieutenant governor prepares a ballot title and summary and places the proposed amendment before the voters at the next general election. If the amendment is approved by a majority of the votes cast, it is adopted and takes effect 30 days after certification of the election. Alaska Const. art. XIII, sec. 1.

The plain text of section 16 states that a veto may be taken up "no later than the fifth day of a special session of that legislature." After the fifth day of the special session, the legislature lacks the power to act on vetoes. This would be a harsh result for bills vetoed and delivered after the fifth day of a special session if it were not for the power of the legislature to call itself into special session.<sup>2</sup> Special sessions called by the legislature are not limited by subject matter, and would initiate a five-day period for the reconsideration of vetoed bills.

The rules of constitutional construction require an examination of judicial constructions, statutory definitions, and the common understanding of the words set out in the amendment approved by the voters. Application of the tenets of constitutional construction yields the same interpretation of section 16 as does an examination of the plain words used there. As the Alaska Supreme Court has explained,

Because of our concern for interpreting the constitution as the people ratified it, we generally are reluctant to construe abstrusely any constitutional term that has a plain ordinary meaning. Rather, absent some signs that the term at issue has acquired a peculiar meaning by statutory definition or judicial construction, we defer to the meaning the people themselves probably placed on the provision.

*Citizen's Coalition for Tort Reform v. McAlpine*, 810 P.2d 162, 1269 (Alaska 1991). Our research, in the limited time available to prepare this memorandum, discloses no cases directly on point interpreting a time limit for the consideration of vetoes similar to article II, section 16 of the Alaska

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<sup>2</sup> The Alaska Constitution provides:

Special sessions may be called by the governor or by vote of two-thirds of the legislators. The vote may be conducted by the legislative council or as prescribed by law.

Constitution. There are no statutes which purport to interpret or make specific the provisions pertaining to veto override time limits. However, the legislature interpreted section 16 when it adopted its uniform rules. Uniform Rule 45 provides in pertinent part:

Bills vetoed after adjournment of any regular session shall be returned with a statement of the governor's objections to the Legislative Affairs Agency and may be reconsidered by the full membership of the legislature sitting as one body *not later than the fifth day after the next regular session or any intervening special session convenes during that legislature.*

(Emphasis added.)

Other expressions of time limits *in pari material* use similar words to fix a deadline by describing the specific day of a legislative session on which a period expires. *See, e.g.*, Uniform Rule 44 (fixing thirty-fifth day of the second regular session as the personal bill deadline); AS 37.07.020 (responsibility of the governor to present a budget no later than the fourth legislative day). These provisions clearly are referring to a specific legislative day in the session. This is consistent with interpreting the override powers of the legislature to cease after the expiration of the first five days of the special session.

At the time of ratification, the voters of the state were provided with an official election pamphlet that contained the official ballot title and summary.<sup>3</sup> The official summary merely repeated the time limits in HJR 11 word for word. However, the pamphlet also contained a statement in favor of the proposition written by former Representative Mike Miller. Representative Miller was presumably well informed concerning the legislative history of HJR 11 since he was then a member of the House of Representatives of the Ninth Legislature. Representative Miller wrote:

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<sup>3</sup> The official election pamphlet is prepared by the lieutenant governor and distributed to each household identified from the official registration list. AS 15.58.010.

At present there is some question as to whether the legislature, during a special session called by the governor for another reason, can properly take up a veto which came down from the governor after the adjournment of a regular legislative session. This question should be resolved and will be resolved if the voters approve this proposed constitutional amendment. The amendment states without ambiguity that if a special legislative session is called by the governor (or by the legislature itself) for any reason, *such vetoed bills will be considered during the first five days of the session.*

1976 Official Election Pamphlet at p.47 (emphasis added).

A primary aim in constitutional interpretation is to give the constitutional provision a reasonable and practical interpretation in accordance with common sense. *O'Callaghan v. State*, 826 P.2d 1132, 1136 (Alaska 1992) (citing *Kochutin v. State*, 739 P.2d 170, 171 (Alaska 1987)). A common sense interpretation ensures that the constitution is upheld as the people ratified it. We believe that the construction offered by former Representative Miller is consistent with the text of the amendment. It comports with a usage common to other provisions setting deadlines according to days of a legislative session. Finally, it is probably the meaning that the people thought they were ratifying.

Under this interpretation, the legislature has the power to reconsider a vetoed bill only during the first five days of a special session called by the governor. The Alaska Supreme Court has given a clear indication that time limits on the exercise of legislative power will be enforced. *Cf. Alaska Christian Bible Institute*, 772 P.2d 1079, 1080 (Alaska 1989) (legislature authorized to be in session during the 121 days after convening using recognized method for computing legal deadlines). For this reason, if the legislature attempts to reconsider a vetoed bill, there will be a substantial legal question as to the validity of that action. If the legislature votes to override a veto, we would be inclined to advise the governor that the veto remains intact. We would also advise the governor that a judicial determination should be initiated to declare whether the bill was validly enacted into law.

We hope this memorandum adequately answers your question.

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Sincerely,

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Attorney General

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